Delaware Register of Regulations

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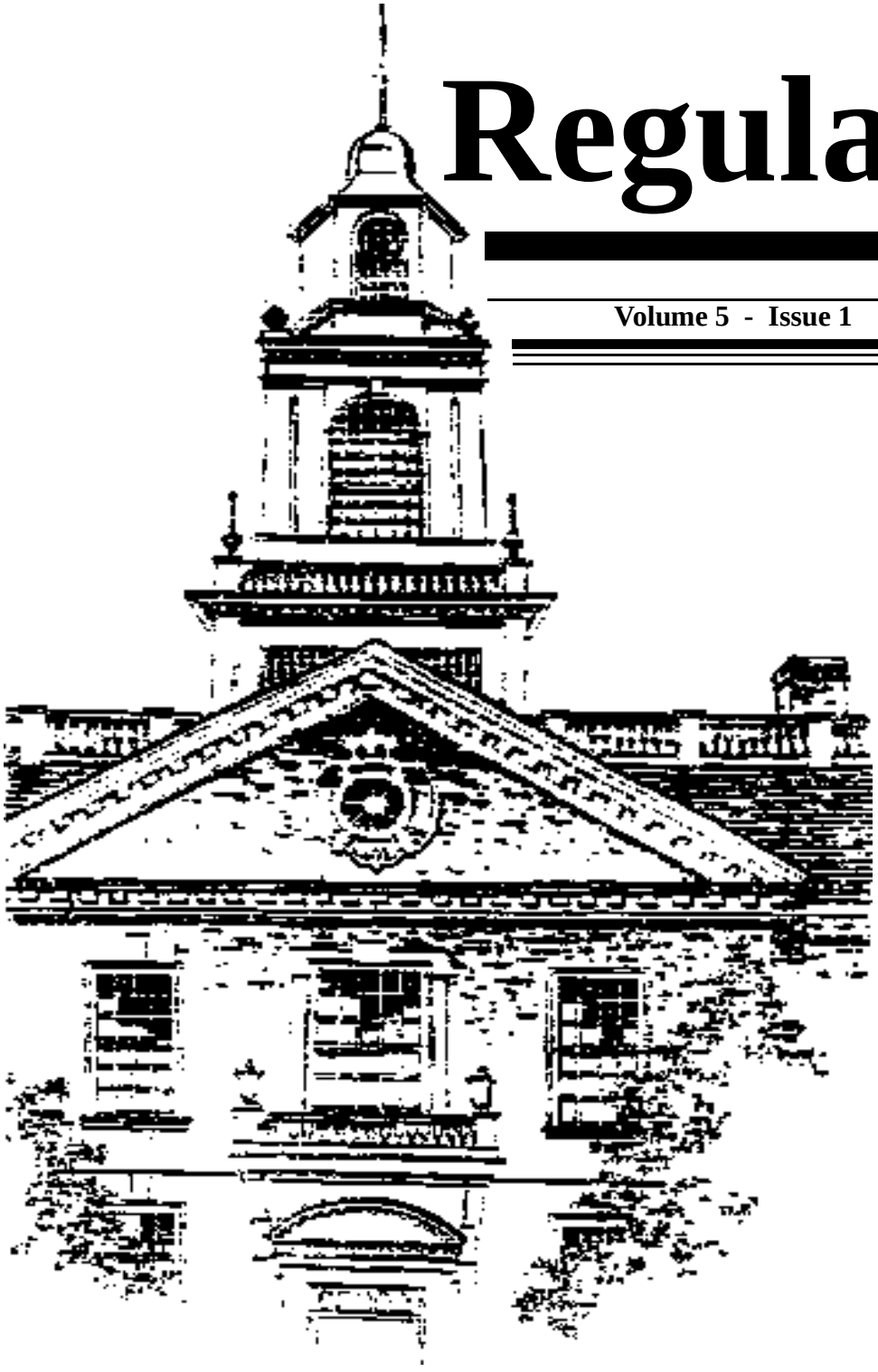

IN THIS ISSUE:

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 June15, 2001.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

Walter G. Feindt, Deputy Director; **Judi Abbott,** Secretary; **Jeffrey W. Hague**, Registrar of Regulations; **Maryanne McGonegal**, Research Analyst; **Ruth Ann Melson**, Legislative Librarian; **Deborah J. Messina,** Print Shop Supervisor; **Alex W. Mull,** Assistant Registrar; **Deborah A. Porter**, Administrative Assistant; **Barbara Ryan,** Public Information Clerk; **Victoria Schultes**, Administrative Assistant; **Ted Segletes,** Paralegal; **Don Sellers,** Printer; **Thom Shiels**, Legislative Attorney; **Marguerite P. Smith**, Public Information Clerk; **Alice W. Stark**, Legislative Attorney; **Mary Jane Starkey**, Senior Secretary; **Marvin L. Stayton**, Printer; **Rochelle Yerkes**, Senior Secretary.

TABLE OF CONTENTS

PROPOSED

FINAL

DEPARTMENT OF INSURANCE

DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT & TRAINING
COUNCIL ON APPRENTICESHIP AND TRAINING

OFFICE OF LABOR LAW ENFORCEMENT

PUBLIC SERVICE COMMISSION

GOVERNOR

CALENDAR OF EVENTS/HEARING NOTICES

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF ACCOUNTANCY

24 DE Admin. Code 100

Statutory Authority: 24 Delaware Code, Section 105(1)(5), (24 **Del.C.** §105(1)(5))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 105(1) and 105(5), the Delaware Board of Accountancy proposes to revise its Rules and Regulations. The proposed amendments implement and clarify the requirements for firm permits to practice by revising Section 9.0 in its entirety, including proposed rules to implement 24 **Del.C.** 112 regarding professional responsibility standards. Other proposed changes include clarifying the definition of "firm," and deleting language from the rules and regulations relating to the conduct of hearings.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, August 22, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address by calling (302) 739-4522, extension 207.

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

Board of Accountancy
Statutory Authority: 24 Del.C. 105

1.0 General Provisions

1.1 Pursuant to 24 **Del.C.** Ch. 1, the Delaware Board of Accountancy ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 1.

1.7 Board members are subject to the provisions applying to "honorary state officials" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 **Del.C.** Ch. 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

2.0 Professional Conduct

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 Use of Designations

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A sole proprietorship, partnership, ~~professional association or professional corporation~~ corporation, or any other entity authorized under Delaware law or a ssimilar statute of another state ~~composed of certified public accountants~~ which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation"CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of

certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

3.3 Designation "Public Accountant" and the abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1 An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2 A sole proprietorship, partnership, ~~professional association or professional corporation~~ corporation, or any other entity authorized under Delaware law or a ssimilar statute of another state ~~composed of certified public accountants~~ which is registered with the Board and holds a current firm permit to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, sole proprietorship, partnership, ~~or~~ corporation, or any other entity authorized under Delaware law or a similar statute of another state shall hold him/her/ itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual on whom has been conferred, by the Internal Revenue Service, the title enrolled agent to use that title or the abbreviation "EA".

3.5 No person, sole proprietorship, partnership, ~~or~~ corporation, or any other entity authorized under Delaware law or a similar statute of another state shall use a title or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such designations as "CFP", "CVA", "ABV", etc.

4.0 Applications

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

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

5.0 Examination and Certificate Requirements

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance,

management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

6.0 Requirements for Permit to Practice Certified Public Accountancy

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 **Del.C.** §108(c)(2) and Sections 6.3 , 6.4 and 6.5 of these Rules and Regulations, as applicable.

6.3 Applicants who hold a master's degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §108(c)(2):

6.3.1 Qualifying experience for holders of a master's degree shall include the provision of any type of service or advice involving the use of accounting, attest, compilation, internal audit, management advisory, financial advisory, tax or consulting skills.

6.3.1.1 "Management advisory" experience shall be limited to the fields of accounting, financial or business matters.

6.3.1.2 "Consulting skills" shall be limited to providing accounting, financial or business advice.

6.3.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.4 Applicants who hold a baccalaureate degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §108(c)(2):

6.4.1 Qualifying experience for holders of a baccalaureate degree shall include experience in engagements resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.4.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.4.2. Experience in internal audit may be used in lieu of or in addition to the experience described in 6.4.1.

6.4.3 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.5 Applicants who hold an associate degree pursuant to the terms of 24 **Del.C.** §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 **Del.C.** §108(c)(2):

6.5.1 The applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.5.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.6 Each applicant, regardless of educational level, must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit

must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.6.1 In cases in which any part of the required experience has been obtained in the practice of public accountancy, the affidavit may be from the responsible supervisor at each employer with whom such experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.7 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

See 3 DE Reg. 1668 (6/1/00)

7.0 Requirements for Permit to Practice Public Accountancy

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

8.0 Reciprocity

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets requirements of 24 **Del.C.** §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 **Del.C.** §109 (a) (3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 **Del.C.** §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9.0 Firm Permits to Practice

9.1 Definitions

9.1.1 "Firm" means a sole proprietorship, partnership, corporation or any other entity authorized under Delaware law or a similar statute of another state.

~~9.1 For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations,~~

9.1.2 The term "principal of a firm" is defined as any individual who has an equity interest in the firm.

9.2 Each firm which intends to be or is engaged in the practice of certified public accountancy or the practice of public accountancy in this State shall be required to obtain and maintain a valid permit to practice. Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such time as that person begins to perform certified public accounting or public accounting services in this State or for clients located in this State.

9.3 Each applicant for issuance or renewal of a firm permit to practice certified public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid individual permit to practice certified public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not as yet accumulated sufficient experience to qualify for a permit under 24 *Del. C.* § 108, holds a valid individual permit to practice certified public accountancy. For purposes of 24 *Del. C.* § 111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.

9.4 Each applicant for issuance or renewal of a firm permit to practice public accountancy shall be required to show that: 1) each principal who performs services in this State, who performs services for a client(s) located in this State, or who is responsible for the accounting work in this State, holds a valid individual permit to practice public accountancy; and 2) each employee holding a certificate who performs services in this State or who performs services for a client(s) located in this State, except for employees who have not yet met the requirements to qualify for a permit under 24 *Del. C.* § 110, holds a valid individual permit to practice public accountancy. For purposes of 24 *Del. C.* § 111 and this Section of the Rules and Regulations, employees of a firm with its principal offices outside of Delaware that work in excess of eighty (80) hours in this State or who work for a client(s) in this State must have an individual permit to practice.

9.5 An applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to register each office of the firm within this State with the Board, and to show that each such office is under the charge of a person holding a valid permit to practice.

9.6 Each holder of or applicant for a firm permit to practice certified public accountancy or public accountancy shall notify the Board in writing within thirty (30) days after its occurrence of: 1) any change in the identities of principals who work regularly within this State; 2) any change in the number or location of offices within this State; 3) any change in the identity of the persons supervising such offices; and 4) any issuance, denial, revocation or suspension of a permit issued by any other State to the firm or to any principal or employee regulated by the Board.

9.~~2~~7 Certified public accounting and public accounting firms practicing as corporations organized pursuant to Delaware law must be organized ~~as professional corporations ("P.C.") or professional associations ("P.A.")~~ in compliance with The Professional Service Corporation Act, 8 **Del.C.** § ~~671~~ 601, *et. seq.*

9.8 All firms and accountants practicing in firms shall be bound by professional responsibility standards no less stringent than those stated in 8 *Del. C.* § 608. Each applicant for issuance or renewal of a firm permit to practice certified public accountancy or public accountancy shall be required to cause a duly authorized individual to verify under oath that upon issuance by the Board of a firm permit to practice, the firm will be bound by professional standards no less stringent than those stated in 8 *Del. C.* § 608.

~~9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.~~

9.~~4~~9 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

10.0 Continuing Education

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one

year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs of national, state and local accounting organizations;

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters;

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education;

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.);

10.5.3.6 Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance

with the provisions of the Administrative Procedures Act, 29 **Del.C.** §10101, *et. seq.*

10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting
Administrative Practice
Auditing
Business Law
Communication Arts
Computer Science
Economics
Finance, Production and Marketing
Management Services Mathematics, Statistics, Probability, and Quantitative
Applications in Business
Personnel Relations, Business Management and Organization
Social Environment of Business
Specialized Areas of Industry
Taxation

11.0 Additional Provisions Concerning Examinations

11.1 All examinations required under 24 **Del.C.** Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the

attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

12.0 Excepted Practices; Working Papers

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 **Del.C.** §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 **Del.C.** Chapter 1.

12.2 Working Papers: For purposes of 24 **Del.C.** §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

13.0 Hearings

13.1 Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 **Del.C.** §8807(h)(1)-(3).

13.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

13.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

13.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

13.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C.** §§10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. ~~A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall~~

~~be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both.~~ The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

13.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

13.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §§10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

13.2. General procedure

13.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

13.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

13.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

14.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

14.1 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.

14.2 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.

14.3 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).

14.4 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.

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

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

14.6.1 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.

14.6.2 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.

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

14.6.4 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.

14.6.5 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.

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

14.7 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.

14.8 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.

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

14.10 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.

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

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF MASSAGE & BODYWORK

24 DE Admin. Code 5300

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

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del. C.** Sections 5306(1) and 5312(c), the Delaware Board of Massage and Bodywork proposes to revise its Rules and Regulations. The proposed revisions increase the period of time within which a licensed massage and bodywork therapist or a certified massage technician may still renew such license or certificate, notwithstanding the fact that such licensee or certificate holder has failed to renew on or before the renewal date. The proposed increase in the period of time is from ninety (90) days to one (1) year. In addition, the proposed revisions clarify that prior to renewal, the licensee or certificate holder will be required to demonstrate compliance with the continuing education requirements.

A public hearing will be held on the proposed Rules and Regulations on Thursday, August 2, 2001 at 1:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

1.0 Definitions
2.0 Filing of Application for Licensure as Massage/Bodywork Therapist
3.0 Examination
4.0 Application for Certification as Massage Technician.
5.0 Expired License or Certificate
6.0 Continuing Education
7.0 Scope of Practice
8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Definitions and General Definitions

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

1.2 The term a "100-hour course of supervised in-class study of massage" as referenced in 24 **Del.C.** §5309(a)(1) shall mean that an instructor has controlled and reviewed the applicant's education on the premises of a school or approved program of massage or bodywork therapy, and can document that the applicant has successfully completed a 100 hour course which includes hands-on technique and theory, and anatomy, physiology, and contraindications as they relate to massage and bodywork.

1.2.1 The 100 hour course must be a unified introductory training program in massage and bodywork, including training in the subjects set forth in Rule 1.2. The entire 100 hour course must be taken at one school or approved program. The Board may, upon request, waive the "single school" requirement for good cause or hardship, such as the closure of a school.

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

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

Acupressure
Chair Massage
Craniosacral Therapy
Deep Tissue Massage Therapy
Healing Touch
Joint Mobilization
Lymph Drainage Therapy
Manual Lymphatic Drainage
Massage Therapy
Myofascial Release Therapy
Neuromuscular Therapy
Orthobionomy
Process Acupressure
Reflexology
Rolfing
Shiatsu
Swedish Massage Therapy
Trager
Visceral Manipulation

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

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

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

2.0 Filing of Application for Licensure as Massage/ Bodywork Therapist

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

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

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

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

is first reviewed by the Board, the Board will propose to deny the application.

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

2.4 Renewal. Applicants for renewal of a massage/ bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

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

3.0 Examination

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

4.0 Application for Certification as Massage Technician

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

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

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

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

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

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

4.4 Renewal. Applicants for renewal of a massage technician certificate shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State certified cardiopulmonary resuscitation program. Certificate holders shall be required to maintain current CPR certification throughout the biennial licensure period.

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

5.0 Expired License or Certificate

An expired license as a massage/bodywork therapist or expired certificate as a massage technician may be reinstated within ~~ninety (90) days~~ one (1) year after expiration upon application and payment of the renewal fee plus a late fee as set by the Division of Professional Regulation, and submission of documentation demonstrating compliance with the continuing education requirements.

6.0 Continuing Education

6.1 *Hours required*. For license or certification periods beginning September 1, 2000 and thereafter, each massage/ bodywork therapist shall complete twenty-four (24) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Each massage technician shall complete twelve (12) hours of acceptable continuing education during each biennial licensing period, except as otherwise provided in these Rules and Regulations. Completion of the required continuing education is a condition of renewing a license or certificate. Hours earned in a biennial licensing period in excess of those required for renewal may not be credited towards the hours required for renewal in any other licensing period.

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

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

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

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

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

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

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

6.3 *Content.*

6.3.1 Except as provided in Rule 6.3.2, continuing education hours must contribute to the professional competency of the massage/bodywork therapist or massage technician within modalities constituting the practice of massage and bodywork. Continuing education hours must maintain, improve or expand skills and knowledge obtained prior to licensure or certification, or develop new and relevant skills and knowledge.

6.3.2 No more than 25% of the continuing education hours required in any licensing period may be earned in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

6.3.2.5 Courses taught by video, teleconferencing, video conferencing or computer

6.4 *Board approval.*

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

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

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

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

6.4.4 The Board may award additional continuing education credits, on an hour for hour basis, to continuing education instructors for the first-time preparation and presentation of an approved continuing education course for other practitioners, to a maximum of 6 additional hours. (e.g. an instructor presenting a 8 hour course for the first time may receive up to 6 additional credit hours for preparation of the course). This provision remains subject to the limitations of Rule 6.3.2.

6.5 *Reporting.*

6.5.1 For license or certification periods beginning September 1, 2000 and thereafter, each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board on or before May 31 of the year the license or certification expires. No license or certification shall be renewed until the Board has approved the required continuing education hours or granted an extension of time for reasons of hardship. The Board's approval of a candidate's continuing education hours in a particular modality does not constitute approval of the candidate's competence in, or practice of, that modality.

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

6.5.3 If a continuing education program has not already been approved by the Board, the candidate for renewal must give the Board, at the Board's request, all of the materials required in Rule 6.4.2 and demonstrate the actual completion of the continuing education hours by giving the Board a letter, certificate or other acceptable proof of attendance provided by the program sponsor.

6.6 *Hardship.* A candidate for renewal may be granted an extension of time in which to complete continuing education hours upon a showing of unusual hardship. "Hardship" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship

consideration must be submitted to the Board in writing prior to the end of the licensing or certification period for which it is made. If the Board does not have sufficient time to consider and approve a request for hardship extension prior to the expiration of the license, the license will lapse upon the expiration date and be reinstated upon completion of continuing education pursuant to the hardship exception. The licensee may not practice until reinstatement of the license.

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

7.0 Scope of Practice

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

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 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.

8.2 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.

8.3 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).

8.4 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.

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

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

8.6.1 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.

8.6.2 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.

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

8.6.4 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.

8.6.5 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.

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

8.7 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.

8.8 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.

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

8.10 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.

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

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

DEPARTMENT OF AGRICULTURE

THOROUGHBRED RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10103 (3 **Del.C.** 10103)

The Commission proposes this amendment pursuant to 3 **Del.C.** §10103(c) and 29 **Del.C.** §10115. The proposed amendment to Rule 13.01 would permit a horse to be claimed by any owner who is good standing and in possession of a valid Delaware license.

The Commission will accept written comments on the proposed rule amendment from July 1, 2001 until July 30, 2001. Written comments should be sent to the Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rule can be obtained by contacting the Commission office at 302-698-4600.

PART 13 -- CLAIMING RACES

13.01 Owners Entitled:

In claiming races, any horse is subject to claim for its entered price by any Owner in good standing who ~~has started a horse at the meeting at which the claim is made~~ possesses a valid/current Delaware license. ~~An Owner may claim out of the race in which he first starts a horse.~~

~~A new Owner, i.e., an individual, partnership, corporation or any other authorized racing interest who has not held an Owner's licenses in any racing jurisdiction during the prior year, is eligible to claim by obtaining an "Open Claiming License" from the Delaware Thoroughbred Racing Commission.~~

~~In order to obtain an open claiming license and file an open claim, an individual must comply with the following procedures:~~

~~(a) Depositing an amount no less than the minimum claiming price of the intended claim at that meet with the Horsemen's Bookkeeper. Such amount shall remain on account until a claim is in fact made. In the event of withdrawal of such fund, any license issued hereunder shall be automatically revoked and terminated.~~

~~(b) Securing an Owner or authorized racing interest license by the Delaware Thoroughbred Racing Commission. Such license will be conditioned upon the making of a claim and shall be revoked if no such claim is, in fact, made within thirty (30) racing days after issuance or if the deposit above required is withdrawn prior to completion of a claim.~~

~~(c) Naming a Trainer licensed by the Delaware Thoroughbred Racing Commission who will represent him once said claim is made.~~

13.02 Claim by Agent:

A claim may be made by an authorized agent, but an agent may claim only for the account of those for whom he is authorized and registered as agent and the name of the authorized agent, as well as the name of the Owner for whom the claim is being made, shall appear on the claim slip.

13.03 Claiming Own Horse Prohibited:

No person shall claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account. No claimed horse shall remain in the same stable or under the care or management of the Owner or Trainer from whom claimed.

13.04 Limits on claims:

No person shall claim more than one horse from any one race. No authorized agent, although representing several Owners, shall submit more than one claim for any race. When a stable consists of horses owned by more than one person, trained by the same Trainer, not more than one claim may be entered on behalf of such stable in any one race. An Owner who races in a partnership may not claim except in the interest of the partnership, unless he has also started a horse in his own individual interest. An owner who races in a partnership may claim in his or her individual interest if the individual has started a horse in the partnership. The individual must also have an account with the horsemen's bookkeeper that is separate from the partnership account.

13.05 Thirty Day Prohibition -- Racing Claimed Horse:

Repealed 8/95.

13.06 Thirty Day Prohibition -- Sale of Claimed Horse:

No horse claimed in a claiming race shall be sold or transferred, wholly or in part, to anyone within thirty (30) days after the day it was claimed, except in another claiming race. No claimed horse shall race elsewhere until sixty (60) calendar days after the date on which it was claimed or until after the close of the meeting at which it was claimed, whichever comes first. The day claimed shall not count, but the following calendar day shall be the first day and the horse shall be entitled to enter elsewhere whenever necessary so the horse may start on the 61st calendar day following the claim. The Stewards shall have the authority to waive this rule upon application, so as to allow a claimed horse to race in a stakes race. The Stewards may also permit a horse claimed in a steeplechase or hurdle race to race elsewhere in a steeplechase or hurdle race after the close of the steeplechase program, if such a program ends before the close of the meeting at which it is claimed.

Revised: 7/16/86

13.07 Form of Claim:

Each claim shall be made in writing on a form and in an envelope supplied by Licensee. Both form and envelope must be filled out completely and must be accurate in every detail.

13.08 Procedure for Claim:

Claims must be deposited in the claim box at least ten (10) minutes before post time of the race from which the claim is being made. No money or its equivalent shall be put in the claim box. For a claim to be valid, the claimant must have, at the time of filing the claim, a credit balance in his account with the Horsemen's Bookkeeper of not less than the amount of the claim.

Revised: 8/15/95

13.09 Stewards' Duties:

The Stewards, or their designated representatives, shall open the claim envelopes for each race as soon as the horses leave the paddock en route to the post. They shall thereafter check with the Horsemen's Bookkeeper to ascertain whether the proper credit balance has been established with the Licensee and with the Racing Secretary as to whether the claimant has claiming privileges at Licensee's meeting.

13.10 Conflicting claims:

If more than one valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the Stewards or their designated representative.

13.11 Delivery of Claimed Horse:

Any horse that has been claimed shall, after the race has been run, be taken to the paddock for delivery to the claimant, who must present written authorization for the claim from the Racing Secretary. No person shall refuse to deliver to the person legally entitled thereto a horse claimed out of a claiming race and, until delivery is made, the horse in question shall be disqualified from further racing.

13.12 Nature and Effect of a Claim:

Claims are irrevocable. Title to a claimed horse shall be vested in the successful claimant from the time the said horse is a starter and said claimant shall then become the Owner of the horse, whether it be alive or dead, sound or unsound, or injured, during the race or after it. A claimed horse shall run in the interest of and for the account of the Owner from whom claimed.

13.13 Prohibited Practices:

No person shall offer or enter into an agreement to claim or not to claim or to attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt, by intimidation, to prevent anyone from running a horse in any claiming race. No Owner or Trainer shall make

an agreement with another Owner or Trainer for the protection of each other's horses in a claiming race.

Rule 13.06 Rev. March 1976.

13.14 Invalidation of Claim:

Claims which are not made in keeping with the Rules shall be void. The Stewards may, at any time in their discretion, require any person filing a claim to furnish an affidavit in writing that he is claiming in accordance with these Rules. The Stewards shall be the judges of the validity of the claim and, if they feel that a "starter" was nominated for the purpose of making its Owner eligible to claim, they may invalidate the claim.

13.15 Necessity to Record Lien:

Any person holding a lien of any kind against a horse entered in a claiming race must record the same with the Racing Secretary and/or Horsemen's Bookkeeper at least thirty (30) minutes before post time for that race. If none is so recorded, it shall be conclusively assumed, for claiming purposes, that none exists.

13.16 Claiming Privileges -- Eliminated Stable:

If a person's stable shall be eliminated with thirty (30) racing days or less remaining in the current racing season, and such person is unable to replace the horse(s) lost via a claim by the end of the racing season, such person may apply to the Stewards for an additional thirty (30) racing days of eligibility to claim in the new race meeting as long as the person owns no other horses at the start of the next race meeting.

13.17 Claim Embraces Horse's Prior Engagements:

The engagements of a claimed horse pass automatically with the horse to the claimant.

13.18 Caveat Emptor:

Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

13.19 Racing Claimed Horse:

No horse claimed in a claiming race shall be raced in another claiming race for an amount less than the original claiming price for a period of thirty (30) days after the date of the original claim.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 122(a) (14 **Del.C.** 122(a))

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

101 Delaware Student Testing Program

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 101 Delaware Student Testing Program. The amendments to 1.0, 3.0, and 4.0 reflect the changes in 14 *Del. C.* Sections 152 and 153 as per H.B.106 on high school diplomas, off grade testing and on promotion and retention procedures. In section 2.4 the reference to “Near the Standard” has been deleted. Section 7.0 (formally 2.0) on security and confidentiality has been amended by adding 7.4 Procedures for Reporting Security Breaches. Other amendments include 5.0 that describes who is responsible for providing summer school programs, 6.0 that describes how the high school diploma index is applied and 8.0 that describes procedures for reviewing questions and response sheets from the DSTP.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses issues in the DSTP. The DSTP is part of the accountability system for the purpose of improving student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses elements of the DSTP. This program is designed to provide an assessment of student progress in as equitable a way as is possible.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses issues in the DSTP. Students’ legal rights are always a consideration in the DSTP.

5. Will the amended regulation preserve the necessary authority and flexibility of decision makers at the local board and school level? The amended regulation reflects the changes in the statute. The changes to the statute do enhance the 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 does not place any more reporting or administrative requirements or mandates upon decision makers at the local board and school levels than occurred due to changes in the statute.

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 will remain in the same entity.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The statute requires that the Department of Education make regulations for the implementation of the DSTP.

10. What is the cost to the state and to the local school boards of compliance with the regulation? The cost of the DSTP program is addressed in the budget act.

101 Delaware Student Testing Program

1.0 ~~General:~~ Definition: The Delaware Student Testing Program (DSTP) shall include the assessments of all students in grades K-10 in the areas of reading, writing and mathematics and the assessments of all students in grades 4, 6, 8, and 11 in the areas of science and social studies. The DSTP shall also include the participation of Delaware students in the National Assessment of Educational Progress (NAEP) as determined by the Department of Education. All districts and charter schools shall participate in all components of the DSTP including field test administrations.

~~Assessments created pursuant to the Delaware Student Testing Program shall be administered annually, on dates specified by the Secretary of Education. The assessments shall be administered to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science.~~

1.1 All students in said grades shall be tested except that students with disabilities and students with limited English proficiency shall be tested according to the Department of Education's Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency, as the same, may from time to time be amended hereafter.

1.2 The Department of Education shall determine the dates upon which the DSTP will be administered, and will advise the school districts and charter schools of those dates.

2.0 ~~3.0~~ Levels of Performance: For assessments administered to students in grades 3, 5, 8, and 10, in the content areas of reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in the content areas of social studies and science, there shall be five levels of student performance relative to the State Content Standards on the assessments administered pursuant to the Delaware Student Testing Program. Said levels are defined and shall be determined as follows:

2.1 ~~3.1~~ Distinguished Performance (Level 5): A student's performance in the tested domain is deemed exceptional. Students in this category show mastery of the Delaware Content Standards beyond what is expected of students performing at the top of the grade level. Student performance in this range is often exemplified by responses that indicate a willingness to go beyond the task, and could be classified as "exemplary." The cut points for Distinguished Performance shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

2.2 ~~3.2~~ Exceeds the Performance Standard (Level 4): A student's performance in the tested domain goes well beyond the fundamental skills and knowledge required for students to Meet the Performance Standard. Students in this category show mastery of the Delaware Content Standards beyond what is expected at the grade level. Student performance in this range is often exemplified by work that is of the quality to which all students should aspire, and could be classified as "very good." The cut points for Exceeds the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

2.3 ~~3.3~~ Meets the Performance Standard (Level 3): A student's performance in the tested domain indicates an understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students in this category show mastery of the Delaware Content Standards at grade level. Student performance in this range can be classified as "good." The cut points for Meets the Performance Standard shall be determined by the Department of Education, with the consent of the State

Board of Education, using advice from a standard setting body. The standard setting body shall utilize a proven method for setting standards on test instruments that utilizes student work in making the recommendation.

2.4 ~~3.4~~ Below the Performance Standard (Level 2): A student's performance in the tested domain shows a partial or incomplete understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Below the Performance Standard may require additional instruction in order to succeed in further academic pursuits, and can be classified as academically "deficient." The cut points for Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process. ~~Students at the upper end of this level are to be further sub-classified as Near the Performance Standard. Students who are Near the Performance Standard are those whose performance on the fundamental skills and knowledge articulated in the Delaware Content Standards is not yet sufficient to meet the Performance Standard, but the student is near the threshold in relation to the Meets the Performance Standard category. The threshold for Near the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using an error of measurement determined by the test data and the results from the standard setting process.~~

2.5 ~~3.5~~ Well Below the Performance Standard (Level 1): A student's performance in the tested domain shows an incomplete and a clearly unsatisfactory understanding of the fundamental skills and knowledge articulated in the Delaware Content Standards. Students who are Well Below the Performance Standard have demonstrated broad deficiencies in terms of the standards indicating that they are poorly prepared to succeed in further academic pursuits and can be classified as "very deficient." The cut points for Well Below the Performance Standard shall be determined by the Department of Education, with the consent of the State Board of Education, using test data and the results from the Standard Setting process.

3.0 ~~2.0~~ Other Indicators of Student Performance

3.1 ~~2.1~~ Other indicators of student performance relative to the state content standards may be considered when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP.

~~2.1.1 Other indicators shall be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee (14 Del. C., 158). Pursuant to 14, Del. C., § 153 (b) school districts and charter schools shall submit a list of proposed indicators to the Department no later than September 1 of each year.~~

3.1.1 ~~2.1.1.1~~ Such a list must include a demonstration of how an indicator aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.1.2 ~~2.1.2~~ Pursuant to 14 Del. C. § 153(d)(1)(b), (2)(b), (3)(b), (4)(b) and (5) these indicators of student performance shall be evaluated by an academic review committee composed of educators in the student's district or charter school.

3.1.2.1 ~~2.1.2.1~~ Such committees shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member, two school building administrators and be chaired by the school district's or a charter school's supervisor of curriculum or instruction or designee.

4.0 Individual Improvement Plan (IIP)

~~4.1 Beginning with the Spring 2000 DSTP results, students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.~~

4.1 The following students are required to have an Individual Improvement Plan:

4.1.1 Students who score below Level 3 Meets the Standard, on the reading portion of the 3rd, 5th or 8th grade Delaware Student Testing Program or the mathematics portion of the 8th grade Delaware Student Testing Program shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.2 Students assessed on the DSTP in grades K, 1, 2, 4, 6, 7, and 9 who are not progressing satisfactorily toward the standards in reading shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.1.3 Students assessed on the DSTP in grades 6, 7, and 9 who are not progressing satisfactorily toward the standards in mathematics shall have an Individual Improvement Plan prepared by school personnel and signed by the teacher(s), principal or designee and a parent or legal guardian of the student.

4.2 ~~4.1.1~~ The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations

or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

4.3 ~~4.1.2~~ The Individual Improvement Plan shall at a minimum identify a specific course of study for the student that the school will provide and the academic improvement activities that the student shall undertake to help the student progress towards meeting the standards. Academic improvement activities may include mandatory participation in summer school, extra instruction and/or mentoring programs.

4.4 ~~4.1.3 The~~ Individual Improvement Plan shall be prepared by school personnel and signed by the teacher(s), principal or designee and the parent or legal guardian of the student. A parent or the student's legal guardian must sign and return a copy of the student's Individual Improvement Plan to the student's school by the end of the first marking period.

4.5 ~~4.2~~ Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided ~~by the school district's superintendent. Disputes among school and/or district staff concerning a student's IIP shall be settled through the school district's normal procedures for resolving similar internal disagreements.~~ pursuant to 14 Del. C., § 153(d)(1). Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

5.0 Students in Grades 3, 5,and 8 Who are Required to Attend a Summer School Program Pursuant to 14 Del. C., § 153.

5.1 Summer school programs shall be provided by the student's district of residence with the following exceptions:

5.1.1 Where a student attends another district as a result of school choice or attends a charter school the district of choice or charter school shall provide the summer school program.

5.1.2 Where by mutual agreement of both districts or a charter school and the parent or guardian of the student another district provides services.

5.1.3 Where by mutual agreement of the student's school district or a charter school and the student's parent or guardian, the parent or guardian arranges for summer school instruction to be provided outside the public school system. Under such conditions the parent or guardian shall be responsible for the cost of providing non-public school instruction and requirements for secondary testing shall be met unless the districts or the charter school and parents or guardian agree otherwise.

5.1.4 Where a student has been offered admission into a vocational technical school district or charter school that district or charter school may provide summer school services.

6.0 High School Diploma Index As Derived from the 10th Grade Assessments Pursuant to 14 Del. C., § 152.

6.1 Students who graduate from a Delaware public high school, as members of the class of 2004 and beyond shall be subject to the diploma index as stated herein.

6.1.1 Beginning in 2002 for the graduating class of 2004, the State shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, and mathematics.

6.1.2 Beginning in 2005 for the graduating class of 2006, the State shall calculate a diploma index based upon the student's grade 10 Delaware Student Testing Program performance levels in reading, writing, mathematics and the grade 11 Delaware Student Testing Program performance levels in science and social studies.

6.2 A student may choose to participate in additional scheduled administrations of the DSTP in order to improve his/her diploma index. The highest earned performance level in each content area will be used in calculating the diploma index.

6.3 The diploma index shall be calculated by multiplying the earned performance level in each content area by the assigned weight and summing the results.

6.3.1 Beginning with the year 2002, the assigned weights shall be .40 for reading, .40 for mathematics, and .20 for writing for the graduating class of 2004.

6.3.2 Beginning with the year 2005, the assigned weights shall be .20 for reading, .20 for mathematics, .20 for science and .20 for social studies for the graduating class of 2006.

6.4 Students shall qualify for State of Delaware High School diplomas as follows:

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 3.5 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.2 A student shall be awarded a Standard State Diploma upon attainment of a diploma index greater than or equal to 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.4.3 A student shall be awarded a Basic State Diploma upon attainment of a diploma index less than 3.0 and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

6.5 Parent or Guardian Notification: Within 30 days of receiving student performance levels and/or diploma indices, school districts and charter schools shall provide written notice of the same and the consequences thereof to the

student's parent or legal guardian.

7.0 ~~2.0~~ Security and Confidentiality: In order to assure uniform and secure procedures, the Delaware Student Testing Program shall be administered pursuant to the Delaware Student Testing Program Coordinators Handbook, as the same, may from time to time be amended hereafter.

7.1 ~~2.1~~ Every district superintendent, district test coordinator, school principal, school test coordinator and test administrator shall sign the affidavit provided by the Department of Education regarding test security before, during and after test administration.

7.2 ~~2.2~~ Violation of the security or confidentiality of any test required by the *Delaware Code* and the regulations of the Department of Education shall be prohibited.

7.3 ~~2.3~~ Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials. Conduct that violates the security or confidentiality of a test is defined as any departure from the test administration procedures established by the Department of Education. Conduct of this nature shall include, without limitation, the following acts and omissions:

7.3.1 ~~2.3.1~~. D ~~d~~uplicating secure examination materials;

7.3.2 ~~2.3.2~~ D ~~d~~isclosing the contents of any portion of a secure test;

7.3.3 ~~2.3.3~~ P ~~p~~roviding, suggesting, or indicating to an examinee a response or answer to a secure test item or prompt;

7.3.4 ~~2.3.4~~ C ~~c~~hanging or altering a response or answer of an examinee to a secure test item or prompt;

7.3.5 ~~2.3.5~~ A ~~a~~iding or assisting an examinee with a response or answer to a secure test item or prompt;

7.3.6 ~~2.3.6~~ E ~~e~~ncouraging or assisting an individual to engage in the conduct described above;

7.3.7 ~~2.3.7~~ F ~~f~~ailing to report to an appropriate authority that an individual has engaged in conduct outlined above.

7.4 Procedures for Reporting Security Breaches

7.4.1 School Test Coordinators shall report any questionable situations to the District Test Coordinators immediately.

7.4.2 District Test Coordinators shall report all situations immediately to the State Director of Assessment and Analysis.

7.4.2.1 Within 5 days of the incident the District Test Coordinator shall file a written report with the State Director of Assessment and Analysis that includes the sequence of events leading up to the situation, statements by everyone interviewed, and any action either disciplinary or procedural, taken by the district.

7.4.2.2 Following a review of the report by the State Director of Assessment and Analysis and the Associate Secretary of Education for Assessment and Accountability, an investigator from the State Department of Education will be assigned to verify the district report.

7.4.2.3 Within 10 days of the receipt of the report from the District Test Coordinator, the assigned investigator shall meet with the district personnel involved in the alleged violation. The meeting will be scheduled through the District Test Coordinator and the investigator shall be provided access to all parties involved and/or to any witnesses.

7.4.2.4 The investigator shall report the findings to the Associate Secretary for Assessment and Accountability. Following the review the Associate Secretary and shall make a ruling describing any recommendations and or required actions.

7.4.2.5 The ruling shall be delivered within 10 days of the receipt of all reports and information and records shall be kept of all investigations.

8.0 Procedures for reviewing questions and response sheets from the Delaware Student Testing Program (DSTP)

8.1 School personnel including Local School Board Members and the public may request to review the Delaware Student Testing Program (DSTP) questions. In order to review the DSTP questions individuals shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education.

8.1.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.1.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.1.3 In cases where more than one individual is requesting to view the DSTP questions, the local school district shall send a representative to sit in on the review.

8.2 Parent/guardian(s) may request to view the test questions and their student's responses. In order to review the DSTP questions and their student's responses parents/ guardian(s) shall make a request in writing to the State Director of Assessment and Analysis for an appointment at the Department of Education. The Department shall be allowed sufficient time to secure a copy of student responses from the test vendor.

8.2.1 At the time of the appointment, the individual shall: provide proper identification upon arrival, sign a confidentiality document, remain with a Department of Education staff member while reviewing the test questions and take nothing out of the viewing area.

8.2.2 The Department of Education's responsibility is to do the following: schedule the review at a mutually agreeable time, notify the local district that the review has been requested, review the procedures for looking at the DSTP questions, assist the individual(s) as requested and keep records of all reviews.

8.2.3 In the case of the stand-alone writing response, the parent/guardian(s) may go to the local school district or charter school to view the test responses.

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

515 High School Diplomas and Record of Performance

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 515 High School Diploma and Record of Performance. The regulation is amended by adding a new section 4.0 on granting state high school diplomas to World War II veterans pursuant to 14 *Del. C.* § 159 (a) (b) and (c). The title of the regulation and section 1.0 has also been amended to reflect the name change from Record of Performance to Certificate of Performance as per 14 *Del.C.* § 152. The reasons for granting the Certificate of Performance are now stated in Section 152 (e) so the local school districts no longer establish their own guidelines for awarding the Certificate of Performance.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation reflects changes to the *Delaware Code* and does not directly relate to improving state achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation reflects changes to the *Delaware Code* and does not directly relate to issues of an equitable education.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation reflects changes to the *Delaware Code* and does not directly relate to issues of students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation reflects changes to the *Delaware Code* and does not directly relate to issues of 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 as to when to grant the Certificate of Performance is now defined in the *Delaware Code*.

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The statute requires the Department of Education to make regulations on the granting of diplomas to World War II veterans.

10. What is the cost to the state and to the local school boards of compliance with the regulation? The Department of Education will pay for the Diplomas. There is no cost to the local school boards.

515 High School Diploma and ~~Record~~ Certificate of Performance

1.0 A state sanctioned diploma or certificate of performance will be granted to pupils who meet the state and local school district requirements for graduation pursuant to regulation 511 Credit Requirements for High school Graduation and to 14 *Del.C.* §152. ~~It is the responsibility of local school districts to establish guidelines for granting the Record of Performance in lieu of a diploma.~~

2.0 Diplomas from one school year ~~cannot~~ shall not be issued after December 31 of the next school year.

3.0 Duplicate diplomas or certificates of performance will not be issued, but legitimate requests for validation of ~~graduation~~ the diploma or the certificate of performance will

be satisfied through a letter of certification. Requests for diploma information from graduates of Delaware high schools should be directed to the high school the student was attending at the time of graduation. If the school does not have the records then the student should contact the Department of Education in Dover~~.~~ for a notarized ~~The~~ letter of certification ~~must~~ that contains the name of the applicant, the name of the school, the date of graduation, and the diploma registry number (if available). ~~and must be notarized.~~

4.0 State High School Diploma for World War II veterans pursuant to 14 *Del. C.* § 159 (a) (b) (c))

4.1 "World War II Veteran" means any veteran who performed wartime service between December 7, 1941 and December 31, 1946. If the veteran was in the service on December 31, 1946, continuous service before July 16,1947 is considered World War II.

4.2 The Department of Education shall provide a high school diploma to any World War II veteran who:

4.2.1 Left a Delaware high school prior to graduation in order to serve in the armed forces of the United States.

4.2.2 Did not receive a high school diploma, or received a G.E.D., as a consequence of such service and,

4.2.3 Was discharged from the armed forces under honorable circumstances.

4.3 The diploma may also be awarded posthumously if the deceased veteran meets the qualifications in 4.2.1 through 4.2.3.

4.4 Applications for this high school diploma shall be made on forms designated by the Delaware Department of Education and the Delaware Commission ofVeterans Affairs and shall have a copy of the candidate's honorable discharge papers attached to the application.

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

701 Unit Count

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis of Subject Matter of Regulation

The Secretary of Education seeks to amend the regulation 701 Unit Count. The sections being amended are 4.1.2, 4.1.6 and 8.0. Section 4.1.2 adds the inclusion of repeating seniors who take three or more courses a day to the unit count. Also added to this section is a reference to the James H Groves In-school Program from 2.4 in regulation 915 James H. Groves High School. Section 4.1.6 adds a reference to the inclusion of students in Alternative programs to the unit count. The amendment to section 8.0 describes the conditions for reinstatement in the Unit Count that are required for a special education student who is disqualified.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the Unit Count system not achievement standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the Unit Count system 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 Unit Count system not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the Unit Count system 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 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? The issues must be addressed in the context 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 and to the local school boards for compliance with the amended regulation.

701 Unit Count

1.0 Forms and Record Keeping

1.1 All information submitted through the unit count process shall be on the forms provided by the Department of Education or in such other format as may be acceptable to the Department.

1.2 Each school shall maintain September enrollment records in a manner, which will allow for efficient enrollment audits by the Department of Education and the State Auditor of Accounts. At the end of September, each school shall assemble a comprehensive enrollment file that contains all necessary support materials to substantiate the enrollments reported. This file shall be retained in the school for at least three years.

1.3 Records to substantiate special education students included in the enrollment count shall contain: student name, cohort age group, grade level, handicapping condition, name of special education teachers serving the student in September, and number of hours of special education services received during the last week of school in September. Individual student case studies, evaluations, and reports of specialists do not need to be maintained as part of the September 30 enrollment file. However, individual student files may be reviewed by the Department of Education or State Auditor of Accounts to ascertain that the students reported are bonafide special education students as per Regulation 925, Children with Disabilities.

2.0 Special Situations Regarding Enrollment

2.1 All exceptions and extenuating circumstances relating to the enrollment count are addressed to the Secretary of Education and shall be received by the Secretary for consideration prior to September 30.

2.2 Students with multiple handicaps shall be reported in the category that corresponds to their major handicapping condition.

2.3 Students included in the special education unit count under the placement provisions of Transfer Student or Emergency Temporary Placement or Change of Placement shall meet the evaluation and placement requirements found in Regulation 925, Children with Disabilities.

2.4 Students not assigned to a specific grade shall be reported in a grade appropriate for their age or their instructional level for purposes of the unit count.

3.0 Accounting for Students ~~n~~ Not in Attendance the Last Ten Days in September

3.1 For students not in attendance at school during the last 10 school days of September, the following information shall be on file to substantiate their inclusion in the enrollment count:

3.1.1 Reason for absence and date of last direct contact with student or parent.

3.1.2 Reason to believe that student will be returning to school before November 1st.

3.1.3 Districts and Charter Schools enrolling a within-state transfer student during the last ten school days of September shall notify the student's previous district of such enrollment. The notification shall be by fax with a follow-up letter to the previous district central office. The notification shall be clearly labeled Unit Count Transfer Students and include the student's name, grade, and previous school of attendance. A student enrolling with a formal notice of withdrawal from the previous district is exempted from this notification requirement. Failure to follow the notification procedure may result in including the same student in two different district enrollments and hence unit counts. If that occurs, the student will be disallowed from the receiving district's enrollment and unit count. Copies of the fax transmittals and follow-up letters shall be on file to substantiate the student's inclusion in the receiving district's enrollment and unit count.

4.0 Programs, Situations and Program Types that Qualify for Inclusion in the Unit Count

4.1 Students in the following programs, situations and program types shall qualify for inclusion in the enrollment count:

4.1.1 Delaware Adolescent Program, Inc. (DAPI): A student enrolled in DAPI on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received during the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may continue to be reported as enrolled in the next vocational course in the program series.

4.1.2 ~~Advanced placement in college: Students shall be enrolled and attend at least one full credit course in their high school.~~ Repeating seniors who are enrolled in school for a minimum number of instructional hours defined as three traditional courses or an equivalent time in a block schedule, shall be included in the unit count provided they meet the age and residency requirements. Students in the James H. Groves In-school Credit Program (2.4 in regulation 915 James H. Groves High school) and students in the Advanced Placement Program shall be enrolled and attend at least one full credit course in their high school to be included in the unit count provided they also meet the age and residency requirements.

4.1.3 Temporary medical problem, which precludes school attendance prior to November 1st.

4.1.4 Supportive ~~home-bound~~ homebound instruction provided by the reporting school.

4.1.5 Stevenson House or New Castle County Detention Center: Students on a temporary basis pending disposition of case who are expected to return to school prior to November 1st.

4.1.6 Alternative Education Program: A student enrolled in an Alternative Program on September 30 may be counted in the home school enrollment count. If enrolled the previous year in a special education program in the reporting school, the student may continue to be reported for the same level of special education service as was received the previous year. If enrolled the previous year in a vocational program in the reporting school, the student may be reported as enrolled in the next vocational course in the program series.

4.1.7 ~~4.1.6~~ Four-year old "gifted or talented" students recorded in the grade level enrollment group to which they are assigned.

4.1.8 ~~4.1.7~~ All pre-kindergarten students with disabilities shall be counted as full-time special education students.

4.1.9 ~~4.1.8~~ Students enrolled in residential facilities as of the last day of September. These students are included in the enrollment count of the district operating the instructional program in that facility. The facilities that are eligible shall be identified each year by the Department of Education.

4.1.10 ~~4.1.9~~ Regular Programs - Regular programs include students who are enrolled in the regular elementary or secondary curriculum of the school, i.e., the core of the school subjects, which most students take.

4.1.11 ~~4.1.10~~ Full-time Special Education Programs - Students who have been properly diagnosed, placed in a special program, and receive instruction from a certified special education teacher for at least 12 1/2 hours per week. Special students must have appropriate supporting documentation on file as required by the Identification, Evaluation and Placement Process in Regulation 925, Children with Disabilities.

4.1.12 ~~4.1.11~~ Part-time Special Education Programs - Part-time special education programs include students who receive less than 12-1/2 hours of instruction from a certified special education teacher, but meet all other criteria for full-time special education services. Part-time special education students, for unit computation, have their time apportioned between a regular student in a specified grade and a special student in a specified category.

4.1.12.1 ~~4.1.11.1~~ The apportioning is accomplished by dividing the number of hours that each student receives instruction from a certified special education teacher by 15. For example, if a second grade Learning Disabled student receives 11.5 hours of special education service per week, the student is counted as a .77 LD student (11.5/15 = .77) and a .23 second grade regular student. This accounts for one Full-Time Equivalent Student (.77 + .23 = 1.0).

4.1.13 ~~4.1.12~~ Vocational Programs - A maximum of 900 minutes of vocational time per week per student shall be credited toward the vocational unit determination. Students who attend full time, 900 minute vocational programs are not counted in any other vocational course. They have the maximum time allowed.

5.0 Programs and/or Situations that Do Not Qualify for the Unit Count

5.1 Students in the following programs and situations do not qualify for inclusion in the enrollment count:

5.1.1 Students who have not attended school during the last 10 days of September

5.1.2 Students who are enrolled in General Education Development (GED) programs

5.1.3 Students who are enrolled in other than Department of Education approved programs

5.1.4 Students who are transferred to a state residential facility during September shall not be included in the enrollment count of the District unless that District operates the facility's instructional program; otherwise the student must be treated as a withdrawal

6.0 Nontraditional High School Schedules: For unit count purposes if a special education student or a vocational student in a school utilizing nontraditional schedules receives during the course of the year the same amount of instruction the student would have received under a traditional class schedule, the district shall average the time and calculate instructional time on a weekly basis; providing however, that a vocational student receives a minimum of 300 minutes of instruction per week and a full-time special education student receives a minimum of 7.5 hours of instruction per week.

6.1 The following exemplifies a situation with the required minimum minutes and hours for a full time vocational and/or special education student:

Fall Vocational= 300 minutes per week
Spring Vocational= 1500 minutes per week
1800 /2 = 900 minutes per week

Fall Special Education= 7.5 hours per week
Spring Special Education= 17.5 hours per week
= 25.0 /2 = 12.5 hours per week

7.0 Charter Schools

7.1 Charter schools shall be allowed the following options in calculating their unit count:

7.1.1 using the standard public school procedure: major fraction unit rounding rule in each category or

7.1.2 adding the fractional units in each category

and using the major fraction unit rounding rule on the total.

8.0 ~~Unit Adjustments After Audit: If after the units are certified by the Secretary of Education, students are disqualified through the auditing process from the unit count, the units will be recalculated without those students. Other eligible students shall not be substituted for the disqualified students.~~ Unit Adjustments After Audit: If, after the units are certified by the Secretary of Education, a students is disqualified through the auditing process from the unit count, the units will be recalculated without that student. An other eligible student shall not be substituted for the disqualified student. A special education student who has been identified and is receiving special education services and is disqualified from the unit count due to irregularities contained within supporting documentation, may then be included in the appropriate regular enrollment category provided the student meets eligibility requirements. Only a student disqualified by the audit process may be reassigned to another unit category. In no event can this adjustment result in a net increase in units for a district.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

OFFICE OF EMERGENCY MEDICAL SERVICES

Statutory Authority: 16 Delaware Code, Section 122 (3)(c) (16 Del.C. 122 (3)(c))

Notice Of Public Hearing

The Office of Emergency Medical Services, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss proposed changes to the Trauma System Rules & Regulations.

Delaware's Trauma Center Standards are modeled after the American College of Surgeons' (ACS) Trauma Center Standards, which have been revised. The proposed changes allow Delaware's regulations to remain consistent with the current ACS Trauma Center Standards and avoid the need for frequent future revisions. The state Trauma System Committee developed this revised format.

One new summary page will replace the seventeen existing pages of Delaware Trauma Center Standards. In the existing Delaware regulations, the entire American College of Surgeons' document was typed into the regulations. The revised format references the ACS Trauma Center Standards and specifies only the Delaware changes. Methods of accessing the full ACS document are included in the revision for those wishing to see a copy or purchase it from the American College of Surgeons.

This public hearing will be held July 24, 2001 at 10:00 AM in the Conference Room at the Delaware Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware

Copies of the proposed regulation are available for review by calling:

Office of Emergency Medical Services
Blue Hen Corporate Center, Suite 4-H
655 Bay Road,
Dover, Delaware 19901
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by close of business July 20, 2001. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business July 31, 2001 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19901

Summary Of Proposed Regulations
State Of Delaware Trauma System Rules & Regulations

These revised regulations replace regulations previously adopted on December 2, 1997. They are to be adopted in accordance with Title 16, **Delaware Code** §9706(g)(2). They will supercede all previous regulations concerning the State Trauma System.

Delaware's Trauma Center Standards are modeled after the American College of Surgeons' (ACS) Trauma Center Standards, which have been revised. In order to remain consistent with the ACS Trauma Center Standards and avoid the need for frequent future revisions, the state Trauma System Committee developed this revised format.

One new summary page will replace the seventeen existing pages of Delaware Trauma Center Standards. In the current Delaware regulations, the entire American College of Surgeons' document was typed into the regulations. The revised format references the ACS document and only specifies the Delaware changes. Methods of accessing the full ACS document are included in the revision for those wishing to see a copy or purchase it from ACS.

V. STATE OF DELAWARE TRAUMA CENTER STANDARDS

I. Delaware Adult and Pediatric Trauma Center and

Participating Hospital Standards will be those of the current American College of Surgeons' Committee on Trauma Verification/Consultation Program for Hospitals as published in their Resources for Optimal Care of the Injured Patient:1999 (Chapter 23 pages 99-102 and Chapter 10, Table 1, page 40) and subsequent revisions.

A. Delaware may modify existing American College of Surgeons' Committee on Trauma Standards to increase the level of the requirement.

B. Because American College of Surgeons verification is a requirement for designation as a Delaware Trauma Center, no American College of Surgeons Trauma Standard may be modified so as to decrease the level of the requirement.

C. The process for modifying an existing American College of Surgeons Standard is:

1. The Trauma System Committee will discuss and vote to recommend to the Director of the Division of Public Health that a modification be made.

2. If approved by the Director, the existing Delaware Trauma System regulations will be revised following the usual promulgation of regulations procedures of Delaware Health and Social Services and the Division of Public Health.

D. Copies of the American College of Surgeons' Resources for Optimal Care of the Injured Patient:1999 may be obtained by contacting the American College of Surgeons' Publication Orders Department at 633 N. Saint Clair Street in Chicago, IL, 60611 or by telephone at (312) 202-5000.

1. Additionally, The Office of Emergency Medical Services (Blue Hen Corporate Center Suite 4H, Dover (302) 739-6637) and Division of Public Health Director's Office (Jesse Cooper Building, Dover, (302) 739-4701) will each have a copy of this document available on site for public reference.

2. Each County Library System will also have a copy of this document available for public reference (New Castle County (302) 395-5680, Kent County (302) 698-6440, Sussex County (302) 855-7890).

II. The modifications to the current American College of Surgeons Standards in effect for Delaware Trauma System facilities are:

	Regional Trauma Center Level 1	Regional Trauma Center Level 2	Community Trauma Center	Participating Hospital
CLINICAL CAPABILITIES				
1. Trauma surgeons, neurosurgeons, and orthopedic surgeons must be dedicated to one hospital when on call (taking call at only one institution at a time) or there must be a physician on back-up call at each institution he/she is covering.	E			
CLINICAL QUALIFICATIONS				
1. Trauma surgeons, neurosurgeons, Emergency Medicine department physicians, and orthopedic surgeons must obtain 16 hours of trauma or trauma-related Continuing Medical Education credits per year.			E	
2. Emergency Medicine department physicians, orthopedic surgeons, and neurosurgeons taking trauma call must be Board certified or eligible. (NOTE- Non-boarded physicians in these specialty areas who have active privileges at a designated Trauma System facility at the time of promulgation of these revisions will be grandfathered.)			E	

III. Designated Trauma System facilities will continue to function in accordance with the Trauma Facility –Division of Public Health Memoranda of Agreement signed upon designation.

E = Essential; D = Desirable; n/a = not applicable

~~Regional Trauma Center Level 1 Regional Trauma Center Level 2 Community Trauma Center Participating Hospital~~

~~* NOTE: E = Essential, D = Desirable, n/a = not applicable~~

~~I. Demonstrated Commitment to the Trauma Program by hospital Administration and Medical Staff~~

~~E E E D~~

~~(NOTE- Demonstration of hospital commitment will include-~~

~~1. Development and adoption of written resolution of support from both the Board of Trustees and the Medical Staff.~~

~~2. Establishment of written policies and procedures to provide and maintain the services for Trauma patients as outlined in Delaware's Trauma Center Standards.~~

~~3. Demonstrable evidence of budgetary support of the hospital's Trauma Program such as hospital-funded positions for Trauma Director, Nurse Coordinator, Registrar, and/or Trauma Quality Improvement Program personnel.~~

~~4. Adherance to State Trauma Registry guidelines for providing hospital Trauma Registry data to the State Trauma Registry for utilization in Trauma System management and Quality Improvement activities.~~

~~5. And establishment and maintenance of written transfer procedures and agreements with appropriate Trauma Centers, Speciality Centers, and hospitals, providing for movement of both critical and convalescing patients within the Trauma System. Compliance with these procedures is to be monitored by the Quality Improvement process in each institution. It is the responsibility of each receiving hospital to provide timely feedback to transferring hospitals on the status and outcome of all patients received.)~~

~~II. Documentation of EMS Involvement~~

~~E E E D~~

(NOTE- Active involvement in the Emergency Medical Services System will include-

1. Achievement and maintenance of Designated Paramedic Medical Command Center status.

Additional methods of demonstrating compliance with this standard include-

2. Didactic or clinical participation in Emergency Medical Technician- Basic and/or Paramedic initial and/or continuing educational programs.

3. Membership on such committees as the Delaware Paramedic Advisory Council, Delaware EMS Advisory Committee, or Delaware Volunteer Firemen's Association by hospital personnel.)

III. Hospital Organization

A. Trauma Service

E E E n/a

(NOTE- The Trauma Service is made up of all attending general surgeons who take trauma call. It is established by the Medical Staff and has the responsibility for the coordination of care of injured patients, the training of personnel, and trauma Quality Improvement within the Trauma Center. Privileges for surgeons participating in the Trauma Service are to be determined by the Medical Staff credentialing process. Patients with multiple-system or major injury must be evaluated by the Trauma Service with the surgeon responsible for the overall care of each patient clearly identifiable.

Written protocols and standards of care for the major trauma patient should include definitions of response and turnaround times as well as team participant roles.

In Regional and Community Trauma Centers, requirements for surgeons on the Trauma Service include board certification or eligibility, Advanced Trauma Life Support for Physicians provider certification (current), regular clinical involvement in trauma care, and documentation of annual continuing medical education in trauma care (at least 16 trauma-related Continuing Medical Education hours annually; 24 of these hours every 3 years must be obtained outside the institution).

1. Trauma Service Support Personnel

a. Trauma Coordinator

E E E n/a

(NOTE- The Trauma Coordinator is fundamental to the development, implementation, and evaluation of the institution's Trauma Program. Working with the Trauma Director, the Trauma Coordinator is responsible for the organization of services and systems necessary for a multidisciplinary approach throughout the continuum of trauma care. The Trauma Coordinator role has the following components: clinical, educational, registry/quality improvement/research, administrative, and liaison.

Records must be available documenting annual trauma-specific continuing education hours.)

B. Trauma Service Director

E E E n/a

(NOTE- The Trauma Service Director shall be a board-certified or board-eligible surgeon with demonstrated special competence in trauma care. Through the Quality Improvement process, the director will have responsibility for all trauma patients and administrative authority for the hospital's Trauma Program. The Director is responsible for recommending surgeon appointment to and removal from the Trauma Service, in conjunction with appropriate Medical Staff committees.

Additional qualifications for the Trauma Service Director include regular involvement in the care of injured patients, participation in trauma-related educational activities such as ATLS and continuing education for hospital physicians, nursing staff, and prehospital providers, and involvement in community or national trauma projects or organizations.)

C. Trauma Multidisciplinary Committee

E E E n/a

(NOTE- This committee should meet regularly for the purpose of peer-review. It should be chaired by the Trauma Director and have representation from all the major services that treat trauma patients, with membership including but not limited to the Trauma Coordinator, neurosurgeon, orthopedic surgeon, emergency medicine physician, and anesthesiologist. The tasks of this committee are to critically review, evaluate, and discuss the quality and appropriateness of care in cases of adverse outcome (complications and deaths, particularly unexpected deaths), monitor complication trends, identify well-managed cases which can be utilized as teaching cases, and designate focused audits.)

D. Hospital Departments/Divisions/Sections

1. General Surgery

E E E D

2. Neurologic Surgery

E E D n/a

3. Orthopedic Surgery

E E D n/a

4. Emergency Services

E E E E

5. Anesthesia

E E E n/a

IV. Clinical Capabilities

A. Specialty Availability

1. In-house 24 hours a day:

a. General Surgery

E E D n/a

(NOTE- The active involvement of the Trauma Surgeon is crucial to optimal care of the injured patient in all phases of management, including resuscitation, identification and prioritization of injuries, therapeutic decisions, and operative procedures. In Regional facilities the 24-hour in-house availability of the attending Trauma

Surgeon is the most direct method for providing this involvement. However, alternative methods for providing immediate availability of the attending surgeon are also acceptable. In hospitals with residency programs, evaluation and treatment may be started by a team of surgeons that will include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. This may allow the attending surgeon to take call from outside the hospital. In this case, local criteria must be established to define conditions requiring the attending Trauma Surgeon's immediate hospital presence. The attending surgeon's participation in major therapeutic decisions, presence in the Emergency Department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness must be monitored by the hospital's Trauma Quality Improvement Program.

In Trauma Centers without applicable residency programs, local conditions may allow the Trauma Surgeon to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be present in the Emergency Department at the time of arrival of the major trauma patient to supervise resuscitation and major therapeutic decisons, provide operative treatment, and be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

b. Neurologic Surgery

E E D n/a

(NOTE- An attending neurosurgeon must be promptly available and dedicated to the hospital's Trauma Service. The in-house requirement may be fulfilled by an in-house neurosurgeon or surgeon who has special competence, as documented in the credentialing process by the chief of neurosurgery, in the care of patients with neurotrauma and who is capable of initiating measures directed toward stabilization of the patient and determination of diagnosis.)

c. Emergency Medicine

E E E E

(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine chief residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When chief residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available.

In Community Trauma Centers this requirement may be fulfilled by a physician who is credentialed by the hospital to provide emergency medical services.)

d. Anesthesiology

E E D n/a

(NOTE- Requirements may be fulfilled by anesthesiology chief residents PGY4/CA4 who are capable of assessing emergent conditions of trauma patients and providing any indicated treatment, including initiation of surgical anesthesia. When anesthesiology residents are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.

In Trauma Centers without anesthesiology residency programs, requirements may be fulfilled when local conditions assure that the staff anesthesiologist will be in the hospital at the time of the patient's arrival. During the interim period prior to the arrival of the staff anesthesiologist, an in-house Certified Registered Nurse Anesthetist (CRNA) capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment will be available. In some hospitals without a CRNA inhouse, local conditions may allow anesthesiologists to be rapidly available on short notice. Under these circumstances, local criteria must be established to allow anesthesiologists to take call from outside the hospital without CRNA availability, but with the clear commitment that anesthesiologists will be immediately available for airway emergencies and operative management. The availability of the anesthesiologist and the absence of delays in airway control or operative anesthesia must be documented by the hospital QI process.)

2. On call and promptly available:

a. Anesthesiology

n/a n/a E D

(NOTE- May be provided by a CRNA under physician supervision. Anesthesia personnel involved in caring for trauma patients must have appropriate educational background and participate in trauma-related continuing educational and QI activities. Prompt response must be monitored by the Trauma QI program.)

b. Cardiac Surgery

E D n/a n/a

c. Cardiology

E E D n/a

d. General Surgery

n/a n/a E D

(NOTE- Communication should be such that the general surgeon will be present in the emergency department at the time of arrival of a major trauma patient. Initial management of major trauma patients should follow a standard trauma treatment protocol adopted by the institution.)

e. Hand Surgery

E D n/a n/a

f. Infectious Disease

E D n/a n/a

g. Internal Medicine

E E E n/a

(NOTE- The patient's primary care physician should be notified at an appropriate time.)

h. Microvascular Surgery (replant/flaps)
E D n/a n/a
i. Neurologic Surgery
n/a n/a D n/a
j. Obstetric/Gynecologic Surgery
E E D n/a
k. Ophthalmic Surgery
E E D n/a
l. Oral/Maxillofacial Surgery
E E n/a n/a
m. Orthopedic Surgery
E E E n/a
n. Pediatric Surgery
E D D n/a

(NOTE- A pediatric surgeon is defined as a surgeon who has been granted privileges by the hospital to provide surgical care for the injured child.)

o. Pediatrics
E E D n/a

(NOTE- The patient's primary care physician should be notified at an appropriate time.)

p. Plastic Surgery
E E D n/a
q. Pulmonary Medicine
E E n/a n/a
r. Radiology
E E E D
s. Thoracic Surgery
E E D n/a

(NOTE- A general Trauma Surgeon is presumed to be qualified and should have privileges to provide thoracic surgical care to patients with thoracic injuries. In facilities where the on-call Trauma Surgeon does not have privileges to provide thoracic surgical care, a board-certified thoracic surgeon should be available.)

t. Urologic Surgery
E E D n/a

(NOTE- All specialists on call will be notified immediately and be promptly available. This availability will be continuously monitored by the Trauma QI Program.

Requirements for all physicians caring for trauma patients include board certification or eligibility, regular participation in trauma-related Continuing Medical Education and QI activities, and experience in the care of trauma patients through education and/or background. Neurosurgeons and orthopedic surgeons who participate on the Trauma Call Roster must have documentation of at least 16 trauma-related CME's annually, one-half of which every 3 years must be obtained outside the institution.)

V. Facilities/Resources/Capabilities

A. Emergency department (ED)

1. Personnel

a.) Designated physician director
E E E D

b.) Physicians with special competence in care of critically injured, physically present in the ED and assigned a designated role as a member of the trauma team
E E E D

(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine senior residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When senior residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available. This requires, at a minimum, 24 hour availability of a physician who is credentialed by the hospital to provide emergency medical services and is either Board Certified in Emergency Medicine or currently certified as an ACLS and ATLS provider. All E.D. physicians caring for trauma patients must have documentation of at least 16 trauma-related CME's annually, one-half of which every 3 years must be obtained outside the institution.)

c.) Nursing personnel with special capability in trauma care who provide continual monitoring of the Trauma patient from hospital arrival to in-house disposition
E E E D

(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for every nurse who cares for critically injured trauma patients. Staffing patterns should be based upon data describing both the Emergency Department and trauma patient populations in terms of numbers and acuity.)

2. Equipment for resuscitation of patients of all ages shall include, but not be limited to:

a.) Airway control and ventilation equipment, including laryngoscopes and endotrachael tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen
E E E E
b.) Pulse oximetry
E E E D
c.) End-tidal CO2 determination
E E E D
d.) Suction devices
E E E E
e.) EKG-monitor-defibrillator
E E E E
f.) Apparatus to establish central venous pressure monitoring
E E E D
g.) Standard intravenous fluids and administration devices including large-bore intravenous catheters
E E E E
h.) Sterile surgical sets for
i.) Airway control/cricothyrotomy
E E E E
ii.) Thoracotomy

E E E D

iii.) Vascular access

E E E E

iv.) Chest decompression

E E E E

i.) Gastric decompression

E E E E

j.) Drugs necessary for emergency care

E E E E

k.) X-ray availability, 24 hours a day

E E E D

(NOTE- There will be written policies and procedures related to monitoring of trauma patients when they are out of the Emergency Department and availability of emergency equipment in areas such as CT or angiography to which critical trauma patients are transported.)

l.) Two-way communication with vehicles of emergency transport system

E E E E

m.) Skeletal traction devices, including capability for cervical traction

E E E D

n.) Arterial catheters

E E D D

o.) Thermal control equipment

i.) For patient

E E E E

ii.) For blood and fluids

E E E D

3. Helipad consistent with Delaware Air Medical Regulations

E E E D

B. Operating Suite

1. Personnel and operating room

Operating room adequately staffed in-house and immediately available 24 hours a day

E E D n/a

(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the population in terms of numbers and acuity. Prompt response must be monitored by the Trauma QI program if on-call personnel are utilized in Community Trauma Centers.)

2. Equipment for all ages shall include, but not be limited to:

a.) Cardiopulmonary bypass capability

E D n/a n/a

b.) Operating microscope

E D n/a n/a

c.) Thermal control equipment

i.) For patient

E E E n/a

ii.) For blood and fluids

E E E n/a

d.) X-ray capability including c-arm image intensifier available 24 hours a day

E E D n/a

e.) Endoscopes

E E D n/a

f.) Craniotomy instruments

E E D n/a

g.) Equipment appropriate for fixation of long-bone and pelvic fractures

E E E n/a

C. Postanesthetic recovery room (surgical intensive care unit is acceptable)

1. Registered nurses and other essential personnel 24 hours a day

E E E n/a

(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

2. Equipment for all ages shall include, but not be limited to:

a. Capability to continuously monitor temperature, hemodynamics, and gas exchange

E E E n/a

b. Equipment for the continuous monitoring of intracranial pressure

E E D n/a

c. Pulse oximetry equipment

E E E n/a

d. End-tidal CO2 determination

E E E n/a

e. Thermal control

E E E n/a

D. Intensive care units (ICU's) for trauma patients

1. Personnel

a.) Designated surgical director of trauma patients

E E E n/a

b.) Physician, with privileges in critical care and approved by the trauma director, on duty in ICU 24 hours a day or promptly available to the patient

E E[1] D[1] n/a

(NOTE- In addition to overall responsibility for patient care by the patient's own surgeon, patients in Regional Levels 1 and 2 and Community Trauma Centers must have in-house physician coverage for intensive care at all times. This coverage may be provided by the patient's primary service or by a physician who is credentialed in critical care by the hospital and the director of the ICU. This coverage

for emergencies is not intended to replace the primary surgeon in caring for the patient in the ICU; it is to ensure that the patient's immediate needs will be met while the primary surgeon is being contacted.

The active involvement of the Trauma Surgeon is crucial to optimal care of the injured patient in all phases of management, including resuscitation, identification and prioritization of injuries, therapeutic decisions, and operative procedures. In Regional facilities the 24-hour in-house availability of the attending Trauma Surgeon is the most direct method for providing this involvement. However, alternative methods for providing immediate availability of the attending surgeon are also acceptable. In hospitals with residency programs, evaluation and treatment may be started by a team of surgeons that will include a PGY4 or more senior surgical resident who is a member of that hospital's residency program. This may allow the attending surgeon to take call from outside the hospital. In this case, local criteria must be established to define conditions requiring the attending Trauma Surgeon's immediate hospital presence. The attending surgeon's participation in major therapeutic decisions, presence in the Emergency Department for major resuscitations, and presence at operative procedures are mandatory. Compliance with these criteria and their appropriateness must be monitored by the hospital's Trauma Quality Improvement Program.

1. In Trauma Centers without applicable residency programs, local conditions may allow the physician to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.

In Community Trauma Centers electing to manage severely injured patients in lieu of transferring them, a method of providing 24 hour physician coverage for ICU patients must be in place and documented through the hospital Trauma Quality Management Program.)

c.) Adequate staffing by nursing personnel with special capability in trauma care

E E E n/a

(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for every nurse who cares for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)

2. Equipment for all ages shall include, but not be limited to:

a.) Cardiopulmonary resuscitation cart

E E E n/a

b.) Defibrillator with internal, external paddles

E E E n/a

c.) Electrocardiograph machine

E E E n/a

d.) Sets of instruments for

i.) Tracheal intubation

E E E n/a

ii.) Tracheostomy

E E E n/a

iii.) Thoracostomy

E E E n/a

iv.) Venous cut-down

E E E n/a

v.) Central venous puncture

E E E n/a

vi.) Arterial cannulation

E E E n/a

vii.) Peritoneal lavage

E E E n/a

e.) Scale

E E E n/a

f.) Volume- and pressure-cycled ventilators

E E E n/a

g.) Vascular and intracranial pressure monitors

E E E n/a

h.) Pulse or venous oximeters

E E E n/a

i.) Thermodilution cardiac output computers

E E E n/a

j.) Temporary transvenous pacemakers

E E E n/a

k.) Infusion devices

E E E n/a

l.) Blood warmers

E E E n/a

m.) Orthopedic traction devices

E E E n/a

o.) Equipment for rapid warming, cooling of pts

E E E n/a

p.) Adjustable chairs

E E E n/a

3. Support Services

A.) Immediate access to clinical diagnostic services

E E E n/a

(NOTE- Blood gas measurements, hematocrit level, and chest X-ray studies should be available within 30 minutes of request. This capability will be continuously monitored by the QI Program.)

B.) Social Service assistance for trauma patients meeting Regional triage criteria and their families

E E E n/a

E. Medical Surgical floors designated to receive

~~**trauma patients meeting Regional triage criteria post ICU**~~

~~E E E n/a~~

~~1. Adequate staffing by nursing personnel with special capability in trauma care~~

~~E E E n/a~~

~~(NOTE- Records must be available in the hospital documenting identifiable annual trauma-specific continuing education hours for nurses who care for critically injured trauma patients. Staffing patterns should be based upon data describing the patient population in terms of numbers and acuity.)~~

~~2. Equipment for all ages shall include, but not be limited to:~~

~~a.) Airway control and ventilation equipment, including laryngoscopes and endotrachael tubes of all sizes, bag-mask resuscitator, pocket masks, and oxygen~~

~~E E E n/a~~

~~b.) Suction devices~~

~~E E E n/a~~

~~c.) EKG monitor defibrillator~~

~~E E E n/a~~

~~d.) Apparatus to establish central venous pressure monitoring~~

~~E E E n/a~~

~~e.) Standard intravenous fluids and administration devices~~

~~E E E n/a~~

~~f.) Cardiopulmonary resuscitation cart~~

~~E E E n/a~~

~~g.) Gastric decompression~~

~~E E E n/a~~

~~h.) Drugs necessary for emergency care~~

~~E E E n/a~~

~~**F. Acute hemodialysis capability**~~

~~E D D n/a~~

~~**G. Organized burn care**~~

~~E E E E~~

~~1. Physician-directed burn center staffed by nursing personnel trained in burn care and equipped properly for care of the extensively burned patient OR~~

~~2. Transfer agreement with recognized burn center~~

~~H. Acute spinal cord/head injury management capability~~

~~E E E E~~

~~1. In circumstances in which a designated spinal cord injury center exists in the region, early transfer should be initiated in selected patients; transfer agreements should be in effect~~

~~2. In circumstances in which a head injury center exists in the region, early transfer should be initiated in selected patients; transfer agreements should be in effect~~

~~**I. Critical pediatric trauma care capability**~~

~~E E E E~~

~~1. Trauma Center with Pediatric Commitment OR~~

~~2. Written transfer agreement with a tertiary pediatric referral center with critical care capabilities~~

~~J. Radiological special capabilities~~

~~1. In-house radiology technician 24 hrs a day~~

~~E E E n/a~~

~~(NOTE- If this requirement is fulfilled in Community Trauma Centers by technicians not in-house 24 hours a day, quality improvement must verify that the procedure is promptly available.)~~

~~**2. Angiography**~~

~~E E D n/a~~

~~**3. Sonography**~~

~~E E D n/a~~

~~**4. Nuclear scanning**~~

~~E D D n/a~~

~~**5. Computed tomography (CT)**~~

~~E E E n/a~~

~~**6. In house CT technician 24 hrs a day**~~

~~E E D n/a~~

~~(NOTE- If this requirement is fulfilled by technicians not in-house 24 hours a day, quality improvement must verify that the procedure is promptly available.)~~

~~**7. Neuroradiology**~~

~~E D D n/a~~

~~(NOTE- Defined as a radiologist credentialed by the institution to interpret radiology studies of the central nervous system.~~

~~There will be written policies and procedures related to monitoring of trauma patients when they are out of the Emergency Department and availability of emergency equipment in areas such as CT or angiography to which critical trauma patients are transported.)~~

~~K. Rehabilitation~~

~~1. Rehabilitation service staffed by personnel trained in rehabilitation care and equipped properly for acute care of the critically injured patient~~

~~E E E n/a~~

~~a. Early referral~~

~~E E E n/a~~

~~(NOTE- Consultation with appropriate rehabilitative services should be made early in the patient's hospitalization. Patients with rehabilitative needs should have access to early rehabilitative evaluation and bedside therapy during the acute phase of their care. Optimal time for rehabilitation consult is within 72 hours of admission.)~~

~~b. Discharge planning~~

~~E E E E~~

~~(NOTE- There must be identifiable evidence of early and adequate discharge planning including assessment of function to assure that all trauma patients have access to the inpatient or outpatient services they require post-acute care~~

discharge.)

2. Full in-house long-term rehabilitation service

E E E E

(NOTE- Access to the full range of rehabilitative services must be provided, including physiatrist or physician director of rehabilitative services, nursing care, physical therapy, occupational therapy, speech/language/hearing services, substance abuse rehabilitative counseling/referrral, orthotic/prosthetic services, psychological/social/family support services, and age-appropriate rehabilitative capability.

Records documenting annual continuing education hours must be available for all rehabilitation team members who provide care for trauma patients.

There must be immediate availability of adequate emergency equipment in all rehabilitation areas.)

OR

transfer agreement with a rehabilitation facility for long-term care

(NOTE- Facilties providing in-patient acute rehabilitative care for trauma patients should have current CARF (Committee on Accreditation of Rehabilitation Facilities) certification.)

L. Clinical laboratory service (available 24 hrs. a day)

1. Standard analyses of blood, urine, and other body fluids

E E E E

2. Blood typing and cross-matching

E E E E

3. Coagulation studies

E E E D

4. Comprehensive blood bank or access to a community central blood bank and adequate storage facilities

E E E E

5. Blood gases and pH determinations

E E E D

6. Microbiology

E E E D

7. Drug and alcohol screening

E E E D

VI. Quality Improvement

A. Quality improvement program based on ACS Resources for Optimal Care of the Injured Patient: 1993, Chapter 16 and the State of Delaware Trauma System Quality Management Plan

E E E E

B. Trauma registry

E E E E

C. Special audit for all trauma deaths

E E E E

D. Morbidity and mortality review

E E E E

E. Trauma conference, multidisciplinary

E E E D

F. Medical nursing audit, utilization, tissue review

E E E E

G. Review of prehospital trauma care

E E E D

H. Published on-call schedule must be maintained for surgeons, neurosurgeons, orthopaedic surgeons, and other major specialists

E E E D

I. Times of and reasons for trauma -related bypass must be documented and reviewed by quality improvement program

E E E n/a

K. Quality improvement personnel dedicated to and specificfor the trauma program

E E D D

VII. Outreach Program

Telephone and on-site consultations with physicians of the community and outlying areas

E E D n/a

VIII. Prevention/Public Education

A. Epidemiology research

1. Conduct studies in injury control

E D D n/a

2. Research collaboration w/ other institutions

E D D D

3. Monitor progress of prevention programs

E D D D

4. Consult with qualified researchers on evaluation measures

E D D D

(NOTE- An epidemiologist or biostatistician should be available.)

B. Surveillance

1. Special ED & field collection projects

E D n/a n/a

(NOTE- This includes the capability of doing special data collection projects as need is identified, such as monitoring bicycle helmet use in the community.)

2. Expanded trauma registry data

E E E D

3. Minimal trauma registry data

E E E E

(abbreviated)

C. Prevention

1. Designated prevention coordinator

E E D n/a

(NOTE: This activity may be part of the Trauma Coordinator's responsibilities.)

2. Outreach activities, program development

E E D n/a

3. Information resource

E E D n/a

4. Collaboration with existing national, regional, and state programs

E E E D

IX. Trauma Research Program

(NOTE: A trauma research program should be designed to produce new knowledge applicable to the care of injured patients. This research may be conducted in a number of ways, including traditional laboratory and clinical research, reviews of clinical series, and epidemiological or other studies. Regardless of the approach, the study design must include the development and testing of a clearly defined hypothesis. Consistent publication of articles focused on a clinical problem in peer-reviewed journals is the distinguishing feature of an effective research program. A trauma research program should have an organizational structure that fosters and monitors such ongoing productivity. In addition to the publications mentioned above, presentation of results at local, regional, and national society meetings and ongoing studies approved by local human and animal research review boards are expected from productive programs.)

A. Organized program with designated director

E D n/a n/a

B. Regular meeting of research group

E D n/a n/a

C. Evidence of productivity

1. Proposals reviewed by IRB

E D n/a n/a

2. Presentation at local/regional/national meetings

E D n/a n/a

3. Publications in peer-reviewed journals

E D n/a n/a

X. Continuing Education

Formal programs in continuing education provided by hospital for:

A. Staff physicians

E E D n/a

B. Nurses

E E E D

C. Allied health personnel

E E E D

D. Community physicians

E E D n/a

XI. Organ Procurement Activity

E E E E

XII. Transfer Agreements

A. As transferring facility

D E E E

(NOTE- Written transfer procedures and agreements with appropriate Trauma Centers, Speciality Centers, and hospitals, providing for timely movement of both critical and convalescing patients within the Trauma System, must be established and maintained. Compliance with these procedures is to be monitored by each institution's Quality Improvement process.)

B. As receiving facility

E E D n/a

(NOTE- It is the responsibility of each receiving hospital to provide timely feedback to transferring hospitals on the status and outcome of all patients received.)

PEDIATRIC TRAUMA STANDARDS

Adult Trauma Center Regional Pediatric Community with Pediatric Trauma Center Pediatric Commitment Level 1Level 2 Trauma Center

I. Demonstrated Commitment to Trauma Care

A. Facility must meet all corresponding Adult Trauma Center Standards

Regional Regional Regional Community Level 1 or 2 Level 1 Level 2

(NOTE-The Pediatric Trauma Standards identify the categories of resources required in facilities which specialize in pediatric trauma care. Reference must be made to the standards for the corresponding Trauma Center level in the Delaware Adult Trauma Center Standards document to determine the specific elements of these categories and whether each is an Essential or a Desirable standard for each level Pediatric Trauma Center.)

II. Hospital Organization

A. Hospital

1. Children's hospital or general hospital with a separate pediatric department

--- E E E

OR

General hospital with an organized pediatric department or service

E --- --- ---

B. Trauma Service

1. Pediatric Trauma Service organized and managed by a pediatric surgeon

--- E E E

OR

Pediatric Trauma Program administered by a surgeon

E --- --- ---

(NOTE- The Pediatric Program Director must be board-certified and committed to the care of the injured child, as evidenced by documented experience and annual continuing medical education on pediatric trauma.)

2. Pediatric Trauma Coordinator

--- E E E

OR

Trauma Coordinator

E --- --- ---

III. Clinical Capabilities

A. In-house 24 hours a day:

1. Pediatric surgeon

--- E E D

OR

General surgeon

E --- --- ---

(NOTE- At Regional Pediatric Trauma Centers a pediatric surgeon credentialed in trauma care will be promptly available. This responsible pediatric surgeon will be present in the operating room for all procedures. A general surgical resident at a minimum PGY4 level may initiate resuscitative care until the attending pediatric surgeon arrives.

In Trauma Centers utilizing general surgeons to provide pediatric trauma care, the surgeons so credentialed must have special interest in and commitment to care of the injured child, demonstrated by experience and documented CME.

In Trauma Centers without applicable residency programs, local conditions may allow the Pediatric Trauma Surgeon to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the pediatric surgeon will be present in the Emergency Department at the time of arrival of the major trauma patient to supervise resuscitation and major therapeutic decisons, provide operative treatment, and be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.)

2. Pediatric neurosurgeon

--- E E D

OR

Neurosurgeon

E --- --- ---

(NOTE- An attending neurosurgeon must be promptly available and dedicated to the hospital's Trauma Service. The in-house requirement may be fulfilled by an in-house neurosurgeon or surgeon who has special competence, as documented in the credentialing process by the chief of neurosurgery, in the care of patients with neurotrauma and who is capable of initiating measures directed toward stabilization of the patient and determination of diagnosis.)

3. Pediatric Emergency physician

--- E E E

OR

Emergency physician

E --- --- ---

(NOTE- In Regional institutions, requirements may be fulfilled by emergency medicine chief residents capable of assessing emergency situations in trauma patients and providing any indicated treatment. When chief residents are used to fulfill availability requirements, the attending on call will be advised and be promptly available.

In Community Trauma Centers this requirement may be fulfilled by a physician who is credentialed by the hospital to provide emergency medical services.)

4. Pediatric anesthesiologist

--- E E D

OR

Anesthesiologist

E --- --- ---

(NOTE- Requirements may be fulfilled by anesthesiology chief residents PGY4/CA4 who are capable of assessing emergent conditions of trauma patients and providing any indicated treatment, including initiation of surgical anesthesia. When anesthesiology residents are used to fulfill availability requirements, the staff anesthesiologist on call will be advised and promptly available.

In Trauma Centers without anesthesiology residency programs, requirements may be fulfilled when local conditions assure that the staff anesthesiologist will be in the hospital at the time of the patient's arrival. During the interim period prior to the arrival of the staff anesthesiologist, an in-house Certified Registered Nurse Anesthetist (CRNA) capable of assessing emergent situations in trauma patients and of initiating and providing any indicated treatment will be available. In some hospitals without a CRNA inhouse, local conditions may allow anesthesiologists to be rapidly available on short notice. Under these circumstances, local criteria must be established to allow anesthesiologists to take call from outside the hospital without CRNA availability, but with the clear commitment that anesthesiologists will be immediately available for airway emergencies and operative management. The availability of the anesthesiologist and the absence of delays in airway control or operative anesthesia must be documented by the hospital QI process.)

5. Pediatric intensivist

--- E E[1] D[1]

OR

Surgical Critical Care specialist

E --- --- ---

(1 In Trauma Centers without applicable residency programs, local conditions may allow the physician to be rapidly available on short notice. Under these circumstances local criteria must be established that allow the Trauma Surgeon to take call from outside the hospital, but with the clear commitment on the part of the hospital and the surgical staff that the general surgeon will be available to care for trauma patients in the ICU. Compliance with this requirement and applicable criteria must be monitored by the hospital's QI Program.

In Community Trauma Centers electing to manage severely injured patients in lieu of transferring them, a method of providing 24 hour physician coverage for ICU patients must be in place and documented through the hospital Trauma Quality Management Program.)

B. On call and promptly available:

1. Pediatric surgeon

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OR

General surgeon

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(NOTE- Communication should be such that the Pediatric Trauma Surgeon will be present in the emergency department at the time of arrival of a major trauma patient. Initial management of major trauma patients should follow a standard trauma treatment protocol adopted by the institution

2. Pediatric anesthesiologist

--- --- --- E

OR

Anesthesiologist

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(NOTE- May be provided by a CRNA under physician supervision. CRNA's involved in caring for trauma patients must have appropriate educational background and participate in trauma-related continuing educational and QI activities. Prompt response must be monitored by the Trauma QI program.)

3. Pediatric orthopedist

--- E E E

OR

Orthopedist

E --- --- ---

4. Pediatric radiologist

--- E E E

OR

Radiologist

E --- --- ---

5. Other pediatric surgical specialists

D E E E

6. Other pediatric medical specialists

D E E E

(NOTE- An on-call schedule designating pediatric surgical and medical specialists must be utilized. Prompt availability of these specialists must be monitored through the Pediatric Trauma QI Program. It is expected that physicians participating on the Pediatric Trauma Call Roster will demonstrate their interest in pediatric trauma care through involvement in Pediatric Trauma QI and educational activities.

In reference to the adult standards for on call physicians, freestanding pediatric facilities may meet the Obstetric/ Gynecological Surgery standard through current transfer agreements with an adult Trauma Center as outlined in Section VI. of this document. The requirement for Pediatric Surgery and Pediatrics coverage is Essential for all Pediatric Trauma Centers.)

IV. Facilities/ Resources/ Capabilities

A. Special equipment necessary for the resuscitation, surgical or nonoperative management, and postoperative or postresuscitative care of infants and children must be immediately available on every hospital unit caring for injured children.

E E E E

B. Physician and nursing staff who care for pediatric trauma patients throughout their hospitalization must include some pediatric specific hours in their documented annual trauma related continuing education.

E E E E

(NOTE- Courses such as Pediatric Advanced Life Support (PALS) and Advanced Pediatric Life Support (APLS) are strongly encouraged for physician and nursing staff caring for pediatric trauma patients.)

C. Emergency Department

1. Pediatric Emergency Department with appropriate personnel, equipment, facilities

--- E E E

OR

Pediatric capabilities in an Emergency equipment and staffed by personnel trained to care for pediatric trauma patients Department with adequate pediatric

E --- --- ---

2. Nurses who are knowledgeable in the care of pediatric trauma patients

E E E E

D. Intensive care unit

1. Pediatric ICU with pediatric surgical, medical, and nursing personnel and equipment needed to care for the injured child

--- E E E

OR

ICU with personnel and equipment appropriate for the care of the injured child

E --- --- ---

E. Pediatric perioperative services

1. Operative and recovery facilities,

~~**equipment, and personnel specific to meet the trauma care needs of all ages of pediatric patients.**~~

~~E E E E~~

~~**F. Pediatric medical surgical floor/unit**~~

~~**1. Identifiable pediatric floor or unit staffed with personnel knowledgeable in the care of pediatric trauma patients.**~~

~~**E E E E**~~

~~G. Support services~~

~~**1. Psychosocial services providing appropriate support and referrals for injured children and their families.**~~

~~D E E E~~

~~**2. Rehabilitation and physical medicine services specific to the needs of pediatric trauma patients available for early consult and treatment**~~

~~D E E E~~

~~**3. Comprehensive pediatric diagnostic and laboratory capabilities including micro sampling and 24-hour CT scan availability**~~

~~E E E E~~

~~V. Pediatric Trauma Quality Improvement~~

~~**A. Identifiable Quality Improvement activities specific to the pediatric trauma patient population.**~~

~~E E E E~~

~~**B. Documented participation by pediatric trauma physicians in pediatric trauma QI activities.**~~

~~E E E E~~

~~**C. Trauma Registry collecting expanded data on pediatric patients, with capability to provide information on the pediatric trauma population, including hospital course and outcome.**~~

~~E E E E~~

~~**D. Demonstrated institutional commitment to pediatric trauma research, education, and injury prevention**~~

~~D E D D~~

~~VI. Transfer Agreements~~

~~**A. Appropriate current transfer agreements must be in place for all pediatric trauma specialty care not provided by each institution, including care for burns, head and spinal cord injuries, obstetrics/gynecologic surgery, critical care, and rehabilitation.**~~

~~E E E E~~

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT

AIR QUALITY MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)

REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

Amendment to Regulation 31.

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

To amend Regulation 31 (Low Enhanced Inspection and Maintenance Program) as follows:

a. Put forth new testing requirements for model year 1996 and newer light duty vehicles that replaces the tail pipe test and pressure test with the on-board diagnostic (OBD) systems check. The on-board diagnostic system will be checked by the inspection lane technician by plugging into the vehicle's data link connector (DLC). This will indicate if the vehicle's emission will provide the customer with a printout of the "diagnostic trouble codes" (DTC) that will aid in the repair of the vehicle.

A failure of the OBD systems check will require the owner to repair his or her vehicle if one of the following conditions exists with the vehicle's "malfunction indicator light" (MIL) or the DLC:

The MIL does not light when the ignition key is in the "on" position

The MIL is lit for any DTC while the engine is running.

The DLC is missing, tampered or inoperable monitors are ready to detect problems with the emission control systems. The vehicle's ignition will be turned on and the vehicle's engine turned on briefly. If the vehicle fails the check according to the criteria below the inspection lane technician.

b. To revise the technical procedure for the evaporative system integrity (pressure) test.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 **Del.C.** Section 6010

Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE

AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Public Hearing is on July 25, 2001, 6 pm Richardson and Robbins Auditorium, 89 Kings Highway, Dover

7. PREPARED BY:

Philip A. Wheeler, 739-4791, 6/22/01

Proposed Amendments
Low enhanced Inspection and Maintenance Program
Regulation No. 31

Section 1 - Applicability.

(a) This program shall be known as the "Low enhanced Inspection and Maintenance Program" or "LEIM Program", and shall be identified as such in the balance of this regulation.

(b) This regulation shall apply to New Castle and Kent Counties.

(c) This regulation shall apply to all vehicles registered in the following postal ZIP codes:

19701	19702	19703	19706	19707	19708	19709
19710	19711	19712	19713	19714	19715	19716
19717	19718	19720	19730	19731	19732	19733
19734	19735	19936	19703	19938	19800	19801
19802	19803	19804	19805	19806	19807	19808
19809	19810	19850	19890	19894	19896	19897
19898	19899	19901	19902	19903	19904	19934
19936	19938	19942	19943	19946	19952	19953
19954	19955	19961	19962	19963*	19964	19977
19979	19980					

* Note: If vehicles registered in Sussex County and with this ZIP code, this regulation is not applicable.

(d) The legal authority for implementation of the LEIM Program is contained in 7 Del.C. Chapter 60, §6010(a). Appendix 1 (d) contains the letter from the State of Delaware, Secretary of the Department to EPA Regional Administrator, W. Michael McCabe committing to continue the I/M program through the enforcement of this regulation out to the attainment year and remain in effect until the applicable area is re-designated to attainment status and a Maintenance Plan is approved by the EPA. 7 Del. C. Chapter 60, §6010(a) does not have a sunset date.

(e) Requirements after attainment.

This LEIM program shall remain in effect if the area is re-designated to attainment status, until approval of a Maintenance Plan, under Section 175A of the Clean Air Act, which demonstrates that the area can maintain the relevant standard for the maintenance period (10 years) without benefit of the emission reductions attributable to the continuation of the LEIM program.

(f) Definitions

Alternative Fuel Vehicle: Any vehicle capable of operating on one or more fuels, none of which are gasoline, and which is subject to emission testing to the same stringency as a similar gasoline fueled vehicle.

Certified Repair Technician: Automotive repair technician certified jointly by the College (or other training agencies or training companies approved by the Department) and the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles as having passed a recognized course in emission repair. (See Appendix 7 (a))

Certified Manufacturer Repair Technician: Automotive repair technician certified by the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles, as trained in doing emission repairs on vehicles of a specific manufacturer. (See Appendix 7 (a))

College: The Delaware Technical and Community College

Compliance Rate: The percentage of vehicles out of the total number required to be inspected in any given year that have completed the inspection process to the point of receiving a final certificate of compliance or a waiver.

Director: The Director of the Division of Motor Vehicles in the Department of Public Safety.

Division: The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

Department: The Department of Natural Resources and Environmental Control of the State of Delaware.

Emissions: Products of combustion and fuel evaporation discharged into the atmosphere from the tailpipe, fuel system or any emission control component of a motor vehicle.

Emissions Inspection Area: The emissions inspection area shall constitute the entire counties of New Castle and Kent.

Emissions Standard(s): The maximum concentration of hydrocarbons (HC), carbon monoxide (CO) or oxides of nitrogen (NO_X), or any combination thereof, allowed in the emissions from a motor vehicle as established by the Secretary, as described in this regulation.

Failed Motor Vehicle: Any motor vehicle which does not comply with applicable exhaust emission standards, evaporative system function check requirements and emission control device inspection requirements during the initial test or any retest.

Flexible Fuel Vehicle: Any vehicle capable of operating on more than one fuel type, one of which includes gasoline, which must be tested to program standards for gasoline. This is in contrast to alternative fuel vehicles.

Going Concern: An individual or business with a primary, full time interest in the repair of motor vehicles.

GPM: Grams per mile (grams of emissions per mile of

travel).

Manufacturer's Gross Vehicle Weight: The vehicle gross weight as designated by the manufacturer as the total weight of the vehicle and its maximum allowable load.

Model Year: The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

Motor Vehicle: Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors, off-highway vehicles, motorcycles and mopeds.

Motor Vehicle Technician: A person who has completed an approved emissions inspection equipment training program and is employed or under contract with the State of Delaware.

New Model Year Clean Screen Exemption: An exemption from the exhaust emissions test and the evaporative system integrity (pressure) test except for the gas cap test on the eight newest model years. This exemption will only apply during periods of long wait times at the inspection facilities.

New Model Year Exemption: An exemption of a designated new model year of an applicable vehicle from any or all of the requirements in this regulation. The exemption shall begin on the first day of October of the calendar year, which will be the anniversary date for calculating the applicability of a vehicle for a new model year exemption. For example, a 1997 model year vehicle titled in Delaware in August of 1996 will have an anniversary date of October 1, 1996 and thus does not lose its five model year exemption status until October 1, 2001.

New Motor Vehicle: A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin, unregistered vehicle title.

Onboard Diagnostics (OBD): A system of vehicle component and condition monitors controlled by a central, onboard computer designed to signal the motorist when conditions exist which could lead to a vehicle's exceeding its certification standards by 1.5 times the standard.

Official Inspection Station: All official Motor Vehicle Inspection Stations located in New Castle and Kent counties, operated by, or under the auspices of, the Division.

Operator: An employee or contractor of the State of Delaware performing any function related to motor vehicle inspections in the State.

Performance Standard: The complete matrix of emission factors derived from the analysis of the model program as defined in 40 CFR Part 51 Subpart S, by using EPA's computerized Mobile5a emission factor model. This matrix of emission factors is dependent upon various speeds, pollutants and evaluation years.

PFI: The Plan for Implementation of Regulation No. 31, which can be also considered to be the technical support document for that regulation.

Reasonable Cost: The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes towards compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to the alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

Registration Fraud: Any attempt by a vehicle owner or operator to circumvent the requirements to properly and legally register any motor vehicle in the State of Delaware.

Secretary: The Secretary of the Department of Natural Resources and Environmental Control.

Stringency Rate: The tailpipe emission test failure rate expected in an I/M program among pre-1981 model year passenger cars or pre-1984 light-duty trucks.

Vehicle Type: EPA classification of motor vehicles by weight class which includes the terms light duty and heavy duty vehicle.

Waiver: An exemption issued to a motor vehicle that cannot comply with the applicable exhaust emissions standard and cannot be repaired for a reasonable cost.

Waiver Rate: The number of vehicles receiving waivers expressed as a percentage of vehicles failing the initial exhaust emission test.

Section 2 -Low Enhanced I/M Performance Standard.

(a) On-road testing:

The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection required in paragraph (a) of Section 3. The requirements are contained in Section 12 of this regulation.

(b) ~~(Reserved)~~ On-Board Diagnostics (OBD).

The performance standard shall include inspection of all 1996 and newer light-duty vehicles and light- duty trucks equipped with certified on-board diagnostic systems with the exception of the five most recent model years, and repair of malfunctions or system deterioration identified by or affecting OBD systems. (see Section 6)

Section 3 - Network Type And Program Evaluation.

(a) The LEIM Program shall be a test-only, centralized system operated in New Castle and
Kent Counties by the State of Delaware's Division of Motor Vehicles.

(1) Network type: Centralized testing.
(2) Start date: January 1, 1995
(3) Test frequency: Biennial testing.
(4) Model year coverage: Idle and two-speed idle

test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks with the exception of the five most recent model years.

(5) Vehicle type coverage: Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type: Idle test of all covered vehicles: Model years 1968 through 1980 for light duty vehicles and model years 1970 through 1980 for light duty trucks according to the requirements found in Appendix 6 (a).

Two-speed idle test (vehicle engine at idle and 2500 revolutions per minute (rpm) of all covered vehicles model years 1981 ~~and newer~~ through 1995 according to the requirements found in Appendix 6 (a).

(7) Emission standards: (Emissions limits according to model year may be found in Appendix 3(a)(7))

Maximum exhaust dilution measured at no less than 6% CO plus carbon dioxide (CO_2) on all tested vehicles (as described in Appendix B of the EPA Rule).

(8) Emission control device inspections: Visual inspection of the catalyst on all 1975 and later model year vehicles with the exception of new motor vehicles registered in Delaware.

(9) Evaporative system function checks: Evaporative system integrity (pressure) test on 1975 and later model year vehicles with the exception of the five most recent model years.

(10) Stringency: A 20% emission test failure rate among pre1981 model year vehicles.

(11) Waiver rate: A 3% rate, as a percentage of failed vehicles.

(12) Compliance rate: A 96% compliance rate.

(13) Evaluation date: Low enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone non-attainment areas and 2001 for CO non-attainment areas, and for severe and extreme ozone non-attainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_X shall be the same as for ozone..

(b) ~~[Reserved]~~ Onboard diagnostics (OBD):

(i) All 1996 and newer light-duty vehicles and light- duty trucks equipped with certified on-board diagnostic systems with the exception of the five most recent model years according to the requirements found in Section 6.

(ii) 1996 and newer light-duty vehicles and light-duty trucks not equipped by the manufacturer with certified on-board diagnostics systems with the exception of tampered or removed systems will be required to undergo the two-speed idle test, the evaporative system integrity (pressure) test and the emission control device test.

(c) Program Evaluation

(1) Program evaluation shall be used in determining actual emission reductions achieved from the LEIM program for the purposes of satisfying the requirements of sections 182(g)(1) and 182(g)(2) of the Clean Air Act, relating to reductions in emissions and compliance demonstration.

(2) Transient mass emission test procedure: A randomly selected number of subject vehicles that are due to be tested according to the requirements of this regulation will be required to undergo, in addition to the required tests, an alternative test procedure to provide information for the purpose of evaluating the overall effectiveness of the Low Enhanced Inspection and Maintenance Program. The test is referred to as the VMAS^{TM} method. See Appendix 3 (c) (2).

Section 4 - Test Frequency And Convenience.

(a) The LEIM Program shall be operated on a biennial frequency, which requires an inspection of each subject vehicle at least once every two years, regardless of any change in vehicle status, at an official inspection station. New vehicles must be presented for LEIM program testing not more than 60 months after initial titling.

(b) This system of inspections and registration renewals allows the additional benefit of coupling both enforcement systems together. Local, County and State police shall continue to enforce registration requirements, which shall require inspection in order to come into compliance. Requirements of inspection of motor vehicles before receiving a vehicle registration is found in the Delaware Criminal and Traffic manual Title 21 Chapter 21. Violations of registration provisions and the resulting penalties are found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. One 60 day extension shall be available to allow testing and repair.(See Appendix 4 (a) for the citations)

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours shall equal a minimum of 42 hours per week. Stations shall remain open continuously through the designated hours, and every vehicle presented for inspection during these hours shall receive a test prior to the daily closing of the station. Testing hours shall be Monday and Tuesday: 8:00 am to 4:30 PM, Wednesday: 12 noon to 8 PM, Thursday and Friday 8:00 am to 4:30 PM. These hours may be subject to change by the State. Official inspection stations shall adhere to regular, extended testing hours and shall test any subject vehicle presented for a test during its test period.

Section 5 - Vehicle Coverage.

(a) Subject Vehicles

The LEIM program is based on coverage of all 1968 model year, ~~gasoline powered~~, light duty vehicles and 1970 and later model year light duty trucks up to 8,500 pounds GVWR (with the exception of the five most recent model years and vehicles exempted under Section 5 (b)). The following is the complete description of the LEIM program:

Vehicles registered or required to be registered within the emission inspection area, and fleets primarily operated within the emissions inspection area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles, which are as follows: (See Appendix 5 (a) for DMV Out of State Renewals)

(1) All vehicles titled/registered in Delaware from model year 1968 light duty vehicles and 1970 and later model year light duty trucks and whose vehicle type are subject to the applicable test schedule.

(2) All subject fleet vehicles shall be inspected at an official inspection station.

(3) Subject vehicles which are registered in the program area but are primarily operated in another LEIM area shall be tested, either in the area of primary operation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles (e.g., vehicles belonging to students away at college should be rescheduled for testing during a visit home).

(4) Vehicles which are operated on Federal installations located within an emission inspection shall be tested, regardless of whether the vehicles are registered in the emission inspection jurisdiction. This requirement applies to all employee owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the LEIM program for reimbursement of the costs of tests provided for agency vehicles, at the discretion of the Director. The installation manager shall provide documentation of proof of compliance to the Director. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the Director, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

(i) Presentation of a valid certificate of compliance from the LEIM program, from any other LEIM program at least as stringent as the LEIM program described herein, or from any program deemed acceptable by the Director.

(ii) Presentation of proof of vehicle registration within the geographic area covered by the LEIM program, except for any Inspection and Maintenance program whose enforcement is not through registration denial.

(iii) Another method approved by the Director.

(5) Vehicles powered solely by a "clean fuel" such as compressed natural gas, propane, alcohol and similar non-gasoline fuels shall be required to report for inspection to the same emission levels as gasoline powered cars until standards for clean fuel vehicles become available and are adopted by the State.

(6) Vehicles able to be powered by more than one fuel, such as compressed natural gas and/or gasoline, must be tested and pass emissions standards for all fuels when such standards have become adopted by the Department.

(b) Exemptions

The following motor vehicles are exempt from the provisions of this regulation:

(1) Vehicles manufactured and registered as kit cars

(2) Tactical military vehicles used exclusively for military field operations.

(3) All motor vehicles with a manufacturer's gross vehicle weight over 8,500 pounds.

(4) All motorcycles and mopeds

(5) All vehicles powered solely by electricity generated from solar cells and/or stored in batteries.

(6) Non-road sources, or vehicles not operated on public roads

(7) Model year vehicles 1996 and older powered solely by diesel fuel.

(c) Any exemption from inspection requirements issued to a vehicle under this section shall not have an expiration date and shall expire only upon a change in the vehicle status for which the exemption was initially granted.

(d) Fleet owners are required to have all non-exempted vehicles under their control inspected at an official inspection station during regular station hours.

(e) Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

(f) New Model Year Clean Screen: Clean screening exemptions will be determined for model years of vehicles six to eight years old that may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test (except for a fuel cap pressure test) if warranted by queue conditions at the inspection lanes. Each Delaware inspection lane shall independently control clean screen

activation. Clean screen mode shall occur when the inspection lane queue exceeds 60 minutes. The Lane Manager (or designee) must advise inspection personnel to activate the process. Once a queue reduction to less than 60 minutes takes place, reversion to the normal testing protocol shall occur. Wait times will be determined by queue lengths that surpass lane markers that indicate expected wait time of 60 minutes or more. The Lane Manager (or designee) is responsible for advising inspection personnel to activate the clean screening exemption process. Once a reduction in queue length to that representing a motorist wait time of less than 60 minutes takes place, reversion to the normal testing protocol shall occur. Each Delaware inspection lane shall independently control clean screen activation. The Division of Motor Vehicles will cap, on an annual basis, the number of vehicles which may be exempted through clean screening by model year in order to prevent failure to meet expected emission reductions. The first year of implementation will have an annual cap of 14,000 vehicles. If the specified number of vehicles clean screened for an individual model year equals the annual cap of emissions for that individual model year, no more vehicles for that model year will be exempt. The maximum allowable number of vehicles to be clean screened will be re-evaluated annually.

Section 6 -Test Procedures And Standards.

(a) Test procedure requirements. (The test procedure use to perform this test shall conform to the requirements shown in Appendix 6 (a)).

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at the inspection facility, prior to the test.

(2) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition or unsafe conditions.

(3) Tests involving measurements shall be performed with equipment that has been calibrated according to the quality control procedures established by the Department.

(4) Vehicles shall be rejected from testing, as covered in this section, if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(5) After an initial failure of any portion of any emission test (idle or two speed idle test) in the LEIM program, all vehicles shall be retested without repairs being performed. This retest shall be indicated on the records as the second chance test. After failure of the second chance test, prior to any subsequent retests, proof of appropriate repairs must be submitted indicating the type of repairs and parts installed (if any). This shall be done by completing the ffVehicle Emissions Repair Report Form (Appendix 6 (a) (5) which will be distributed to anyone failing the emissions test.)

(6) Idle testing using BAR 90 emission analyzers (analyzers that have been certified by the California Bureau of Automotive Repair) shall be performed on all 1968 through ~~current (minus five years)~~ 1995 model year vehicles in New Castle and Kent Counties.

(7) Emission control device inspection.

Visual emission control device checks shall be performed through direct observation or through indirect observation using a mirror. These inspections shall include a determination as to whether each subject device is present.

(8) Evaporative System Integrity Test. Vehicles shall fail the evaporative system integrity test(s) if the system(s) cannot maintain the equivalent pressure of eight inches of water ~~using USEPA approved fast pass methodology~~ for up to two minutes after being pressurized to 14 plus or minus 0.5 inches of water. Additionally, vehicles shall fail evaporative system integrity testing if the canister is missing or obviously disconnected, the hoses are crimped off, or the fuel cap is missing. Evaporative system integrity test procedure is found in See Appendix 6 (a) (8) .

(9) ~~[Reserved]~~ Onboard diagnostic checks.

Vehicles shall be tested following the procedures found in Appendix 6 (a) (9).

(b) Test standards

(1) Emissions standards.

HC, CO, CO+CO_2 (or CO_2 alone), emission standards shall be applicable to all vehicles subject to the LEIM program and repairs shall be required for failure of any standard regardless of the attainment status of the area.

(i) Steady-state short tests.

Appropriate model program standards shall be used in idle testing of vehicles from model years 1968 light duty vehicles and model years 1970 light duty trucks and newer.

(2) Visual equipment inspection standards performed by the MotorVehicleTechnician.

(i) Vehicles shall fail visual inspections of subject emission control devices if such devices are part of the original certified configuration and are found to be missing, modified, disconnected, or improperly connected.

(3) ~~(reserved)~~ Onboard diagnostics test standards.

(i) Vehicles shall fail the OBD test if:

(A) Malfunction Indicator Light (MIL) is not lit during key on, engine off check of bulb; and/or

(B) MIL lit (or commanded on) for any Diagnostic Trouble Codes (DTC);

(C) Data Link Connector (DLC) is damaged, missing, tampered or obstructed by an after-market device

(D) More than two unset readiness codes for model years 1996-2000 unless an exception from this provision is given under the requirements in Appendix 6 (a) (9) for vehicles that have failed the initial test and have been repaired where the monitors are not yet ready to test. In

addition, an exception to this provision will be allowed for vehicles listed in Appendix 6 (a) (9) by model and year.

(E) More than one unset readiness code for model years 2001 and newer unless an exception from this provision is given under the requirements in Appendix 6 (a) (9) for vehicles that have failed the initial test and have been repaired where the monitors are not yet ready to test. In addition, an exception to this provision will be allowed for vehicles listed in Appendix 6 (a) (9) by model and year.

(c) Applicability.

In general, section 203(a)(3)(A) of the Clean Air Act prohibits altering a vehicle's configuration such that it changes from a certified to a non-certified configuration. In the inspection process, vehicles that have been altered from their original certified configuration are to be tested by the Motor Vehicle Technician in the same manner as other subject vehicles.

(1) Vehicles with engines of a model year older than the chassis model year shall be required to pass the standards commensurate with the chassis model year.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the LEIM program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (c)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the Division determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without such devices.

(4) Vehicles converted to run on alternate fuels, frequently called a dual-fuel vehicle, shall be tested and required to pass the most stringent standard for each fuel type.

(5) Mixing vehicle classes (e.g., light duty with heavy duty) and certification types (e.g., California with Federal) within a single vehicle configuration shall be considered tampering.

Section 7 - Waivers And Compliance Via Diagnostic Inspection.

(a) Waiver issuance criteria.

(1) Motorists shall expend a reasonable cost, as defined in Section 1 of this Regulation in order to qualify for a waiver.

(i) For vehicles failing the exhaust emissions test under Section 3 (a) (6), ~~Effective January 1, 1997 for vehicles registered in New Castle County~~ and ~~July 1, 1997 for vehicles registered in Kent County~~ in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation, and must have been appropriate to correct the emission failure. Repairs of primary emission control components may be performed by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver would apply to the cost of parts for the repair or replacement of the following list of emission control component systems: Air induction system (air filter, oxygen sensor), catalytic converter system (converter, preheat catalyst), thermal reactor, EGR system (valve, passage/hose, sensor) PCV System, air injection system (air pump, check valve), ignition system (distributor, ignition wires, coil, spark plugs). The cost of any hoses, gaskets, belts, clamps, brackets or other emission accessories directly associated with these components may also be applied to the waiver limit.

(ii) For vehicles failing the on-board diagnostics test under Section 3 (b) in order to qualify for waiver, repairs on any 1996 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation, and must have been appropriate to correct the emission failure.

(2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraph (a)(4) of this section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(3) Receipts shall be submitted for review to further verify that qualifying repairs were performed.

(4) A minimum expenditure for repairs of $75 for pre-81 model year vehicles or a minimum expenditure of $200 for 1981 model year and newer vehicles shall be spent in order to qualify for a waiver. The minimum repair cost for 1981 and newer vehicles shall increase to $450 starting January 1, 2000. For each subsequent year, the $450 minimum expenditure shall be adjusted in January of that year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(5) The issuance of a waiver applies only to those vehicles failing an exhaust emission or on-board diagnostics tests. No waivers are granted to vehicles failing the evaporative emission integrity test.

(6) Waivers shall be issued by the Division Director only after:

(i) a vehicle has failed a retest for only the exhaust emissions or on-board diagnostics portions of the program, performed after all qualifying repairs have been completed;

(7) Qualifying repairs include repairs of primary emission control components performed within 90 days of the test date.

(8) Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

(9) Waivers will not be issued to vehicles for tampering related repairs. The cost of tampering related repairs shall not be applicable to the minimum expenditure in paragraph (a)(4) of this section. The Director will issue exemptions for tampering related repairs if it can be verified that the part in question or one similar to it is no longer available for sale.

(b) Compliance via diagnostic inspection.

Vehicles subject to an emission test at the cut-points shown in Appendix 3 (a)(7) of Regulation 31 may be issued a certificate of compliance without meeting the prescribed emission cut-points, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by a Delaware Certified Emission Repair Technician shows that no additional emission related repairs are needed.

(c) (1) In order to meet the requirements of the EPA Rule, the State commits to maintaining a waiver rate equal to or less than 3% of the failed vehicles.

(2) The Secretary shall take corrective action to lower the waiver rate should the actual rate reported to EPA be above 3%.

(3) Actions to achieve the 3% waiver rate, if required, shall include measures such as not issuing waivers on vehicles less than 6 years old, raising minimum expenditure rates, and limiting waivers to once every four years. If the waiver rate cannot be lowered to levels committed to in the SIP, or if the State chooses not to implement measures to do so, then the Secretary shall revise the I/M emission reduction projections in the SIP and shall implement other LEIM program changes needed to ensure the performance standard is met.

Section 8 - Motorist Compliance Enforcement.

(a) Registration denial.

Registration denial enforcement (See Appendix 8 (a), the Systems Requirement Definition for the Registration Denial process) is defined as rejecting an application for initial registration or re-registration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the LEIM program requirement prior to granting the application. This enforcement is the express responsibility of the Division with the assistance of police agencies for on road inspection and verification. The law governing the registration of motor vehicles is found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. Pursuant to section 207(g)(3) of the Act, nothing in this section shall be construed to require that new vehicles shall receive emission testing prior to initial retail sale. In designing its enforcement program, the Director shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the LEIM program. This shall be in the form of a window sticker and tag sticker which clearly indicate the vehicles compliance status and next inspection date;

(2) Adopt a schedule of biennial testing that clearly determines when a vehicle shall have to be inspected to comply prior to (re)registration;

(3) Design a registration denial system which features the electronic transfer of information from the inspection lanes to the Division's Data Base, and monitors the following information:

(i) Expiration date of the registration;

(ii) Unambiguous vehicle identification information; and

(iii) Whether the vehicle received either a waiver or a certificate of compliance, and;

(iv) ~~The Division's unique windshield certificate identification number to verify authenticity; and~~

(v) The Division shall finally check the inspection data base to ensure all program requirements have been met before issuing a vehicle registration.

(4) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal.

(5) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers do not restart the clock on the inspection cycle.

(6) Limit and track the use of time extensions of the registration requirement to only one 60 day extension per vehicle to prevent repeated extensions.

(b)(1)(i) Owners of subject vehicles must provide valid proof of having received a passing test or a waiver to the Director's representative in order to receive registration from the Division.

(ii) State and local enforcement branches, such as police agencies, as part of this program, shall cite motorist who do not visibly display evidence of compliance with the registration and inspection requirements.

(iii) Fleet and all other registered applicable vehicle compliance shall be assured through the regular enforcement mechanisms concurrent with registration renewal, on-road testing and parking lot observation. Fleets shall be inspected at official inspection stations.

(iv) Federal fleet compliance shall be assured through the cooperation of the federal fleet managers as well as also being subject to regular enforcement operations of the Division.

Section 9 - Enforcement Against Operators And Motor

Vehicle Technicians.

(a) Imposition of penalties

The State of Delaware shall continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of program requirements, ~~the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action, and,~~ the State of Delaware Merit Rules, shall be adhered to in all matters. Applicable provisions of these documents are found in Appendix 9 (a).

(b) Legal authority.

(1) The Director shall have the authority to temporarily suspend station Motor Vehicle Technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits. ~~in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8 Disciplinary Action.~~

(2) The Director shall have the authority to impose disciplinary action against the station manager or the Motor Vehicle Technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the ~~Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, and the~~ State of Delaware Merit Rules. The lane manager shall be held fully responsible for performance of the motor vehicle technician in the course of duty.

Section 10 - Improving Repair Effectiveness.

A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed. (See Section 6 (a) (5) of this Regulation).

Section 11 - Compliance With Recall Notices.

[Reserved]

Section 12 – On-Road Testing.

(a) Periodic random Delaware registered vehicle pullovers on Delaware highways will occur without prior notice to the public for on-road vehicle exhaust emission testing.

(b) Vehicles identified by the on-road testing portion of the LEIM program shall be notified of the requirement for an out-of-cycle emission retest , and shall have 30 days from the date of the notice to appear for inspection. Vehicles not appearing for a retest shall be out of compliance, and be liable for penalties under Title 21 of Delaware Criminal and Traffic Law Manual and the Division will take action to suspend the vehicle registration.

Section 13 - Implementation Deadlines.

All requirements related to the LEIM program shall be effective ten days after the Secretary's order has been signed and published in the State Register except for the following provisions that have been amended to this regulation:

	Date of Implementation
(a) Two-speed idle test (vehicle at idle and 2500 rpm) of all covered vehicles model years 1981 and newer	November 1, 1999
(b) Program Evaluation using VMAS^{TM} test procedure.	~~January 1, 2000~~ January 1, 2002
(c) On-Board Diagnostics Test	January 1, 2002

APPENDICIES

APPENDIX 1 (d)
Commitment to Extend the I/M Program to the Attainment Date Letter from Secretary Tulou to EPA Regional Administrator, W. Michael McCabe

June 1, 1998

Mr. W. Michael McCabe
Regional Administrator
EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

Dear Mr. McCabe:

This correspondence is to address one of the cited deficiencies published in the May 19, 1997 EPA rulemaking, concerning Delaware's Inspection and Maintenance regulation. I understand that this letter will address the following deficiency:

Provide a statement from an authorized official that the authority to implement Delaware's I/M program as stated above will continue through the attainment date . . .

The Delaware I/M regulation has no sunset provision and there is nothing in the Delaware statute that requires our regulations to have a sunset date nor to be re-authorized in order to continue beyond a sunset date.

We fully expect, barring the repeal of 7 Del. Chapter 67, the Delaware I/M regulation will be implemented to the full extent of the law through the attainment date and most likely through the maintenance period when that occurs.

Please feel free to contact Darryl Tyler, Program

Administrator of the Air Quality Management Section at (302) 739-4791, if you should have any questions.

Sincerely,
Christophe A. G. Tulou
Secretary

cc:Jeffrey W. Bullock, Governor's Chief of Staff
J. Jonathan Jones, Governor's Policy Assistant for Federal Affairs
Secretary Karen L. Johnson, Delaware Department of Public Safety
Secretary Anne P. Canby, Delaware Department of Transportation

APPENDIX 3(a)(7)
EXHAUST EMISSION LIMITS ACCORDING TO MODEL YEAR

Group	Auto/Station Wagons (passenger vehicles)	Pickup/Van under 8501#	HC Limit (ppm)	CO Limit %
1	1968-70	1970-72	900	9.00
2	1971-74	1973-78	600	6.00
3	1975-79	1979-8	400	4.00
4	1980	(none)	220	2.00
5	1981 +	1984 +	220	1.20

APPENDIX 3(c)(2)
VMAS^{TM} TEST PROCEDURES

General Requirements

(1) Test Parameters. The following information shall be determined for the vehicle being tested and used to automatically select the dynamometer inertia, power absorption settings, and evaporative emission test parameters.

(i) Model Year
(ii) Manufacturer
(iii) Model name
(iv) Body style
(v) Number of cylinders
(vi) Engine displacement

Alternative computerized methods of selecting dynamometer test conditions, such as VIN de-coding, may be used.

(2) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure shall be recorded continuously during the transient test, or as a single set of readings if taken less than 4 minutes prior to the transient driving cycle.

(3) Restart. If shut off, the vehicle shall be restarted as soon as possible before the test and shall be running at least 30 seconds prior to the transient driving cycle.

(4) During the entire VMASTM testing procedure the vehicle shall be operated by a certified Motor Vehicle Technician (herein called inspector) and the vehicle owner or operator shall be asked to wait in a specified area during the test.

Pre-inspection and Preparation

(1) Accessories. All accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) shall be turned off by the inspector, if necessary.

(2) Traction Control and Four-Wheel Drive (4WD). Vehicles with traction control systems that cannot be turned off shall not be tested on two wheel drive dynamometers. Vehicles with 4WD that cannot be turned off shall only be tested on 4WD dynamometers. If the 4WD function can be disabled, then 4WD vehicles may be tested on two wheel drive dynamometers.

(3) Leaks. The vehicle shall be inspected for exhaust leaks. Audio assessment while blocking exhaust flow, or measurement of carbon dioxide or other gases, shall be acceptable. Vehicles with leaking exhaust systems shall be rejected from testing.

(4) Operating Temperature. The vehicle temperature gauge, if equipped and operating, shall be checked to assess temperature. If the temperature gauge indicates that the engine is well below (less than 180(F) normal operating temperature, the vehicle shall not be fast-failed and shall get a second-chance emission test if it fails the initial test for any criteria exhaust component.Vehicles in overheated condition shall be rejected from testing.

(5) Tire Condition. Vehicles shall be rejected from testing if tire cords, bubbles, cuts, or other damage are visible. Vehicles shall be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected if they do not have reasonably sized tires. Vehicle tires shall be visually checked for adequate pressure level. Drive wheel tires that appear low shall be inflated to approximately 30 psi, or to tire side wall pressure, or manufacturer's recommendation. The tires of vehicles being tested for the purposes of program evaluation under the Code of Federal Regulations Title 40 §51.353(c) shall have their tires inflated to tire side wall pressure.

(6) Ambient Background. [RESERVED]

(7) Sample System Purge. [RESERVED]

Equipment Positioning and Settings

(1) Purge Equipment. If an evaporative system flow meter purge test is to be performed:

(i) The purge flow meter shall be connected in series between the evaporative canister and the engine.

(ii) All hoses disconnected for the test shall be reconnected after a purge flow test is performed.

(2) Roll Rotation. The vehicle shall be maneuvered

onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires shall be dried if necessary to prevent slippage during the initial acceleration.

(3) Cooling System. The use of a cooling system is optional when testing at temperatures below 50(F). Furthermore, the hood may be opened at the state's discretion. If a cooling system is in use, testing shall not begin until the cooling system is positioned and activated. The cooling system shall be positioned to direct air to the vehicle cooling system, but shall not be directed at the catalytic converter.

(4) Vehicle Restraint. Testing shall not begin until the vehicle is restrained. Any restraint system shall meet the requirements of the Code of Federal Regulations Title 40, §85.2226(a)(5)(vii). The parking brake shall be set for front wheel drive vehicles prior to the start of the test. The parking brake need not be set for vehicles that release the parking brake automatically when the transmission is put in gear.

(5) Dynamometer Settings. Dynamometer power absorption and inertia weight settings shall be automatically chosen from an EPA-supplied electronic look-up table which will be referenced based upon the vehicle identification information obtained in Code of Federal Regulations Title 40, §85.2221(a)(1). Vehicles not listed shall be tested using default power absorption and inertia settings in the latest version of the EPA I/M Look-up Table, as posted on EPA's web site: www.epa.gov/orcdizux/im.htm

(6) Exhaust Collection System. The exhaust collection system shall be positioned to insure complete capture of the entire exhaust stream from the tailpipe during the transient driving cycle. The system shall meet the requirements of §85.2226(b)(2) in the Code of Federal Regulations Title 40,.

Vehicle Conditioning

(1) Queuing Time. Not applicable

(2) Program Evaluation. Vehicles being tested for the purpose of program evaluation under Section 3 (c) (2) shall receive two full VMAS emission tests (i.e., a full 240 seconds each). Results from both tests and the test order shall be separately recorded in the test record. Emission scores and results provided to the motorist may be from either test.

(3) Discretionary Preconditioning.

(i) Any vehicle may be preconditioned by maneuvering the vehicle on to the dynamometer and driving the 94 to 239 second segment of the transient cycle in § 85.2221(e)(1) Code of Federal Regulations Title 40,. This method has been demonstrated to adequately precondition the vast majority of vehicles (SAE 962091). Other preconditioning cycles may be developed and used if approved by the Administrator of the USEPA.

(4) Second-Chance Purge Testing. Not applicable

Vehicle Emission Test Sequence

(1) Transient Driving Cycle. The vehicle shall be driven over the following cycle:

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
0	0.0	40	17.7	80	32.2	120	18.1	160	33.5	200	56.7
1	0.0	41	19.8	81	32.4	121	18.6	161	36.2	201	56.7
2	0.0	42	21.6	82	32.2	122	20.0	162	37.3	202	56.3
3	0.0	43	23.2	83	31.7	123	20.7	163	39.3	203	56.0
4	0.0	44	24.2	84	28.6	124	21.7	164	40.5	204	55.0
5	3.0	45	24.6	85	25.1	125	22.4	165	42.1	205	53.4
6	5.9	46	24.9	86	21.6	126	22.5	166	43.5	206	51.6
7	8.6	47	25.0	87	18.1	127	22.1	167	45.1	207	51.8
8	11.5	48	25.7	88	14.6	128	21.5	168	46.0	208	52.1
9	14.3	49	26.1	89	11.1	129	20.9	169	46.8	209	52.5
10	16.9	50	26.7	90	7.6	130	20.4	170	47.5	210	53.0
11	17.3	51	27.5	91	4.1	131	19.8	171	47.5	211	53.5
12	18.1	52	28.6	92	0.6	132	17.0	172	47.3	212	54.0
13	20.7	53	29.3	93	0.0	133	17.1	173	47.2	213	54.9
14	21.7	54	29.8	94	0.0	134	15.8	174	47.2	214	55.4
15	22.4	55	30.1	95	0.0	135	15.8	175	47.4	215	55.6
16	22.5	56	30.4	96	0.0	136	17.7	176	47.9	216	56.0
17	22.1	57	30.7	97	0.0	137	19.8	177	48.5	217	56.0
18	21.5	58	30.7	98	3.3	138	21.6	178	49.1	218	55.8
19	20.9	59	30.5	99	6.6	139	22.2	179	49.5	219	55.2
20	20.4	60	30.4	100	9.9	140	24.5	180	50.0	220	54.5
21	19.8	61	30.3	101	13.2	141	24.7	181	50.6	221	53.6
22	17.0	62	30.4	102	16.5	142	24.8	182	51.0	222	52.5
23	14.9	63	30.8	103	19.8	143	24.7	183	51.5	223	51.5
24	14.9	64	30.4	104	22.2	144	24.6	184	52.2	224	50.5
25	15.2	65	29.9	105	24.3	145	24.6	185	53.2	225	48.0
26	15.5	66	29.5	106	25.8	146	25.1	186	54.1	226	44.5
27	16.0	67	29.8	107	26.4	147	25.6	187	54.6	227	41.0
28	17.1	68	30.3	108	25.7	148	25.7	188	54.9	228	37.5
29	19.1	69	30.7	109	25.1	149	25.4	189	55.0	229	34.0
30	21.1	70	30.9	110	24.7	150	24.9	190	54.9	230	30.5
31	22.7	71	31.0	111	25.2	151	25.0	191	54.6	231	27.0
32	22.9	72	30.9	112	25.4	152	25.4	192	54.6	232	23.5
33	22.7	73	30.4	113	27.2	153	26.0	193	54.8	233	20.0
34	22.6	74	29.8	114	26.5	154	26.0	194	55.1	234	16.5
35	21.3	75	29.9	115	24.0	155	25.7	195	55.5	235	13.0
36	19.0	76	30.2	116	22.7	156	26.1	196	55.7	236	9.5
37	17.1	77	30.7	117	19.4	157	26.7	197	56.1	237	6.0
38	15.8	78	31.2	118	17.7	158	27.3	198	56.3	238	2.5
39	15.8	79	31.8	119	17.2	159	30.5	199	56.6	239	0.0

(2) Driving Trace. The inspector shall follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace shall be of sufficient magnification and adequate detail to allow accurate tracking by the inspector/driver and shall permit anticipation of upcoming speed changes. The trace shall also clearly indicate gear shifts as specified in paragraph (3) and Table B below.

(3) Shift Schedule. To identify gear changes for manual shift vehicles, the driving display presented to the inspector/driver shall be designed according to the following shift schedule and prominently display visual cues where the inspector/driver is required to change gears:

Shift Sequence (gear)	Speed (miles per hour)	Approximate Cycle Time (seconds)
1 - 2	15	9.3
2 - 3	25	47.0
De-clutch	15	87.9
1 - 2	15	101.6
2 - 3	25	105.5
3 - 2	17.2	119.0
2 - 3	25	145.8
3 - 4	40	163.6
4 - 5	45	167.0
5 - 6	50	180.0
De-clutch	15	234.5

Gear shifts shall occur at the points in the driving cycle where the specified speeds are obtained. For vehicles with fewer than six forward gears the same schedule shall be followed with shifts above the highest gear disregarded.

Automatic shift vehicles with overdrive or fuel economy drive modes shall be driven in those modes.

(4) Speed Excursion Limits. Speed excursion limits shall apply as follows:

(i) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(ii) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(iii) Vehicle speed excursions beyond tolerance limits given in items a. and b. above are acceptable provided that each such excursion is not more than 2 seconds in duration.

(iv) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(v) [Reserved : Criteria that shall allow limited excursions of speed higher than the prescribed upper limit in paragraphs (i) through (iii)]

(vi) A transient emissions test shall be void and the vehicle retested if the speed excursion limits prescribed by paragraphs (i) through (iii) are exceeded, except in the event that computer algorithms, developed by the Department, determine that the conditions of paragraphs (v) and (vi) are applicable. Tests may be aborted if the speed excursion limits are exceeded.

APPENDIX 4(a)
SECTIONS FROM DELAWARE CRIMINAL AND TRAFFIC LAW MANUAL

Penalties For Non-compliance Of Vehicle Registration
21 **Del.C.** 21, §§ 2115, 2116

§ 2115

"No person shall:

(l) Operate or, being the owner of any motor vehicle, trailer or semitrailer, knowingly permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the Department and unexpired registration plate or plates, subject to the exemptions allowed in this title, or under temporary or limited permits as otherwise provided by this title;

(2) Display or cause or permit to be displayed or have in possession any registration card, number plate or registration plate, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered;

(3) Lend to, or knowingly permit the use by, one not entitled thereto any registration card, number plate or registration plate issued to the person so lending or permitting the use thereof;

(4) Fail or refuse to surrender to the Department upon demand any registration card, number plate or registration plate which has been suspended, canceled or revoked as provided in this title;

(5) Use a false or fictitious name or address in any application for the registration or inspection of any vehicle, or for any renewal or duplicate thereof, or for any certificate or transfer of title, or knowingly make a false statement, knowingly conceal a material fact or otherwise commit a fraud in any such application;

(6) Drive or move or, being the owner, cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or which is equipped in any manner in violation of this title, but the provisions of this title with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable;

(7) Own or operate any qualified motor vehicle as defined under the International Registration Plan, as authorized in Chapter 4 of this title, not properly displaying an apportioned plate with required registration credentials, or operate a qualified motor vehicle without having in that person's possession a trip permit registration as authorized in §2103(6) of this title. Any person who violates this subsection shall, for the first offense, be fined not less than $115 nor more than $345, and for each subsequent offense not less than $345 nor more than $575. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less, which fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the gross weight at the time of the offense or the

maximum legal limit for such vehicle.

(8) Do any act forbidden or fail to perform any act required under this chapter. (36 Del. Laws, c. 10, § 25; 40 Del. Laws, c. 38, § 10; Code 1935, § 5563; 43 Del. Laws, c. 244, § 14; 21 Del. C. 1953, § 2115; 49 Del. Laws, c. 220, § 21; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 202, § 2.)

Revisor's note.—Section 3 of 70 Del. Laws, c. 202, effective July 10, 1995, provides: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable."

Effect of amendments.—70 Del. Laws, c. 202, effective July 10, 1995, inserted present (7) and redesignated former (7) as (8)."

§ 2116

"(a) Whoever violates this chapter shall, for the first offense, be fined not less than $10 nor more than $100 or be imprisoned not less than 30 days nor more than 90 days o; both. For each subsequent like offense, the person shall be fined not less than $50 nor more than $200 or imprisoned not less than 90 days nor more than 6 months or both, in addition to which any person, being the operator or owner of any vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle and any load thereon shall be fined at a rate double that which is set forth in this subsection and be imprisoned as provided herein or both. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less; which fine shall be suspended, if within 5 days of the offense the court is presented with a valid registration card for the gross weight at the time of the offense for the maximum legal limit for such vehicle.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, whoever violates §2115(1)(5) of this title shall, for the first offense, be fined not less than $50 nor more than $200, be imprisoned not less than 30 days nor more than 90 days, or be penalized by both fine and imprisonment. For each subsequent like offense, such person shall be fined not less than $100 nor more than $300, be imprisoned not less than 90 days nor more than 6 months, or be penalized by both fine and imprisonment.

(2) Any owner or operator of a vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle, and any load thereon, and who violates § 2115(1)(5) of this title, shall be fined at a rate double that which is set forth in this subsection, or be imprisoned as provided herein, or be both fined and imprisoned. In addition, such person shall also be fined an amount which is equal to the costs of registering the vehicle either at its gross weight at the time of the offense, or at the maximum legal limit, whichever is less. Such fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the actual gross weight of the vehicle at the time of the offense.

(c) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(d) For any violation of the registration provisions of § 2102 or § 2115 of this subchapter and in absence of any traffic offenses relating to driver impairment' the violator's copy of the traffic summons shall act as that violator's authority to drive the vehicle involved by the most direct route from the place of arrest to either the violator's residence or the violator's current place of abode. (36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, §§ 10, 11; Code 1935, § 5570; 21 Del. C. 1953, § 2116; 59 Del. Laws, c. 332, §§ 1, 2; 64 Del. Laws, c. 207, § 2; 69 Del. Laws, c. 307, §§ 1, 3, 4.)."

Appendix 5 (a)
DIVISION OF MOTOR VEHICLES POLICY
ON OUT-OF-STATE RENEWALS

The following is the Division's policy for accomplishing a registration renewal on a vehicle located outside the State of Delaware when the vehicle owner is unable to return the vehicle for inspection prior to the renewal date. Vehicles located within a 200 mile radius of a Division of Motor Vehicles facility will be inspected at a division inspection station prior to renewal. All other vehicles may be renewed by accomplishing the following procedures:

(1) (Refer all inquiries on out-of-state renewal to the Dover Correspondence Office (739-3147). Normally, customers will be provided the out-of-state renewal package by the Dover Administrative Office Correspondence Section. Lane locations may provide the renewal package to walk-in customers, but the completed paperwork must be mailed to Dover for processing.

(2) When all documents are completed and the vehicle has passed inspection, copies of the Application for Out-of-State Registration and the inspection report (MV Form 210(a) will be provided to Dover Lane (Tom Kersey) and DNREC Air Quality Section (Phil Wheeler).

(3) Tom Kersey or his designated representative will load the inspection information on the MV210(a) form into the computer system. The MV210(a) form will be saved for two years by the Dover lane.

(4) When the inspection information has been loaded, Tom Kersey will send a Vehicle Inspection Report to Dover Correspondence, the renewal can be completed and the registration card and plate sticker can be mailed to the customer.

(5) All documents will be saved by the Registration Correspondence Section for two years.

(6) Random audit procedures: Correspondents prior to renewing selected vehicles will call the inspection station and inspector shown on the MV210(a) form. One out of every ten vehicles will be selected to verify the vehicle was inspected. The verification will be conducted prior to sending copies to DNREC and Dover lane. Indicate on the bottom of Page 2 of the form the date and time of verification and the name of the person performing the verification. Sandy Tracy will be in charge of the verification and selection process.

Appendix 5 (f)
New Model Year Clean Screen

BACKGROUND

Delaware's revised I/M State Implementation Plan (SIP) commits the State to implementing a clean screen program to help reduce lines during peak inspection periods. Delaware previously enacted a provision to use the low emitter profile model (LEP) to clean screen vehicles at the lanes during peak inspection periods. During off-peak periods, all vehicles that show up for inspection would be tested. Currently, however, the LEP clean screen program has not been implemented, and long lines are a problem during certain times. The main reason for not implementing the LEP clean screen program is the complexity of integrating the LEP program into the existing information system. The low emitter profile has been replaced in this regulation with a new model year clean screen exemption that will in effect exempt during one calendar year, approximately another 9,200 vehicles from the major portion of the emissions testing program. This provision will reduce inspection volume by about 18% when it is activated.

It is important to note that the vehicle ages under this provision will be six, seven and eight model years old according to the definition in model year exemption in Section 1(f). Under the low emitter profile a clear distribution of exemptions of each model year was defined by the regulation. The provisions of Section 5 (f) does not require a definite distribution of any one of the six, seven or eight years old model years to be exempt. It is expected that, because it will be a random arrival of vehicles into the lanes, the number of each model year exempted will be proportional in number to the actual fleet size of each applicable model year . That is, the distribution should be no more than 24% of the number of vehicles in each model year when considering the cap of 14,000 vehicle years being eligible to be clean screened.

EMISSION IMPACTS OF NEW MODEL YEAR CLEAN SCREEN

Restricting clean screen to only the above vehicles cannot result in greater emissions than including all the clean screen candidates identified by the LEP. To further confirm that this approach would not cause problems with compliance with Delaware's revised I/M SIP, the exemptions were modeled with MOBILE5b. Unlike the use of Radian's LEP model, this approach does not need to be modeled with the Clean Screen Credit Utility. This alternative option – expanding model year exemptions during peak periods – would have less impact on the emission reduction credits for Delaware's I/M program than the LEP Clean Screen program presented in Delaware's I/M SIP that has already been approved by EPA. Table 1 presents the impact of the alternative clean screen program, assuming it's in operation for 24% of the inspections. As shown, on-demand model year exemptions would provide more emission reductions than the program Delaware has committed to in its SIP.

Table 1.
Estimated Impact of New Model Year Clean Screen Program

Scenario	MOBILE5b Emission Factor (grams/mile) 1999 Evaluation Year		
	Exhaust	Evap	Total
No IM	0.928	0.781	1.709
Existing 5 model year exemption, TSI + pressure	0.759	0.679	1.438
8 model year exemption TSI + pressure	0.796	0.704	1.532
New Model Year Clean Screen – 8 model years TSI + pressure –24% of the time when needed to reduce the volume at the inspection lanes.	0.768	0.685	1.453

TSI - Two speed idle test.

APPENDIX 6(a)
IDLE EMISSIONS TEST PROCEDURES

The on-site test inspection of motor vehicles uses the ESP FICS 4000 - Bar 90 computerized Emission Analyzer which will require minimal time to complete the inspection procedure.

GENERAL TEST PROCEDURES

1. If the inspection technician observes a vehicle having coolant, oil, excess smoke or fuel leaks or any other

such defect that is unsafe to allow the emission test to be conducted the vehicle shall be rejected from the testing area. The inspection technician is prohibited from conducting the emissions test until the defects are corrected.

2. The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the parking brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle's tires.

3. The inspection technician advises the owner to turn off all vehicle accessories.

4. The inspection technician enters the vehicle registration number (tag) or the vehicle identification number into the BAR 90 system. This information is electronically transmitted to the Division of Motor Vehicle's database. The system will also identify for each vehicle entered into the BAR 90 system whether the vehicle is eligible for a clean screen exemption. ~~Only under certain conditions determined by the vehicle services chief or his designee will those vehicles eligible for the clean screen exemption be excuse from any exhaust emissions test for the current two-year test cycle. In no case shall the number of vehicles exempt in any one calendar year, under the clean screen procedures, exceed 40% of the total number of vehicles subject to the requirements of Regulation 31. The clean screen procedures or methodology is described in Appendix Y.~~

5. If the vehicle registration number is in the database, the following information will be transmitted to and verified by the inspection technician:

a. Vehicle make
b. Vehicle Year
c. Vehicle Model
d. Vehicle Body Style
e. Vehicle fuel type and
f. other related information

6. The inspection technician will verify this information and verify the last five characters of the Vehicle Identification Number (VIN) prior to beginning the emission test.

7. If the vehicle's identification number is not on the database, the R.L. Polk VIN Package shall be automatically accessed. This VIN package will return the following information to the inspection technician who, in turn will verify the returned information:

a. Vehicle make
b. Vehicle Year
c. Vehicle Model
d. Vehicle Body Style
e. Vehicle fuel type

8. The DMV System will identify and require an emission inspection on all eligible vehicles meeting the State's criteria for an emission inspection. Once the vehicle information has been verified and accepted, the system will prompt the inspection technician to place the analyzer test probe into the tailpipe. The technician connects the tachometer lead to the vehicle's spark plug and verifies that the idle RPM is within the specified range. If the RPM exceeds the allowed range the vehicle is rejected and not tested. The technician will insert the probe at least 8 inches into the exhaust pipe. Genuine dual exhaust vehicles will be tested with a dual exhaust probe. Once the probe has been placed into the exhaust pipe the test will begin. The test process is completely automatic, including the pass/fail decision.

9. If the vehicle has been identified as requiring a completed Vehicle Inspection Repair (VIRR) Report Form prior to reinspection, the inspection technician will review the form for completeness and, if applicable, record into the system the Certified Emission Repair Technician's (CERT) number or Certified Manufacturer's Repair Technician (CMRT) number before the retest.

TWO SPEED IDLE TEST PROCEDURES

1. Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

2. Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in Appendix 3 (a)(7) and the measured value for HC and CO. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

3. Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO_2 (CO+ CO_2) falls below six percent of the total concentration of CO plus CO_2 or the vehicle's engine stalls at any time during the test sequence.

4. Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with dual exhaust systems will be sampled accordingly.

5. The test will be immediately terminated upon reaching the overall maximum test time.

6. Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(i) The first-chance test will consist of an idle mode followed by a high-speed mode.

(ii) The second-chance high-speed mode, as described will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(i) The vehicle will be tested in as-received condition with the transmission in neutral or park, the parking brake actuated (or chocked) and all accessories turned off. The engine shall appear to and is assumed to be at normal operating temperature.

(ii) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe(s) will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(iv) The measured concentration of CO plus CO_2 (CO + CO_2) will be greater than or equal to 6% of the total concentration.

(c) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified above are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(d) First-chance idle mode. The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The maximum idle mode length will be 30 seconds (mt=30) elapsed time. The pass/ fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in Appendix 3 (a)(7)

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of d (i) are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(e) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode. The mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (e) (i) and (ii) below. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(i) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither

paragraphs (e) (i) (A) (III) or (e) (i) (A) (IV), above, are not satisfied by an elapsed time of 180 seconds (mt=180).

(B) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off it necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (B) (I), (e) (i) (B) (III) or e (i) (B) (IV), above, is satisfied by an elapsed time of 180 seconds (mt=180).

(ii) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in paragraph (e) (i), above, will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of paragraphs (e) (ii)(A)(I) or (e) (ii)(A)(II), above, is satisfied.

(B) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values are less than or equal to the applicable standards listed Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of paragraphs (e) (ii)(B)(I) or (e) (ii)(B)(II) is satisfied.

(f) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0) and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(i) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in paragraph (f) (iii) below. The

maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(iii) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (f)(iii)(A), above, are not satisfied and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed Appendix 3 (a)(7).

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of paragraphs (f) (iii)(A) or (f)(iii)(B), above are satisfied by an elapsed time of 30 seconds (mt=30).

SINGLE SPEED IDLE TEST
From 40 CFR 51 Appendix B to Subpart S
Test Procedures

(I) Idle Test

(a) General requirements

(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart, and the measured value for HC and CO as described in paragraph (I)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO2 falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence.

(1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (I)(d) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO2 shall be greater than or equal to six percent.

(c) First-chance test. The test timer shall start (tt=0) when the conditions specified in paragraph (I)(b)(2) of this appendix are met. The first-chance test shall have an overall maximum test time of 145 seconds (tt=145). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described under paragraph (I)(c)(2) of this appendix. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(c)(2)(i) of this appendix are not satisfied and

the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(c)(2)(i), (ii) and (iii) of this appendix is satisfied by an elapsed time of 90 seconds (mt=90). Alternatively, the vehicle may be failed if the provisions of paragraphs (I)(c)(2)(i) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(v) Optional. The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(d) Second-chance test. If the vehicle fails the first-chance test, the test timer shall reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds (tt=425). The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) Preconditioning mode. The mode timer shall start (mt=0) when the engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode.

(i) Ford Motor Company and Honda vehicles. The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (I)(d)(2)(iii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the idle mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(d)(2)(iii)(A) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (I)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(d)(2)(iii)(A), (d)(2)(iii)(B), and (d)(2)(iii)(C) of this appendix

(E) Are satisfied by an elapsed time of 90 seconds (mt=90)

APPENDIX 6(a)(5)
Vehicle Emission Repair Report Form

This document may be reviewed during normal business hours (8:30 am – 4 PM) Monday through Friday at the Air Quality Management Section Office, 156 South State Street, Dover. For more information call Philip Wheeler at 302/739-4791

APPENDIX 6 (a)(8)
EVAPORATIVE SYSTEM INTEGRITY (PRESSURE) TEST

ESP Alternative Pressure Test

The EPA has defined an evaporative pressure test that involves removing hoses from the charcoal canister. An alternative, less intrusive test technique has been developed by ESP. The EPA pressure test is performed by removing the gas tank fuel vapor vent line from the charcoal canister and pressurizing the gas tank through this line with nitrogen gas. The pressure in the gas tank is then monitored for two minutes and if the pressure drops below a specified level, the vehicle is failed. The canister is often difficult to access and the vent hoses difficult to remove and replace. The alternative test consists of pressurizing the gas tank from the gas tank filler neck instead of the canister. The gas cap is removed and replaced by a gas cap adapter through which the fuel tank is filled with nitrogen gas. The vent hose is clamped at the canister, the gas tank is pressurized and the pressure in the tank monitored for two minutes. Clamping

the hose rather than removing it is less likely to lead to breakage or hoses left disconnected, reducing the liability arising from the test procedure. The gas cap is tested on a test rig where the gas cap can be pressurized on its own. Removing the gas cap and pressurizing the tank from the filler neck has the following advantages:

Half of the leaks in the gas tank occur in the gas cap. On those vehicles where the canister and vent lines are inaccessible, 50% of the emissions reduction available from the evaporative system integrity check can be achieved by just testing the gas cap. Testing the gas cap separately allows leaking gas caps to be identified. The customer can be recommended to replace the gas cap rather than pay to have the leak.

The test is less intrusive as the vapor line to the charcoal canister is clamped off rather than e a repair station isolate the cause of removed. On some vehicles the vapor line can be reached even when the canister:, itself is inaccessible. The gas tank can be more rapidly pressurized through the large filler neck opening than from the canister as the vapor line to the tank typically has a narrow orifice in the line. This is particularly important when pressurizing the large vapor space in nearly empty gas tanks. The more rapid pressure test potentially increases the throughput of the lane. The ESP method will result in a 50% time saving in the fill time or approximately 30 seconds. The 30 second time saving in the multi-position lane will result in a lane throughput increase of one to two vehicles per hour.

The ESP Alternative Pressure Test is a more accurate test because it compensates for the volume of vapor space. During the development of this technique, ESP discovered that differences in fuel level in the gas tank can result in an order of magnitude change in test results. ESP's alternative approach is designed to compensate for the pressure drop change of the vapor space condition. Without the ESP method of testing, it is expected that errors of omission and commission will result. The variability of the test results derived from the EPA prescribed method will result in problems such as, customer complaints for "Ping-Pong" effects and general public dissatisfaction with the program. To further reduce the problem of ping-ponging, ESP has developed a pressure drop table for repair stations, that will enable the repair technicians to perform the pressure test with a much higher degree of correlation to the centralized test.

Procedures for Evaporative System Integrity (Pressure) Test

(a) General Requirements

(1) Pressure Test. The on-vehicle pressure tests shall be performed after any tailpipe emission test. Vehicles receiving a pressure test will also be given a gas cap leak test.

(2) Controlling Test Variability. The pressure test shall be conducted in a manner that minimizes changes in temperature, since pressure measurements are affected by changes in the vapor space temperature. Volume compensation for the pressure test is not required, but the vapor space volume will affect the pressure decay measurement. Excessive fuel vapor pressure, although not controllable at the time of test, may affect the accuracy and repeatability of the result.

(b) Pre-inspection and Preparation

(1) Visual Inspection - Canister. The evaporative canister(s) shall be visually checked to the degree practical. A missing or obviously damaged canister(s) shall fail the visual evaporative system check.

(2) Visual Inspection - System. The evaporative system hoses shall be visually inspected for the appearance of proper routing, connection, and condition, to the degree practical. If any evaporative system hose is misrouted, disconnected, or damaged, the vehicle shall fail the visual evaporative system check.

(3) Visual Inspection - Gas Cap. If the gas cap is missing, obviously defective, or the wrong style cap for the vehicle, the vehicle shall fail the visual inspection.

(c) Fuel Inlet Pressure Test

(1) Equipment Set-up. The vapor vent line(s) from the gas tank to the canister(s) shall be clamped off as close to the canister(s) as practical without damaging evaporative system hardware. Dual fuel tanks shall be checked individually if the complete vapor control system can not be accessed by pressurizing from the fill pipe interface of only one fuel tank. The proper adapter shall be selected.

(2) Starting Pressure. The gas tank shall be pressurized to 14± 05 inches of water.

(3) Stability. Pressure stability shall be monitored for a period of 10 seconds prior to the start of the pressure decay measurement. One definition of stability is a loss of no more than 5 inches of water over a 10 second period when the initial pressure is 14±1 inches of water. If the loss of pressure in 10 seconds exceeds this value, two more attempts shall be made to reach stability. Failure to achieve stability likely indicates the presence of a large leak and therefore failure of the pressure test.

(4) Volume Compensation. Pressure decay measurements are affected by the vapor volume in the fuel tank. Volume-compensated pressure decay measurements are presently not required. By design, flow comparator or flow measurement methods do not require volume corrections.

(5) Pressure Monitoring. Close the pressure source and measure the loss in pressure over a 120 second interval. Fast-pass determinations may be made using the equations in 40 CFR §85.2205(d)(2)(ii).

(6) Clamp Removal. Remove the clamp on the vapor line and carefully relieve pressure and remove the adapter used to supply pressure to the vapor space.

(d) Gas Cap Test

(1) Cap Installation. The fuel cap, or caps, shall be removed from the fuel inlet(s) and installed on a portable or bench test rig using the adapter appropriate for the gas cap as specified in 40 CFR §85.2227(d)(1)(ii).

(2) Leak Measurement. The gas cap leak rate shall be measured and compared against a 60 cc/min at 30 in. water flow standard. Pressure decay measurement using instruments with a 1 liter head space shall be made from an initial pressure of 28 inches of water and be compared against a loss of 6 inches of water in 10 seconds.

(3) Cap Replacement. The fuel cap(s) shall be replaced on the fuel inlet and tightened appropriately.

APPENDIX 6 (a) (9) ON-BOARD DIAGNOSTIC TEST PROCEDURE

OBD II TEST PROCEDURE

Introduction

The Delaware Analyzer System (DAS) shall include the hardware and software necessary to access the onboard computer systems on 1996 and newer vehicles, determine OBDII readiness, and recover stored fault codes using the SAE standardized link. The analyzer shall be designed to guide the inspector-mechanic through the OBDII inspection sequence for a particular vehicle, and record the results.

(a) OBD Inspection Sequences: The following subparagraphs describe the OBDII inspection. The display monitor will guide the inspector through the required steps.

(1) The vehicle's front occupants will be asked to step out of the vehicle or moved to one of the other passenger seats. The analyzer will prompt the inspector to perform the OBDII check on all passenger vehicles and light-duty trucks model years covered in Section 2 –"Low Enhanced I/M Performance Standard"

(2) The inspector will initiate an official test by scanning or manually inputting the required vehicle and owner information into the station manager.

(3) The inspector will visually examine the instrument panel to determine if the MIL illuminates when the ignition key is turned to the "key on, engine off" (KOEO) position. This portion of the test procedure is also known as the "bulb check." Enter this information into the station manager.

(4) The inspector will locate the vehicle's data link connector (DLC) and, with the key in the off position, plug a scan tool into the connector.

(5) The inspector will start the vehicle's engine and visually check MIL illumination under the "key on, engine running" (KOER) condition. The inspector will perform the scan of the vehicle's on-board diagnostics system.

(6) Scan will determine:

(i) Vehicles readiness status

(ii) MIL status (whether commanded on or off) , and

(iii) Diagnostic Trouble Codes (DTCs) for those vehicles with MILs commanded on.

(b) Inspection results will be automatically recorded.

(1) Failed vehicles: vehicle owners will get a detailed inspection report from the inspector that will indicate the diagnostic trouble codes that have been set in the vehicle's on-board computer. (Criteria for a failure of the OBD II test is given in Section 6 (b) (3).)

(2) Vehicles with unset readiness: owners with vehicles with more than two unset readiness codes for model years 1996-2000 or one unset readiness code for model years 2001 and newer will be given a failure with a Anot ready for testing@ result on their printed vehicle inspection report. Owners will be required to return to the inspection facility for a retest as soon as the readiness codes requirements of Section 6 (b) (3) are met. The vehicle owners will be given information concerning the readiness codes in their vehicle's on-board computer and advised accordingly before the vehicle is retested.

(3) An exception from the readiness codes requirements of Section 6 (b) (3) may be given for vehicles who have been given an initial test and are being retested after repairs have been performed. A repair receipt including evidence of a diagnostic scan and dated either on the same date as the initial test or some date thereafter will be considered adequate for establishing proof of repair for retests purposes only. The retest procedure for OBD will be performed according to the provisions in this appendix.

(4) An exception from the readiness codes requirements of Section 6 (b) (3) may be given for the following vehicles by model and year. The vehicles are, but not limited, to the following:

(i) 1996 Chrysler vehicles - Vehicles may clear readiness at key-off. Vehicles should be tested normally. If vehicles are found to be "Not Ready," they should be referred to a qualified service provider so the OBD software can be updated.

(ii) 1996 - 1998 Mitsubishi vehicles - These vehicles may have a high degree of "Not Ready" for catalyst monitor due to a "trip based" design. Mitsubishi has provided driving cycles in its service information to allow monitors to operate. These vehicles should be scanned for MIL illumination without regard to readiness status.

(iii) 1996 Nissan vehicles and 1997 Nissan 2.0 liter 200SX - These vehicles may have a high degree of "Not Ready"for catalyst and evaporative monitors due to a "trip based" design. Nissan has provided driving cycles in its service information to allow monitors to operate. These vehicles should be treated as other non-problematic vehicles. Nissan Technical Service Bulletin #NTB98-018, February 18, 1998.

(iv) 1996-98 Saab vehicles - These vehicles may have a high degree of "Not Ready"for catalyst and evaporative monitors due to a "trip based" design. Saab has provided driving cycles in its service information to allow monitors to operate. These vehicles should be treated as other non-problematic vehicles.

(v) 1996 Subaru vehicles - Vehicles will clear readiness at key-off. There is no reprogramming available for this line of vehicles. These vehicles should be scanned for MIL illumination without regard to readiness status. Subaru Technical Service Bulletin #11-49-97R.

APPENDIX 7(a)
EMISSION REPAIR TECHNICIAN CERTIFICATION PROCESS

Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation. The cost of such repairs must total no less than $200. Under the policy developed by the Department, a Certified Emission Repair Technician may be certified as trained to do repairs on all makes of vehicles or vehicles of a specific manufacturer. Auto repair technicians seeking to become certified under Regulation 31 have the following options in attaining the certification:

1. All those applying for certification can "test out" and gain certification without further emission repair training as provided by the College or Auto Manufacturer or other training organization. The "test out" process is administered by the College as follows:

- Applicants without L1 ASE (Automobile Service Excellence) certification must first take the Fundamental Inspection Repair System Training final exam. Those achieving a score of 75% or better are eligible to take the Delaware Emission Education Program certification exam.
- Applicants achieving a score of 75% or better on the certification exam will become certified on all makes of vehicles. Applicants with L1 ASE certification can test out by taking the Delaware Emission Education Program certification exam ONLY.

2. The testing procedure discussed above will determined what, if any, training is needed for applicants seeking certification.

- Technicians scoring below 75% on the Fundamental Inspection Repair System Training final exam must take a 60 hour fundamental emission repair training course provided by the College.
- Those completing the 60 hour program and scoring 75% or better on the final exam can advance into a 40 hour class which is the next level of training, or attempt to test out and take the certification exam, scoring 75% or better to become certified.
- Technicians scoring below 75% on the Delaware Emission Education Program certification exam must take a 40 hour emission repair training course provided by the College and then score 75% or better on the final exam to become certified.

3. Technicians who are L1 ASE certified and who have approved manufacturer's emission repair training will be certified for each make of vehicle of each manufacturer that the technician was trained to do emission repairs. The procedure for certification is as follows:

- The Department will evaluate each of the manufacturers OEM Emissions Path to determine if it meets a reasonable minimum standard. This evaluation must contain proof that the manufacturers course work clearly covers the Delaware I/M regulation (e.g. waiver process, etc.)
- Candidate manufacturer technician submits: His/her transcript from the manufacturer on courses taken and passed and; Proof of ASE L1 certification to the Department.
- Candidate manufacturer technician takes and passes a Delaware-specific short test which is intended to test the candidate on the Delaware regulation, any specifics on waivers that should be known, and general questions on vehicle repair.
- The Department and the Division issues manufacturing-specific certification with clearly marked authority on the certificate.

APPENDIX 8 (a)
Registration Denial System Requirements Definition
April 30, 1997

Prepared by: BarryW. Pugh and
Edited by: Cheryl Roe - DMV

Version 1.1

Section I , Management Summary

Goals and Objectives

Improved Customer Service, Convenience and Control:

1. Implement Bar Coding interface to the Title and Registration function.

2. Design an interface between Registration Renewal and Titles to the Registration Denial system that will enable the State of Delaware to obtain an improved rating though Cleaner Air.

3. Design a Temporary tag tracking system.

4. Design an automated Waiver/Override system.

5. Design a Repair Facility and Repair Technician tracking system.

6. Design improved data inquiry capabilities and distribute to necessary customers.

Improved Personnel Training and System On-Line Help:

1. On-Line Help Training within each of the applications.

2. On-Line Training through specialized system testing.

3. Improved Operating Procedures.

Improved System Security and Flexibility:

1. System Security

· Override system parameter changes based on functionality.

· Override system parameter changes based on specific fields.

· Improved tracking of transactions, personnel and dates.

· Improved reporting to DMV management.

1. Provide additional facilities for trouble shooting and problem investigation capabilities.

Flexibility and Responsiveness to External Requirements:

1. Ability to create and maintain the registration denial tables.

2. Maintain tracking history information for the following functions:

- Temporary and Window Sticker inventory
- Temporary Tag history
- Window Sticker history
- Vehicle Inspection history
- Lane Inspector history
- Waiver history
- Override history
- Repair Facility and Repair Technical history
- Registration Notices
- External Agency history
- Audit request history

Improved Business Control Over the System:

1. Operators:

- Tighter control over the issuance of registration notices, vehicle inspections, registration renewal, title and registration denial, temporary tags and waivers.
- Improved controls over the issuance of window stickers.
- Better customer service through the offering of inspection overrides and the tracking of external agency vehicle inspections.
- Provide for the tracking of Certification of all Lane Inspectors and the Re-Certification.

1. Transactions:

- Add on-line Waiver, Override, Vehicle Inspections, Temporary tags and Window Stickers.

1. Auditing:

- Reduction of the number of vehicles being renewed without an inspection.
- Reduction of the number of multiple temporary tags being issued to the same vehicle owners.
- Identification of missing temporary tags and window stickers from DMV inventory.
- Decrease the number of false inspection readings.
- Decrease the number of external agency vehicles traveling the Delaware highways without receiving vehicle inspections.
- Increase inspection accountability through more accurate vehicle inspection testing.
- Increase reporting accuracy to the Environmental Protection Agency.

Improved System Functionality:

1. Title and Registration Denial:

- Improved editing on title and registration application.
- Design interface between vehicle inspections, temporary tags and waivers.

1. Linkage to mainframe MVALS database:

- Information transfer from vehicle inspection database.
- Information transfer from temporary tags, window stickers and the title and registration database.
- Information transfer of registration denial data to DNREC and EPA.
- Control the issuance of temporary tags though lot range controls.
- Control the temporary tag inventory through the delivery and distribution of temporary tags.

1. Bar Code interface on title and registration cards.
2. Automation and change to reports:

- Provide on-line tracking of inspectors by location, date and time.
- Provide an inventory control system enabling the Division to review temporary tags and window stickers.
- Provide Title and Registration clerks the ability to review active and historical inspection results on-line.
- Provide an interface to the Title and Registration application to effectively associate a vehicle inspection with a specific registration and deny access until the vehicle has been successfully approved.
- Provide inspector information of a specific registration in association with a vehicle inspection.
- Provide on-line reporting activity by specific testing, location, time and inspector on a weekly, monthly and fiscal basis.
- Provide the ability to track vehicle repairs and associate them with the proper vehicle registration.
- Track overrides that are associated with a vehicle inspection.
- Provide on-line access to inspection results data to the Department of Natural Resources and Environmental Control.
- Provide the ability to select specific inspection information and print specific analysis reports.
- Provide the ability to create on-line reports to EPA on a weekly, monthly and fiscal basis.
- Provide customers with notification of inspection 90 days prior to the expiration date.

1. External Agency Vehicle Identification

- Provide the ability to identify/track external agency vehicles being operated in Delaware.
- Provide the ability to ensure the external agency vehicles have complied with the Federal standards.
- Provide the ability to automatically send and receive vehicle inspection information.
- Provide the ability to report inspection result to the Environmental Protection Agency.

Project Scope

This document does not include portions of the project already in progress or being addressed by other selected DMV vendors such as Environmental Systems Products, Inc. (ESP). It centers on the mainframe application development and maintenance that must be completed to support the requirements of the project. It assumes the vehicle inspection information to be correct and residing in the databases already established for the Registration Denial project and that ESP has provided OIS with complete and detailed technical documentation of the database content, data manipulation, calculations and report specifications. The State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal Environmental Protection Agency (EPA) in January 1997 for review and approval. This scope most certainly will be subject to change based upon the EPA review and their findings.

Background:

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile source air pollution. Of all highway vehicles it appears that, passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency is attempting to achieve major emission reductions from these transportation sources. Until the development and commercialization of cleaner burning engines and fuels are successful, the main source of air pollution reduction will come from the proper maintenance of the vehicles during customer use.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle drive ability, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV system without change. Failing vehicles will require repair and re-testing until they pass or receive a vehicle waiver from DMV management.

Project Scope:

DMV has suggested that the project be designed and implemented in phases. Phasing the project installation makes a great deal of sense since many of the components of the entire project are still not totally defined. DMV's recommendation is:

Phase I:

- Create database images to store the ESP information.
- Test ESP system and database content.
- Analyze database content and verify accuracy.
- Install Phase I into production and begin accumulating EPA information.

Phase II:

- Design, code and test Registration Renewal Denial.
- Design, code and test a new (summary) Vehicle Waiver system.
- Design, code and test a new Inspection Results Override system.
- Design, code and test new rules for Registration and Title Denial.
- Design, code and test a new temporary tag extension tracking system.
- Design, code and test preliminary DMV management reports.
- Test on-line access to MVALS by DNREC personnel at their site locations.
- Add bar coding to the registration card print.
- Implement Phase II into production.

Phase III:

- Design, code and test Title Denial.
- Design, code and test inspection results database "time remaining" routines for:
- Registration Renewal Denial.
- Registration Renewal Notices.
- Title Denial.
- Add bar coding to the Title form.
- Implement Phase III into production.

Phase IV:

- Design, code and test reporting for DNREC and EPA auditing.
- Test on-line access to MVALS reports by DNREC personnel at their site locations.
- Design, code and test a new inventory control system for window stickers.
- Implement Phase IV into production.

Phase V:

- Design, code and test DAFB vehicle tracking system.
- Design, code and test Federal vehicle tracking system. (PV, PO, etc.)
- Implement Phase V into production.

Phase VI:

- Design, code and test a new Certified Repair Technicians system.
- Design, code and test a new Certified Lane Technicians system.
- Design, code and test a new (detail) Waiver system.
- Create special files and/or downloads and reports to assist the DAFB in their conversion efforts.
- Design, code and test the identification and reporting of covert vehicles.

Phase I:

The Registration Denial project centers around an automated vehicle inspection system (installed by ESP) and subsequent customer permission to title or renew a registration in the State of Delaware. The new ESP system will replace the need to issue inspection cards and the associated manual inspection card tracking systems currently in place. Instead, the new system will record the information results and data of a physical vehicle inspection in databases locally on the lane PC server and remotely at OIS on the IBM mainframe. The mainframe databases will be the final residence of the data and those databases will be used for all system decisions and reporting. That database information will be used by the MVALS programs to determine if the vehicle is in compliance with Federal and Delaware codes and laws governing legal vehicle registration. If the vehicle passes all of the inspection tests, it becomes eligible to legally travel Delaware roadways. Inspection results are related to the vehicle and applicable for 2 years.

The inspection results database and supporting databases must be mapped back to the reporting requirements of DMV management, DNREC and EPA in this phase to be absolutely positive all of the informational contents are present. Inconsistencies in the mapping may require modifications to the ESP data capture.

Phase II:

The vehicle will be rejected by MVALS if it does not pass all the inspection criteria. In this case, a temporary (60 day) tag may be issued to give the customer time to correct the detected problems with the vehicle. The design will incorporate tracking and reporting on the temporary tags after the time of issuance. When a vehicle is rejected, the customer may elect to repair the deficiency and attempt to pass the inspection again. Vehicle repairs may be made by a Certified Technician or by the customer. If the vehicle continues to fail the inspection but does not decrease measured emissions by set percentage guidelines, DMV may elect to issue an inspection waiver based upon established rules, limitations and customer expenditure amounts. A vehicle summary of waiver expenditure information for this inspection period must be recorded and tracked in a new database by vehicle. This new database must be read during the registration renewal process, for all failing vehicles, to be sure a current record exists prior to allowing the vehicle to be legally registered. A vehicle waiver overrides the most

recent inspection result. It is related to a vehicle and effective for 2 years. The waiver and inspection results databases must be accessible to DNREC personnel for inquires using MVALS.

At times DMV management may elect to override the results of an inspection and permit the vehicle legal registration without further inspections by the lane technicians. The system must permit management to override the vehicle inspection result record with a passing grade. When an override is granted, the system must record the new (overridden) information and track who, when and why the override was given. The new record will be stored in the inspection results database along with information about the operator, date and time. An override reason must be supplied before the record is written to the database. Override capability and permissible override categories must be controlled by an external means to permit DMV management to modify who can override inspection results and what can be modified.

Upon a successful inspection or if the results were overridden or a waiver is issued, a registration renewal card containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

Phase III:

When a vehicle is titled in the State of Delaware, it must also comply with safety and emission tests prior to becoming registered. The titling system must be modified to access the new inspection results database to make the appropriate decisions. Vehicle titling must be modified to parallel the upgrades installed into the registration renewal system. It must apply all of the same rules, waiver conditions and override capabilities. A title containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

After a vehicle has been renewed or titled and successfully passed inspection, or granted a waiver, the customer has the option to choose a renewal period of 6 months, 1 year or 2 years. Since inspection results and waivers are valid for 2 years, the system must determine the amount of time remaining on the inspection based upon the renewal period chosen by the customer. This algorithm must be incorporated in the registration renewal, registration renewal notification and title systems.

Phase IV:

DMV management, DNREC and the Federal EPA require reports to be generated from the data captured on the inspection results database. DMV management requires specific counts of vehicles, the types of tests that are performed and the results and percentages of the testing. They will also require management reports and online inquires to monitor the inspection system performance, database contents and results. DNREC and the Federal EPA reporting requirements are normally completed on an annual arrangement and require reports concerning; the numbers and types of tests, vehicle breakdowns by make and year, first test and re-test results, information about the testing facilities and the results of both covert and overt audits.

DNREC must be permitted access to the inspection results and waiver databases through an on-line function that will be created within the MVALS application. This function will allow DNREC to review the inspection results and (summary) waiver information on all vehicles. To insure DMV is in compliance with the Federal regulations, DNREC will be given the capability to order printed reports on-line from MVALS concerning the inspection results and waiver information.

Tracking and re-calling certified lane technicians is definitely going to be another new responsibility of the Division. DMV must track all State inspectors requiring testing and re-certification in order to comply with the new Federal EPA regulations. Reports on this activity must be submitted to the Federal EPA on an annual basis.

Phase V:

In addition to the normal vehicle registration activity occurring for Delaware citizens, with the new EPA requirements, DMV must inspect approximately 10,000 additional vehicles owned by; the (non-military) Federal Government, the military and military personnel from the Dover Air Force base (DAFB). The majority of these vehicle inspections will be on personally owned vehicles (POV) from the DAFB. The DAFB presents a unique opportunity to DMV because POV's are normally not registered in Delaware. Delaware does not require out of state vehicles to be inspected. However, with the new federal regulations, DMV is required to ensure that vehicles residing within the jurisdiction are in compliance with the state-regulated inspection program. This now includes all non-military Federally owned vehicles and vehicles stationed at federal military sites throughout the state even if they are not registered in Delaware. Notifying, tracking and re-calling (test failures) POV's will require cooperation and coordination with DAFB motor pool and security personnel. Additional software and databases may be required to assist in a successful implementation.

Phase VI:

As stated previously, the State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal EPA in January 1997 for review and approval. This phase is subject to change based upon the EPA review and their findings. The

following tasks are not definite requirements but may become so after the EPA has made their final decision.

Certified repair technician information is currently being gathered and retained by the Delaware Technical Community College. DMV would like access to the information to enable them to incorporate the data into the motor vehicle inspection reports that will be produced on failed inspections. Tracking reports will include the number of vehicles passing and failing by Certified Technician and the repairs performed by the technician on each vehicle. DMV may require the information to be downloaded from DTCC or if that is not possible, they may have need to maintain the information in duplicity.

When a vehicle is titled or renewed in the State of Delaware, the Division must comply with the security requirements established by the EPA. It requires the Division to track and report all stickers issued to vehicles that have passed the inspection program. It will be necessary to track a history of these documents when being issued, re-issued and/or replaced.

In Phase II, summary waiver information is going to be stored in a new database to assist in tracking vehicle waivers that are issued. It is planned that DNREC will retain the detail backup paperwork and copies necessary to comply with the Federal regulations. If DNREC requires DMV to record the details of a waiver, the system must be modified to comply. Waiver details would include recording the place of purchase, the line items purchased for repair and the individual amounts of each.

If additional programming or design support is required to assist the DAFB or other Federal agencies in meeting their schedules and requirements, DMV may supply resources to assist in the effort. The agencies requiring assistance may require reports, file downloads and programming expertise to expeditiously complete their commitment.

DNREC is currently handling all assignments and identification of covert vehicles. If they require assistance in this effort or require DMV to specially track them in the MVALS system, additional design and programming will be required. Reports on the activity of the covert vehicles would also be required.

Exclusions:

Not included in the scope of this project are:

- Data capture, recording, tracking and reporting of repair facilities.
- Special demarcation of Kent and Sussex county boundaries.
- Design or software programming to handle identification of covert and overt vehicles.
- Purchase of software for bar code printing.
- Covert vehicle identification and reporting issues.
- Vehicle manufacture notification requirements.

I accept this Project Scope as written and agree on the contents within.

Approved by:
Michael Shahan, Director of Motor Vehicles
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Jack Eanes, DMV Chief of Vehicle Service
Approved by:
Cheryal Roe, DMV Systems Administrator
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Management Overview

Background

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile-source air pollution. Of all highway vehicles, it appears that passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency (EPA) is attempting to achieve major emission reductions from these transportation sources. Until the automotive manufacturers develop and commercialize cleaner-burning engines and fuels, the main source of air pollution reduction will derive from the proper maintenance of the vehicles during customer use. The contents of this System Requirement Definition are subject to change based upon EPA review of the Delaware State Implementation Plan (SIP) and their findings.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle performance, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important inspection data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV titling and registration systems without change. Failing vehicles will require repair and re-testing until they pass inspection or receive a vehicle waiver from DMV management. All subsequent action, beginning with the initial inspection test – such as re-test inspection

results, waivers, and overrides – will be recorded by the system.

The Project Scope document refers to six implementation phases within the development process of this project. Those six phases translate into six high-level requirement specifications categories. It is important to understand that the six requirement categories do not all directly relate to the six installation phases. Part or all of each requirement category will be implemented to establish the six-phase approach for implementation. The categories defined in the System Requirements Definition document are:

1. System Control - This section of the requirements document encompasses system rule file maintenance, new temporary tag and window sticker inventory file maintenance, and certified lane technician maintenance. All of the functions within this design category must be implemented before the system can become operational.

2. Vehicle Inspection - This corresponds to Phase I of the Project Scope and must be implemented in its entirety before other components may be installed that depend on the Inspection Result data produced. The requirements document refers to, but does not detail, the client/server system developed by ESP. Since this document was developed after the ESP design, it only addresses utilization of the data produced. Additional information regarding the design of the system can be located in the ESP design document.

3. Vehicle Registration - The requirements described under this section cover registration renewal, vehicle titling, temporary tag distribution, window sticker distribution, inspection result verification/handling, and vehicle repair tracking. All of the components in this section must be implemented before the system can go online. Registration renewal will be the first section to be implemented, with the title section to follow. To support either section, temporary tag distribution, window sticker distribution, and inspection result overrides and waivers must be installed. The certified repair facility and technician tracking components may be installed after the system becomes operational.

4. External Agency - External agencies are vehicles that are not registered with the State of Delaware. Examples of these are: Dover Air Force Base motor pools and civilian vehicles; Postal Service vehicles; Reserved Armed Forces vehicles; etc. Identification of these vehicles will not be as straightforward as the vehicles registered in Delaware because DMV does not keep records for them today. The Clean Air Act requires those vehicles to comply with the EPA emission standards as long as they continue to operate in Delaware. This section addresses the requirements and how to accomplish them. As each agency is introduced to the system, new program components may be required. Each agency may be processed differently than the previous, based upon their technical capabilities. DMV will strive to develop a standardized approach and demand adherence from all external agencies. The components described in this section are required before introducing the first external agency to the system.

5. Audit Reporting - Requirements for three auditing techniques have been identified: standard auditing reports and functions; special auditing functions; and auditing as required by DNREC. Auditing the system on a periodic basis – daily, weekly, etc. – is considered a standard procedure. Reports and screens will be programmed to run automatically for all of the standard auditing procedures. Special audits and DNREC (overt and covert) audits will be discussed and will permit flexibility in selection and formatting of the information. Registration Denial data transfer to local PCs will also be an option.

6. Information Inquiry - The components in this section represent additional inquiry functions required to view the new information. Three separate areas have been defined as requiring access to the information: DMV, the State Police, and DNREC. Each will share many of the same inquiry components with "information blocks" applied when information is required by one agency and not the other. System rules will be developed to control the information selection and screen displays. Portions of this section will be required as the initial system is installed. Advanced inquiry facilities will be identified and included as the detail system specifications are developed.

The following paragraphs supply additional detail in reference to the above system requirement categories. If more detail is required, please refer to Section II - Data Requirements and Section III - Process Requirements located later in this document.

System Control

The requirements described in this section are designed to keep the inventory files and system rules updated and in control of the system. Currently there are five separate processes defined:

1. The Registration Denial Rule Maintenance process will permit DMV management to maintain all of the associated rules concerning the Registration Denial system. Rules pertain to system variables that actually "drive" the system decision-making process. Externalizing the rules permits more flexibility and better overall control of the system by DMV.

2. A Temporary Tag Inventory maintenance system will be developed to control the acquisition and distribution of all temporary tags. The maintenance system will allow control of and accounting for each temporary tag distributed by DMV. Control begins when new inventory is received. It will be tracked until the vehicle to which the tag was assigned is purged from the DMV files. The inventory and temporary tag history files will be closely related.

3. A Window Sticker inventory control system will permit similar control (as in the case of temporary tags) over the window stickers issued by DMV. The maintenance system will allow control of and accounting for each window sticker distributed by DMV. A vehicle window sticker history file will be incorporated with the present DMV title file.

4. The Certified Lane Technician maintenance system will allow DMV to track and record information about their lane technician employees. Information such as certification test results, re-certification results, and demographic data will be retained and reported.

5. The last new maintenance system planned will track Certified Repair Facilities and associated Certified Repair Technicians. The system will permit maintenance and reporting of repair facilities employing certified repair technicians and their certification test results.

Vehicle Inspection

This section describes the physical vehicle inspection that normally occurs for every registered vehicle in Delaware. The process is completed prior to a vehicle being titled, and then (normally) every 2 years after for registration renewals. The entire process occurs at the inspection lane(s) and is conducted at various checkpoints within. The ESP system controls the events that occur during the inspection process and helps ensure that each station checkpoint records the appropriate results. The results of each checkpoint test will be recorded and stored in the ESP station manager computer and then transmitted to the OIS mainframe in Dover, Delaware, for permanent storage and retention. ESP handles all pass and fail parameters, anti-tampering verification and recording, permissible limits of the test, and calculating the 10% reduction in emission gases from the initial inspection for waiver processing. ESP also issues the final pass or fail grade for the vehicle.

Vehicle Registration

The normal DMV administrative "life cycle" of a vehicle is described in this section. It begins when the vehicle is purchased and titled in the State of Delaware. Under normal circumstances, a vehicle will undergo an inspection to initiate this process. However, most new vehicles purchased in the state are exempt from an initial inspection. During the vehicle "life cycle," it may be issued a temporary tag, window sticker, or a waiver for emissions; or the inspection test results may be overridden by DMV management. As the next vehicle-registration renewal period nears, a registration renewal notice is printed and sent to the customer. That notice prompts the owner to bring the vehicle to DMV for an inspection and registration renewal. The process (Notice, Inspection, Renewal) continues as long as the vehicle ownership does not change and the vehicle remains in Delaware. The major new portions of the Vehicle Registration component for Registration Denial are:

Temporary Tags -

Once a vehicle is issued a temporary tag, the paperwork flows into DMV for recordkeeping. A clerk will enter the temporary tag information into the computer using a new temporary tag data-entry program. The program will complete a stolen vehicle check as is currently done while adding a title. A record will be added to the Temporary Tag History file for that (X) tag number. That record will then be available for inquiry by DMV and law enforcement. It can be found by entering the VIN or the (X) temporary tag number. The record will remain linked to the vehicle by VIN until the vehicle is purged from the DMV files. As the record is being recorded in the Temporary Tag History file, the temporary tag number will be consumed from the Temporary Tag Inventory file. Temporary tags are not tracked by today's system and will be valuable new information for DMV and law enforcement agencies. The introduction of this system will be completely new to DMV.

Window Stickers -

After a vehicle is titled or renewed, it will be assigned a new window sticker. The current processes will be modified to assign the next available window sticker to the vehicle from the clerk's inventory. As a safety precaution the clerk must enter the window sticker number, and the program will verify the number against the available window stickers in the clerk's inventory. If the number is not found, a window sticker override will be permitted. A reason for the override must be supplied by the clerk. The program will consume the window sticker from the clerk's inventory and add the information to the Window Sticker History file. The Window Sticker History will remain on the DMV files for a minimum of one inspection cycle. Replacement window sticker issuance and fee collection will be made available on the Cash Collection miscellaneous menu. Window sticker inventories, distribution, and tracking are new processes to DMV.

Title Vehicle -

Vehicle titling is required by law, and all vehicles owned by Delaware residents traveling the highways must be titled. The title function encompasses several functions today, such as adding, correcting, and transferring titles. All of the functions used by the title section will be affected by the changes being made for the Registration Denial project. Titling can only occur after the vehicle has passed all of the inspection tests required of the particular vehicle class. There are a few exceptions, such as the fact that a vehicle may be permitted an override (and pass) of a failed test by DMV management. Or, a vehicle may receive a waiver if it

meets the vehicle repair expense limits and obtains a ten percent emission reduction measured from the initial test. A window sticker must also be issued to the vehicle.

The Correct Title function permits the title clerk to correct information on the Title file that may have been entered incorrectly during the title add function. New features must be included in the program to calculate the remaining time left on an inspection and restrict expiration date modification to the last day of that inspection. Additionally, extensions beyond that inspection date will not be permitted by the program without another inspection. The program will require the capability to assign a new window sticker without regard to inspection dates, although the Correct Title function for a tag change will not issue a new window sticker. The window sticker stays with the vehicle in all cases.

The Transfer Title function permits the title clerk to transfer vehicle title and associated information from one owner to another. Transfers occur anytime vehicle ownership changes for any reason. Expiration dates cannot be transferred to another vehicle. In all cases, a vehicle expiration date remains with the vehicle, not the tag.

The introduction of inspection result verification and handling, window sticker inventories and distribution, waivers, and overrides are new concepts that will be introduced to DMV with the installation of this system.

Waiver Process -

This process allows a clerk, or DMV management, to store vehicle waiver repair information into the system for a specific vehicle. The system will record the waiver information and retain links to the Inspection Results, Title, and Certified Technician files. Those linked files will be used for tracking and reporting the effectiveness of repair technicians and the waiver information permitted by DMV. The waiver information will be validated by the Title and Registration Renewal systems. When present and within the confines of the rules set by DMV, the vehicle will be permitted to proceed through the system without a passing inspection record. Waivers may be entered directly from the Titles and Registration Renewal screens or through an administrative function. The repair facility and repair technician information completing the vehicle repairs must be present in their respective files before a waiver can be entered. The repair facility and technician information may only be modified by DMV supervisors and above. Recording and verifying this information via computer is a completely new function to DMV.

Override Function -

This function will be used by DMV management (and selected supervisors) and permit them to perform four major functions against the Inspection Result file. It will allow:

1. Adding an Inspection Result record to the file. This will only be permitted when the ESP system is down and vehicle inspections revert back to the Bar 84 technique. This function will be extremely secure and verified each time a new entry is attempted.

2. Modification of the Inspection Result content. This is the function normally known as an override. The function will be restricted to particular DMV personnel, and even those permitted will have data-level restrictions. Overrides will be permitted on a case-by-case level and normally restricted to only safety item failures.

3. Transferring Inspection Results from one registration to another. This option will be used when the lane technician makes a mistake while entering the vehicle identification information. When a mistake has been made, the inspection results will be logged under the wrong registration. The customer will not be permitted to continue through the process unless the mistake is rectified. The system will track the transfer (from and to) information and create another record for the proper vehicle. The original inspection record will not be included in any statistical reporting.

4. Deleting individual Inspection Result records from the file. This is a very rarely used, but required, function to delete an inspection result record from the file. This option will be used when an inspection result record was created (Option #1 above) under the wrong registration. The record will be marked for deletion, but it will not be physically deleted from the file until the proper authorization is given by DMV management. This function will be highly secured and available only to those that absolutely require the function.

Daily auditing reports will be produced by the system and distributed to DMV management for all of the above functions. All of the functions listed above are completely new to DMV.

Renewal Notice -

This process will be modified to produce additional customer notices for one-year renewal and State Police inspection requests. It will examine the Titles and Inspection Results files to identify the vehicles whose registrations are about to expire. It will determine if the vehicle requires an inspection or just a registration renewal. It will also find vehicles that have been requested to report to DMV for a special inspection by the State Police. While processing the selected records, it will determine if a vehicle must receive an inspection or if the current inspection is valid for the vehicle registration renewal. Vehicles that have been inspected within the last year may renew their registration for one additional year without another inspection. All the requirements of the owner to obtain a registration renewal will be printed on the renewal notice. The two-year inspection rule applies in all cases and will be printed on the

notice. The reporting changes are modifications to the current process. Adding a maintenance program to update vehicles stopped by the State Police is a new requirement of DMV.

Registration Renewal -

The registration renewal process will be modified to verify the inspection results file before permitting a renewal. As in the title process, a renewal will only occur after the vehicle has passed all of the inspection tests required for a particular vehicle class, or it was permitted an override (and pass) of a failed inspection, or a waiver was issued. A waiver requires proof of repair expenses and a ten percent emission reduction from the initial inspection before a renewal may be issued. The renewal process updates the current title record in the Title file. Once the title record is updated, the system prints a 2-D bar code on the updated registration card and issues the next available window sticker from the clerk's inventory. If the vehicle does not pass the inspection, a temporary tag will be issued, without a window sticker, by the registration clerk. Temporary tag issuance will be accessible through the renewal screen. As with the title functions, inspection result verification and handling, window sticker and temporary tag inventories, waivers, and overrides are new concepts to the registration clerks.

External Agency (Unregistered Vehicles)

This process is designed to permit DMV to identify and test vehicles stationed in Delaware that are owned by external agencies and not registered in Delaware (such as those owned by the DAFB, the postal service, and other federal motor pools). Those vehicles must be identified and tested to be sure they are in compliance with the federal emission standards. It is the responsibility of the individual agency to perform the follow-up to ensure that all vehicles are, and remain, in compliance. The system design for this function will incorporate:

- automatically receiving and loading the vehicle and owner information into a database that will be used by ESP;
- using the information to inspect and test the vehicle (ESP);
- recording the test results and subsequent re-test results;
- providing the Inspection Results data to the external agency in either a report or an online inquiry so that notices may be forwarded by the agency;
- and reporting vehicles inspected and statistical information.

The introduction of this system will be completely new to DMV.

Audit Reporting

This process will match the Title, Inspection Result, and at times the Vehicle Audit Information files and create reports about the information. Specific calculations and formats will be determined as the design process continues. External rules will be used to control the processing. All of the following components are new to DMV:

Standard Audit Reports - The reports will be standard reports that will run unattended periodically and produce the necessary reporting and audit information. The reports will be designed in conjunction with DMV management to support the information required by DNREC and the EPA. Some of the reports will be written as part of the Phase II installation since EPA will require reports before the system will be fully installed.

Specialized Audit Reports - The reports will be specialized (by data selection, not report format or content) processes that will run to produce the necessary reporting and audit information. Special reports may be produced from the Inspection Result, Repair Facility, Technician, Waiver, and inventory files. All reports will be designed with DMV management to support any special requirements of DNREC and the EPA.

Covert Audit Reports - These reports, like the specialized reports, will be specific processes (by data selection, not report format or content) that will run to produce the necessary reporting and audit information. An automated process will be created to allow DNREC the ability to access and report the contents of the Title and Inspection Result files. The audit function is a direct responsibility of DNREC. Additional functionality will be created as DNREC defines the requirements. All reports will be designed with DNREC management in support of the information they require.

Information Inquiry

There will be a great deal of new information created by the Registration Denial system. That new information will be accessible by DMV, the State Police, and DNREC, and they will require new systems to permit online inquiries into the data. Modifications will also be required to current systems to provide access to the data without writing new inquiry systems. Access to allow specific personnel permission to view the information will be granted based on security levels and new rules set up in the system. Changes include modification to the current Delaware State Police (CICS) processes to permit inquiry and viewing of the new data captured by DMV. The current DMV inquiry systems will be modified to access the new data and display the information for the requester.

APPENDIX 9 (a)
ENFORCEMENT AGAINST OPERATORS AND INSPECTORS

~~*Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action. (Subject to change as the result of future union negotiations)*~~

~~**ARTICLE 8 DISCIPLINARY ACTION**~~

~~8.1 The Employer agrees that any disciplinary action up to and including dismissal shall be taken only for just cause.~~

~~8.2 Employee suspensions shall not exceed 30 calendar days except under the following circumstances: a court action is pending in the matter which led to the suspension; as a result of an arbitration award; or as a result of a grievance settlement involving a dismissal action where arbitration is pending.~~

~~8.3 Monetary fines shall not be imposed as a disciplinary measure.~~

~~8.4 Prior to the implementation of a dismissal action, employees shall be notified in writing that such action is being considered and provided the reasons for the proposed action.~~

~~8.41 Employees shall be entitled to a pre-termination hearing, provided they submit a written request for such hearing to the Division Director and State Deputy Director for Labor Relations within 5 work days of receiving the above referenced notification. The employee may be suspended without pay during this period.~~

~~8.42 The pretermination hearing shall be held within a reasonable time after the employee has requested such hearing in compliance with 8.41.~~

~~8.43 Pretermination hearings shall be informal meetings for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why dismissal may not be justified or too severe a penalty.~~

~~8.44 Prior to implementing a suspension without pay, the Employer shall follow the notification requirements set forth in 8.4.~~

~~8.5 Employees shall be entitled to a presuspension meeting with the Employer prior to the implementation of the suspension, provided they make a written request for such meeting to the Division Director within 5 working days after receiving the notice.~~

~~8.51 The presuspension meeting shall be held within a reasonable time after the employee has requested such meeting in compliance with 8.5.~~

~~8.52 The pre-suspension meeting shall be an informal meeting for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why the proposed suspension may not be justified or too severe a penalty.~~

~~8.6 Employees may be accompanied by a Union representative at any meeting/hearing held under this Article.~~

~~8.7 Any employee failure to comply with the requirements set forth in 9.41 and 9.5 shall be treated as a waiver of any rights set forth in this Article.~~

~~8.8 Disciplinary documentation shall not be cited by the Employer in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.~~

State of Delaware Merit Rules

CHAPTER 15 EMPLOYEE ACCOUNTABILITY

15.1 Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. "Just cause.' means that management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

15.2 Employees shall receive a written reprimand where appropriate based on specified misconduct, or where a verbal reprimand has not produced the desired improvement.

15.3 Prior to finalizing a dismissal, suspension, fine or demotion action, the employee shal1 be notified in writing that such action is being proposed and provided the reasons for the proposed action.

15.4 Employees shall receive written notice of their entitlement to a predecision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency's designated personnel representative within 15 calendar days from the date of notice. employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

15.5 The predecision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with 15.4.

15.6 Predecision meetings shall be informal meetings to

provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

15.7 Fines of not more than 10 days pay may be imposed, provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

DEPARTMENT OF STATE

OFFICE OF THE STATE BANKING COMMISSIONER

Statutory Authority: 5 Delaware Code, Section 121(b) (5 **Del.C.** §121(b))

Notice of Proposed Amendment of Regulations of the State Bank Commissioner

Summary:

The State Bank Commissioner proposes to adopt amended Regulation Nos. 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.0007; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011 and 5.1105.0008. Proposed amended Regulation No. 5.1101(f).0001 ("Election to be Treated for Tax Purposes as a Single 'Subsidiary Corporation' of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principle Office in Delaware, or Out-Of-State Bank that Operates a Resulting Branch in Delaware") is being amended to require that an electing corporation must file a verification form each year; to add a mailing address to the form; and to make other technical and conforming changes. Proposed amended Regulations Nos. 5.1101etal.0002 ("Instructions for Preparation of Franchise Tax") and 5.1101etal.0009 ("Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-Of-State Banks") are being amended to conform the regulation to the adoption of the Historic Preservation Tax Credit Program (30 Del. C. §§ 1811 et seq.); to require a report of income and a federal employer identification number for certain subsidiaries in the final Franchise Tax Report; to reflect the annual verification filing of the subsidiary election form; and to make other technical and conforming changes. Proposed amended Regulations Nos. 5.1101etal.0003 ("Estimated Franchise Tax Report") and 5.1101etal.0010 ("Estimated Franchise Tax Report for Resulting Branches in this State of Out-Of-State Banks") are being amended to conform the regulation to the adoption of the Historic Preservation Tax Credit Program (30 Del. C. §§ 1811 et seq.); to require further detail concerning income adjustments for an insurance division or subsidiary; to require a specification of the tax year and the filer's federal employer identification number; to add the mailing address of the Office of the State Bank Commissioner; and to make other technical and conforming changes. Proposed amended Regulations Nos. 5.1101etal.0004 ("Final Franchise Tax Report") and 5.1101etal.0011 ("Final Franchise Tax Report for Resulting Branches in this State of Out-Of-State Banks") are being amended to conform the regulation to the adoption of the Historic Preservation Tax Credit Program (30 Del. C. §§ 1811 et seq.); to require further detail concerning the income adjustment for an insurance division or subsidiary; to require a report of income and a federal employer identification number of certain subsidiaries; to require a specification of the tax year and the filer's federal employer identification number; to add the mailing address of the Office of the State Bank Commissioner; and to make other technical and conforming changes. Proposed amended Regulation No. 5.1101etal.0005 ("Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in the State but Maintaining Branches in the State") is being amended to conform the regulation to the adoption of the Historic Preservation Tax Credit Program (30 Del. C. §§ 1811 et seq.); and to make other technical and conforming changes. Proposed amended Regulation No. 5.1101etal.0006 ("Estimated Franchise Tax Report Federal Savings Banks not Headquartered in Delaware") and proposed amended Regulation No. 5.1101etal.0007 ("Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware") are being amended to conform to the adoption of the Historic Preservation Tax Credit Program (30 Del. C. §§ 1811 et seq.); to specify the tax year and the filer's federal employer identification number; to add the mailing address of the Office of the State Bank Commissioner; and to make other technical and conforming changes. Proposed amended Regulation No. 5.1105etal.0008 ("Instructions for Calculation of Employment Tax Credits") is being amended to conform to the extension of the Employment Tax Credit Program through the year 2006 (72 Del. Laws Ch. 331); and to make other technical and conforming changes. Proposed amended Regulation Nos. 5.1101(f).0001; 5.1101etal.0002; 5.1101etal.0003; 5.1101etal.0004; 5.1101etal.0005; 5.1101etal.0006; 5.1101etal.000.7; 5.1101etal.0009; 5.1101etal.0010; 5.1101etal.0011; and 5.1105.0008 would be adopted by the State Bank Commissioner on or after August 1, 2001. Other regulations issued by the State Bank Commissioner are not affected by these proposed amended regulations. These regulations are issued by the State Bank Commissioner in accordance with Title 5 of the Delaware Code.

Comments:

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

Interested parties are invited to comment or submit written suggestions, data, briefs or other materials to the Office of the State Bank Commissioner as to whether these proposed new and amended regulations should be adopted, rejected or modified. Written materials submitted will be available for public inspection at the above address. Comments must be received before the public hearing that is being held on Wednesday, August 1, 2001.

Public Hearing:

A public hearing on the proposed new and amended regulations will be held at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, on Wednesday, August 1, 2001 at 10:00 a.m.

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

Regulation No.: 5.1101(f).0001
Proposed

Election to Be Treated for Tax Purposes as a "Subsidiary Corporation" of a Delaware Chartered Banking Organization or Trust Company, National Bank Having its Principal Office in Delaware, or Out-of-state Bank That Operates a Resulting Branch in Delaware (5 Del. C.§1101(f))

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

B. Who May Elect: A corporation may make the election only if it meets the following two tests:

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

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

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

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

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

regulations of the Commissioner.

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

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

F. Termination Of Election: Once an election is made, it remains in effect until terminated (a) by notice of voluntary termination delivered to the State Bank Commissioner, with a copy to the Delaware Division of Revenue, at any time during the Electing Corporation's taxable year (which termination shall be effective as of the first day of such taxable year), or (b) by failure to meet the ownership test and the employment test referenced in Section B.1 and B.2 hereof. If either test is first failed at any time during the first six months of any taxable year, the termination shall relate back to the first day of such taxable year. If either test is failed at any time during the second six months of any taxable year, the termination shall relate forward to the first day of the succeeding taxable year. However, an Electing Corporation shall have the allowable time period referenced in Section B.2 initially to meet the employment test.

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

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

Document Control No.: _____

Regulation No. 5.1101(f).0001
Proposed

Election To Be Treated As A Subsidiary Corporation Under 5 Del. C. §1101(F)

Initial Election or Verification For Tax Year

1. Name and Principal Place of Business of Electing Corporation:

_____
_____
_____

2. First day of Electing Corporation's taxable year for which election is made: _____

3. Name and Principal Place of Business of Qualifying Entity (as defined in Section B.1 of this regulation).

_____
_____
_____

4. Name and Principal Place of Business of Deemed Parent (as defined in Section B.1 of this regulation):

_____
_____
_____

5. Ownership of Voting Power of Electing Corporation (See Section B.1 of this regulation):

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

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

7. If the answer to Question 6 is "No," do you expect the

number of Delaware employees of the Electing Corporation and its affiliates to be at least equal to 200 by the end of the taxable year following the year of election? _____

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

_____ _____ _____
Date Signature Title

_____ _____
Print Name Phone No.

_____
_____
Print Address

Mail Completed Forms To:

Office of the State Bank Commissioner
555 E. Loockerman Street, Suite 210
Dover, DE 19901

Regulation 5.1101etal.0002
Proposed

Instructions for Preparation of Franchise Tax (5 Del. C., Chapter 11)

I. This regulation applies to banking organizations and trust companies, other than resulting branches in this State of outofstate banks or federal savings banks not headquartered in this state but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0003 and 5.1101etal.0004, respectively. Regulations 5.1101etal.0005, 5.1101etal.0006 and 5.1101etal.0007 are applicable to federal savings banks not headquartered in this State but maintaining branches in this State. Regulations 5.1101etal.0009, 5.1101etal.0010 and 5.1101etal.0011 are applicable to resulting branches in this State of outofstate banks.

II. Definitions

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

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;

2. A national bank, including a federal savings bank, with its principal office in this State;

3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an "Edge Act Corporation"), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an "Agreement Corporation"), and maintaining an office in this State;

4. A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

6. A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

6. The entering into foreign exchange trading or hedging transactions in connection with the activities

described in paragraphs (1) through (5) above.

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

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

F. "Net Operating Income Before Taxes" means the total net interest income plus total non-interest income, minus provision for loan and lease losses, provision for allocated transfer risk, and total non-interest expense, and adjustments made for securities gains or losses and other appropriate adjustments.

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

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

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

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

III. Estimated Franchise Tax

A banking organization or trust company whose franchise tax liability for the current year is estimated to exceed $10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax:

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0003;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any estimated income from an insurance division or subsidiary;

3. Less any deductions set forth in 5 Del. C. §1101;

4. Multiplied by .56 to arrive at estimated taxable income;

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

6. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

8. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

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

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

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

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income of the banking organization and the final franchise tax report, setting forth the "taxable income" of the banking organization or trust company, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year, except as otherwise required by 5 Del. C. §904.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0004.

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

1. The net operating income before taxes, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary)

3. Less any deduction set forth in 5 Del. C. §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

4. Multiplied by .56 to arrive at "taxable income";

5. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

6. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

7. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

8. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

V. Payment of Final Franchise Tax

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

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

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

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

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

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

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

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

VII. Penalty - Late Payment of Final Franchise Tax

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

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of a banking organization or trust company pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for a banking organization or trust company whose franchise tax liability

for the current year is estimated to exceed $10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the final franchise tax report due January 30 or February 15, as applicable.

As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 5.1101(f).0001 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

Document Control No.:

_____

Regulation 5.1101etal.0003
Proposed

Estimated Franchise Tax Report (5 Del.C., Chapter 11)

This report shall be completed by any banking organization (other than a resulting branch in this State of an out-of-state bank, as defined in § 1101(a) of Title 5 of the Delaware Code) or trust company with an estimated tax liability in excess of $10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0002.

_____ _____
Name of Banking Organization or Trust Company — Tax Year

_____ _____
Location — Federal Employer Identification Number

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

_____
_____

Rounded to the nearest thousand $

1. Estimated net operating income before taxes (including income of Electing Corporations) _____

2. Less:
   (a) Adjustment for income from an insurance division or subsidiary paid to Delaware Department of Insurance _____
   (b) Adjustment for income from an insurance division or subsidiary paid to another state _____

3. Subtotal _____

4. Less:
   (a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law. _____
   (b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5, Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a ecurities business. _____
   (c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. _____
   (d) Net operating income before taxes from any non-

United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto. _____

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto. _____

(f) Gross income from international banking facilities less any attributable expenses or other deductions. _____

(g) Interest income from obligations of volunteer fire companies. _____

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code. _____

5. Total deductions (add lines 4(a)-(h)) _____

6. Estimated total income before taxes (subtract item 5 from item 3) _____

7. Estimated taxable income (calculated to nearest dollar) x .56

8. Estimated subtotal annual franchise tax liability (before tax credits)
Calculation Table:
First $20,000,000 of item 7 at 8.7% _____
Next $ 5,000,000 of item 7 at 6.7% _____
Next $ 5,000,000 of item 7 at 4.7% _____
Next $620,000,000 of item 7 at 2.7% _____
Amount of item 7 over $650,000,000 at 1.7% _____
Subtotal _____

9. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) _____

10. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

11. Less: Historic Preservation Tax Credits calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.) _____

12. Estimated total annual franchise tax liability (subtract items 9, 10 & 11 from item 8)$ _____

13. Payment structure and dates $ Amount
June 1 40% of estimate due _____
September 1 20% of estimate due _____
December 1 20% of estimate due _____
March 1 (of succeeding year)
Final payment _____

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

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

_____
Print Name Phone No.

_____

_____
Print Address

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

Document Control No.:

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Regulation 5.1101etal.0004
Proposed

Final Franchise Tax Report (5 Del.C., Chapter 11)

This report shall be completed by all banking organizations (other than resulting branches in this State of out-of-state banks, as defined in § 1101(a) of Title 5 of the Delaware Code) and trust companies and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a banking organization entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall submit this report to the Office of the State Bank Commissioner on or before February 15. Income reported is for the previous calendar year.

Instructions for the preparation of this report are found in Regulation 5.1101etal.0002.

_____ _____

Name of Banking Organization or Trust Company — Tax Year

_____ _____

Location — Federal Employer Identification Number

List corporation(s) electing under Section 1101(f) and attach hereto separate reports of estimated income for each Electing Corporation (include Federal Employer Identification number).

_____

_____

Rounded to the nearest thousand $

1. Estimated net operating income before taxes _____ (including income of Electing Corporations)

2. Less:

(a) Adjustment for income from an insurance division or subsidiary paid to Delaware Department of Insurance (report of income attached hereto) _____

(b) Adjustment for income from an insurance division or subsidiary paid to another state (report of income attached hereto) _____

3. Subtotal _____

4. Less:

(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law.

_____

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5, Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

_____

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign branch or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

_____

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

_____

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

_____

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

_____

(g) Interest income from obligations of volunteer fire companies.

_____

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

_____

5. Total deductions (add lines 4(a)-(h)) (Include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

_____

6. Total income before taxes (subtract item 5 from item 3) _____

x .56

7. Taxable income (calculated to nearest dollar) _____

8. Subtotal franchise tax liability (before tax credits)
Calculation Table:
First $20,000,000 of item 7 at 8.7%_____
Next $ 5,000,000 of item 7 at 6.7%_____
Next $ 5,000,000 of item 7 at 4.7%_____
Next $620,000,000 of item 7 at 2.7%_____
Amount of item 7 over $650,000,000 at 1.7%_____
Subtotal _____

9. Less:Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) _____

10. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

11. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements, Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.) _____

12. Total annual franchise tax liability
(subtract items 9, 10 & 11 from item 8) $_____

13. Less: Estimated tax payments
a. June 1 payment $_____
b. September 1 payment _____
c. December 1 payment _____
d. Total estimated tax payments
(add items 13a, 13b and 13c)_____

14. March 1 final tax payment
(subtract item 13d from item 12) _____

15. Additional tax due to underpayment of estimated franchise tax or installment (if applicable)_____

16. Penalty for late payment of final franchise tax (if applicable) _____

17. Total final tax payment
(add items 14, 15 and 16) $_____

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

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

_____
Print Name Phone No.

_____
_____
Print Address

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

Document Control No.:

Regulation No.: 5.1101etal.0005
Proposed

Instructions for Preparation of Franchise Tax for Federal Savings Banks Not Headquartered in this State but Maintaining Branches in this State (5 Del. C., Chapter 11)

I. This regulation applies only to federal savings banks not headquartered in this State but maintaining branches in this State. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0006 and 5.1101etal.0007, respectively.

II. Definitions

A. "Net operating income before taxes" means the total net income calculated in accordance with Section VIII of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

III. Estimated Franchise Tax

A federal savings bank not headquartered in this State whose franchise tax liability for the current year is anticipated to exceed $10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated franchise tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0006;

C. Calculation of estimated tax. The total estimated

annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the branch or branches located in Delaware;

2. Less the interest income from obligations of volunteer fire companies;

3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

4. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

5. The subtotal estimated annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

6. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1181 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5. Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30. Del. C. §1814(c).

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

40% due on or before June 1 of the current year;

20% due on or before September 1 of the current year;

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

IV. Final Franchise Tax

A. 1.Filing. The December 31 call report, verified by oath, setting forth the net operating income of the Delaware branch or branches of the federal savings bank not headquartered in this State and the final franchise tax report shall be filed with the Office of the State Bank Commissioner on or before January 30 each year;

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in section IV. A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0007.

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

1. The net operating income before taxes of the branch or branches located in Delaware;

2. Less the interest income from obligations of volunteer fire companies;

3. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

4. The subtotal annual franchise tax shall be adjusted for tax credits applicable pursuant to 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

5. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

6. The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

V. Payment of Final Franchise Tax

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

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

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

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

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

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

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required

to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax shown on the final return of the federal savings bank not headquartered in this State for the preceding taxable year.

VII. Penalty - Late Payment of Estimated Franchise Tax or Installment or Final Franchise Tax

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

VIII. Separate Accounting by Delaware Branches

A. Books and Records. Each branch in this State of a federal savings bank not headquartered in this State must keep a separate set of books and records as if it were an entity separate from the rest of the federal savings bank that operates such Delaware branch. These books and records must reflect the following items attributable to the Delaware branch:

1. Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 567;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a federal savings bank not headquartered in this State operates more than one Delaware branch, it may treat all Delaware branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Delaware Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a Delaware branch if personnel at the Delaware branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures Options, Swaps, and Similar Assets. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a Delaware branch if physically stored at the Delaware branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a Delaware branch if they are located at or are part of the physical facility of a Delaware branch.

8. Other Business Assets. Other business assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory OffBalance Sheet Items Taken Into Account in Determining RiskBased Capital Ratio. These are the credit equivalent amounts of offbalance sheet items described in 12 C.F.R. part 567 not otherwise addressed above (e.g., guarantees, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending federal savings bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities). These assets will be attributed to a Delaware branch if personnel at the Delaware branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Delaware Branch.

The liabilities attributable to a Delaware branch shall be the deposits recorded on the books of the Delaware branch plus any other legally enforceable obligations of the Delaware branch recorded on the books of the Delaware branch or the federal savings bank not headquartered in this State.

E. Income of a Delaware Branch.

1. Income from Assets. Income and gain from assets (including fees from offbalance sheet items) attributed to a Delaware branch in accordance with the rules in

subsection C above will be attributed to the Delaware branch.

2. Income from Fees. Fee income not attributed to a Delaware branch in accordance with subsection 1 above will be attributed to the Delaware branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the Delaware branch if the letters of credit, travelers checks, or money orders are issued by the Delaware branch, except to the extent that subsection 1 above requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the Delaware branch if the services generating the fees are performed by personnel at the Delaware branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Delaware Branch.

1. Interest. The amount of interest expense of a Delaware branch shall be the actual interest booked by the Delaware branch, which should reflect market rates.

2. Direct Expenses of a Delaware Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the Delaware branch are direct expenses of such Delaware branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the Delaware branch, some taxes, insurance, the cost of supplies and fees for services rendered to the Delaware branch.

3. Indirect Expenses of a Delaware Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a Delaware branch must be allocated between the Delaware branch and the rest of the federal savings bank operating the Delaware branch. If the federal savings bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the federal savings bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the Delaware branch to the assets of the entire federal savings bank or based on the ratio of gross income of the Delaware branch to gross income of the entire federal savings bank.

Document Control No.:

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Regulation No.: 5.1101etal.0006
Proposed

Estimated Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware (5 Del. C., Chapter 11)

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State with an estimated tax liability in excess of $10,000 in any given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0005.

_____ _____
Name of Federal Savings Bank Tax Year

_____ _____
Location Federal Employer Identification Number

Rounded to the nearest thousand $

1. Estimated net operating income before taxes _____

2. Less:Interest income from obligations of volunteer fire companies _____

3. Estimated taxable income before taxes (subtract item 2 from item 1) _____

4. Estimated subtotal annual franchise tax liability (before tax credits)
Calculation Table:
First $20,000,000 of item 3 at 8.7% _____
Next $ 5,000,000 of item 3 at 6.7% _____
Next $ 5,000,000 of item 3 at 4.7% _____
Next $620,000,000 of item 3 at 2.7% _____
Amount of item 3 over $650,000,000 at 1.7% _____
Subtotal _____

5. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) _____

6. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

7. Less: Historic Preservation Tax Credits (calculated in

accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.) _____

8. Estimated total annual franchise tax liability (subtract items 5, 6 and 7 from item 4) _____

9. Payment Structure and Dates $ Amount

June 1 40% of estimate due _____
September 1 20% of estimate due _____
December 1 20% of estimate due _____
March 1 (of succeeding year) Final payment _____

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

Date	Signature of President, Treasurer or Other Proper Officer	Title

Print Name	Phone No.

_____
_____
Print Address

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

Document Control No.:

Regulation No.: 5.1101etal.0007
Proposed

Final Franchise Tax Report Federal Savings Banks Not Headquartered in Delaware (5 Del.C., Chapter 11)

This report shall be completed by any federal savings bank not headquartered in this State but maintaining branches in this State and submitted to the Office of the State Bank Commissioner on or before January 30. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0005.

_____	_____
Name of Federal Savings Bank	Tax Year
_____	_____
Location	Federal Employer Identification Number

Rounded to the nearest thousand $

1. Estimated net operating income before taxes _____

2. Less:Interest income from obligations of volunteer fire companies _____

3. Estimated taxable income before taxes (subtract item 2 from item 1) _____

4. Estimated subtotal annual franchise tax liability (before tax credits)

Calculation Table:
First $20,000,000 of item 3 at 8.7% _____
Next $ 5,000,000 of item 3 at 6.7% _____
Next $ 5,000,000 of item 3 at 4.7% _____
Next $620,000,000 of item 3 at 2.7% _____
Amount of item 3 over $650,000,000 at 1.7% _____
Subtotal _____

5. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto) _____

6. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto) _____

7. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.) _____

8. Estimated total annual franchise tax liability (subtract items 5, 6 and 7 from item 4) _____

9. Less: Estimated tax payments
a. June 1 payment $ _____
b. September 1 payment _____
c. December 1 payment _____
d. Total estimated tax payments (add items 9a, 9b and 9c) _____

10. March 1 final tax payment
(subtract item 9d from item 8) _____

11. Additional tax due to underpayment of estimated
franchise tax or installment (if applicable)_____

12. Penalty for late payment of final
franchise tax (if applicable) _____

13. Total final tax payment
(add items 10, 11 and 12) $_____

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

Date	Signature of President, Treasurer or Other Proper Officer	Title

Print Name	Phone No.

_____

_____

Print Address

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

Document Control No.:

Regulation No.: 5.1101etal.0009
Proposed

Instructions for Preparation of Franchise Tax for Resulting Branches in this State of Out-of-state Banks (5 Del. C., Chapter 11)

I. This regulation applies only to resulting branches in this State of out-of-state banks. The estimated and final franchise tax reports that accompany this regulation are found in regulations 5.1101etal.0010 and 5.1101etal.0011, respectively.

II. Definitions

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

B. "Banking organization" means:

1. A bank or bank and trust company organized and existing under the laws of this State;

2. A national bank, including a federal savings bank, with its principal office in this State;

3. An Edge Act corporation organized pursuant to §25(a) of the Federal Reserve Act, 12 U.S.C. §611 et seq. (an "Edge Act Corporation"), or a state chartered corporation exercising the powers granted thereunto pursuant to an agreement with the Board of Governors of the Federal Reserve System (an "Agreement Corporation"), and maintaining an office in this State;

4. A federal branch or agency licensed pursuant to §4 and §5 of the International Banking Act of 1978, 12 U.S.C. §3101 et seq., to maintain an office in this State;

5. A foreign bank branch, foreign bank limited purpose branch or foreign bank agency organized pursuant to Chapter 14 of Title 5, or a resulting branch in this State of a foreign bank authorized pursuant to Chapter 14 of Title 5; or

6. A resulting branch in this State of an out-of-state bank, or a branch office in this State of an out-of-state bank.

C. "International Banking Transaction" shall mean any of the following transactions, whether engaged in by a banking organization, any foreign branch thereof (established pursuant to 5 Del. C. §771 or federal law) or any subsidiary corporation directly or indirectly owned by any banking organization:

1. The financing of the exportation from, or the importation into, the United States or between jurisdictions abroad of tangible property or services;

2. The financing of the production, preparation, storage or transportation of tangible personal property or services which are identifiable as being directly and solely for export from, or import into, the United States or between jurisdictions abroad;

3. The financing of contracts, projects or activities to be performed substantially abroad, except those transactions secured by a mortgage, deed of trust or other lien upon real property located in this State;

4. The receipt of deposits or borrowings or the extensions of credit by an international banking facility, except the loan or deposit of funds secured by mortgage, deed of trust or other lien upon real property located in this State;

5. The underwriting, distributing and dealing in debt and equity securities outside of the United States and the conduct of any activities permissible to an Edge Act Corporation or an Agreement Corporation described above, or any of its subsidiaries, in connection with the transaction of banking or other financial operations; or

6. The entering into foreign exchange trading or hedging transactions in connection with the activities described in paragraphs (1) through (5) above.

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

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

F. "Net Operating Income Before Taxes" means the total net income calculated in accordance with Section IX of this Regulation, with adjustments made for securities gains or losses and other appropriate adjustments.

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

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

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

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

III. Estimated Franchise Tax

A resulting branch or branches in this State of an out-of-state bank whose franchise tax liability for the current year, on a consolidated basis, is estimated to exceed $10,000 shall file an estimated franchise tax report with the State Bank Commissioner and pay estimated tax.

A. 1. Filing. The estimated franchise tax report shall be filed with the State Bank Commissioner on the first day of March of the current year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the estimated franchise tax report required above in section III.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The estimated franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0010;

C. Calculation of estimated tax. The total estimated annual franchise tax shall be calculated as follows:

1. The estimated net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback for the preceding income year (calculated in accordance with Section IV.C.2. of this Regulation).

3. Adjusted for any estimated income from an insurance division or subsidiary;

4. Less any deductions set forth in 5 Del. C. §1101;

5. Multiplied by .56 to arrive at estimated taxable income;

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied;

7. The subtotal estimated annual franchise tax shall be adjusted for tax credits applicable pursuant 5 Del. C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal estimated annual franchise tax shall be adjusted for tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

9. The subtotal estimated annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

D. Payment of estimated tax. The estimated tax liability shall be due and payable as follows:

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

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

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

IV. Final Franchise Tax

A. 1. Filing. The December 31 call report, verified by oath, setting forth the net operating income, on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank and the final franchise tax report, setting forth the "taxable income", on a consolidated basis, of the resulting branch or branches in this State of the out-of-state bank, shall be filed with the Office of the State Bank Commissioner on or before January 30 each year; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal

bank supervisory authority shall file the December 31 call report and the final franchise tax report with the Office of the State Bank Commissioner on or before February 15 of each year.

2. Penalty for late filing. A late filing penalty shall be assessed against the taxpayer in the amount of $25 for each day after the due date that the taxpayer fails to file the final franchise tax report required above in subsection IV.A.1., unless the State Bank Commissioner is satisfied that such failure was not willful.

B. Form. The final franchise tax report shall be in the form set out in Regulation No. 5.1101etal.0011.

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

1. The net operating income before taxes of the resulting branch or branches in this State of the out-of-state bank, which includes the income of any corporation making an election as provided in Regulation No. 5.1101(f).0001;

2. Increased by the resulting branch imputed capital addback, which is the product of the greater of the products determined under subparagraphs (a) and (b) of this subsection (2) and the average of the monthly shortterm applicable federal rates, as determined under §1274(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1274(d)), or any successor provisions thereto, and as published each month in the Internal Revenue Bulletin, for the twelvemonth period preceding the date on which the resulting branch imputed capital addback is being determined.

a) The product of (i) the deposits recorded on the books of the resulting branch in this State, and (ii) the minimum risk-based capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed "adequately capitalized" pursuant to 12 C.F.R. Part 325.

b) The product of (i) the value of that portion of the total risk-weighted assets (as defined in 12 C.F.R. Part 325) of the out-of-state bank operating the resulting branch in this State that are attributable to such resulting branch in accordance with section IX.C of this regulation, and (ii) the minimum riskbased capital ratio (expressed as a decimal fraction) that a resulting branch in this State would be required to maintain, if it were a bank, in order to be deemed 'adequately capitalized' pursuant to 12 C.F.R. Part 325.

3. Adjusted for any income from an insurance division or subsidiary; (include a report of income showing the name and federal employer identification number of the division or subsidiary)

4. Less any deduction set forth in 5 Del. C. §1101; (include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction)

5. Multiplied by .56 to arrive at "taxable income";

6. The appropriate rate of taxation set forth in 5 Del. C. §1105 shall be applied to the taxable income to arrive at subtotal annual franchise tax;

7. The subtotal annual franchise tax shall be adjusted for tax credits pursuant to 5 Del.C. §1105, which are calculated in accordance with Regulation No. 5.1105.0008.

8. The subtotal annual franchise tax shall be adjusted for Travelink tax credits calculated in accordance with Department of Transportation Travelink tax credit reporting requirements.

9. The subtotal annual franchise tax shall be adjusted for Historic Preservation Tax Credits calculated in accordance with 30 Del. C. §§1811 et seq. and the regulations thereunder. Claimed credits must be accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that the credits have been properly earned, in accordance with 5 Del. C. §1105(g). If the credits have been transferred, sold or assigned to the taxpayer by another person, a Certificate of Transfer must also be attached, in accordance with 30 Del. C. §1814(c).

V. Payment of Final Franchise Tax

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

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

VI. Additional Tax Due to Underpayment of Estimated Franchise Tax or Installment

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

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

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

B. The period of the underpayment shall run from the date the estimated franchise tax or installment was required

to be paid to the earlier of the date when such estimated tax or installment is paid or the date of the final payment of tax for the year;

C. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment thereof equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were the tax
shown on the final return of the resulting branch(es) of the out-of-state bank for the preceding taxable year.

D. Notwithstanding the above, the addition to the tax with respect to any underpayment of estimated franchise tax or any installment shall not be imposed if the addition is attributable to the difference between the imputed capital addback for the current and preceding income years.

VII. Penalty - Late Payment of Final Franchise Tax

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

VIII. Election to be listed as a "Subsidiary Corporation"

Any corporation which has elected to be treated as a "subsidiary corporation" of the resulting branch(es) of the out-of-state bank pursuant to §1101(f) and filed with the State Bank Commissioner the required election form in accordance with Commissioner's Regulation No. 5.1101(f).0001 shall provide (a) a tentative report of income for the electing corporation covering estimated bank franchise tax liability for the current income year to be submitted in conjunction with the estimated franchise tax report due March 1 for the resulting branch(es) of the out-of-state bank whose franchise tax liability for the current year is estimated to exceed $10,000, and (b) a report of income for the electing corporation as of December 31 of each year to be submitted in conjunction with the Final Franchise Tax Report due January 30 or February 15, as applicable.

As long as the election remains in effect, the ownership and employment tests must be met. Therefore, the election form in Regulation No. 5.1101(f).0001 must be completed each year for each Electing Corporation and submitted with the final franchise tax report.

IX. Separate Accounting by Resulting Branches

A. Books and Records. Each resulting branch must keep a separate set of books and records as if it were an entity separate from the rest of the bank that operates such resulting branch. These books and records must reflect the following items attributable to the resulting branch:

1. Assets and the credit equivalent amounts of offbalance sheet items used in computing the riskbased capital ratio under 12 C.F.R. part 325;
2. Liabilities;
3. Income and gain;
4. Expense and loss.

B. Consolidation of Delaware Branches. If a bank operates more than one resulting branch, it may treat all resulting branches as a single separate entity for purposes of computing the assets, liabilities, income, gain, expense, and loss referred to above.

C. Determining Assets Attributable to a Resulting Branch

1. General Principle of Asset Attribution. The general principle will be to attribute assets to a resulting branch if personnel at the resulting branch actively and materially participate in the solicitation, investigation, negotiation, approval, or administration of an asset.

2. Loans and Finance Leases. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, final approval, or administration of a loan or financing lease. Loans include all types of loans, including credit and travel card accounts receivable.

3. Stocks and Debt Securities. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

4. Foreign Exchange Contracts and Futures, Options, Swaps, and Similar Assets. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

5. Patents, Copyrights, Trademarks, and Similar Intellectual Property. These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the licensing of such asset.

6. Currency. U.S. and foreign currency will be attributed to a resulting branch if physically stored at the resulting branch.

7. Tangible Personal and Real Property. These assets (including bullion and other precious metals) will be attributed to a resulting branch if they are located at or are part of the physical facility of a resulting branch.

8. Other Business Assets. Other business assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the acquisition of such assets.

9. Credit Equivalent Amounts of Regulatory Off-Balance Sheet Items Taken Into Account in Determining Risk-Based Capital Ratio. These are the credit equivalent amounts of off-balance sheet items described in Appendix A to 12 C.F.R. part 325 (the "Appendix") not otherwise

addressed above (e.g., guarantees, surety contracts, standby letters of credit, commercial letters of credit, risk participations, sale and repurchase agreements and asset sales with recourse if not already included on the balance sheet, forward agreements to purchase assets, securities lent (if the lending bank is exposed to risk of loss), bid and performance bonds, commitments, revolving underwriting facilities, note issuance facilities described in the Appendix). These assets will be attributed to a resulting branch if personnel at the resulting branch actively and materially participated in the solicitation, investigation, negotiation, acquisition, or administration of such assets.

D. Liabilities Attributable to a Resulting Branch. The liabilities attributable to a resulting branch shall be the deposits recorded on the books of the resulting branch plus any other legally enforceable obligations of the resulting branch recorded on the books of the resulting branch or its parent.

E. Income of a Resulting Branch.

1. Income from Assets. Income and gain from assets (including fees from off-balance sheet items) attributed to a resulting branch in accordance with the rules in section IX.C above will be attributed to the resulting branch.

2. Income from Fees. Fee income not attributed to a resulting branch in accordance with 1. above will be attributed to the resulting branch depending on the type of fee income.

a. Fee income from letters of credit, travelers checks, and money orders will be attributed to the resulting branch if the letters of credit, travelers checks, or money orders are issued by the resulting branch, except to the extent that 1. requires otherwise.

b. Fee income from services (e.g., trustee and custodian fees) will be attributed to the resulting branch if the services generating the fees are performed by personnel at the resulting branch. If services are performed both within and without Delaware, the fees from such services must be allocated between Delaware and other states based on the relative value of the services or upon the time spent in rendering the services or on some other reasonable basis. The basis for allocation must be disclosed and applied consistently from period to period.

F. Determining the Expenses of a Resulting Branch.

1. Interest. The amount of interest expense of a resulting branch shall be the actual interest booked by the resulting branch, which should reflect market rates.

2. Direct Expenses of a Resulting Branch. Expenses or other deductions that can be specifically identified with the gross income, gains, losses, deductions, assets, liabilities or other activities of the resulting branch are direct expenses of such resulting branch. Examples of such expenses are payroll, rent, depreciation and amortization of assets attributed to the resulting branch, some taxes, insurance, the cost of supplies and fees for services rendered to the resulting branch.

3. Indirect Expenses of a Resulting Branch. Expenses or other deductions that cannot be specifically identified with the gross income, gains, losses, deductions, assets, liabilities, or other activities of a resulting branch must be allocated between the resulting branch and the rest of the bank operating the resulting branch. If the bank makes such an allocation on any reasonable basis, and applies such basis consistently from period to period, the allocation likely will be respected. If the bank makes no such allocation, such expenses could be allocated on the basis of the ratio of assets of the resulting branch to the assets of the entire bank or based on the ratio of gross income of the resulting branch to gross income of the entire bank.

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Proposed

Estimated Franchise Tax Report for Resulting Branches in this State of Out-of-state Banks (5 Del.C., Chapter 11)

This report shall be completed by the resulting branch(es) in this State of an out of state bank with an estimated tax liability in excess of $10,000 in a given year. The completed report is to be filed in the Office of the State Bank Commissioner on or before March 1 of the current year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0009.

_____ _____
Name of Out-of-State Bank Tax Year

_____ _____
Location Federal Employer Identification Number

List corporation(s) electing under Section 1101(f)and attach hereto separate reports of estimated incomefor each Electing Corporation (include Federal Employer Identification number).

_____

_____

Rounded to the nearest thousand $

1. Estimated net operating income before taxes(including income of Electing Corporations) _____

2. Plus: Resulting branch imputed capital addback for the

preceding income year _____

3. Less:

(a) Adjustment for income from an insurance division or subsidiary paid to Delaware Department of Insurance _____

(b) Adjustment for income from an insurancedivision or subsidiary paid to another state _____

4. Subtotal _____

5. Less:

(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law.

_____

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5 of the Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

_____

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary, foreign bank or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

_____

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

_____

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

_____

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

_____

(g) Interest income from obligations of volunteer fire companies.

_____

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

_____

6. Total deductions (add lines 5(a)-(h)) _____

7. Estimated total income before taxes (subtract item 6 from item 4) _____

x .56

8. Estimated taxable income (calculated to nearest dollar) _____

9. Estimated subtotal annual franchise tax liability (before tax credits)

Calculation Table:

First $20,000,000 of item 8 at 8.7%_____

Next $ 5,000,000 of item 8 at 6.7%_____

Next $ 5,000,000 of item 8 at 4.7%_____

Next $620,000,000 of item 8 at 2.7%_____

Amount of item 8 over $650,000,000 at 1.7%_____

Subtotal _____

10. Less: Total employment tax credits (calculated in accordance with Regulation No. 51105.0008, completed worksheet attached hereto) _____

11. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements) _____

12. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold, or assigned to the taxpayer by another person.) _____

13. Estimated total annual franchise tax liability (subtract items 10, 11 and 12 from item 9) $_____

14. Payment structure and dates $ Amount

June 1 40% of estimate due _____

September 120% of estimate due_____
December 120% of estimate due_____
March 1 (of succeeding year)Final payment_____

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

Date	Signature of President, Treasurer or Other Proper Officer	Title

Print Name	Phone No.

_____
_____
Print Address

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

Document Control No.:

Regulation No.: 5.1101etal.0011
Proposed

Final Franchise Tax Report for Resulting Branches in this State of Out-of-state Banks (5 Del.C., Chapter 11)

This report shall be completed by all resulting branch(es) in this state of out-of-state banks and submitted to the Office of the State Bank Commissioner on or before January 30; provided, however, that a resulting branch of an out-of-state bank that is entitled to take an additional 15 days to submit its Report of Condition and Income to the appropriate federal bank supervisory authority shall submit this report to the Office of the State Bank Commissioner on or before February 15. Income reported is for the previous calendar year. Instructions for the preparation of this report are found in Regulation 5.1101etal.0009.

Name of Out-of-State Bank	Tax Year

Location	Federal Employer Identification Number

List corporation(s) electing under Section 1101(f)and attach hereto separate reports of estimated incomefor each Electing Corporation (include Federal Employer Identification number).

_____
_____

Rounded to the nearest thousand $

1. Estimated net operating income before taxes(including income of Electing Corporations) _____

2. Plus: Resulting branch imputed capital addback _____

3. Less:
(a) Adjustment for income from an insurance division or subsidiary paid to Delaware Department of Insurance (report of income attached hereto). _____
(b) Adjustment for income from an insurance division or subsidiary paid to another state (report of income attached hereto). _____

4. Subtotal _____

5. Less:
(a) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is otherwise subject to income taxation under Delaware law. _____

(b) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived and subject to income taxation under the laws of another state, and that portion of net operating income before taxes from any such entity other than a Delaware-chartered banking organization or a national bank located in this State (as defined in §801(5) of Title 5 of the Delaware Code), which entity is a banking organization and which is subject to income taxation under the laws of another state. In no event shall the amount of income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business. _____

(c) Net operating income before taxes verifiable by documentary evidence from any subsidiary or foreign branch established within the United States pursuant to §771 of Title 5, or other branch established within the United States but outside of Delaware pursuant to federal law or other applicable Delaware law, which is derived from business activities carried on outside the State, which subsidiary,

foreign bank or other branch established outside of Delaware is subject to shares tax under the laws of another state. In no event shall the income excluded exceed 50% of such subsidiary's net operating income before taxes in the case of a subsidiary engaged in a securities business.

(d) Net operating income before taxes from any non-United States branch office provided that at least 80% of gross income of such office constitutes "income from sources without the United States" as defined under §862(a) of the Internal Revenue Code of 1954, as amended, or any successor provisions thereto.

(e) Gross income from international banking transactions after subtracting therefrom any expenses or deductions attributable thereto.

(f) Gross income from international banking facilities less any attributable expenses or other deductions.

(g) Interest income from obligations of volunteer fire companies.

(h) Any examination fee paid to the Office of the State Bank Commissioner pursuant to §127(a) of Title 5 of the Delaware Code.

6. Total deductions (add lines 5(a)-(h)) (Include a report of income showing the name and federal employer identification number of each subsidiary taken as a deduction.)

7. Total income before taxes
(subtract item 6 from item 4)

x .56

8. Taxable income
(calculated to nearest dollar)

9. Subtotal annual franchise tax liability
(before tax credits)

Calculation Table:
First $20,000,000 of item 8 at 8.7%
Next $ 5,000,000 of item 8 at 6.7%
Next $ 5,000,000 of item 8 at 4.7%
Next $620,000,000 of item 8 at 2.7%
Amount of item 8 over $650,000,000 at 1.7%
Subtotal

10. Less: Total employment tax credits (calculated in accordance with Regulation No. 5.1105.0008, completed worksheet attached hereto)

11. Less: Travelink tax credits (calculated in accordance with Department of Transportation Travelink tax credit reporting requirements, completed worksheet attached hereto)

12. Less: Historic Preservation Tax Credits (calculated in accordance with the Office of Historic Preservation tax credit reporting requirements. Certificate of Completion attached. Certificate of Transfer attached if credits have been transferred, sold or assigned to the taxpayer by another person.)

13. Total annual franchise tax liability
(subtract items 10, 11 and 12 from item 9) $

14. Less: Estimated tax payments
a. June 1 payment $
b. September 1 payment
c. December 1 payment
d. Total estimated tax payments
(add items 14a, 14b and 14c)

15. March 1 final tax payment
(subtract item 14d from item 13)

16. Additional tax due to underpayment of estimated franchise tax or installment (if applicable)

17. Penalty for late payment of final franchise tax (if applicable)

18. Total final tax payment
(add items 15, 16 and 17) $

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

Date	Signature of President, Treasurer or Other Proper Officer	Title

Print Name	Phone No.

Print Address

Mail Completed Forms To:
Office of the State Bank Commissioner

555 E. Loockerman Street, Suite 210
Dover, DE 19901

Document Control No.:

Regulation No.: 5.1105.0008
Proposed

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

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

I. Definitions

A. "Base year" means calendar year 1996.

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

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

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

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

II. Employment Tax Credit

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

III. New Investment Required

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

IV. Annual Limit On Credit

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

V. Applicable Years

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

VI. Credit Carryover

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

VII. Calculation Worksheet

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

Document Control No.:

Employment Tax Credit Calculation Worksheet For Years 1997 - 2006

The Following Eligibility Requirements Apply to the Employment Tax Credit:

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

A. Employment Requirement

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

B. Required Investment

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

C. Credit Calculation

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

D. Credit Allowed

14. Current Year Franchise Tax Liability Pursuant to Chapter 11 of Title 5 _____
15. Maximum Tax Credit Allowed _____
(50% of Line 14)

E. Total Tax Credit Taken

16. (Lesser of Line 13 or Line 15) _____

F. Tax Credit Carryforward _____

17. (Line 13 less Line 16)

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. **[~~Bracketed stricken through~~]** indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

DELAWARE SOLID WASTE AUTHORITY

Statutory Authority: 7 Delaware Code, Section 6403 (7 **Del.C.** §6403)

O R D E R

On this 7th day of June, 2001, IT IS ORDERED that the Delaware Solid Waste Authority (DSWA) hereby adopts revisions to **Regulations of the Delaware Solid Waste Authority**, adopted March, 1999; the Differential Disposal Fee Program; and the Statewide Solid Waste Management Plan, in the form attached hereto.

In accordance with 29 **Del.C.** §10118(b)(1), a brief summary of the evidence and information submitted follows. Oral testimony was presented at a public hearing held on May 24, 2001. Such testimony included testimony from American Ref-Fuel Company which objected to the proposal to control the flow of municipality waste on the alleged grounds that such control was uneconomic, unnecessary and unconstitutional. Two attorneys testified on behalf of Eastern Shore Environmental, Inc. (ESE), which objected to the control of municipality waste on various grounds, including the process by which the regulations were proposed. The Director of Public Works for the City of Dover requested that the rebate program in its contract be modified so that it could receive the rebate earlier. An Environmental Program Manager with the Delaware Department of Natural Resources and Environmental Control (DNREC) asked a series of questions regarding the regulations, as did one of the attorneys for ESE.

Written submittals included the following. A letter from the Public Works Director for the City of Newark suggested that source separated recyclables should not be required to be taken to DSWA facilities. A letter from the Mayor of the Town of Selbyville requested that the provision related to the control of municipality waste be deleted. Letters from American Ref-Fuel Company stated the position related in the oral testimony. A letter on behalf of the Town of Millsboro objected to the requirements related to the control of municipality waste. It also objected to a provision that authorized a change in the rates of dry waste disposal on 30 days' notice. A letter from the Maryland-Delaware Solid Waste Association objected to the control of municipality waste. A letter from DNREC raised various issues regarding definitions, collection and licensing, recycling, and transfer stations. Finally, letters and a memorandum with exhibits were submitted on behalf of ESE. Those submittals contained argument objecting to the control of municipality waste, the proposed lower rate for the disposal of dry waste, and the procedure used for the notice of, consideration and adoption of the proposed changes.

In addition to the above materials submitted by members of the public, the Hearing Officer, an employee of DSWA's staff prepared a report that responds to the public input on the proposed changes and provides related information. Such report addresses the legality of the

proposed changes, the basis for the proposed revisions, ESE's allegation that the proposed changes are intended to harm ESE, and the requests for modifications to the proposals. The report recommends that the proposals be adopted, with minor changes. Those recommendations have been adopted and the minor changes incorporated in the attachments to this order.

In accordance with 29 **Del.C.** §10118(b)(2), a brief summary of the Board's findings of fact with respect to the evidence and information follows. The Board finds that it has the legal authority to adopt the proposed revisions in the form attached and that the correct process for adoption of the revisions has been followed. The Board finds that there is a reasonable basis in the record for the proposed revisions and that they serve to implement the intent of the General Assembly as expressed in 7 **Del.C.** Chapter 64. The Board also finds that the intention of the attached revisions is unrelated to any of the allegations raised by ESE with respect to the dealings between DSWA and ESE. The Board finds that the revision to the price for the disposal of dry waste will facilitate the recycling of dry waste materials and otherwise serve the purposes of sound solid waste management. Likewise, the Board finds that the control of municipality waste is consistent with the General Assembly's intent and serves the public interest. The Board finds that the reporting requirements for waste not delivered to DSWA facilities are reasonable and necessary. The Board finds that there is a reasonable basis to make minor modifications to the proposed revisions, in accordance with the recommendations of the staff report. In all three cases, the recommendations are for revisions which reduce the level of regulatory control and are in accordance with requests made expressly or implicitly during the public input process. They are deemed nonsubstantive matter. One makes clear that source separated recyclables need not be delivered to DSWA facilities. Such clarification is consistent with how the regulations have been interpreted in the past. A second modification deletes authorization to modify the fee for dry waste disposal on 30 days' notice. The third modification reduces the level of control of municipality waste by removing from the proposed revisions language which would have swept into the requirement those persons who contract with municipalities. Finally, with respect to the Board's findings, the Board hereby incorporates by reference the analysis contained in the Hearing Officer's report which is part of the record.

HEARING OFFICER'S REPORT
JUNE 5, 2001

I. INTRODUCTION

On May 24, 2001, the undersigned conducted a public hearing to gather public comment and input on the Delaware Solid Waste Authority's (DSWA) proposal to amend its regulations, adopted in March 1999; to revise its Differential Disposal Fee Program (DDFP); and to revise the Statewide Solid Waste Management Plan (Statewide Plan). In addition, the record was kept open following the hearing to allow written comment up to and including June 1, 2001. This report organizes and summarizes the public input regarding the above proposals. It also provides additional information and makes recommendations in response to the public input. For the most part, the recommendations conclude that the proposal should be implemented. A few minor modifications to the proposal are recommended.

II. SUMMARY OF PUBLIC INPUT

The following written materials were presented by the public.

Exhibit 1: DSWA Proposal Package as published in the Delaware Register of Regulations.

Exhibit 2: DSWA letter to all Contract Customers providing a copy of the Proposal and informing them of the Public Hearing.

Exhibit 3: Typical notice of the Public Hearing as published in local newspapers.

Exhibit 4: Letter from Mr. Richard M. Lapointe, Public Works Director for the City of Newark, Delaware.

Exhibit 5: Letter from Clifton C. Murray, Mayor of the Town of Selbyville, Delaware.

Exhibit 6: Written testimony of Stephen W. Simmons, Business Manager of American Ref-Fuel, Chester Pennsylvania.

Exhibit 7: Letter from David Staats, P.A. on behalf of Eastern Shore Environmental, Inc.

Exhibit 8: Sign in Sheet from the Public Hearing.

Exhibit 9: May 31, 2001 Letter from Tempe Steen, Esquire, on behalf of the Town of Millsboro.

Exhibit 10: May 31, 2001 Letter from American Ref-Fuel.

Exhibit 11: May 31, 2001 Letter from Maryland-Delaware Solid Waste Association.

Exhibit 12: June 1, 2001 Letter from Prickett, Jones & Elliott.

Exhibit 13: June 1, 2001 Memorandum from Prickett, Jones & Elliott.

Exhibit 14: June 1, 2001 Appendix of Exhibits submitted by Prickett, Jones & Elliott.

Exhibit 15: June 1, 2001 Letter from Delaware Department of Natural Resources & Environmental Control (DNREC).

In addition to the above, **Exhibit 16** is a transcript of the public hearing.

Oral testimony presented at the Public Hearing is summarized as follows:

Mr. Steven W. Simmons of American Ref-Fuel Company read from his prepared statement (see Exhibit 6). He objected to the DSWA proposal to reinstate regulatory

flow control of municipally generated waste. He then discussed the safety and operational record of American Ref-Fuel.

Mr. David Staats, an attorney representing Eastern Shore Environmental, Inc. (ESE), stated that he objected to DSWA reinstating regulatory flow control over municipalities.

Mr. Scott Koenig, representing the Division of Public Works for the City of Dover, Delaware, stated that the City was opposed to the reinstating of regulatory flow control on municipalities. Mr. Koenig also stated that it was in the City of Dover's best interests to keep all options open and to find the lowest priced services. Mr. Koenig also requested that DSWA consider implementing a monthly rebate instead of an annual program.

Mr. Jim Short, representing DNREC, raised questions regarding DSWA definitions and reporting requirements.

Mr. John Paradee, an attorney representing ESE, reiterated the statements made by Mr. Staats.

The written materials are discussed in Section III.

III. A. DSWA AUTHORITY.

Some of the comments question DSWA's authority to adopt the proposed changes. The questions arise out of DSWA's enabling authority contained at 7 **Del.C.** Chapter 64, the so-called dormant Commerce Clause contained in the U.S. Constitution, and the Sherman Act which addresses monopolies. This report contains a brief summary of the contentions and a brief response to the contentions. However, the comments raise legal issues that have been considered more fully by DSWA's counsel in advance of the public notice of the proposed regulatory changes. DSWA stands ready to defend, if necessary, the legality of the proposal.

The comments, particularly the comment submitted by ESE, contain analysis of DSWA's enabling authority, which apparently fails to read the enabling statute as a whole. In other words, ESE's comment latches on certain provisions of the enabling statute to find meanings that clearly were not intended. For example, ESE argues that the meaning of "municipality" should be gleaned from a clause in Section 6405(a)(27), which speaks to DSWA's authority to contract with various entities. ESE suggests from that section that the word "municipality" (a word not used in Section 6406(a)(7)) should be construed not to include counties, towns and other public bodies. However, the word "municipality" is defined in Section 6402 to include just such entities.

Moreover, although ESE's comment argues in a section titled "DSWA Lacks Authority for its Proposed Regulations," the text within ESE's argument admits that Section 6406(31) "would authorize DSWA's proposed flow control regulations." That section reads:

> "[DSWA has the authority to] Control, through regulation or otherwise, the collection, transportation, storage and disposal of solid waste, including the diversion of solid waste within specified geographic areas to facilities owned, operated or controlled by the Authority…"

A detailed discussion of DSWA's enabling authority is beyond the scope of this report. However, it is obvious that the enabling statute contains broad authority for the implementation of the proposed changes. Numerous provisions speak to such authority, including Section 6401 (findings, policy, purpose); Section 6404 (functions of Authority); and Section 6406 (powers of Authority). One provision, Section 6404(5), states, in part:

> "It is the intention of this chapter that the Authority shall be granted all powers necessary to fulfill these purposes and to carry out its assigned responsibilities and that this chapter, itself, is to be construed liberally in furtherance of this intention."

With respect to the Commerce Clause, the comments fail to provide any convincing argument to the effect that DSWA cannot require municipalities, which are created by the State, to utilize DSWA facilities. Although the Commerce Clause may impose some restrictions on the State's control of the interstate flow of waste, the proposed regulatory changes as they relate to flow control of municipal waste merely require that State created public bodies utilize the State's facilities as contemplated by the enabling statute. Such requirement implements the State's choice to participate in the waste disposal service market in the manner it sees fit, just as any other entity does. The Commerce Clause is not implicated.

With respect to the Sherman Act, the regulatory controls contained in the proposal are not monopolistic. Assuming for the sake of argument that they were, immunity from any Sherman Act cause of action exists where the State activity is the consequence of legislative authorization. Such is the case here because DSWA's enabling statute authorizes flow control of municipality waste.

III. B. THE PROCESS FOR ADOPTION OF THE REGULATIONS

ESE also questions whether DSWA has followed the right procedure for rule-making under the Delaware Administrative Procedures Act (APA), 29 **Del.C.** Chapter 101. Again, these matters are ones that have been considered by DSWA's legal counsel and this report contains only a brief discussion of the comments.

ESE first contends that the notice of the rule-making was deficient because it allegedly failed to identify relevant legal authority and did not provide "critical information" in the notice. The notice requirements appear in the APA at 29

Del.C. §10115. Among other things, they require publication in the **Delaware Register of Regulations** and a reference in the notice to the legal authority relied upon for the rule-making. DSWA duly noticed the rule-making in the Register. Included in the notice was this statement:

> "The authority for the DSWA Regulations is contained in 7 **Del.C.** Ch. 64, most notably §6403."

Section 6403 contains three provisions (i, k, and l) that authorize rule-making for changes to the Statewide Solid Waste Management Plan, to fee schedules, and to regulations. These matters are precisely the subjects of the rule-making.

ESE's contention that the notice failed to contain critical information is unsupported by any requirement in the APA. The notice is required by the APA to provide a synopsis of the proposed changes (which was provided in the subject notice) but is not required to explain the reasons for the changes. Nonetheless, ESE claims that "The most glaring deficiency is DSWA's complete failure to provide any reason for the proposed changes." (emphasis in original) ESE cites no authority for that proposition and there is no such authority. ESE's position is based on what it thinks the law should require, not on what the General Assembly has determined is the law.

Similarly, ESE argues that the rule-making process should include another requirement not in the APA which would allow ESE to comment on other input about the proposed changes to the Board. The General Assembly did not see fit to adopt that procedure, which conceivably could result in a circular process that does not end.

ESE also contends that the APA dictates that rule-making be initiated pursuant to a section (Section 10114) which allows for (but not require) the process to be initiated by the motion of an "agency member" (it is unclear who a "member" is for purposes of DSWA) or petition of anyone else. This section identifies only one of the many means for initiating rule-making.

Finally, ESE contends that the record does not contain a reasonable basis for the proposed changes. In addition to this report and the attached exhibits, DSWA has a long history of dealing with the issues raised in the comments and proposed changes. Those changes are refinements to existing programs and are based on DSWA's experience and expertise developed over the last few decades.

III. C. ESE'S THEORY RE DSWA'S MOTIVATION

ESE owns and operates a transfer station located at 836 Postles Corner Road, Little Creek, Delaware. ESE's written comment contends that the proposed regulatory changes are part of a campaign calculated to harm ESE's business. Exhibit 13. The comment references various "steps" that DSWA allegedly has taken to block ESE's entry into the MSW disposal market. Most of those steps are described in the form of bald allegations with no documentation to support them. For example, ESE claims that DSWA threatened to remove recycling centers from the City of Milford in order to persuade Milford to stop doing business with ESE. Similarly, ESE contends that "DSWA tortiously interfered with ESE's expected disposal contract with Dover." However, there is no basis in fact for such contentions. DSWA has entered into contracts with the cities of Milford and Dover, under which those cities are required to deliver municipal solid waste (MSW) to DSWA's landfills. Exhibits A and B. ESE's efforts to encourage those cities to break their contracts have been frustrated, but not by the means suggested in ESE's comment (e.g., DSWA has not threatened to remove recycling centers from Milford, but merely reminded the City, after documenting that contracted waste was not going to DSWA's facilities, that the contract requires the waste to be delivered to DSWA. Exhibit C).

ESE also claims, without documentation, that DSWA has initiated "sham litigation" to appeal ESE's DNREC permit for the transfer station. In fact, the appeal is well-founded in that the permit was issued without due consideration of requisite planning and zoning approvals and possible environmental impacts. Attached as Exhibit D is a copy of DSWA's pleading, which, among other things, points out the many deficiencies in ESE's proposal.

ESE also suggests that DSWA brought a frivolous lawsuit in Chancery Court that challenges ESE's authority to operate its transfer station because ESE did not obtain the required zoning approval. Initially ESE engaged in discussions with Kent County about obtaining a conditional use approval, it then proceeded to file a civil rights suit against the County and its Levy Court Commissioners claiming that conditional use approval was unnecessary, only then to recognize that proper zoning approval had not been obtained by filing an application for conditional use approval which is currently pending before Kent County.

In sum, DSWA and ESE unfortunately have had an adversarial relationship in some respects. That relationship has evolved because DSWA has sought to fulfill its statutory responsibilities regarding (1) the proper handling of waste in the State; and (2) the enforcement of contractual commitments that enable DSWA to meet its obligations to the public.

The proposed regulatory changes do not unduly interfere with ESE's business opportunities. Under the proposed system, ESE has a right to compete for private hauler business. In addition, the proposed regulatory system allows ESE to continue to do what DSWA cannot by law do, namely bring municipal waste and dry waste from out of state for processing. ESE's principal complaints appear to be that (1) DSWA's proposed rate for the disposal of dry waste is too low for ESE to compete; and (2) the requirement that

municipalities bring waste to DSWA facilities allegedly violates the Commerce Clause. Those arguments are addressed below and above.

III. D. DRY WASTE PRICING

The proposed regulatory changes include provision for a new price for dry waste at the Southern Solid Waste Management Center and the Central Solid Waste Management Center in Sussex and Kent Counties, respectively. The new price will be $40.00 per ton, as opposed to the old price of $58.50 per ton (before rebate which reduces the price to $48.50 per ton). ESE asserts that such pricing is predatory (i.e., designed to harm ESE) because allegedly (1) it costs more than $40.00 per ton to process dry waste; (2) the pricing would encourage the delivery of more dry waste to DSWA landfills and thereby utilize more landfill space, a result contrary to claimed DSWA policy; and (3) the pricing is not implemented in New Castle County because ESE's facility is not located there.

All of the allegations are groundless. First, DSWA did not know at the time of its new pricing proposal what it costs ESE to process dry waste. In fact, although ESE's written comment received by DSWA on June 1, 2001, states that it costs $45.00 per ton, no documentation supports that number and it may be that the real cost for ESE is less. In any event, ESE's cost was not a consideration in the price proposal.

As discussed below, DSWA's principal motivation to lower the price for dry waste is to facilitate its recycling efforts, as mandated by statute. The lower price will encourage users of disposal services to separate dry waste from MSW and thereby obtain the lower dry waste disposal fee. Due to various uncertainties such as quantities of dry waste that will be delivered to DSWA's facilities, DSWA is not now in a position to calculate the exact costs of processing dry waste. However, DSWA has an adequate basis to believe based on its experience and expertise that the program will be cost effective. DSWA has an agreement in place with a company located in Baltimore, Maryland, Recovermat, under which Recovermat will haul dry waste delivered to DSWA's facilities in Sussex County and Kent County for a cost significantly less than $40.00 per ton. Under the agreement Recovermat will process the dry waste so collected and return recovered product, named "Recovermat," at no cost to DSWA for use as cover at DSWA's landfills. Recovermat will also be utilized to build roads. The benefits of the recycling program include the conservation of landfill space and the preservation of virgin materials for other uses that would otherwise be used for landfill cover and road construction.

Although ESE maintains that the regulatory changes are motivated by DSWA's recent conflicts with ESE, in fact the recycling of dry waste for such purpose has been in the works for several years. As early as 1996, DSWA explored the possibility. Exhibit E. Correspondence in 1998 reflects that DSWA received DNREC's approval for testing Recovermat at DSWA's facilities. Exhibit F. In the year 2000, DNREC finally approved the use of Recovermat. Exhibit G. It should also be pointed out that DSWA has had in place a program for the recycling of dry waste in New Castle County on a limited basis for a period of a few years. That program has been implemented by Burns and Company and the trade name of its product is "Barrier." Exhibit H.

ESE has also contended that the proposal varies from its "normal and customary practice… to give approximately 18 months advance notice of price changes." The proposed changes do not alter the base rate for the disposal of solid waste, $58.50/ton, which has been in place for several years. If DSWA were to increase its rates, it might be desirable to provide lengthy notice to enable affected parties to budget for the change. In this case the proposal is to reduce the price it charges for dry waste. Shorter notice is thus appropriate and also consistent with the relatively short time period in which the existing DDFP was implemented.

Recycling is an important part of DSWA's Waste Management Program. As you know, there are currently three significant programs underway which promote recycling. Recycling Centers, for the separation of source waste such as newspapers, aluminum cans, etc., are operated around the State at a cost of approximately $3,500,000.00 annually (less approximately $800,000.00 for the sale of the materials recycled). Exhibit I. In addition, DSWA operates a program for recycling hazardous household products, and has recently undertaken steps to recycle electronic goods. Exhibits I and J. These recycling programs are subsidized by DSWA's overall fee structure and illustrate the fact that DSWA is concerned not merely with the profitability of its individual waste management programs, but also with sound management practices which are consistent with its legislative mandate. DSWA must establish a budget which covers all of its operations, including those which are subsidized, since DSWA receives no operating or capital funds from the State.

Finally, with respect to the price of dry waste processing, such pricing was considered in DSWA's last budget plan, notwithstanding ESE's contentions to the contrary. Exhibit K.

As indicated above, ESE claims that the proposed pricing for dry waste will result in more dry waste being delivered to DSWA landfill facilities, and thereby use more landfill space. The opposite is true. Much of the dry waste that is brought to the landfills now is commingled with MSW. As you know, DSWA has operated the landfills for many years and has processed a great quantity of waste. See Exhibit I for the total tonnage of waste processed in year 2000. Based on its experience and expertise, DSWA is convinced that considerable quantities of dry waste that are now commingled with MSW can be separated and that such

separation will result in less waste received as MSW (commingled waste is treated as MSW). Moreover, although more dry waste is expected to be delivered to the landfill, it will not take up more landfill space because it will be recycled.

Finally, ESE argues that DSWA's intention to harm ESE is reflected in the fact that the differential pricing for dry waste applies to the Kent and Sussex County landfills, but not to Cherry Island, the New Castle County landfill, with which ESE's transfer station is less likely to compete. Although there is a possibility that the lower price eventually could be implemented at the Cherry Island facility, DSWA would prefer to first see how the program works in Kent and Sussex Counties. DSWA has some concerns regarding its ability in New Castle County to insure that out of state dry waste is not being brought to Cherry Island (prohibited by Delaware law). The proximity of Cherry Island to Pennsylvania and New Jersey, with its large population centers, makes it more difficult to control the entry of out-of-state waste in New Castle County.

III. E. MUNICIPAL WASTE CONTROL.

ESE and others have submitted comments that question DSWA's legal right to require "municipalities" to deliver waste to DSWA facilities. That issue, as it relates to DSWA's enabling authority and the Commerce Clause is addressed above (Section III. A). This section of the report responds to comments that the proposed control of municipality waste would not benefit citizens of the State. Specifically, it has been contended that such control would stifle competition and result in the payment of higher rates.

As explained above, DSWA's proposed changes are consistent with its enabling legislation and it can be fairly stated that the General Assembly has determined that it is in the best interest of Delaware's citizens to allow for the control of municipality waste. Thus the statute defines "municipality" to include counties, cities, towns, and "other public bodies." The statute also finds that local governments need help to provide adequate waste disposal services and that State governmental powers should be used to assist local governments. Section 6401. Further, the statute requires that DSWA provide essential waste disposal services without resort to State funds or use of the State's credit to obtain financing. Instead, the statute contemplates that DSWA shall pay for debt service, capital improvements and its operating costs out of user fees that it can collect from private entities or impose on "municipalities." It was the General Assembly's judgment that such a system would be in the public interest and of benefit to the citizens of the State. Accordingly, DSWA has financed at great costs a number of waste disposal facilities and implemented a variety of recycling programs consistent with the General Assembly's objectives. To fund those programs, DSWA has instituted a system through its regulations and differential disposal fee program to assure on a long-range basis that funds will be available to pay for the programs.

The proposed regulatory and management plan changes would benefit Delaware citizens in various ways. First, the proposal includes plans for new transfer stations to be located in the Dover area, Milford area and Rehoboth/Lewes area, which will reduce the cost to municipalities for transporting waste to DSWA facilities. See Exhibit L, which relates to the new transfer stations.

Second, under DSWA's fee program, municipalities may access DSWA's services under the same competitive price arrangement that is available to private entities, including the rebate provisions. That DSWA's prices are competitive with private industry disposal services is clear – approximately 97% of solid waste generated in Delaware is brought voluntarily to DSWA's facilities pursuant to contracts voluntarily entered into by the users, including the municipalities. Exhibit I. The regulatory proposal merely requires municipalities to do what they are already voluntarily doing because it is in their interest to do so. The advantage to DSWA is that it assures long-range stability with respect to the funding for the programs which benefit Delaware citizens. Moreover, the proposal will provide the same or cheaper rates for MSW and dry waste, which will generate new savings for the municipalities. ESE incongruously complains on the one hand that Delaware's citizens will be adversely affected by the program and, on the other, that it cannot effectively compete with DSWA's low rate.

Having duly considered the comments on the proposed changes, there are two minor modifications to the proposal that are hereby recommended.

One, the City of Millsboro objected to the provision in the proposal that would allow DSWA to modify prices for dry waste disposal services on thirty days' notice. If the other proposed changes to the existing program are adopted, the stability of DSWA's source of funds would be assured and there would be little anticipated need to modify the price on any short-term basis. Thus, it is recommended that the clause in the DDFP that authorizes such price adjustments on 30 days' notice be deleted.

Two, again if the other elements of the proposed changes are adopted, it would not be necessary to require private haulers who contract with municipalities to bring the waste to DSWA facilities (thus it is recommended that the applicable clauses in Section 4.01(b) of the regulations be deleted so as not to require private haulers who contract with municipalities to bring the waste to DSWA facilities). That conclusion is based on the assumption that most of the municipality waste will continue to go to DSWA facilities because of the convenience of the new transfer stations and the competitive price offered by DSWA. The recommendation does not go so far as to suggest that municipalities that do not utilize private haulers should be

allowed to take their waste wherever they want because such an arrangement could result in instabilities to the source of funds needed to implement the waste-management programs. The General Assembly in adopting the DSWA enabling legislation envisioned that the State entity which it created (DSWA), should be entitled to require other State entities (municipalities) it created, to use the facilities which were created for the benefit and use of such entities.

III. F. CITY OF NEWARK COMMENTS

In a letter dated May 23, 2001, Mr. Richard M. Laponite, Public Works Director for the City of Newark, provided comments which focused on distinctions involving dry waste and recyclables. Exhibit 4. The emphasis of the comments was that source separated recyclables should not be subject to DSWA's proposed delivery requirements. DSWA has not required source separated materials to be delivered to its facilities under the current Differential Disposal Fee Program and it is recommended that such practice be formalized by including under the Section 4.03 exemptions a new subparagraph h. to read "Source separated recyclables." Such addition would simply codify practice under the existing regulations and would not result in any change.

III. G. DNREC COMMENTS.

By letter dated June 1, 2001, DNREC's Division of Air and Waste Management submitted comments and questions on the DSWA's proposed revisions. Exhibit 15.

The first comment questioned DSWA's proposed modification to the definition of dry waste to include "…construction and demolition waste not mixed with waste that is other than dry waste…" The proposed change makes clear that the industry term for dry waste, which is "C&D" (Construction and Demolition) waste, is included in the DSWA definition. The focus of the proposed change is commercial rather than regulatory and DSWA has had long term experience in handling such materials at its facilities. DSWA would review its proposed dry waste activities with DNREC to assure satisfaction of regulatory requirements.

The second comment questions the consistency of requiring under Section 3.24 reporting of waste collected in Delaware and disposed in Delaware at non-DSWA facilities and the requirement under Section 4.01(a) for reporting all waste collected in Delaware which is disposed at <u>any</u> non-DSWA facility. The requirements are consistent in that the Section 4.01(a) requirement is broader and requires the identification of the generator of the waste. Such information is important to DSWA to support DSWA's planning and waste management efforts.

The third comment questions DSWA's intentions regarding source separated recyclables and requirements for disposal of municipality waste. As stated above, DSWA has always considered source separated recyclables as exempt from delivery requirements and it is recommended that Section 4.03 be worded to formally recognize the exemption.

The fourth comment addresses the deletion of the requirement of recycling centers to submit reports to DSWA, and the substitution of the provision with a requirement to file with DSWA information provided to DNREC. It is anticipated that DNREC, with input from the Recycling Public Advisory Council, will assume responsibility for obtaining the subject information, and if such should not be the case, DSWA would consider further amendment to the provision in the future.

The fifth comment is in the form of a question regarding future transfer station/material recovery projects and the applicability of permit requirements. DSWA would review such matters with DNREC prior to project implementation.

III. H. OUT OF STATE REPORTING REQUIREMENTS

ESE argues that the proposed regulations impose reporting requirements for out of state waste disposal which are not imposed on in-state waste disposal, and therefore impose an impermissible burden on interstate commerce and violate the Commerce Clause. ESE recites no facts to support this argument and it is unclear why the reporting requirement would be burdensome.

The requirement is necessary because DSWA is charged with a number of responsibilities that require it to have a knowledge regarding the source and disposal destination of solid waste generated in-state. To the extent that waste is not delivered to its facilities, the mechanism for obtaining the necessary information that is least burdensome to the regulated entity is the simple reporting requirement contained in the proposed rule-making.

Finally, DSWA has posed similar requirements in the past. See Exhibit M. Such requirement has not resulted in any difficulty that has been reported to DSWA.

IV. CONCLUSION

In addition to the above reasons for implementing the proposed changes to the Regulations, the DDFP and the Statewide Plan, the undersigned has reviewed the enabling statute and the Statewide Solid Waste Management Plan (Exhibit N), and has concluded that the proposed changes are consistent with and serve the purposes set forth therein. Thus, it is recommended that the proposed changes be adopted with the minor modifications suggested above. Attached is an Order that, if adopted, would implement these recommendations.

Regulations of Delaware Solid Waste Authority
(adopted March, 1999)

I. PURPOSE AND AUTHORIZATION

These Regulations * are adopted pursuant to the Act to

achieve the goals set forth therein.

II. DEFINITIONS

"Act" means the Delaware Solid Waste Authority Act, 7 **Del.C.** Ch. 64.

"CEO" means Chief Executive Officer and Manager of DSWA.

"Chairman" means the Director designated by the Governor as chairman of DSWA in accordance with 7 **Del.C.** Section 6403(a).

"Department" means the Department of Natural Resources and Environmental Control of the State of Delaware.

"Directors" means the directors of DSWA holding office in accordance with 7 **Del.C.** Section 6403.

"Dry Waste" means wastes including, but not limited to construction and demolition waste not mixed with waste that is other than dry waste, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"DSWA" means the Delaware Solid Waste Authority, an instrumentality of the State of Delaware, existing pursuant to the Act.

"Hazardous Waste" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, or chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible illness, or poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes listed described in Sections 261.31, 261.32 and 261.33 of the Delaware Regulations Governing Hazardous Waste. ~~and those solid wastes which otherwise exhibit the characteristics of a hazardous waste as defined in Part 261 of the Delaware Regulations Governing Hazardous Waste.~~

"Industrial Process Solid Waste" means solid waste produced by or resulting from industrial applications, processes or operations and includes, by way of example and not by way of limitation, sludges of chemical processes, waste treatment plants, water supply treatment plants, and air pollution control facilities and incinerator residues, but does not include the solid waste generated at an industrial facility which is comparable to municipal solid waste, such as cafeteria waste, cardboard, paper and pallets, crates or other containers constructed of and containing non-hazardous combustible material.

* The Department also has promulgated regulations pertaining to solid waste disposal.

"Junkyard" means an establishment or place of business which is maintained, operated or used for storing, keeping, buying or selling junk or wrecked, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

"Licensee" means a person holding a license issued by DSWA pursuant to Article III of these Regulations.

"Municipality" means a county, city, town or other public body of the State of Delaware.

"Permit" means the stickers which DSWA issues under the License identifying the Licensee's account number and a vehicle number, which shall be affixed to both sides of the vehicle.

"Person" means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision, or other duly established legal entity.

"Solid Waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or ~~water~~ air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ~~Section 402 of the Federa1 Water Pollution Control Act,~~ 7 **Del. Code**, Chapter 60 as amended, or source, special nuclear, or by-product materials defined by the Atomic Energy Act of 1954, as amended, or materials separated on-site by the generator thereof for further use, service or value.

"DSWA Solid Waste Facility" ~~means any landfill, recycling project, including waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility of project operated by, on behalf of, or under contract with DSWA.~~ means any solid waste disposal site, system or process and the operation thereof, including but not limited to personnel, equipment and buildings. Such facility includes any landfill, recycling project, including waste to energy projects, collection station, transfer station, or other solid waste processing or disposal facility for projects operated by, on behalf of, or under contract with DSWA.

"Special Solid Wastes" means those waste that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

~~**"Toxic Substance"** means any chemical substance or mixture that may present an unreasonable risk of injury to health or the environment.~~

"Transfer Station" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing,

recycling or disposal.

III. COLLECTION AND LICENSING

3.01 No person shall collect, transport, and/or deliver solid waste in the State of Delaware without first having obtained a license from DSWA, provided, however, that:

a. persons transporting and delivering solid waste that they created on their premises resulting from their activities shall not be required to obtain a license therefore; and

b. persons collecting, transporting and/or delivering solid waste in the course of their employment by a person holding a license from DSWA shall not be required to obtain a license therefore; and

c. a license shall not be required for the collection, transportation, or delivery exclusively of dry waste, leaves, street and storm sewer cleaning materials, agricultural wastes or those materials identified in paragraph 4.02 (a) - (e) of these Regulations.

3.02 With respect to solid waste delivered to a DSWA Solid Waste Facility, the CEO, based upon a determination of threat to public health or welfare or other emergency, may designate a specific Solid Waste Facility for ~~use~~ disposal of such waste.

3.03

a. Each Licensee shall clearly display on both sides of the vehicle:

i. the license permit ~~stickers~~ provided by DSWA which is the property of DSWA and subject to cancellation, suspension and/or revocation. The license permit ~~stickers~~ shall be legible at all times and shall be placed in an area of high visibility to allow immediate identification by DSWA Weighmasters and Compliance Officers. License permit ~~stickers~~ shall be not be placed on fuel or hydraulic tanks or reservoirs, or areas where the operation of mechanical parts would impair the visibility of the permit ~~stickers~~;

ii. the Licensee's business name with letters at least three (3) inches high and of a color that contrasts with the color of the vehicle. No name other than the Licensee's business name shall be displayed. A regularly used business logo may also be displayed.

b. Licensees shall maintain business offices and phone numbers as follows:

i. Licensees who collect on a yearly average 100 tons per month or more:

(a) each Licensee shall maintain a manned business office location or locations and designate a representative in responsible charge thereof;

(b) each Licensee shall provide his business office street address in addition to a Post Office Box;

(c) telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by a responsible and authorized person at the main office during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. An answering machine shall not satisfy this; and

(d) notification regarding any change of business location or telephone number shall be provided to DSWA in writing at least fifteen (15) days prior to such change.

ii. Licensees who collect on a yearly average less than 100 tons per month:

(a) each Licensee shall provide a street address in addition to a Post Office Box for the business office or dwelling that is able to receive correspondence. A Post Office Box shall not satisfy this requirement;

(b) telephone coverage with a Delaware telephone number listed in the appropriate Delaware Telephone Directory in the business name of the Licensee shall be maintained by the Licensee during normal business hours. Licensees with main offices located outside of the State of Delaware may utilize a call forwarding service so that a Delaware telephone number may be dialed to reach an out-of-state office. An answering service may be utilized. An answering machine shall not satisfy this requirement; and

(c) notification regarding any change of business location or telephone number shall be provided to DSWA in writing at least fifteen (15) days prior to such change.

3.04

a. Each Licensee shall maintain insurance at the following minimum amounts:

i. Automobile liability: $350,000 combined bodily injury and property damage per occurrence;

ii. General liability: bodily injury $300,000 per occurrence; property damage: $100,000 per occurrence; and

iii. Workman's Compensation as required by law.

b. Each Licensee shall provide to DSWA new certification of the coverages specified in subsection 3.04(a) including a certification within ten (10) days of renewal. Each such certification of insurance shall provide that DSWA receive at least thirty (30) days advance notice of any canceled, discontinued, or diminished coverage.

3.05 Each Licensee shall maintain collection vehicles to comply with the following minimum requirements:

a. Each collection vehicle body shall be maintained to prevent fluids from discharging onto the surface of the ground.

b. Each collection vehicle body shall be capable of being readily emptied.

c. Each collection vehicle shall be kept in as much of a

sanitary condition as to control the presence of vectors.

d. Containers, boxes, and other devices, excluding open top trailers, referred to as roll-offs, used by Licensees for collection of solid waste in excess of thirty (30) gallon capacity shall be enclosed or covered to reduce fluid leakage or collection of water.

e. Each collection vehicle shall be equipped so that it can be readily towed, and maintained in good operational condition for safe and stable operation and/or navigation in or about a Solid Waste Facility.

f. Each collection vehicle used or proposed for use by an applicant or Licensee and the contents of any collection vehicle shall be subject at all times to inspection by DSWA.

~~g. All roll-off containers used for collecting, transporting and delivering of solid waste generated within the State of Delaware shall display stickers issued by DSWA near the bottom and front of both sides of each roll-off. Solid waste described in Section 4.03 shall be exempt from this requirement.~~

3.06 Each Licensee shall comply with the following requirements while collecting, transporting and/or delivering solid waste.

a. Solid waste shall not be processed, scavenged, modified, or altered unless in compliance with applicable laws and regulations.

b. Solid waste in collection vehicles and/or containers shall be suitably enclosed or covered to prevent littering or spillage of solid waste or fluids.

c. Solid waste shall not be stored in a collection vehicle for more than twenty-four (24) hours unless the solid waste is being delivered to a Solid Waste Facility and the facility is closed for the entire day when the twenty four hour period expires, in which case the collection vehicle may discharge the solid waste at the facility on the next day that the facility is open.

d. Any spillage of solid waste shall be immediately cleaned up and removed.

e. No undue disturbance shall be caused in residential areas as a result of collection operations.

3.07 All collection vehicles shall be owned in the name of the Licensee or leased in the name of the Licensee. Upon submission of an application for a first time license, each applicant shall provide a copy of a valid motor vehicle registration card for each collection vehicle. If the collection vehicle is not owned by the applicant, a copy of a written motor vehicle lease agreement shall also be submitted with the application.

3.08 ~~Each Licensee shall provide and continuously maintain backup capability to allow for continued collection, transportation, and/or delivery of solid waste in the event of equipment breakdown.~~ As a minimum each Licensee, except for municipalities with a written agreement with a licensed collector ~~another municipality~~ for such backup, shall own and/or lease, in the name of the licensee, at least two fully and continuously operational collection vehicles of like service, except for down time for routine maintenance

3.09 Only enclosed vehicles or vehicles capable of being enclosed or covered to prevent any ~~compactor type vehicles or "roll-offs" with a cover sufficient to prevent any~~ spillage of, loss or littering of solid waste shall be used by Licensees for collection, transportation, or delivery of solid waste, except for vehicles utilized only to collect, transport or deliver the solid wastes referenced in Section 4.02 (a-e) and Section 4.03, infra, or oversized bulky waste, such as couches and refrigerators. Such vehicles used for oversized bulky waste shall not satisfy part or all of the Section 3.08 requirement that each Licensee own and/or lease at least two fully and continuously operational vehicles. An exception to the requirements of the first sentence of this section may be authorized by the CEO or his designee in circumstances where it is physically impossible to provide solid waste collection services with such vehicles.

3.10

a. With the exception of any municipality, each applicant for a license and each Licensee shall provide to DSWA and maintain a bond under which the Licensee shall be jointly and severally bound with a corporate surety qualified to act in the Courts of Delaware to DSWA for amounts due to DSWA for fees or charges for services. A Bond or Surety is not required if the licensee pays at the time of solid waste delivery.

b. In lieu of corporate surety, the applicant or Licensee may provide security for its bond by depositing withDSWA, one of the following in an amount at least equal to the amount of the bond:

i. United States Treasury bonds, United States Treasury notes, United States Treasury certificates of indebtedness, or United States Treasury bills; or

ii. bonds or notes of the State of Delaware; or

iii. bonds of any political subdivision of the State of Delaware; or

iv. certificates of deposit or irrevocable letters of credit from any state or national bank located within the United States; or

v. United States currency, or check for certified funds from any state or national bank located within the United States.

c. The amount of the bond specified in paragraph 3.10 (a) shall be based upon the total solid waste tonnage charged by the Licensee at a DSWA Solid Waste Facility during for the month of November immediately preceding the license year for which the license is issued in accordance with the following schedule:

"TONNAGE CHARGED FOR PRIOR NOVEMBER"	AMOUNT OF BOND
Less than or equal to 750 tons	(minimum) $5,000
Greater than 750 tons but less than or equal to 1,500 tons	$25,000
Greater than 1,500 tons	$50,000
Each additional 1000 tons over 1,500 tons	$5,000

If the Licensee has expanded or acquired its business since the preceding November, then the total tonnage for November and Bond amount will be adjusted to account for such increase. By reference to the accounts, business, or assets acquired, an estimate will be made of what the charges in November would have been if the Licensee had been operating the newly acquired accounts, business, or assets at that time.

3.11 Any person desiring to collect, transport, and/or deliver solid waste in the State of Delaware shall submit a completed application for license to DSWA on forms provided by DSWA substantially in the form set forth in ~~Appendix~~ Attachment "A" of these Regulations. DSWA shall approve or deny license applications within thirty (30) days of receipt of a completed application.

3.12 DSWA may require information to supplement that requested in ~~Appendix~~ Attachment "A" in reviewing license applications.

3.13 The license period shall be July 1 to June 30 annually. Applications for license renewal shall be submitted to DSWA at least thirty (30) days prior to the expiration date.

3.14 Before any additional collection vehicle or substitute collection vehicle is utilized for the collection, transportation, and/or delivery of solid waste, the Licensee shall submit to DSWA the following:

a. The name, address and telephone number of the owner of the vehicle.

b. The state motor vehicle registration number.

c. A description of chassis by year and manufacturer.

d. A description of the body by year and manufacturer.

e. The legal weight limit of the vehicle.

f. The volume of the body of the vehicle in cubic yards.

g. Evidence of the insurance coverage required by this Article.

3.15 Each license shall contain the following:

a. Owners Name and/or trading name.

b. Physical and/or mailing addresses.

~~b. A listing of all collection vehicles under the license~~.

c. License period.

~~c. The location or locations for delivery of solid waste for each collection vehicle.~~

d. Authorized signature.

e. ~~d.~~ Special license conditions regarding collection, transportation, and/or delivery of solid waste, as specified by DSWA.

3.16 Each license and/or collection vehicle may be transferred subject to prior approval of DSWA. Except for a municipality with a written agreement with a licensed collector ~~another municipality~~ for backup capacity, no person shall be entitled to collect, transport and/or deliver solid waste under another person's license.

3.17 Notwithstanding anything to the contrary contained in these Regulations, a Licensee may operate a replacement vehicle on a temporary basis for a period of fifteen (15) days; provided further, that the licensee shall provide DSWA an original signed letter on company letterhead providing the information listed in Section 3.14 of these Regulations. An original letter must be submitted for each day of operation until DSWA license permits ~~stickers~~ are properly displayed on the vehicle or the vehicle is removed from temporary service. Letters must be taken to the weighstation of the DSWA Solid Waste Facility.

3.18 No license shall be issued to any person who:

a. has an account with DSWA that is past due in accordance with DSWA policies or

b. is obligated to file a report in accordance with Section 8.02 of these Regulations and has not done so for the immediately preceding calendar year.

3.19 Any person who first collects, transports, and/or delivers solid waste within the State of Delaware, without leaving first obtained a license under this Article, shall not be issued a license under this Article, until the expiration of one hundred twenty (120) days after the last day on which such collection, transportation and delivery without a license occurred, as determined by the CEO, or his designee.

3.20 Any Licensee who does not maintain his principal place of business in Delaware shall designate an agent, by name and street address (box number not acceptable), for service of process within Delaware. The agent shall be either an individual resident in Delaware or a corporation authorized under Title 8 of the **Delaware Code** to transact business in Delaware.

3.21 Before a license application is approved or denied, DSWA shall determine whether the applicant is able and reasonably certain to comply with these Regulations. Such determination may take into account any relevant factors including, but not limited to, the prior conduct of the applicant or any person, as defined herein, who is employed by or is otherwise associated with the applicant and may significantly affect the applicant's performance as it is related to the licensed activities. If the application is denied, the determination shall be reduced to writing and include the rationale for denial. Any person denied a license shall be entitled to request a hearing on such determination before the Directors of DSWA in accordance with paragraph 11.01(b) hereof.

3.22 No license shall be issued to any person who:

a. holds or has held a license from DSWA which has been revoked;

b. holds or has held a license from DSWA which has been suspended, for such period as the license is suspended.

c. holds or has held an interest in any Licensee whose license from DSWA has been revoked;

d. holds or has held an interest in any Licensee whose license from DSWA has been suspended, for such period as the license is suspended.

e. owns, in whole or in part, solid waste operating assets, including vehicles and routes, which were acquired from a Licensee whose license from DSWA was revoked or suspended and who acquired such assets from such Licensee for less than fair market value. Applicants for a license may be required to produce records and other information to demonstrate that they comply with this paragraph before a license will be issued.

3.23 A Licensee shall give written notice to DSWA at least seven (7) days in advance of any of the following:

a. sale or conveyance of a significant portion of its assets;

b. sale or conveyance of a significant portion of the equity interest (e.g. stock) held in it;

c. purchase or other acquisition of a significant portion of the assets of another Licensee;

d. purchase or other acquisition of a significant portion of the equity interest in another Licensee. For purposes of this paragraph, a significant portion shall mean one-half. Fragmentation of a transfer into smaller portions shall not be used to avoid the requirements of this paragraph.

3.24 Each Licensee shall submit a report for the preceding calendar year on February 1 of each year to DSWA stating, with respect to any waste collected in the State of Delaware and disposed of in the State of Delaware at a location other than a DSWA Solid Waste Facility, the quantities and types of waste disposed of, the names and address of the facility where it was disposed of, and any other information required on a form to be supplied by DSWA (See Attachment C).

IV. USE OF DSWA SOLID WASTE FACILITIES

4.01

~~a.~~

~~i. All solid waste generated within the State of Delaware shall be delivered to and disposed of at a Solid Waste Facility or some other duly licensed or permitted facility.~~

~~ii. The owners and occupants of all lands, buildings, and premises located within the State of Delaware, and all of those acting for them or under contract with them, shall use only Solid Waste Facilities or other duly licensed or permitted facilities for the disposal of solid waste generated within the State of Delaware.~~

~~b. Subject to the provisions of Section 3.02 and 3.18 of these Regulations, solid waste generated within the State of Delaware shall be delivered to a Solid Waste Facility or other duly licensed or permitted facility.~~

~~b. Persons delivering solid waste to a Solid Waste Facility shall pay to DSWA the applicable fees and user charges.~~

a. Except as provided in Section 4.0l,b, Section 4.02, Section 4.03, or as provided by contract, all solid waste generated within the State of Delaware shall be delivered to and disposed of at a DSWA Solid Waste Facility or some other duly licensed or permitted facility. Whoever disposes of such waste at a facility which is not a DSWA Solid Waste Facility shall submit a report for the preceding calendar year on February 1 of each year to DSWA stating the generators) of the waste, type and quantity of material disposed and the name of the facility and its address at which the waste was disposed.

b. Except as provided in Section 4.02, all solid waste and dry waste that is generated by a municipality (defined to include any county, city, town or other public body of the State of Delaware, such as State agencies, instrumentalities, school boards, and publicly supported institutions of higher learning) shall be disposed of at a DSWA Solid Waste Facility. All solid waste and dry waste that is collected or transported by a municipality **~~[or pursuant to a contract or other agreement with a municipality]~~** shall be disposed of at a DSWA Solid Waste Facility. **~~[Any such contract or other agreement between a municipality and any person shall so provide, and indicate that DSWA is an intended third party beneficiary of such contract or agreement.]~~**

c. Persons delivering solid waste to a DSWA Solid Waste Facility shall pay to DSWA the applicable fees, user fees, or contract fees. If different types of waste are commingled, the applicable fee shall be based on the type of waste in the commingled waste which has the highest fee.

4.02 The following solid wastes shall not be delivered to a DSWA Solid Waste Facility:

a. Hazardous wastes

b. Explosives

~~c. Toxic substances~~

[c. ~~d.~~] Pathological and infectious wastes

[d. ~~e.~~] Radioactive wastes

[e ~~f.~~] Solid wastes, as determined by the CEO or his designee, which will, because of their quantity, physical properties, or chemical composition, have an adverse effect on the DSWA ~~Solid Waste~~ Facility, or the operation of the DSWA ~~Solid Waste~~ Facility, or if an effective means of risk and cost allocation cannot be achieved.

[f ~~g.~~] Wastes which are prohibited by the DSWA Solid Waste Facility(s) DNREC permit.

4.03 The following solid waste may but is not required to be delivered to a DSWA Solid Waste Facility for disposal, ~~but need not be,~~ upon payment of the appropriate fee or user charge, provided that delivery of such solid waste is not otherwise proscribed by Section 4.02:

a. Agricultural waste generated on a farm.

b. Dry waste, unless such delivery is required by contract in which case it must be delivered to a DSWA Solid Waste Facility.

c. Tires.

d. Non-hazardous waste resulting from emergency clean-up actions of the Department.

e. Industrial process solid waste exempted by Section 5.03 (b).

f. Asbestos.

g. White goods.

[h. Source-separated recyclables]

4.04 In the event that an invoice generated from the charging of fees or user charges at a DSWA Solid Waste Facility is not paid in accordance with DSWA credit policies the license may be revoked and/or the right to use DSWA Solid Waste Facilities may be denied to the user. Before the license revocation and/or denial of use, the user ~~shall~~ may have a hearing before the Directors of DSWA, and the user shall be given at least ten (10) days notice of the hearing. Otherwise, the procedure for the hearing shall be as set forth in paragraph ~~11~~ 10.01 (b) (ii)-(v) of these Regulations.

V. ~~INDUSTRIAL PROCESS~~ SPECIAL SOLID WASTE

5.01

a. Any person causing or allowing ~~industrial process~~ special solid waste to be delivered to any DSWA Solid Waste Facility for disposal shall obtain the approval of DSWA prior to commencement of such disposal; provided however, that where more than one person is involved in the generation and delivery of a particular ~~industrial process~~ special solid waste, approval of DSWA obtained by one person shall be sufficient.

b. In the event that there are any risks or additional costs involved in accepting any ~~industrial process~~ special solid wastes, the CEO may impose **[a ~~an~~]** ~~industrial process~~ special solid waste disposal surcharge to compensate DSWA for such risks and additional costs, including administrative expenses and overhead. The following factors shall be considered in determining the amount of such ~~industrial process~~ special solid waste surcharge:

i. Quantity of waste to be disposed of;

ii. Degree of risk associated with such disposal;

iii. Additional handling, processing and disposal costs;

iv. Additional administrative expenses and overhead;

v. Additional environmental protection controls including monitoring.

c. The ~~industrial process~~ special solid waste surcharge shall be set by the CEO, without notice and public hearing thereon, and may be done on a case by case basis.

5.02 Any person causing or allowing ~~industrial process~~ special solid waste to be delivered to a DSWA Solid Waste Facility operated by or on behalf of DSWA shall be deemed to have agreed to indemnify and hold harmless DSWA from any liability arising from disposal of such ~~industrial process~~ special solid waste and to have agreed to reimburse DSWA for any costs reasonably incurred to protect against or reduce any risk resulting therefrom; provided, however, such person, if such person has not caused or allowed the delivery of a hazardous substance within the meaning of the Comprehensive Environmental Response Compensation Liability Act (CERCLA), as amended, 42 USC Section 9601, et.seq., shall not be liable under this subsection to DSWA for harm or damage caused by the negligence of DSWA.

5.03 It shall be the responsibility of each generator of ~~industrial process~~ special solid waste, in addition to the person collecting, transporting and delivering it, to obtain the approval of DSWA for disposal of ~~industrial process~~ special solid waste at the DSWA Solid Waste Facility and to assure that such waste is delivered to the DSWA Solid Waste Facility ~~of DSWA~~ for disposal. Such solid waste shall ~~be exempted from the requirement of disposal~~ not be disposed in a DSWA Solid Waste Facility if:

a. DSWA refuses to approve the disposal of such waste at a DSWA Solid Waste Facility; or

b. the generator of such waste determines or agrees to have such waste disposed of at another properly licensed or permitted facility;

c. the solid waste is described in Section 4.02 of Article IV.

5.04 Any person aggrieved by a determination of the CEO or his designee, under this Article or subsection 4.02(f) of Article IV, may seek review thereof by the Directors of DSWA in accordance with Section 6427 (f) of the Act, and Section 10.01 of these Regulations.

VI. ~~OTHER SOLID WASTE PROJECTS~~ RESERVED

~~6.01 No person shall finance, acquire, license, construct, maintain, operate, or use a solid waste disposal, processing, or recycling project in the State of Delaware that is neither owned nor operated by, on behalf of, or at the request of DSWA.~~

~~6.02 No person shall cause or assist in the financing, acquiring, licensing, constructing, maintaining, or operating of a solid waste disposal, processing or recycling facility in the State of Delaware, that is neither owned nor operated by, on behalf of, at the request of DSWA.~~

~~6.03 This Article VI shall not apply to:~~

~~a. Projects dedicated exclusively to the disposal of dry waste, hazardous waste, agricultural waste, explosive, toxic substances, radioactive waste, or tires;~~

~~b. Projects used exclusively as transfer stations;~~

~~c. Recycle centers for source separated materials, such as aluminum cans;~~

~~d. Junkyards;~~

~~e. Projects dedicated exclusively to the disposal of industrial process solid waste that are lawfully permitted for the disposal of such industrial solid waste.~~

~~f. Projects dedicated exclusively to the disposal of solid waste generated outside the State of Delaware.~~

VII. OPERATING IN A DSWA SOLID WASTE FACILITY

7.01 All vehicles entering a DSWA Solid Waste Facility to dispose of solid waste shall proceed to the appropriate scale. Each vehicle shall come to a full stop before driving onto the scale, for weighing in or for weighing out. Quick stopping or starting on the scales will not be permitted. All personnel must remain in the vehicle unless directed by the Weighmaster to come to the scale bouse window. After weighing, the vehicle must not leave the scales until authorized to do so by the Weighmaster and must proceed to the area designated for disposal of the quantity and type of waste that is carried in the vehicle.

7.02 After weighing and at the direction of the Weighmaster, each vehicle shall proceed to the area designated. Spotters at the landfill face or on the tipping floor shall direct the vehicles to a dumping location. At small load facilities, waste shall be disposed only in the containers that have been provided. The contents of each vehicle shall be discharged as quickly as possible and the vehicle shall leave as directed by the operating contractor. Clean-up is allowed only at designated locations. No roll-off boxes will be dropped anywhere in a DSWA Solid Waste Facility without the express approval from a DSWA representative.

7.03 Each vehicle operator shall exercise caution, due care, and safe procedures in all operations at the DSWA Solid Waste Facility. The speed limit on the facility roads is 25 miles per hour except where a lower speed limit is indicated. Vehicle drivers who disregard the posted speed limits on a DSWA Solid Waste Facility may be denied access to any DSWA Solid Waste Facility. Vehicle operators shall follow directions from the DSWA or its representative. ~~Or the operating contractor in all cases of emergency.~~

7.04 No hand sorting, picking over, or scavenging of solid waste will be permitted at any time, without specific DSWA approval.

7.05 All vehicle operators and other personnel proceed onto the landfill at their own risk. DSWA shall not be liable for acts or omissions of its contractors, persons using a DSWA Solid Waste Facility, or other third persons in or about a DSWA Solid Waste Facility.

~~7.06 Persons under the age of 18 are not allowed to enter any Solid Waste Facility in waste collection and disposal vehicles.~~

7.0**[~~7~~ 6]** No loitering will be permitted in any DSWA Solid Waste Facility.

7.0**[~~8~~ 7]** DSWA reserves the right to redirect vehicles to alternate locations within the DSWA Solid Waste Facility, if for any reason in the opinion of DSWA's representative, the original location cannot handle the load or type of material.

7.0**[~~9~~ 8]** There shall be no smoking in any DSWA Solid Waste Facility except in areas where smoking is expressly permitted.

7.0**[~~10~~ 9]** The ~~Directors of~~ DSWA from time to time may adopt and post other rules for DSWA Solid Waste Disposal Facilities. It is the responsibility of Licensees and other persons using DSWA Solid Waste Facilities to familiarize themselves with and to obey such rules.

7.0**[~~11~~ 10]** Any vehicle that is immobile and obstructing facility operations shall be moved to a nonconflicting area by DSWA representatives after notifying the Licensee's driver. The Licensee's driver will be given reasonable time to contact his office either through radio or telephone. If the

blocking vehicle poses a safety or fire hazard, it will be removed immediately after giving notice to the driver. Licensee shall also give written instructions to drivers on proper procedures for towing.

7.0**[~~12~~ 11]** To prevent material from falling off vehicles and to minimize litter, all open vehicles, including but not limited to pick-up trucks, entering a DSWA Solid Waste Facility to dispose solid waste shall be sufficiently secured through the use of tarpaulins or ropes or netting or enclosures sufficient to prevent the material from falling off the vehicles.

7.0**[~~13~~ 12]**

a. DSWA shall have the right to require unloading of the contents of the vehicle hauling solid waste to any area on a DSWA Solid Waste Facility for the purpose of inspection.

b. If any prohibited wastes, hazardous wastes, explosives, toxic substance, pathological and infectious wastes, radioactive wastes are found, then the person delivering such waste to a DSWA Solid Waste Facility shall be subject to the sanctions that may be imposed under Section 10.02 ~~11.02~~ for violation of Section 4.02 and sanctions for violation of other applicable laws and regulations and that person shall be notified and given an opportunity to remove properly all of the waste emptied from the solid waste collection vehicle at his expense. If that is not accomplished within four (4) hours of such notice, which shall be either in person or by telephone, or, if the person cannot be reached immediately, either in person or by telephone, DSWA may proceed to arrange for removal and proper disposal of the entire load and the person bringing such material to the DSWA Solid Waste Facility shall be liable to DSWA for all costs incurred by DSWA in arranging for proper disposal, including, without limitation, DSWA's out-of-pocket expenses, contractor's fees, disposal costs, overhead supervisory costs, legal fees, testing costs, and transportation costs.

VIII. RECYCLING

8.01 The following definitions shall apply to this subarticle:

"Recycling Center" means a facility, established pursuant to 7 **Del.C.** S6450 et seq., to receive recyclable materials. The Recycling Center includes the recycling containers marked for the specific recyclable materials which are to be deposited therein and the area immediately surrounding them necessary for the purposes of such recycling centers. Recycling Centers shall be known as 'RECYCLE DELAWARE' Centers.

"Recyclable Materials" mean those materials which have been source-separated by the generator thereof for recycling. Source separated materials must remain separate throughout the journey and are not to be re-combined for transport.

"Recycling" means the process by which solid waste is transformed or converted into usable material(s) or product(s).

"Recycler" means a person in the business of collecting, transporting, and delivering recyclable materials.

8.02 ~~All persons operating facilities within Delaware for the purpose of recycling solid waste or recyclable materials other than 'RECYCLE DELAWARE' Recycling Centers shall file annually with DSWA, on forms prescribed by DSWA, a report on the nature of the recycling activities conducted, the quantity and type of materials recycled , and the disposition of the materials recycled. Such reports will be due on April 30 of each year and shall br for the immediately preceding calendar year.~~

All persons operating facilities within Delaware for the purpose of recycling solid waste or recyclable materials other than `RECYCLE DELAWARE' and "Recycling Centers" shall file with DSWA copies of any reports or other written information related to the recycling facilities or recycling activities that are filed with DNREC. Such reports or written information shall be filed with DSWA when they are filed or otherwise submitted to DNREC.

8.03 At a Recycling Center, no person shall:

a. dispose of solid waste or litter;

b. leave materials outside of recycling containers;

c. deposit into a recycling container any material other than the specific recyclable material for which the recycling container is marked to receive;

d. damage, deface, or abuse a recycling container;

e. block or obstruct vehicles using or serving the Recycling Center;

f. loiter;

g. scavenge any Recyclable Material; or

h. deposit Recyclable Material that has been collected from or by a Recycler.

~~8.04 Each container used for the collection of Recyclable Material must be clearly marked to prevent normal trash from being placed into the container, i.e. "RECYCLABLE MATERIAL ONLY" - "NO TRASH".~~

IX. TRANSFER STATION REQUIREMENTS

9.01 Any person operating a transfer station for solid waste within the State of Delaware shall;

a. prepare daily and maintain (for minimum period of three years after preparation) records of the solid waste handled at the transfer station showing the source and final disposition of such waste after removal from transfer station, including address of such final disposition. The records to be maintained shall be adequate to provide all information

required by the Transfer Station Monthly Solid Waste Report, ~~annexed hereto as Exhibit~~ shown in Attachment B;

b. submit the report required by paragraph 9.01 (a) of these Regulations and verify the accuracy thereof to DS WA on or before the twentieth (20th) day of the month following the month for which the report is compiled. The report shall be in the form of the Transfer Station Monthly Solid Waste Report, ~~annexed hereto as Exhibit~~ shown in Attachment B;

c. make the records required to be maintained and preserved by paragraph 9.01 (a) of these Regulations available for inspection by representatives of DSWA during normal business hours.

9.02 DSWA through its designated representatives shall have the right to inspect the transfer station and solid waste hauling vehicles entering and leaving the transfer station.

X. REVIEW, ENFORCEMENT AND SANCTIONS

10.01

a. Any person seeking a license or to have solid waste disposed of at a DSWA Solid Waste Facility who has been aggrieved by a determination of the CEO or his designee under Section 3.19, 3.21, 4.02, 4.04, 5.01 (b) or 5.04 of these Regulations may seek review thereof by the Directors of DSWA by filing a request for review with the CEO within fifteen (15) days of receipt of notice of such determination. The hearing shall be held in accordance with the paragraph of Section 10.01 (b) of these Regulations.

b.

i. The person filing the request for review under paragraph 10.01 (a) of these Regulations shall be provided notice by registered mail at least fifteen (15) days before the time set for the hearing. The person filing the request for the hearing shall bear the burden of proof.

ii. The person requesting the hearing may appear personally and/or by counsel and may produce competent evidence in his behalf. Upon the request of the person requesting the hearing or the CEO, the Chairman of DSWA shall issue subpoenas requiring the testimony of witnesses and the production of books, records, or other documents relevant to the material involved in such hearing.

iii. All testimony at the hearing shall be given under oath and the Chairman shall administer oaths and all Directors shall be entitled to examine witnesses.

iv. The hearing may be held as part of a regular meeting or a special meeting of the Directors of DSWA. Deliberation shall be held in executive session.

v. The decision of the Directors of DSWA shall be announced at a public meeting and shall be forwarded to the person requesting the hearing in written form by registered mail.

10.02 Any person who violates a provision of these Regulations shall be subject to the following sanctions:

a. If the violation has been committed, a civil penalty of not less than One Hundred ($100) Dollars and not more than Five Thousand ($5000) Dollars shall be assessed;

b. If a violation continues for a number of days, each day of such violation shall be considered a separate violation;

c. If the violation is continuous, or there is substantial likelihood that it will reoccur, DSWA may seek a temporary restraining order, a preliminary injunction or permanent injunction;

d. Any person holding a license issued by DSWA who violates these Regulations shall be subject to revocation of such license, or suspension of such license for such period as determined by DSWA.

e. DSWA personnel are empowered to issue written notices of violations of these Regulations, without the need to employ the sanctions set forth above.

10.03 Any person who violates a provision of these Regulations may be prevented from entering a DSWA Solid Waste Facility, as determined by the CEO or his designee, until that person is in compliance with these Regulations.

DELAWARE SOLID WASTE AUTHORITY
DIFFERENTIAL DISPOSAL FEE PROGRAM

The Delaware Solid Waste Authority ("Authority"), pursuant to the provisions of 7 Del. C. Ch. 64, hereby adopts the following program applicable to the fees for disposal of solid waste at Authority facilities:

1. ~~The base rate for disposal of salid waste (exlcuding special and industrial process solid waste) shall be $58.00 per ton.~~ Except as provided in Paragraph 2 below, the rate for disposal of solid waste and dry waste shall be $58.50 per ton. **~~[; provided however, the Manager of the Authority shall be entitled upon thirty (30) days advance written notice to reduce and adjust the disposal fee for dry waste at the various Authority facilities to an amount which is no lower than $30.00 per ton.~~]**

2. For those ~~persons, as hereinafter defined in Paragraph 6,~~ entering into a contract with the Authority to bring all of their solid waste ~~(excluding special and industrial process solid waste)~~ or dry waste which has been collected in the State of Delaware to Authority facilities in accordance with the terms of the contract, the rebates and rates set forth shall be ~~paid~~ made available by the Authority subject to the following:

a. The contract term shall be from ~~May 1, 1999 to June 30, 2002, July 1, 2000 to June 30, 2002, or July 1, 2001 to June 30, 2002.~~ July 1, 2001 to June 30, 2005; July 1, 2002 to June 30, 2005; July 1, 2003 to June 30, 2005; or July 1, 2004 to June 30, 2005.

b. A rebate of $10.00 shall be paid for each ton of

solid waste (excluding special and industrial process solid waste) delivered to Authority facilities, other than the Northern Solid Waste Facility located at Cherry Island in Delaware, and for which the base rate disposal fee of $58.50 per ton has been paid to the Authority. A rebate of $13.50 shall be paid for each ton of solid waste or dry waste delivered to the Northern Solid Waste Facility located at Cherry Island in Delaware and for which the base rate disposal fee of $58.50 per ton has been paid to the Authority. The rebate shall be paid for the following periods in which the solid waste (excluding special and industrial process solid waste) has been delivered:

(i) ~~May 1, 1999 through June 30, 1999~~ July 1, 2001 through June 30, 2002

(ii) ~~July 1, 1999 through June 30, 2000~~ July 1, 2002 through June 30, 2003

(iii) ~~July 1, 2000 through June 30, 2001~~ July 1, 2003 through June 30, 2004

(iv) ~~July 1, 2001 through June 30, 2002~~ July 1, 2004 through June 30, 2005

c. The rebate for the periods set forth in Paragraph 2(b) above shall be paid within forty-five (45) days after the end of the applicable period or after full payment has been made to the Authority by the person entitled to the rebate, whichever is later, for the solid waste **[~~(excluding special and industrial process solid waste)~~]** delivered during the applicable period.

~~d. An additional rebate shall also be paid in the event that the solid waste (excluding special and industrial process solid waste) delivered to the Authority facilites exceeds 800,000 tones for any of the following periods:~~

~~(i) July 1, 1999 to June 30, 2000~~

~~(ii) July 1, 2000 to June 30, 2001~~

~~(iii) July 1, 2001 to June 30, 2002~~

~~For each ton of solid waste (excluding special and industrial process solid waste) in excess of 800,000 tons paid for at the base rate and delivered to Authority facilities during each period identified immediately above, the Authority shall set aside the sum of $8.50 per ton in a fund which shall be divided among those persons entering into contracts with the Authority. Each such person shall be entitled to a share of the fund based on the percentage of solid waste (excluding special and industrial process solid waste) which such person delivers to Authority facilities as a part of the total of all solid waste (excluding special and industrial process solid waste) delivered to Authority facilities by all persons under contract with the Authority. The additional rebate for the periods set forth in this Paragraph 2(d) shall be paid within forty-five (45) days after full payment has been made to the Authority by the persons entitled to the rebate.~~

d. The disposal fee for dry waste delivered to designated solid waste facilities shall be $40.00 per ton. Such designated facilities shall include the Central Solid Waste Facility located at Sandtown in Delaware and the Southern Solid Waste Facility located at Jones Crossroads in Delaware, but shall not include the Northern Solid Waste Facility located at Cherry Island in Delaware. If the Authority establishes a disposal fee for dry waste above $40.00 per ton at any time during the term of the contract, the $40.00 per ton disposal fee shall apply for the term of the contract to those entering contracts. If the Authority establishes a disposal fee for dry waste below $40.00 per ton at any time during the term of the contract, those entering contracts with the Authority shall be entitled to such lower disposal fees while such disposal fees are in effect.

e. ~~In order to enter into the program, persons delivering solid waste (excluding special and industrial process solid waste) collected in the State of Delaware shall execute contracts with the Authority (i) prior to May 1, 1999 for the contract term from the May 1, 1999 to June 30, 2002; (ii) on or before June 30, 2000 for the contract term July 1, 2000 to June 30, 2002; and (iii) on or before June 30, 2001 for the contract term July 1, 2001 to June 30, 2002.~~

In order to enter into contracts under this Paragraph 2, persons having active accounts with the Authority and delivering solid waste or dry waste to an Authority facility that was collected in the State of Delaware shall execute contracts with the Authority (i) on or before September 1, 2001 for the contract term from July 1, 2001 to June 30, 2005, provided however, that for contracts executed after July 1, 2001 but on or before September 1, 2001 the effective date for participating in the Program shall be the effective date of execution of the contract; (ii) on or before June 30, 2002 for the contract term July 1, 2002 to June 30, 2005; (iii) on or before June 30, 2003 for the contract term July 1, 2003 to June 30, 2005; and (iv) on or before June 30, 2004 for the contract term July 1, 2004 to June 30, 2005.

3. Those persons not under contract with the Authority shall be entitled to use the Authority facilities for disposal of solid waste and dry waste collected in the State of Delaware, subject to payment of such rate or rates established by the Authority, and subject to compliance with the regulations and requirements of the Authority and other applicable laws and regulations.

4. The contracts utilized to effectuate this Program shall be uniform and shall **[~~be consistent with the operative provisions of the program as set forth herein, and shall~~]** contain such other terms and conditions deemed desirable and acceptable to the Authority. Municipalities, political subdivisions and governmental instrumentalities and entities which are required to deliver to Authority facilities all their solid waste and dry waste collected in the State of Delaware shall be entitled to the full benefits of this Program. The contracts shall inure to the benefit of and be binding on the persons, including their successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, ~~contractors and subcontractors,~~ and all other entities existing

or newly formed, controlled directly or indirectly by such persons, through change in ownership or status by transfer of assets or otherwise, and which engage in the collection and/or transportation of solid waste ~~(excluding special and industrial process solid waste)~~ and dry waste generated in the State of Delaware.

5. The ~~This~~ Program established by Paragraph 2, above, shall be available to all persons having active accounts with the Authority effective July 1, 2001. ~~April 30, 1999 and who have delivered to Authority facilities during the preceding twelve (12) month period a total of at least fifty (50) tons of solid waste (excluding special and industrial process solid waste).~~ For new accounts with the Authority opened after ~~May 1, 1999~~ July 1, 2001, persons establishing such accounts shall be entitled to enter ~~the program~~ contracts with the Authority provided:

(a) the uniform contract referenced in Paragraph 4 herein is executed within sixty (60) days of the date the new account is established;

(b) the term of the contract extends to June 30, ~~2002~~ 2005;

(c) the new account is with a new person, and not a person having an account with the Authority as of ~~March 1, 1999~~ July 1, 2001; and

(d) the persons agree that the Program benefits (rebate or reduced fee) do not come into effect until sixty (60) days after the new account is established.

6. For purposes of this Program the term "person" is defined to mean any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity. The term "person" shall also include successors, assigns, parents, subsidiaries, affiliates, partners, joint venturers, divisions, ~~contractors and subcontractors,~~ and all other entities existing or newly formed, controlled directly or indirectly by the person, through change in ownership or status by transfer of assets or otherwise.

7. ~~This program shall become effective on May 1, 1999 and continue until June 30, 2002.~~ For purposes of this Program the term "dry waste" shall have the meaning as defined in the REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY. For purposes of this Program the term "solid waste" shall have the meaning as defined in the REGULATIONS OF THE DELAWARE SOLID WASTE AUTHORITY but shall not include dry waste, or special or industrial process solid waste.

8. This Program shall become effective on July 1, 2001 and continue until June 30, 2005. For those persons who have (i) prior to the adoption of this Program entered Differential Disposal Fee contracts with the Authority and (ii) who do not enter the Differential Disposal Fee contract under this Program, the provisions of prior Program and prior Differential Disposal Fee contract shall continue in full force and effect.

STATEWIDE SOLID WASTE MANAGEMENT PLAN

INTRODUCTION

On March 25, 1999, the Delaware Solid Waste Authority ("DSWA") adopted a limited Plan amendment in conjunction with regulation changes to afford the DSWA greater solid waste management program flexibility. The management flexibility supplemented the existing Plan. The DSWA is undertaking this limited Plan amendment in order to provide for additional flexibilities. To the extent that there is any inconsistency, this proposed Plan amendment supercedes.

BACKGROUND

The DSWA has been directed by the Delaware General Assembly to carry out specific statutory responsibilities under 7 **Delaware Code** Chapter 64 (see appendix A of the Plan as adopted May 1994). Some of those responsibilities include:

1. That a statewide comprehensive program for management, storage, collection, transportation, utilization, processing and disposal of solid waste be established.

2. That a program for the maximum recovery and reuse of materials and energy resources derived from solid wastes be established.

3. That a program for protecting the land, air, surface, and groundwater resources of the State from depletion and degradation caused by improper disposal of solid waste be established.

4. That a statewide solid waste management plan be developed and implemented by DSWA.

In order to fulfill those responsibilities, the Delaware General Assembly provided DSWA with statutory capabilities. Some of those capabilities include:

1. Plan, design, construct, finance, manage, own, operate and maintain solid waste management facilities.

2. The receipt, transfer, storage, transportation, and handling of solid waste and development of support facilities as deemed necessary by DSWA.

3. Being granted all powers necessary to fulfill these purposes and to carry out assigned responsibilities.

4. Develop, implement and supervise a program requiring all persons who haul, convey or transport any solid waste to obtain a license from DSWA.

5. Charge reasonable fees for services.

6. Control, through regulation or otherwise, the collection, transportation, storage and disposal of solid waste, and sanction any person who violates a regulation or a license condition.

7. Establishment of fees and charges for owners and occupants of real estate to support budgeting needs.

8. Utilize private industry to the maximum extent feasible to perform planning, design, management, collection, construction, operation, manufacturing, and

marketing functions related to solid waste disposal and resources recovery.

9. Assist in the development of industrial enterprises based upon resources recovery, recycling, and reuse.

10. Purchase, manage, lease or rent real and personal property.

11. Do all things necessary for the performance of its duties, the fulfillment of its obligations, the conduct of its operations and the conduct of a comprehensive program for solid waste disposal and resources recovery, and for solid waste management services.

12. Make short and long range plans for the storage, collection, transportation or processing and disposal of solid wastes and recovered resources by the DSWA-owned facilities.

13. Contract with municipal, county and regional authorities, state agencies and persons to provide waste management service in accordance with this chapter and to plan, design, construct, manage, operate and maintain solid waste disposal and processing facilities on their behalf.

14. Utilize private industry, by contract, to carry out the business, design, operating, management, marketing, planning and research and development functions of the DSWA or the DSWA may determine that it is in the public interest to adopt other courses of action.

15. Enter into a contract or contracts with any municipality providing for or relating to the collection or treatment and disposal of garbage, solid wastes and refuse originating in the municipality and the cost and expense of such collection or treatment and disposal.

The DSWA has, under its statutory provisions implemented projects to meet the legislated mandate. Such projects include:

Delaware Reclamation Project
Cherry Island Landfill Phases I - V
Intermediate Processing Center
Pigeon Point Transfer Station
Pinetree Corners Transfer Station
Sandtown Landfill Areas A - E
Jones Crossroads Landfill Cells 1 -3
Recycle Delaware Centers (120 locations)
Recyclables Marketing Program
Collection Stations (5 locations)
Household Hazardous Waste Collection
Public Education Program

DSWA by contract has participated as a customer in private sector owned facilities such as Waste to Energy projects and recycling centers.

The DSWA has identified several future projects to continue to meet its legislative mandate. Such projects include:

Delaware Recycling Center / Materials Recovery Facility

Central Solid Waste Management Center: Transfer Station / Materials Recovery Facility

Southern Solid Waste Management Center: Transfer Station / Materials Recovery Facility

Cherry Island Landfill Phase VI
Pine Tree Corners Transfers Station Expansion
Sandtown Landfill Areas F - H
Jones Crossroads Landfill Cells 4 -6
Statewide Site Development
Transportation Operations and Maintenance Centers

The DSWA's enabling legislation establishes a statewide solid waste management system which is unique. The scope of the DSWA's responsibilities are broad and the DSWA has implemented a program which not only meets state needs, but which is regional in nature. To support the DSWA's program, which has involved significant out of state disposal of solid waste, the DSWA has chosen among available management options, a statutorily authorized method of directing the flow of certain solid waste generated in the state to DSWA facilities.

Faced with constantly changing solid waste disposal objectives and alternatives, the DSWA finds it necessary to have available the maximum flexibility possible to structure a program which best meets the needs of the citizens of the state and protects the public health and the environment. Accordingly the DSWA by this supplemental amendment to the Plan identifies additional alternatives available to the DSWA.

SOLID WASTE MANAGEMENT OPTIONS

In addition to the alternatives set forth in Chapter IV of the Plan and the limited amendment adopted March 25, 1999, the DSWA shall have available the following solid waste management options:

1. Construction, acquisition and/or operation of Transfer Stations/Recycling Centers/Dry Waste Facilities to serve the resort areas of Sussex County, the greater Milford area, the greater Dover area, and the greater Newark area.

2. Establishment of differential pricing for the separate management of dry waste, in accordance with §6403 (k) of Title 7 **Delaware Code.**

The DSWA in implementing management options may utilize DSWA staff or contract for services. The DSWA may enter into short or long-term agreements under such terms and conditions considered desirable by the DSWA. The DSWA may set and modify the fees it charges in implementing any of the management options. In selecting and implementing options, alternatives and ancillary program features, including the establishment and modification of fees, the DSWA shall act through Resolution of its Board of Directors.

*** PLEASE NOTE: THREE FORMS: ATTACHMENT A, SOLID WASTE COLLECTORS LICENSE; ATTACHMENT B, TRANSFER STATION MONTHLY SOLID WASTE REPORT; AND ATTACHMENT C, SOLID WASTE HAULER REPORT FOR WASTE GENERATED IN DELAWARE AND DELIVERED AND/OR DISPOSED AT OTHER THAN DSWA FACILITY ARE NOT BEING PRINTED. COPIES ARE AVAILABLE ONLINE IN PDF FORMAT OR BY CONTACTING THE REGISTRAR OF REGULATIONS.**

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF ACCOUNTANCY

24 DE Admin. Code 100

Statutory Authority: 24 Delaware Code, Section 105(1)(5), (24 **Del.C.** §105(1)(5))

ORDER ADOPTING RULES AND REGULATIONS

AND NOW, this 16th day of May, 2001, in accordance with 29 **Del.C.** § 10118 and for the reasons stated hereinafter, the Board of Accountancy of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 **Del.C**. §§105(1) and 105(5), the Board proposed to revise its existing Rules and Regulations in order to comply with, and implement and clarify the Board's authorizing law, 24 *Delaware Code*, Chapter 1, as revised effective July 16, 2000. The proposed revisions change and clarify the requirements for a permit to practice certified public accountancy, including the requirements for qualifying experience. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated March 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 **Del.C.** §10115. The public hearing was held on April 18, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the April 5, 2001 hearing, the Board received no comment from the public regarding the proposed Rules and Regulations.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to comply with, and implement and clarify the revisions to the Board's statutes that were made effective in July, 2000. The proposed amendments are necessary to implement and clarify the requirements for obtaining a permit to practice certified public accountancy, including the requirements for qualifying experience. The proposed amendments will assist applicants in understanding the requirements applicable for obtaining a permit to practice certified public accountancy.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 **Del.C.** § 105(1). The Board further concludes that it has statutory authority to designate the requirements for the issuance of certificates and permits to practice consistent with the provisions of Chapter 1, Title 24, under 24 **Del.C.** § 105(5).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 **Del.C.** Chapter 1.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 **Del.C.** §10118(g).

BY ORDER OF THE BOARD OF ACCOUNTANCY
(As authenticated by a quorum of the Board)

B. Christopher Daney, President, Professional Member
William F. Winters, Secretary, Professional Member
Sally S. Stokes, Professional Member
John A. McManus, Professional Member
Paul C. Seitz, Professional Member
Ezra P. Smith, Professional Member
Rita M. Paige, Public Member
Brian Dolan, Public Member

Board of Accountancy
Statutory Authority: 24 Del.C. 105

1.0 General Provisions

1.1 Pursuant to 24 **Del.C.** Ch. 1, the Delaware Board of Accountancy ("the Board") is authorized to, and has adopted, these Rules and Regulations. The Rules and Regulations are applicable to all certified public accountants, public accountants, permit holders and applicants to the Board.

1.2 Information about the Board, including its meeting dates, may be obtained by contacting the Board's Administrative Assistant at the Division of Professional Regulation, Cannon Building, 861 Silver Lake Boulevard, Ste. 203, Dover, Delaware 19904-2467, telephone (302) 739-4522. Requests to the Board may be directed to the same office.

1.3 The Board's President shall preside at all meetings of the Board and shall sign all official documents of the Board. In the President's absence, the Board's Secretary shall preside at meetings and perform all duties usually performed by the President.

1.4 The Board may seek counsel, advice and information from other governmental agencies and such other groups as it deems appropriate.

1.5 The Board may establish such subcommittees as it determines appropriate for the fair and efficient processing of the Board's duties.

1.6 The Board reserves the right to grant exceptions to the requirements of the Rules and Regulations upon a showing of good cause by the party requesting such exception, provided that the exception is not inconsistent with the requirements of 24 **Del.C.** Ch. 1.

1.7 Board members are subject to the provisions applying to "honorary state officials" in the "State Employees', Officers' and Officials' Code of Conduct," found at 29 **Del.C.** Ch. 58. No member of the Board shall: (1) serve as a peer reviewer in a peer review of a licensee; or (2) be an instructor in an examination preparation course or school or have a financial interest in such an endeavor.

2.0 Professional Conduct

2.1 A certified public accountant, or a public accountant holding a certificate or permit issued by this Board, agrees to comply with the Rules of Conduct contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants. All changes in the Rules and Interpretations made by the American Institute of Certified Public Accountants shall automatically be made a part of these Rules and Regulations unless specifically rejected by the Board.

3.0 Use of Designations

3.1 Designation "Certified Public Accountant" and the Abbreviation "CPA" in the Practice of Certified or Public Accountancy:

3.1.1 Only the following individuals and entities may use the designation "certified public accountant", the abbreviation "CPA", and other designations which suggest that the user is a certified public accountant, in the practice of certified or public accountancy:

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public accountant and a current permit to practice.

3.1.1.2 A partnership, professional association or professional corporation composed of certified public accountants which is registered with the Board and holds a current firm permit to practice.

3.2 Designation "Certified Public Accountant" and the abbreviation"CPA" by certificate holders who do not maintain a permit to practice:

3.2.1 An individual who holds a certificate of certified public accountant but does not maintain a permit to practice may use the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery if:

3.2.1.1 The certificate of certified public accountant has not been suspended or revoked and is in good standing.

3.2.1.2 The individual does not engage in the practice of certified or public accountancy and does not offer to perform certified or public accountancy services.

3.2.1.3 The individual does not hold himself or herself out to be in the practice of certified or public accountancy when performing or offering to perform accounting, bookkeeping, tax or accounting-related matters.

3.2.1.4 The individual does not engage in solicitations or advertising, including listings and advertisements in phone directories, newspapers, or other media (including electronic), in which the individual uses

the designation "certified public accountant" or the abbreviation "CPA".

3.2.1.5 The individual does not publicly display a certificate of certified public accountant to imply that he or she is licensed in the practice of certified or public accountancy or offering to perform certified or public accountancy services.

3.2.1.6 The individual is employed by a government, or an academic institution, corporation, or company not engaged in the practice of certified or public accountancy and uses the designation "certified public accountant" or the abbreviation "CPA" on business cards and stationery provided:

3.2.1.6.1 The business cards and stationery indicate the name of the employer and the title of the person; and

3.2.1.6.2 The business cards or stationery are not used to solicit certified or public accountancy services or accounting-related business.

3.2.2 An individual who holds a certificate of certified public accountant but not a permit to practice may not refer to his or her business as "John/Jane Doe, CPA" or have business cards imprinted "John/Jane Doe, CPA, and Company or Institution, Title" with the intent to offer certified or public accountancy services.

3.2.3 An individual who holds a certificate of certified public accountant, but not a permit to practice, may not perform a service related to accounting, including bookkeeping and tax returns, while holding him or herself out as a certified public accountant without a permit to practice. Similarly, an individual may not prepare income tax returns and refer to his or her business or sign tax returns as "John/Jane Doe, CPA" without a permit to practice. Such individual may put up a sign reading "John/Jane Doe, Tax Preparer" and prepare and sign tax returns as "John/Jane Doe".

3.3 Designation "Public Accountant" and the abbreviation "PA"

3.3.1 Only the following individuals and entities may use the designation "public accountant," the abbreviation "PA", and other designations which suggest that the user is a public accountant, in the practice of public accountancy.

3.3.1.1 An individual who is registered with the Board and holds a permit to practice public accountancy in good standing.

3.3.1.2 A partnership, professional association or professional corporation composed of public accountants which is registered with the Board and holds a current firm permit in good standing to practice public accountancy.

3.3.2 An individual may not refer to his or her business or sign tax returns as "John/Jane Doe, PA" without a permit to practice public accountancy.

3.4 No person, partnership, or corporation shall hold him/her/itself or otherwise use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", "licensed public accountant", "registered public accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any other abbreviations of any prohibited titles or designations likely to be confused with "CPA" or "PA". It is not a violation of this clause for an individual on whom has been conferred, by the Internal Revenue Service, the title enrolled agent to use that title or the abbreviation "EA".

3.5 No person, partnership, or corporation shall use a title or specialized designation that includes the word "accredited" or "certified" or an abbreviation of such a title or designation or otherwise claim a qualification unless that designation has been conferred by a bona fide organization after evaluation of the individual's credentials and competencies. This includes such designations as "CFP", "CVA", "ABV", etc.

4.0 Applications

4.1 An application for examination, certificates, permits to practice and renewals of permits to practice shall be submitted on forms approved by the Board.

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

5.0 Examination and Certificate Requirements

5.1 Each applicant for a certificate must provide the Board with the following:

5.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

5.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination.

5.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

5.1.4 Evidence in a form satisfactory to the Board that the applicant holds a Master's Degree, a Baccalaureate Degree or an Associate Degree, with a concentration in accounting.

5.1.4.1 The applicant also must, upon request, submit proof that the college or university granting the degree was, at the time of the applicant's graduation, accredited by the Middle States Association of Colleges and Secondary Schools or by another comparable regional

accrediting association. A degree granted by a college or university not so accredited at the time of applicant's graduation will not be accepted. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service acceptable to the Board, to determine equivalency to U.S. regional accreditation.

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as accounting courses for this purpose.

5.1.4.3 Except for applicants applying under Section 5.2 of these Rules and Regulations, the educational qualification required by this subsection contemplates satisfactory completion of all required courses of study by the final date for accepting applications for the examination at which the applicant intends to sit.

5.2 Applicants requesting to sit for the the Uniform Certified Public Accountant Examination or its successor examination must demonstrate that they meet the good character and education requirements of Sections 5.1.1 and 5.1.4 of these Rules and Regulations. An applicant who expects to meet the education requirements of Section 5.1.4 within 120 days following the examination is eligible to take the examination provided he or she:

5.2.1 meets the character requirements of Section 5.1.1; and

5.2.2 provides evidence satisfactory to the Board that he or she is expected to complete the education requirements within 120 days of the examination.

6.0 Requirements for Permit to Practice Certified Public Accountancy

6.1 For purposes of Section 6.0 of these Rules and Regulations, the term "certificate holder" shall be defined as the holder of a certificate of certified public accountant issued by any jurisdiction.

6.2 Each applicant for a permit to practice certified public accountancy must provide the Board with the following:

6.2.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board;

6.2.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice;

6.2.3 Evidence in a form satisfactory to the Board that the applicant holds a valid certificate; and

6.2.4 Evidence in a form satisfactory to the Board that the applicant meets the experience requirements provided in 24 **Del.C.** §108(c)(2) and Sections 6.3 , 6.4 and 6.5 of these Rules and Regulations, as applicable.

~~6.3 Applicants who seek a permit based on their experience as an employee of a firm engaged in the practice of certified public accountancy shall meet the following standards and requirements:~~

~~6.3.1 The distinguishing characteristic of practice as a certified public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagements, resulting in the issuance of financial statements including appropriate footnote disclosure and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the supervision of a certified public accountant who holds a valid permit to practice certified public accountancy.~~

~~6.3.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.~~

~~**3 DE Reg. 1668 (6/1/00)**~~

~~6.3.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full-time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall~~

~~be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.~~

~~6.4 Applicants who seek a permit based on their experience in government or industry shall meet the following standards and requirements:~~

~~6.4.1 The applicant shall submit a detailed description of the education and experience requirements of entry to his or her job, a detailed description of his or her duties and responsibilities over the entire period of time relied on to meet the experience qualification, a detailed description of the reporting requirements of his or her job, and a statement of the training opportunities in which the applicant has participated. The employment submitted as qualifying experience must include extensive experience resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants. Such experience must be obtained under the direct supervision of a certified public accountant who holds a valid permit to practice certified public accounting.~~

~~6.4.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.~~

~~3 **DE Reg.** 1668 (6/1/00)~~

~~6.4.3 Each application under this subsection will be considered on its own merits and the Board will evaluate the applicant's experience, as set forth in the application materials, for the purpose of determining whether it is substantially equivalent to experience as an employee of a firm engaged in the practice of certified public accountancy. Such experience may be prorated at less than 100% equivalence.~~

~~6.5 Applicants who seek a permit based on their experience in the practice of public accountancy shall meet the following standards and requirements:~~

~~6.5.1 The distinguishing characteristic of practice as a public accountant is the requirement that the practitioner compile, review or audit all financial statements with which his or her name is associated. Accordingly, the applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted` accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.~~

~~6.5.2 Each applicant must submit an affidavit from each employer with whom qualifying experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.~~

~~6.5.3 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.~~

6.3 Applicants who hold a master's degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del.C. §108(c)(2):

6.3.1 Qualifying experience for holders of a master's degree shall include the provision of any type of service or advice involving the use of accounting, attest, compilation, internal audit, management advisory, financial advisory, tax or consulting skills.

6.3.1.1 "Management advisory" experience shall be limited to the fields of accounting, financial or business matters.

6.3.1.2 "Consulting skills" shall be limited to providing accounting, financial or business advice.

6.3.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.4 Applicants who hold a baccalaureate degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del .C. §108(c)(2):

6.4.1 Qualifying experience for holders of a baccalaureate degree shall include experience in engagements resulting in the preparation and issuance of financial statements, including appropriate footnote disclosures, and prepared in accordance with generally

accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.4.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.4.2. Experience in internal audit may be used in lieu of or in addition to the experience described in 6.4.1.

6.4.3 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.5 Applicants who hold an associate degree pursuant to the terms of 24 Del.C. §107, shall meet the following standards and requirements for qualifying experience pursuant to 24 Del .C. §108(c)(2):

6.5.1 The applicant shall submit evidence of extensive experience obtained in engagement, resulting in the preparation and issuance of financial statements prepared in accordance with generally accepted accounting principles or other comprehensive bases of accounting as defined in the standards established by the American Institute of Certified Public Accountants.

6.5.1.1 "Standards" shall include generally accepted auditing standards and/or Statements on Standards for Accounting and Review Services (SSARS), appropriate to the level of engagement.

6.5.2 Qualifying experience shall be verified by a certified public accountant who holds a valid permit to practice, except as noted in Rule 6.6.1.

6.6 Each applicant, regardless of educational level, must submit an affidavit from each employer with whom qualifying experience is claimed, setting forth the dates of employment, describing the nature of applicant's duties by area and affirming that the applicant discharged his or her duties in a competent and professional manner. The affidavit must be signed by the supervising Certified Public Accountant(s) and include a statement indicating the jurisdiction of his or her certificate and/or license. If the applicant has worked for multiple CPAs, the signature of a qualifying CPA is sufficient. However, the applicant must be able to furnish information concerning permits of other supervising CPAs as requested by the Board.

6.6.1 In cases in which any part of the required experience has been obtained in the practice of public accountancy, the affidavit may be from the responsible supervisor at each employer with whom such experience is claimed, or from the applicant himself or herself where the qualifying experience is claimed as an owner or principal of a firm engaged in the practice of public accountancy. Each affidavit shall include the dates of employment, describe the nature of the applicant's duties, state the approximate time devoted to each, and affirm that the applicant discharged his or her duties in a competent and professional manner. In the case of a sole practitioner, the Board reserves the right to require the sole practitioner to provide additional documentation verifying his or her qualifying experience.

6.7 Only experience obtained after the conferring of the degree under which the candidate applies shall be accepted. A "year" of qualifying experience shall consist of fifty (50) weeks of full-time employment. Two weeks of part-time experience, as defined herein, shall be equivalent to one week of full time employment. A period of full-time employment of less than ten consecutive weeks or part-time employment of less than sixteen consecutive weeks will not be recognized. Full-time employment shall be no less than thirty-five (35) hours per week; part-time employment shall be no less than 320 hours worked during a sixteen week period with a minimum of ten (10) hours per week.

7.0 Requirements for Permit to Practice Public Accountancy

7.1 Each applicant for a permit to practice public accountancy must provide the Board with the following:

7.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).

7.1.2 Evidence in a form satisfactory to the Board that the applicant holds, as a minimum, an associate degree with a concentration in accounting. The provisions of Sections 5.1.4.1 and 5.1.4.2 of these Rules and Regulations also apply to applicants for permits to practice public accountancy.

7.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully passed the accounting examination given by the Accreditation Council for Accountancy & Taxation, which is the examination recognized by the National Society of Public Accountants, or both the Accounting and Reporting and the Auditing portions of the Uniform Certified Public Accounting Examination.

7.1.4 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.

7.1.5 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board.

7.1.6 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a permit to practice.

8.0 Reciprocity

8.1 An applicant seeking a permit to practice through reciprocity shall demonstrate that he or she meets

requirements of 24 **Del.C.** §109(a) and must provide the Board with the following:

8.1.1 A statement under oath or other verification satisfactory to the Board that the applicant has not engaged in any acts that would be grounds for discipline by the Board; and

8.1.2 A certified statement from the licensing authority, or comparable agency, that the applicant has no pending disciplinary proceedings or complaints against him or her in each jurisdiction where the applicant currently or previously held a certificate or permit to practice.

8.2 The provisions of Section 6.3 of these Rules and Regulations shall also apply to the experience required by 24 **Del.C.** §109(a)(3) for the granting of a permit by reciprocity.

8.3 An applicant seeking a certificate through reciprocity shall demonstrate that he or she meets the requirements of 24 **Del.C.** §114 and must provide the Board with the following:

8.3.1 A certified statement from the licensing authority, or comparable agency, of the jurisdiction through which the applicant seeks reciprocity that the applicant holds a valid certificate with no past or pending disciplinary proceedings or complaints against him or her; and

8.3.2 Copies of the law and rules or regulations establishing the requirements for certification in the jurisdiction through which the applicant seeks reciprocity.

9.0 Firm Permits to Practice

9.1 For purposes of 24 **Del.C.** §111 and this Section of the Rules and Regulations, the term “principal of a firm” is defined as any individual who has an equity interest in the firm.

9.2 Certified public accounting and public accounting firms practicing as corporations must be organized as professional corporations ("P.C.") or professional associations ("P.A.") in compliance with The Professional Service Corporation Act, 8 **Del.C.** §671, *et. seq.*

9.3 Individuals not currently practicing certified public accountancy or public accountancy shall not be required to obtain a firm permit to practice until such a time as that person begins to perform certified public accounting or public accounting services.

9.4 Certified public accounting and public accounting firms may not practice using firms names that are misleading as to organization, scope, or quality of services provided.

10.0 Continuing Education

10.1 Hours Required: Each permit holder must have completed at least 80 hours of acceptable continuing professional education each biennial reporting period of each year ending with an odd number. The eighty hours of acceptable continuing professional education submitted must have been completed in the immediately preceding two-year period.

10.2 Reporting Requirements: The Board will mail permit renewal forms which provide for continuing professional education reporting to all permit holders. Each candidate for renewal shall submit a summary of their continuing education hours, along with any supporting documentation requested by the Board, to the Board at least 60 days prior to the permit renewal date set by the Division of Professional Regulation.

10.3 Proration: Prorated continuing professional education regulations consisting of less than eighty hours shall only apply to the first permit renewal, thereafter all permit holders are required to complete at least eighty hours of acceptable continuing professional education biennially.

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing education requirement for that period.

10.3.2 If the initial permit was issued at least one year, but less than two years prior to the renewal date, the continuing education requirement shall be 40 hours for that period.

10.4 Exceptions: The Board has the authority to make exceptions to the continuing professional education requirements for reasons including, but not limited to, health, military service, foreign residency, and retirement.

10.5 Qualified Programs.

10.5.1 General Determination: The overriding consideration in determining if a specific program qualifies as a continuing professional education program is whether it is a formal program of learning which contributes directly to the professional competence of the permit holder.

10.5.2 Formal Programs: Formal programs requiring class attendance will qualify only if:

10.5.2.1 An outline is prepared in advance and the plan sponsor agrees to preserve a copy for five years or the outline is provided to the participant or both.

10.5.2.2 The program is at least an hour (a fifty-minute period) in length.

10.5.2.3 The program is conducted by a qualified instructor or discussion leader.

10.5.2.4 A record of registration or attendance is maintained for five years or the participant is furnished with a statement of attendance, or both.

10.5.3 Programs deemed approved: Provided the criteria in Sections 10.5.1 and 10.5.2 of these Rules and Regulations are met, the following are deemed to qualify for continuing professional education:

10.5.3.1 Programs approved by National Association of State Boards of Accountancy (NASBA);

10.5.3.2 Professional development programs of national, state and local accounting organizations;

10.5.3.3 Technical sessions at meeting of national, state and local accounting organizations and their chapters;

10.5.3.4 University or college courses:

10.5.3.4.1 Credit courses: each semester

hour credit shall equal 5 hours of continuing professional education.

10.5.3.4.2 Non-credit courses: each classroom hour shall equal one hour of continuing professional education;

10.5.3.5 Programs of other organizations (accounting, industrial, professional, etc.);

10.5.3.6 Other organized educational programs on technical and other practice subjects including "in-house" training programs of public accounting firms.

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

10.5.5 Instructors and Discussion Leaders: Credit for one hour of continuing professional education will be awarded for each hour completed as an instructor or discussion leader plus two additional hours of credit for each classroom hour for research and preparation to the extent that the activity contributes to the professional competence of the registrant as determined by the Board. No credit will be awarded for repeated offerings of the same subject matter. The maximum credit toward meeting the continuing professional education requirement as an instructor or discussion leader shall not exceed 50% of the total requirement.

10.5.6 Published Articles and Books: One hour credit will be granted for each 50 minute period of preparation time on a self-declaration basis to a maximum of 20 hours in each biennial reporting period. A copy of the published article must be submitted to the Board upon request.

10.5.7 Committee, Dinner, Luncheon and Firm Meetings. One hour credit will be granted for each 50 minutes of participation. Credit will only be granted for those meetings which are structured as a continuing education program.

10.6 Control and Reporting

10.6.1 Each applicant for permit renewal shall provide a signed statement under penalty of perjury, disclosing the following information pertaining to the educational programs submitted in satisfaction of the continuing education requirements:

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance with the provisions of the Administrative Procedures Act, 29 **Del.C.** §10101, *et. seq.*

10.7 Evidence of Completion- Retention

10.7.1 Primary responsibility for documenting the requirements rest with the applicant. Evidence in support of the requirements should be retained for a period of five years after completion of the educational activity.

10.7.2 Sufficiency of evidence includes retention of course outlines and such signed statements of attendance as may be furnished by the sponsor.

10.7.3 For courses taken for scholastic credit in accredited universities or colleges, evidence of satisfactory completion of the course will satisfy the course outline and attendance record.

10.7.4 For non-credit courses at accredited universities or colleges, a statement of the hours of attendance signed by the instructor or an authorized official of the sponsoring institution, must be obtained and retained by the applicant. Course outlines may be retained by the sponsoring institution for a period of five years in lieu of retention of the outlines by the applicant.

10.8 Composition of Continuing Professional Education: The biennial continuing professional education requirement shall include a minimum of 20 percent in accounting and/or auditing and a minimum of 20 percent in taxation and the remaining hours may be satisfied by general subject matters so long as they contribute to the professional competence of the individual practitioner. Such general subject matters include, but are not limited to, the following areas:

Accounting
Administrative Practice
Auditing
Business Law
Communication Arts
Computer Science
Economics
Finance, Production and Marketing
Management Services Mathematics, Statistics, Probability, and Quantitative Applications in Business

Personnel Relations, Business Management and Organization
Social Environment of Business
Specialized Areas of Industry
Taxation

11.0 Additional Provisions Concerning Examinations

11.1 All examinations required under 24 **Del.C.** Ch. 1 and these Rules and Regulations shall be graded by the applicable grading service of the organization offering the examination.

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the Board's designated agent by the dates determined by the Board's designated agent.

11.3 The CPA examination shall be in the subjects of accounting and reporting, financial accounting and reporting, auditing, and business law, and in such other or additional subjects that may be covered in successor examinations as may be required to qualify for a certificate.

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

11.4.2 Applicants are permitted to use pencil and eraser. Calculators provided at the exam site are the only mechanical devices allowed.

11.4.3 At any examination, an applicant must prepare and submit to the Board papers on all required subjects for which he or she does not have current credit for certification or permit, whichever is applicable.

11.4.4 An applicant who commits an act of dishonesty or otherwise engages in any other form of misconduct, will be expelled from the examination room and may be denied the right to sit for future examinations.

11.4.5 Applicants will be informed in writing of the results achieved in each examination.

11.5 Passing Grade on the Uniform CPA Examination

11.5.1 An applicant for a certificate who receives a grade of 75 or higher in all four subjects at one examination shall be deemed to have passed the Uniform Certified Public Accountant Examination.

11.5.2 An applicant who is taking only the Accounting and Reporting (ARE) and Financial Accounting and Reporting (FARE) sections of the CPA examination in order to apply for a permit to practice public accounting, who receives a grade of 75 or higher in both required subjects, shall be deemed to have passed the applicable parts of the CPA examination.

11.6 Conditional Status for Subjects passed in this State

11.6.1 An applicant who sits for all required parts of either examination and who receives a grade of 75 or higher in one or more, but less than all subjects passed may attain conditional status under the following circumstances:

11.6.1.1 To attain conditional status, the applicant must obtain a grade of 75 or higher in two subjects and obtain a grade of at least 50 in all subjects not passed. This minimum grade requirement is waived if three subjects are passed at a single examination.

11.6.1.2 To add to conditional status, the applicant must obtain a grade of at least 50 in all subjects not passed. Although a grade of less than 50 prevents the applicant from adding to his or her conditional status, it alone does not remove or cancel conditional status previously attained.

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may be extended at the discretion of the Board, if an applicant is unable to sit for a given examination because of health, military service or other circumstances generally beyond the applicant's control.

11.6.1.4 An applicant who fails to pass all subjects required during the 5 consecutive examinations following the attainment of conditional status, shall forfeit all credits and shall, upon application as a new applicant, be examined again in all subjects.

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

11.7.1 An applicant who has passed one or more subjects of either examination in another jurisdiction will be permitted to transfer to this jurisdiction credit for the parts so passed under the following conditions, and provided the requirements of Section 11.6 of these Rules and Regulations have been met:

11.7.1.1 At the time he or she sat for the examination in the other jurisdiction, he or she met all the requirements of the statute and regulations to sit for the examination in Delaware; and

11.7.1.2 At the time he or she makes application to sit for the examination in Delaware, he or she meets all the requirements of the Delaware statute and regulations; and

11.7.1.3 Credit for any subject of the examination which is transferred from some other jurisdiction to Delaware will be treated as if that credit had been earned in Delaware on the same date such credit was earned in the other jurisdiction, and all time requirements of Delaware conditional status will be applied to it.

11.7.2 The Board will require satisfactory evidence from the transferring jurisdiction as to the validity of the credit.

11.7.3 If an applicant has passed all subjects of either examination in one or more other jurisdictions, but does not possess a certificate or permit from one of the jurisdictions in which a subject was passed, transfer of credit will only be permitted if a satisfactory explanation of such lack of a certificate or permit is furnished to the Board in

writing. The Board may require a written explanation of why no certificate or permit was issued from the jurisdiction in which the final subject was successfully completed.

12.0. Excepted Practices; Working Papers

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 **Del.C.** §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 **Del.C.** Chapter 1.

12.2 Working Papers: For purposes of 24 **Del.C.** §120, the term "working papers" does not properly include client records. In some instances, a permit holder's working papers may include data which should be part of the client's books and records, rendering the client's books and records incomplete. In such instances, that portion of the working papers containing such data constitutes part of the client's records and should be made available to the client upon request.

13.0 Hearings

13.1 Disciplinary proceedings against any certificate or permit holder may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 **Del.C.** §8807(h)(1)-(3).

13.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

13.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

13.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

13.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 **Del.C.** §§10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

13.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. A partnership or corporation may be represented at such hearing by a duly authorized representative of such partnership or corporation who shall be a partner or shareholder thereof and a permit holder of the State in good standing, or by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

13.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the accused shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

13.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 **Del.C.** §§10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

13.2. General procedure

13.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

13.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

13.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practical.

13.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing at least three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

14.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

14.1 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.

14.2 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.

14.3 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).

14.4 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.

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

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

14.6.1 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.

14.6.2 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.

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

14.6.4 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.

14.6.5 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.

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

14.7 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.

14.8 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.

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

14.10 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.

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

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

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 9110 (16 **Del.C.** 9110)

ORDER

STATE OF DELAWARE RULES AND REGULATIONS PERTAINING TO THE APPLICATION AND OPERATION OF MANAGED CARE ORGANIZATIONS (MCO).

Nature of the Proceedings:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the Application and Operation of Managed Care Organizations. The DHSS's proceedings to adopt regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 91, Section 9110.

On March 1, 2001 (Volume 4, Issue 9), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 2, 2001, or be presented at public hearings on March 27, 2001 and March 28, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

Findings of Fact:

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the March 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing The Application and Operation of Managed Care Organizations (MCO) are adopted and shall become effective July 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
6/15/01

Summary of Evidence

Public hearings were held on March 27, 2001 at 11:00 a.m. in the Library Conference Room, Townsend Building, 401 Federal Street, Dover, Delaware 19903 and 9:00 a.m. on March 28, 2001 in the first (1st) floor conference room, Delaware Fire Service Center, 2307 MacArthur Road, New Castle, DE 19720 before Susan Kirk-Ryan, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing the Application and Operation of Managed Care Organizations (MCO). The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Ms. Mary Peterson from the Office of Health Facilities Licensing and Certification (OHFLC),

Division of Public Health (DPH), made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Public testimony was given at the public hearing and seven letters were received commenting on the proposed regulations during the comment period. Those letters were from:

- The State Council for Persons with Disabilities (SCPD)
- AmeriHealth
- ReedSmith on behalf of the Health Insurance Association of America (HIAA)
- Campbell Consulting, INC. on behalf of Coventry Health Care and Mamsi
- BlueCross BlueShield of Delaware (BCBSD)
- Delmarva Health Plan
- URAC (American Accreditation HealthCare Commission)

An eighth letter was received from the Governor's Advisory Council for Exceptional Citizens (GACEC). This letter was dated (April 4, 2001) and received (April 9, 2001) after the public comment period ended (March 1 – April 2, 2001). All public comments and the DHSS (Agency) responses are as follows:

- **Regulation 69.102 Industry concern was that the MCOs provide health care coverage, not health care. SCPD and GACEC were concerned that the scope of appealable issues were too narrow**.

Agency Response: Language was changed to "covered healthcare benefits" to be consistent with other statute language. The scope of appealable issues was not revised as the language in the regulation reflects the definitions in statute.

- **Regulation 69.113 SCPD was concerned that the term (appropriateness of service) used for this definition was misleading.**

Agency Response: The term was changed from "appropriateness of service" to "disputable need" (69.113) to allow an appeal classification for adverse determinations that are made based upon identification of a treatment as cosmetic or experimental.

- **Regulation 69.107 Concern was expressed regarding the term "benefits denial" and its definition.**

Agency Response: This term appeared only once in the regulations. Changes made to the section in which it appeared based on public comment lead to the removal of the term. The definition, therefore, is no longer necessary. It is removed from the regulations.

- **Regulation 69.109 SCPD recommended that the word "expressly" be removed from the definition of "Covered Health Services".**

Agency Response: The word "expressly should have been removed prior to publication. It is now removed from the definition.

- **Regulation 69.116 AmeriHealth was concerned that the definition of "enrollee" required the MCO to provide basic health services.**

Agency Response: The definition of "Enrollee" was changed to reflect that the MCO would provide "coverage for" basic health services.

- **Regulation 69.118 SCPD was concerned that this section of the regulations addressed only geographic accessibility and not physical accessibility and reasonable accommodations.**

Agency Response: This definition relates to geographic boundaries. While the SCPD point is well taken, the "geographic area" definition would not be affected.

- **Regulation 69.121 BCBSD suggested changing the word "which" in the definition of the Independent Health Care Appeals Program to "and".**

Agency Response: This change was made to improve the readability of the definition.

- **Regulation 69.128 AmeriHealth was concerned that the definition of MCO did not reflect that MCOs provides "coverage for" health care services. SCPD was concerned that the definition was too limiting.**

Agency Response: The definition of MCO was taken directly from Delaware Code.

- **Regulation 69.129 SCPD was concerned that the definition of "medical necessity" is too limiting. Delmarva Health Plan suggested that the term "medical necessity" not be defined within the regulations.**

Agency Response: The term "medical necessity" is now defined in Delaware Code, Title 16, Part VIII, Chapter 91. The definition used in the regulation is a direct quote of the

definition in the Delaware Code.

- **Regulation 69.141 AmeriHealth was concerned that the term "clinical necessity" was used in this section rather than "medical necessity". HIAA suggested that the word "and" be substituted for the word "or" between the words "efficacy" and "efficiency".**

Agency Response: This section was not intended to tie the definition of "utilization review" to " medical necessity", therefore "clinical necessity" is the more appropriate term. The words "and/or" will be placed between the words "efficacy" and "efficiency", thus permitting a reviewer to review one or all three criteria as appropriate.

- **Regulation 69.202(B)(2) All comments on this section suggested that only those contracts that deviate "substantially" from the sample need be submitted.**

Agency Response: The Department does not wish to review every contract in which there have been minor changes. The word "substantially" will, therefore be inserted after the word deviates. The Department will, however, determine what changes are to be considered substantial.

- **Regulation 69.301 AmeriHealth was concerned with the requirement that every manual concerning enrollee services be filed with the Department. They felt that this was overly broad and unduly burdensome.**

Agency Response: The intent of the Department was to limit the manuals required. The current regulations stipulate that every manual must be filed. To further define the manuals required, however, the following language will be substituted: "every manual concerning: enrollee rights and responsibilities; policies and procedures relating to health plan coverage; appeal and complaint criteria; and, any other manual upon request."

- **Regulation 69.302 The OHFLC suggested during each of the public hearings that this section be revised to eliminate the need for the MCOs to submit financial information as a part of their annual reports.**

Agency Response: The agency suggested this revision. The MCOs are required to file financial information with the Department of Insurance. This filing will be deemed to meet the intent of the law.

- **Regulation 69.305(B) AmeriHealth requested that the phrase, "subject to coverage limitations" be added to this section.**

Agency Response: This request concerned a non-revised section of the regulations. Coverage for health care services is subject to the language within the health plan. The addition of the phrase, "subject to coverage limitations" is not necessary.

- **Regulation 69.316(B) AmeriHealth suggested that the word "submit" be replaced with the phrase "provide access to".**

Agency Response: This request concerned a non-revised section of the regulations. The Department may make examinations of the MCO as it deems necessary at least every three years. At the time of an examination, the Department would request submission of books and records to the examiner. The word "submit" more clearly reflects the intent of the regulation.

- **Regulation 69.317(B) Coventry and HIAA suggested that the word "alternatively" be added to this section to clarify that the Department may pursue a cease and desist order or an action to obtain injunctive relief.**

Agency Response: 16 Del. C. §9123(d) provides that "if the Secretary elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (b) of this section, the Secretary may institute a proceeding to obtain injunctive relief in accordance with the applicable Court Rules." Thus, the Department's remedies are not strictly an "either/or" situation. The language noted herein in quotes is added to the final regulations to clarify this issue.

- **Regulation 69.317(G) The HIAA was concerned that the language in this section was not consistent with the Administrative Procedures Act.**

Agency Response: Review by the Attorney General's Office did not reveal any inconsistencies.

- **Regulation 69.402 The SCPD recommended that the provider network adequacy section include language to address physical accessibility and reasonable accommodations.**

Agency Response: This request concerned a non-revised section of the regulations. Addition of such language would constitute substantive change to the promulgated regulations and would require scheduling of more public hearings.

While the SCPD point is well taken, it should not delay implementation of the Independent Health Care Appeals Program. Language will be considered at the time of the next revision which will probably take place before the end of 2001.

- **Regulation 69.404(A) SCPD expressed concern that the appeal procedure for appropriateness of service was limited to cosmetic and experimental treatments.**

Agency Response: As noted earlier, the term "appropriateness of service was removed from the definition so that it would not be limited. A new term, "disputable need" was added to the definition concerning cosmetic and experimental treatments.

- **Regulation 69.404(B) Several of the comments requested that the timeframes for expedited appeals be clarified. Two MCOs suggested that reports regarding appeals be required annually or semi-annually as opposed to quarterly.**

Agency Response: The section was outlined to better explain the required timeframes for expedited appeals. Quarterly reporting permits the Department to study data and analyze trends; since the volume is expected to be low, quarterly reporting should not be an onerous task.

- **Regulation 69.404(C) Concern regarding timeframes was expressed. In general, the comments suggested longer timeframes than those permitted in the regulations.**

Agency Response: The timeframes utilized throughout the regulations were based on those recommended by the National Association of Insurance Commissioners and do not need to be modified. The word "written" was removed from 69.404 (C) (3) to reflect the fact that verbal notice may also be given to the appellant prior to the required written notice.

- **Regulation 69.404(D) Concern regarding timeframes was expressed. SCPD was concerned that a panel of 2 at the Stage 2 internal appeal would lead to "too many ties".**

Agency Response: The timeframes utilized throughout the regulations were based on those recommended by the National Association of Insurance Commissioners and do not need to be modified. From a practical perspective, an MCO employee panel of 2 for internal review may not suffer frequently deadlocked decisions. The regulations require "at least" 2, so if there is a split, there is room to allow for a third employee opinion.

- **Regulation 69.404(E) There was a concern expressed that the MCO was not permitted the opportunity to submit supplementary information at the third stage in response to the submission of new information by the appellant. An MCO would like to change the requirement for the MCO to submit all material considered to only that material relied upon to come to a decision.**

Agency Response: The Independent Utilization Review Organization will now be required to accept a submission from the MCO. Submitting only those documents relied upon in making a decision could cause disputes over whether documents should have been produced, therefore, this section shall continue to read "all material considered". The word "grievance" in this section was changed to "request for appeal" as "grievance" is not used elsewhere in the regulations.

- **Regulation 69.404(F) Comments suggested that there should be a clarification as to when an appellant may file a request for an expedited review.**

Agency Response: Language changed to reflect the fact that an appellant may request an expedited review if (s)he suffers form a condition that poses an imminent, emergent or serious threat or has an emergency medical condition.

- **Regulation 69.404(G) Comments suggested that the language of the regulation was not clear regarding the Department's discretion to dismiss an appeal which is clearly outside of the scope of review for the Independent Health Care Appeals Program.**

Agency Response: Language revised to clearly show the Department's authority to review an appeal for appropriate inclusion in the Independent Health Care Appeals Program.

- **Regulation 69.404(H) AmeriHealth expressed concern regarding costs for those appeals that are dismissed.**

Agency Response: Changes to 69.404(G) should reduce concerns regarding unnecessary costs.

- **Regulation 69.404(I) AmeriHealth raised questions regarding the appeal data to be submitted to the Department.**

Agency Response: 69.404(I) will be deleted and the annual appeal data requirements will be outlined in 69.705(B) where annual reporting requirements already exist.

- **Regulation 69.405(B) URAC suggested language to make the language for external quality audits more consistent with national standards.**

Agency Response: Suggestions were incorporated into the language of the regulation.

- **Regulation 69.503 Two MCOs suggested that the intent of the regulation be clarified by adding that enrollees must choose a provider from the network of participating providers.**

Agency Response: Language was amended to reflect same.

In addition to changes recommended in this Summary of Evidence, minor grammatical corrections were made to the draft regulations.

The public comment period was open from March 1, 2001 to April 2, 2001.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

RULES AND REGULATIONS GOVERNING THE APPLICATION AND OPERATION OF MANAGED CARE ORGANIZATIONS (MCO)

Adopted by the Department of Health and Social Services on
November 16, 1998
Effective February 1, 1999
Revised **[July 10, 2001]**

PART ONE
LEGAL AUTHORITY AND DEFINITIONS

SECTION 69.0 LEGAL AUTHORITY

These regulations are adopted under Part VIII, Title 16, Delaware Code, Chapter 91, pursuant to delegation of authority from the Secretary of the Department of Health and Social Services (DHSS) to the Director of the Division of Public Health (DPH) ~~effective March 15, 1983 and revised July 1,1989~~.

SECTION 69.1 DEFINITIONS

69.101 "Administrator/Chief Executive Officer": ~~means~~ the individual employed to manage and direct the activities of the MCO.

69.102 "Appeal": a request to reexamine or review an adverse determination made by an MCO that denies, reduces or terminates health care **[benefits]**.

69.103 "Appellant": an enrollee (69.11**[~~7~~ 6]**) or other authorized representative (69.105) of the enrollee who may appeal an MCO decision.

[~~69.104 "Appropriateness of services": an appeal classification for adverse determinations that were made based upon identification of treatment as cosmetic or experimental.~~]

69.10 **[~~5~~ 4]** "Authorized representative": an individual who the appellant willingly acknowledges to represent her or his interests during the appeal process. An MCO may require the appellant to submit written verification of her/his consent to be represented. If an enrollee has been determined by a physician to be incapable of assigning the right of representation, the appeal may be filed by a family member or a legal representative.

69.10~~2~~ **[~~6~~ 5]**"Basic health services": ~~means~~ a range of services, including at least the following:

A. Physician services, including consultant and referral services, by a physician licensed by the State of Delaware.

B. At least three hundred sixty-five (365) days of inpatient hospital services.

C. Medically necessary emergency health services.

D. Initial diagnosis and acute medical treatment (at least one (1) time) and responsibility for making initial behavioral health referrals.

E. Diagnostic laboratory services.

F. Diagnostic and therapeutic radiological services.

G. Preventive health services including at least the provision of physical examinations, papanicolaou (PAP) smears, immunizations, mammograms and childrens' eye examinations (through age 17), conducted to determine the need for vision correction performed at a frequency determined to be appropriate medical practice. Other preventive services may be provided by the MCO as contained in the Health Care Contract.

H. Health education services, including education in the appropriate use of health services, and education in the contribution each enrollee can make to the maintenance of the enrollee's own health. This information shall be understandable and not misleading.

I. Emergency out-of-area coverage.

[~~69.107 "Benefits denial": a denial of service on the grounds that is excluded from the enrollee's health care contract with the insurer.~~]

69.103~~[8 6]~~ "Certificate of Authority": ~~means~~ the authorization by the Department of Health and Social Services to operate the MCO ~~and.~~ T~~t~~his certificate shall be deemed to be a license to operate such an Organization.

69.104~~[9 7]~~ "Certified Managed Care Organization": ~~(MCO) means~~ a managed care organization which has been issued a Certificate of Authority under 16 Del. C. and either a Certificate of Authority from the ~~Insurance Department~~ Department of Insurance (DOI) under the relevant provisions of Title 18 or a statement from the ~~Insurance Department~~ DOI that the ~~Insurance Department~~ DOI Certificate of Authority is not required.

69.105~~[10 8]~~ "Commissioner": ~~means~~ the Insurance Commissioner of Delaware.

69.10~~[11 9]~~ "Covered health services": services that are ~~[expressly]~~ included in the enrollee's health care contract with the insurer.

69.106~~[12 10]~~ "Covered Person": see "Enrollee".

69.107~~[13 11]~~ "Department": ~~means~~ the Delaware Department of Health and Social Services.

69.1~~[14 12]~~"~~Insurance~~ Department of Insurance Certificate of Authority": ~~means~~ the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.

[69.104 113] [~~"Appropriateness of services"~~ Disputable Need]: an appeal classification for adverse determinations that were made based upon identification of treatment as cosmetic or experimental.

69.108~~[15 14]~~ "Emergency Care": ~~means~~ health care items or services furnished or required to evaluate or treat an emergency medical condition.

69.109~~[16 15]~~ "Emergency Medical Condition": ~~means~~ a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

A. placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

B. serious impairment to bodily functions; or

C. serious dysfunction of any bodily organ or part.

69.110~~[17 16]~~ "Enrollee": ~~means~~ an individual and/or family who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into with the MCO, under which the MCO assumes the responsibility to provide to such person(s) **[coverage for]** basic health services and such supplemental health services as are enumerated in the Health Care Contract.

69.1~~[18 17]~~ "Geographical area": ~~refers to~~ the stated primary geographical area served by a MCO. The primary area served shall be a radius of not more than twenty (20) miles or more than thirty (30) minutes driving time from a primary care office operated or contracted by the MCO.

69.12~~[19 18]~~ "Health care contract": ~~refers to~~ any agreement between a MCO and an enrollee or group plan which sets forth the services to be supplied to the enrollee in exchange for payments made by the enrollee or group plan.

69.113~~[20 19]~~ "Health care professional": ~~means~~ individuals engaged in the delivery of health services as licensed or certified by the State of Delaware.

69.114~~[21 20]~~ "Health care services": ~~means~~ any services included in the furnishing to any individual of medical or dental care, or hospitalization or incidental to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness, injury or physical disability.

69.115~~[22 21]~~ "Independent Health Care Appeals Program": a program within the Department of Health and Social Services which establishes a final step in the appeal process ~~[which~~ **and]** provides for a review by an Independent Utilization Review Organization (69.124).

69.116~~[23 22]~~ "Independent Practice Association" (IPA): ~~means~~ an arrangement in which health care professionals provide their services through the association in accordance with a mutually accepted compensation arrangement while retaining their private practices.

69.117~~[24 23]~~ "Independent Utilization Review Organization (IURO)": an entity that conducts independent external reviews of an MCO's determinations resulting in a denial, termination, or other limitation of covered health care services.

69.118~~[25 24]~~ "Insurance Department": ~~means~~ the Delaware ~~Insurance~~ Department of Insurance.

~~69.119 "Insurance Department of Insurance Certificate of Authority": means the authorization by the Insurance Commissioner that the MCO has met the relevant provisions of Title 18 of the Delaware Code.~~

69.120**[26 25]** "Intermediary": means a person authorized to negotiate and execute provider contracts with MCOs on behalf of health care providers or on behalf of a network.

69.121**[27 26]** "Level 1 Trauma Center": means a regional resource trauma center that has the capability of providing leadership and comprehensive, definitive care for every aspect of injury from prevention through rehabilitation.

69.122**[28 27]** "Level 2 Trauma Center": means a regional trauma center with the capability to provide initial care for all trauma patients. Most patients would continue to be cared for in this center; there may be some complex cases which would require transfer for the depth of services of a regional Level 1 or specialty center.

69.123**[29 28]** "Managed Care Organization (MCO)": (MCO) means a public or private organization**[,]** organized under the laws of any state, which:

A. provides or otherwise makes available to enrolled participants health care services, including at least the basic health services defined in 69.102;

B. is primarily compensated (except for co-payment) for the provision of basic health care services to the enrolled participants on a predetermined periodic rate basis.; and

C. provides physician services directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

69.1**[30 29]** "Medical necessity": providing of covered health services (69.111) or products that a prudent physician would provide to a patient for the purpose of diagnosing, or treating an illness, injury, disease or its symptoms in a manner that is:

A. In accordance with generally accepted standards of medical practice;

B. Consistent with the symptoms or treatment of the condition; and

C. Not solely for anyone's convenience.

69.124**[31 30]** "Network": means the participating providers delivering services to enrollees in a managed care plan.

69.125**[32 31]** "Office": means any facility where enrollees receive primary care or other health services.

69.126**[33 32]** "Out of area coverage": refers to health care services provided outside the organization's geographic service areas with appropriate limitations and guidelines acceptable to the Department and the Commissioner. At a minimum, such coverage must include emergency care.

69.127**[34 33]** "Participating provider": means a provider who, under a contract with the Organization or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the Organization.

69.128**[35 34]** "Premium": refers to payment(s) called for in the Health Care Contract which must be:

A. paid or arranged for by, or on behalf of, the enrollee before health care services are rendered by the Organization MCO;

B. paid on a periodic basis without regard to the date on which health services are rendered; and

C. with respect to an individual enrollee are fixed without regard to frequency, extent or cost of health services actually furnished.

69.129**[36 35]** "Primary Care Physician (PCP)": means a participating health care physician chosen by the enrollee and designated by the Organization MCO to supervise, coordinate, or provide initial care or continuing care to an enrollee, and who may be required by the Organization MCO to initiate a referral for specialty care and maintain supervision of health care services rendered to the enrollee.

69.130**[37 36]** "Provider": means a health care professional or facility.

69.131**[38 37]** "Staff model MCO": means an MCO in which physicians are employed directly by the MCO or in which the MCO directly operates facilities which provide health care services to enrollees.

69.132**[39 38]** "Supplemental payment": refers to any payment not incorporated in the premium which is required to be paid to the MCO or providers under contract to the MCO by the enrollee.

69.133**[40 39]** "Supplementary health services": means any health services other than basic health services which may be provided by a MCO to its enrollees and/or for which the enrollee may contract such as:

A. Long term care;

B. Vision care not included in basic health services;

C. Dental services;

D. Behavioral health services;

E. Long term physical medicine or rehabilitative services;

F. Pharmacy services;

G. Infertility services; and

H. Other services, such as occupational therapy, nutritional, home health, homemaker, hospice and family planning services.

69.1~~[41 40]~~ "Tertiary services": ~~means~~ health care services provided for the intensive treatment of critically ill patients who require extraordinary care on a concentrated basis in special diagnostic categories (e.g. burns, cardiovascular, neonatal, pediatric, oncology, transplants, etc.).

69.15~~[42 41]~~ "Utilization Review": a set of formal techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning, or retrospective review.

PART TWO

SECTION 69.2 APPLICATION AND CERTIFICATE OF AUTHORITY

69.201 No person shall establish or operate an MCO in the State of Delaware or enter this State for purposes of enrolling persons in an MCO without obtaining a "Certificate of Authority" under Chapter 91 of Title 16 of the Delaware Code. A foreign corporation shall not be eligible to apply for such certificate unless it has first qualified to do business in the State of Delaware as a foreign corporation pursuant to 8 Del. C., §371.

69.202 Each application for a Certificate of Authority shall be made in writing to the Department of Health and Social Services, shall be certified by an officer or authorized representative of the applicant, shall be in a form prescribed by the Department (Appendix A) and shall set forth or be accompanied by the following:

A. Organizational Information

1. Brief history and description of current status of applicant, including an organization chart;

2. A copy of the basic organizational documents such as the certificate of incorporation, articles of association, ~~partnership agreement, trust agreement~~ or other appropriate documents and amendments thereto;

3. A list of the names, addresses and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant. Include all ~~enrollees~~ members of the Board of Directors or other governing board, the principal officers in the case of a corporation, and the partners or ~~enrollees~~ members in the case of a partnership or association; and

4. A list of positions~~,~~ and names ~~and resumes~~ for all management personnel.

B. Health Services Delivery

1. A description of the plan of operation of the MCO. Include the following items:

a) a listing of basic health services (69.10~~[6 5]~~) and supplemental health services (69.1~~[40 38]~~) ~~(as defined at 69.102 and 69.130 respectively)~~ with utilization projections; and

b) the arrangements for delivery of all covered health services (including details as to whether outpatient services are provided directly or through referrals/purchase agreements with outside fee-for-service providers); a description of service sites or facilities (specifying days and hours of operation in the case of outpatient facilities); and all special policies or provisions designed to improve accessibility of services.

2. A sample of the contract, ~~Copies of all executed contracts~~, agreement~~s~~ or arrangement~~s~~ between the MCO and providers, including individual physicians, IPAs, group practices, hospitals, laboratory services, nursing homes, home health agencies, and other providers. Any contract, agreement or arrangement which deviates **[substantially]** from the sample must be submitted to the OHFLC as executed. In addition, copies of executed contracts or letters of agreement between an IPA or medical group and its member or non-member physicians and other health professionals must be submitted;

3. A list of participating physicians by specialty and by geographic area as well as a list of other health care personnel providing services. Each physician included on the list must be identified as accepting or not accepting new patients and if there are any limitations on that physician's accepting any enrollees as patients. Staffing ratios shall be prepared for each geographic area in which the MCO proposes to operate. Staffing ratios are the number of physicians or providers by specialty per enrollee;

4. For staff model MCOs, a list of facilities that show the capacity, square footage, and the legal arrangements for use of the facility (leases, subleases, contract of sale, etc.). Provide copies of leases, contracts of sale, or other legal agreements relating to the facilities to be operated by the MCO;

5. All of the applicant's utilization review and utilization management, utilization control, quality assurance mechanisms, policies, manuals, guidelines, and materials ~~including information on committee structures and criteria~~;

6. The arrangements for assuring continuity of care for all services provided to enrollees. Include comments on policies related to the primary care physician's responsibilities for coordination and oversight of the enrollee's overall health care and the impact of the medical record keeping system on continuity of care;

7. Procedures utilized by the applicant for determining and ensuring network adequacy;

8. Procedures utilized by the applicant for the credentialing of providers;

9. Procedures for addressing enrollee grievances;

10. Any materials or procedures utilized by the

applicant for measuring or assessing the satisfaction of enrollees; and

11. Procedures for monitoring enrollee access to participating providers including but not limited to:

a) appointment scheduling guidelines;

b) standards for office wait times; and

c) standards for provider response to urgent and emergent issues during and after business hours.

C. Enrollment and Marketing

~~1. A description of the target population, including projections of enrollment levels on a quarterly basis for at least the first three (3) years of operation and the key assumptions underlying these projections;~~

~~2~~1. A description of the geographic area to be served, with a map showing service area boundaries, locations of the MCO's participating providers, PCPs, institutional and ambulatory care facilities, and travel times from various points in the service area to the nearest ambulatory and institutional services;

~~3~~2. Identification of all information to be released to enrollees or prospective enrollees;

~~4~~3. A description of the proposed marketing techniques and sample copies of any advertising or promotional materials to be used within Delaware or to which Delaware citizens would be exposed;

~~5~~4. Enrollee handbooks proposed for use. A finalized enrollee handbook shall also be submitted upon completion; and

~~6~~5. Procedures for notifying enrollees of plan changes.

D. Financial

1. Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4).

~~1. A financial statement for the most recent fiscal year certified by a Certified Public Accountant (CPA);~~

~~2. Financial projections for a minimum of three (3) years. If deficits are anticipated, the projections should cover the period up to and including the year in which break-even is expected. Include projections of revenue and expenses; a projected balance sheet; a pro forma cash flow statement; and a pro forma statement of changes in financial position. Indicate the assumptions on which statements are based, including inflation and utilization assumptions;~~

~~3. Sources of financing (private and governmental) and, where appropriate, written assurances of the availability of financing;~~

~~4. A description of all reinsurance arrangements or risk sharing arrangements with providers; and~~

~~5. The proposed premiums for all classes of enrollee, co-payments, and the rating plan or rating rules used by the applicant.~~

69.203 Within sixty (60) days after receipt of a complete application for issuance of Certificate of Authority the Department shall determine whether the applicant, with respect to health care services to be furnished, has:

A. demonstrated the ability to provide such health services in a manner assuring availability, accessibility and continuity of services;

B. made arrangements for an ongoing health care quality assurance program;

C. the capability to comply with all applicable rules and regulations promulgated by the Department;

D. the capability to provide or arrange for the provision to its enrollees of basic health care services on a prepaid basis through insurance or otherwise, except to the extent of reasonable requirements of co-payments; and

E. for staff model MCOs, the staff and facilities to directly provide at least half of the outpatient medical care costs of its anticipated enrollees on a prepaid basis.

69.204 The Department shall issue a Certificate of Authority to any person filing an application under this section upon demonstration of compliance with these rules and regulations if:

A. The application contains all the information required under 69.202 of this Part;

B. The Department has not made a negative determination pursuant to 69.203 of this Part; and

C. Payment of the application fees prescribed in 16 Del. C. Chapter 91, has been made.

69.205 If within 60 days after a complete application for a Certificate of Authority has been filed, the Department has not issued such certificate, the Department shall immediately notify the applicant, in writing, of the reasons why such certificate has not been issued and the applicant shall be entitled to request a hearing on the application. The hearing shall be held within 60 days of receipt of written request therefor. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Chapter 101 of Title 29, and in accordance with applicable rules and regulations of the Department (63 Del. Laws, c.382, §1;66 Del. Laws, c. 124, §7.).

69.206 No Certificate of Authority shall be issued without a Certificate of Authority from the ~~Insurance Department~~ DOI under the relevant provisions of Title 18 or a statement from the ~~Insurance Department~~ DOI that the ~~Insurance Department~~ DOI Certificate of Authority is not required.

If a deposit is required, it shall be continuously maintained in trust. In case of a deficiency of deposit, the Insurance Commissioner shall transmit notice thereof to both the MCO and the Department. In case the deficiency is not cured within the allowed time, the Commissioner shall give

notice thereof to the Department and the Department shall revoke its Certificate of Authority to the MCO.

PART THREE

SECTION 69.3 GENERAL REQUIREMENTS

69.301 Every MCO operating in this State shall file with the Department every manual concerning**[:]** enrollee **[services rights and responsiblities; policies and procedures relating to health plan coverage; complaint and appeal criteria; and, ~~which it proposes to use and~~]** any other manual upon request. Every filing shall indicate the effective date thereof.

69.302 Annual reports shall be filed with the Department by any MCO on or before June 1 covering the preceding fiscal year. Such reports shall include **[~~a financial statement of the MCO, its balance sheet and receipts and disbursements for the preceding fiscal year, and~~]** any changes in the information originally submitted or required under 69.2, 69.404 ~~E~~ I., 69.405 B. and 69.705. **[Financial information submitted to the Department of Insurance shall be deemed to meet the requirement of Delaware Code, Title 16, Part VIII, Chapter 91, Section 9104(4).]**

69.303 Contract Provisions

A. Every contract between an MCO and a participating provider shall contain the following language:

1. "Provider agrees that in no event, including but not limited to nonpayment by the MCO or intermediary, insolvency of the MCO or intermediary, or breach of this agreement, shall the provider bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against an enrollee or a person (other than the MCO or intermediary) acting on behalf of the enrollee for services provided pursuant to this agreement. This agreement does not prohibit the provider from collecting coinsurance, deductibles or co-payments, as specifically provided in the evidence of coverage, or fees for uncovered services delivered on a fee-for-service basis to enrollees."

2. "In the event of an MCO or intermediary insolvency or other cessation of operations, covered services to enrollees will continue through the period for which a premium has been paid to the MCO on behalf of the enrollee or until the enrollee's discharge from an inpatient facility, whichever time is greater. Covered benefits to enrollees confined in an inpatient facility on the date of insolvency or other cessation of operations will continue until their continued confinement in an inpatient facility is no longer medically necessary."

3. The contract provisions that satisfy the requirements of Subsections 1. and 2. above shall be construed in favor of the enrollee, shall survive the termination of the contract regardless of the reason for termination, including the insolvency of the MCO, and shall supersede any oral or written contrary agreement between a provider and an enrollee or the representative of an enrollee if the contrary agreement is inconsistent with the hold harmless and continuation of covered services provisions required by Subsections 1. and 2. above.

4. Every contract between an MCO and a participating provider shall state that in no event shall a participating provider collect or attempt to collect from an enrollee any money owed to the provider by the MCO.

69.304 Amendments or Revisions of Contracts

Any significant amendment to or revision relating to the text or subtext of an approved provider contract shall be submitted to and approved by the Department prior to the execution of an amended or revised contract with the providers of an MCO.

69.305 The MCO shall establish a policy governing termination of providers. The policy shall include at least:

A. Written notification to each enrollee six (6) weeks prior to the termination or withdrawal from the MCO's provider network of an enrollee's primary care physician except in cases where termination was due to unsafe health care practice; and

B. Except in cases where termination was due to unsafe health care practices that compromise the health or safety of enrollees, assurance of continued coverage of services at the contract price by a terminated provider for up to 120 calendar days in cases where it is medically necessary for the enrollee to continue treatment with the terminated provider. In cases of the pregnancy of an enrollee, medical necessity shall be deemed to have been demonstrated and coverage shall continue to completion of postpartum care.

69.306 The Medical Director and physicians designated to act on his behalf shall be Delaware licensed physicians.

69.307 Prohibited Practices

A. No MCO or representative may cause or permit the use of advertising or solicitation which is untrue or misleading.

B. No MCO may cancel or refuse to renew the enrollment of an enrollee solely on the basis of her/his health. This does not prevent the MCO from canceling the enrollment of an enrollee if misstatements of her/his health were made at the time of enrollment, or prevent the MCO from canceling or refusing to renew enrollment for reasons other than an enrollee's health including without limitation, nonpayment of premiums or fraud by the enrollee.

C. An MCO contract shall contain no provision or nondisclosure clause prohibiting physicians or other health

care providers from giving patients information regarding diagnoses, prognoses and treatment options.

D. An MCO shall not deny, exclude or limit benefits for a covered individual for losses due to a preexisting condition where such were incurred more than twelve (12) months following the date of enrollment in such plan or, if earlier, the first day of the waiting period for such enrollment.

E. An MCO shall not impose any preexisting condition exclusion relating to pregnancy or in the case of a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, as of the last day of the 30-day period beginning on the date of the adoption or placement for adoption, is covered under creditable coverage. The previous sentence shall not apply to coverage before the date of such adoption or placement for adoption.

F. An MCO shall not offer incentives to a provider to provide less than medically necessary services to an enrollee.

G. An MCO shall not penalize a provider because the provider, in good faith, reports to state authorities any act or practice by the MCO that jeopardizes patient health or welfare.

H. A contract between an MCO and a provider shall not contain definitions or other provisions that conflict with the definitions or provisions contained in these regulations.

69.308 An MCO shall establish a mechanism by which the participating provider will be notified on an ongoing basis of the specific covered health services for which the provider will be responsible, including any limitations or conditions on services.

69.309 An MCO shall notify participating providers of the providers' responsibilities with respect to the MCO's applicable administrative policies and programs, including but not limited to payment terms, utilization review, quality assessment and improvement programs, credentialing, grievance procedures, data reporting requirements, confidentiality requirements and any applicable federal or state programs.

69.310 The rights and responsibilities under a contract between an MCO and a participating provider shall not be assigned or delegated by the provider without the prior written consent of the MCO.

69.311 An MCO is responsible for ensuring that a participating provider furnishes covered benefits to all enrollees without regard to the enrollee's enrollment in the plan as a private purchaser of the plan or as a participant in publicly financed programs of health care services. This requirement does not apply to circumstances when the provider should not render services due to limitations arising from lack of training, experience, skill or licensing restrictions.

69.312 An MCO shall notify the participating providers of their obligations, if any, to collect applicable coinsurance, co-payments or deductibles from enrollees pursuant to the evidence of coverage, or of the providers' obligations, if any, to notify enrollees of their personal financial obligations for non-covered services.

69.313 An MCO shall establish procedures for resolution of administrative, payment or other disputes between providers and the MCO.

69.314 Notice of Changes in MCO Operations

The MCO shall notify the Department ~~of Health and Social Services~~, in writing, on an ongoing basis, of any substantial changes in organization, bylaws, governing board, provider contracts or agreements, marketing materials, grievance procedures, enrollee handbooks, utilization management program, and any change of inpatient acute care hospitals. The Department shall be notified on at least a quarterly basis of changes in the provider network.

69.315 Changes in Ownership Interests

Certificates of Authority shall not be assignable or transferable in whole or in part. Accordingly, the holder of record of any Certificate of Authority to operate in Delaware, as a condition thereof, shall comply with all of the following requirements regarding changes in ownership interests. For the purposes of this section, changes in ownership interests shall refer to changes in the ownership of the holder of record of any Certificate of Authority and/or changes in ownership of any individual, corporation or other entity which, through the ownership of voting securities, by contract or by any other means, has the authority to or does in fact direct or cause the direction of the management and/or the policies of the MCO which is the subject of the Certificate of Authority at issue.

69.316 Examinations

A. The Department may make examinations concerning the quality of health care services of any MCO. The Department may make such examination as it deems necessary for the protection of the interests of the enrollees of the MCO, but not less frequently than every three (3) years;

B. Every MCO shall submit its books and records relating to health care services to such examinations. In the course of such examinations, the Department may administer oaths to and examine the officers and agents of the MCO and of any health care providers with which it has contracts, agreements or other arrangements. The MCO

shall require a provider to make health records available to the Department employees involved in assessing the quality of care or investigating the grievances or complaints of enrollees, and to comply with the applicable laws related to the confidentiality of medical or health records; and

C. The reasonable expenses of examinations under this section shall be assessed against the MCO being examined and remitted to the Department.

69.317 ~~Suspension or Revocation of Certificate of Authority.~~ Violations/Penalties

A. The Department may revoke or suspend a Certificate of Authority issued to an MCO pursuant to 16 Del. C. Chapter 91, or may place the MCO on probation for such period as it determines, or may publicly censure an MCO if it determines, after a hearing, that:

1. The MCO is operating in a manner which deviates substantially, in a manner detrimental to its enrollees, from the plan of operation described by it in securing its Certificate of Authority;

2. The MCO does not have in effect arrangements to provide the quantity and quality of health care services required by its enrollees;

3. The MCO is no longer in compliance with the requirements of 16 Del. C. §9104(b); or

4. The continued operation of the MCO would be detrimental to the health or well being of its enrollees needing services.

B. The Department may issue an order directing a health carrier or a representative of a health carrier to cease and desist from engaging in any act or practice in violation of the provisions of this act **~~[or may institute a proceeding to obtain injunctive relief.~~ If the Secretary elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desit order, the Secretary may institute a proceeding to obtain injunctive relief.]**

1. Within twenty (20) calendar days after service of the cease and desist order, the health carrier may request a hearing on the question of whether acts or practices in violation of this act have occurred. This appeal shall not stay the cease and desist order.

~~B.~~C. Proceedings in regard to any hearing held pursuant to this section shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, 29 Del. C. §101, and any applicable rules and regulations of the Department. Any decision rendered following a hearing shall set forth the findings of fact and conclusions of the Department as to any violations of this Chapter, and shall also set forth the reasons for the Department's choice of any sanction to be imposed. The Department's choice of sanction shall not be disturbed upon appeal, except for abuse of discretion.

~~C.~~D. Suspension of a Certificate of Authority pursuant to this section shall not prevent the MCO from continuing to serve all its enrollees as of the date the Department issues a decision imposing suspension, nor shall it preclude thereafter adding as enrollees newborn children or other newly acquired dependents of existing enrollees. Unless otherwise determined by the Department and set forth in its decision, a suspension shall, during the period when it is in effect, preclude all other new enrollments and also all advertising or solicitation on behalf of the MCO other than communication, approved by the Department, which are intended to give information as to the effect of the suspension.

~~D.~~E. In the event that the Department decides to revoke the Certificate of Authority of an MCO the decision so providing shall specify the time and manner in which its business shall be concluded. If the Department determines it is appropriate, it may refer the matter of conservation or liquidation to the Insurance Commissioner, who shall then proceed in accordance with 18 Del. C., Chapter 59. In any case, after the Department has issued a decision revoking a Certificate of Authority, unless stayed in connection with an appeal, the MCO shall not conduct any further business except as expressly permitted in the Department's decision and it shall engage only in such activities as are directed by the Department or are required to assist its enrollees in securing continued health care coverage.

~~E.~~F. The Department may require a corrective action plan from an MCO when the Department determines that the MCO is not in compliance with any of the regulations contained herein.

G. Civil Monetary Penalty (CMP)

1. A carrier that violates any provision of this act shall be liable to a civil penalty of not less than two hundred fifty dollars ($250.00) and not greater than ten thousand dollars ($10,000.00) for each day that the carrier is in violation of the act.

2. The Department shall give ten (10) calendar days written notice to the health carrier of its intent to levy such a penalty.

3. The health carrier may, within such 10 day period, give written notice of their desire to have a hearing. Proceedings in regard to such hearing shall be conducted in accordance with provisions for case decisions as set forth in the Administrative Procedures Act, Title 29, Chapter 101 of the Delaware Code and in accordance with applicable rules and regulations of the Department.

69.318 Fees

Every MCO shall pay the following fees:

A. For filing an application for a Certificate of Authority - three hundred and seventy-five dollars ($375.00).

B. For filing an annual report - two hundred and fifty

dollars ($250.00).

69.319 Confidentiality of Health Information

Any data or information pertaining to the diagnosis, treatment or health of any enrollee or applicant obtained from such person or from any health care provider by any MCO shall be held in confidence and shall not be disclosed to any person except upon the express consent of the enrollee or applicant, or his physician, or pursuant to statute or court order for the production of evidence or the discovery thereof, or in the event of claim or litigation between such person and the MCO wherein such data or information is pertinent or as may be required by the Department in the course of their examinations in accordance with 69.316. The communication of such data or information from a health care provider to a MCO shall not prevent such data or information from being deemed confidential for purposes of the Delaware Uniform Rules of Evidence.

69.320 The MCO is responsible for meeting each requirement of these regulations. If the MCO chooses to utilize contract support or to contract functions under these regulations, the MCO retains responsibility for ensuring that the requirements of this regulation are met.

69.321 Specific standards may be waived by the Department provided that each of the following conditions are met:

A. Strict enforcement of the standard would result in unreasonable hardship on the MCO.

B. A waiver must not adversely affect the health, safety, welfare, or rights of any enrollee of the MCO.

C. The request for a waiver must be made to the Department, in writing, by the MCO with substantial detail justifying the request.

D. Prior to filing a request for a waiver, the MCO shall provide written notice of the request to each enrollee. Prior to filing a request for a waiver, the MCO shall also provide written notice of the request to the Department. The notice shall state that the enrollee has the right to object to the waiver request in writing to the Department.

Upon filing the request for a waiver, the MCO shall submit to the Department a copy of the notice and a sworn affidavit outlining the method by which the requirement was met. The MCO shall maintain proof of the method by which the requirement was met by the MCO for the duration of the waiver and make such proof available upon the request of the Department.

E. A waiver granted by the Department is not transferable to another MCO in the event of a change of ownership.

F. A waiver shall be granted for the term of the license.

PART FOUR

SECTION 69.4 QUALITY ASSURANCE AND OPERATIONS

69.401 Health Care Professional Credentialing

A. General Responsibilities, an MCO shall:

1. Establish written policies and procedures for credentialing verification of all health care professionals with whom the MCO contracts and apply these standards consistently;

2. Verify the credentials of a health care professional before entering into a contract with that health care professional. The medical director of the MCO or other designated health care professional shall have responsibility for, and shall participate in, health care professional credentialing verification;

3. Establish a credentialing verification committee consisting of licensed physicians and other health care professionals to review credentialing verification information and supporting documents and make decisions regarding credentialing verification;

4. Make available for review by the applying health care professional upon written request all application and credentialing verification policies and procedures;

5. Retain all records and documents relating to a health care professionals credentialing verification process for not less than four (4) years; and

6. Keep confidential all information obtained in the credentialing verification process, except as otherwise provided by law.

B. Nothing in these regulations shall be construed to require an MCO to select a provider as a participating provider solely because the provider meets the MCO's credentialing verification standards, or to prevent the MCO from utilizing separate or additional criteria in selecting the health care professionals with whom it contracts.

C. Selection standards for participating providers shall be developed for primary care professionals and each health care professional discipline. The standards shall be used in determining the selection of health care professionals by the MCO, its intermediaries and any provider networks with which it contracts. The standards shall meet the requirements of 69.401 A. and 69.401 D. Selection criteria shall not be established in a manner:

1. That would allow an MCO to avoid high-risk populations by excluding providers because they are located in geographic areas that contain populations or providers presenting a risk of higher than average claims, losses or health services utilization; or

2. That would exclude providers because they treat or specialize in treating populations presenting a risk of higher than average claims, losses or health services utilization.

D. Qualifications of primary care providers

1. Physicians qualified to function as primary care providers include: licensed physicians who have successfully completed a residency program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association in family practice, internal medicine, general practice, pediatrics, obstetrics-gynecology or who are diplomats of one of the above certifying boards approved by the American Board of Medical Specialties or one of the certifying boards of the American Osteopathic Association.

E. Verification Responsibilities, an MCO shall:

1. Obtain primary verification of at least the following information about the applicant:

a) Current license, certification, or registration to render health care in Delaware and history of same;

b) Current level of professional liability coverage, if applicable;

c) Status of hospital privileges, if applicable;

d) Specialty board certification status, if applicable; and

e) Current Drug Enforcement Agency (DEA) registration certificate, if applicable.

2. Obtain, subject to either primary or secondary verification:

a) The health care professional's record from the National Practitioner Data Bank; and

b) The health care professional's malpractice history.

3. Not less than every three (3) years obtain primary verification of a participating health care professional's:

a) Current license or certification to render health care in Delaware;

b) Current level of professional liability coverage, if applicable;

c) Status of hospital privileges, if applicable;

d) Current DEA registration certificate, if applicable; and

e) Specialty board certification status, if applicable.

4. Require all participating providers to notify the MCO of changes in the status of any of the items listed in this section at any time and identify for participating providers the individual to whom they should report changes in the status of an item listed in this section.

F. Health Care Professionals Right to Review Credentialing Verification Information

1. An MCO shall provide a health care professional the opportunity to review and correct information submitted in support of that health care professional's credentialing verification application as set forth below.

a) Each health care professional who is subject to the credentialing verification process shall have the right to review all information, including the source of that information, obtained by the MCO to satisfy the requirements of this section during the MCO's credentialing process.

b) An MCO shall notify a health care professional of any information obtained during the MCO's credentialing verification process that does not meet the MCO's credentialing verification standards or that varies substantially from the information provided to the MCO by the health care professional, except that the MCO shall not be required to reveal the source of information if the information is not obtained to meet this requirement, or if disclosure is prohibited by law.

c) A health care professional shall have the right to correct any erroneous information. The MCO shall have a formal process by which a health care professional may submit supplemental or corrected information to the MCO's credentialing verification committee and request a reconsideration of the health professional's credentialing verification application if the health care professional feels that the MCO's credentialing verification committee has received information that is incorrect or misleading. Supplemental information shall be subject to confirmation by the MCO.

69.402 Provider Network Adequacy

A. Primary, Specialty and Ancillary Providers

1. The MCO shall maintain an adequate network of primary care providers, specialists, and other ancillary health care resources to serve the enrolled population at all times. The MCO shall develop and submit annually to the Department policies and procedures for measuring and assessing the adequacy of the network. At a minimum, the network of providers shall include:

a) A sufficient number of licensed primary care providers under contract with the MCO to provide basic health care services. All enrollees must have immediate telephone access seven (7) days a week, <u>twenty-four</u> (24) hours a day, to their primary care provider or his/her authorized on-call back-up provider;

b) A sufficient number of licensed medical specialists available to MCO enrollees to provide medically necessary specialty care. The MCO must have a policy assuring reasonable access to frequently used specialists within each service area; and

c) A sufficient number of other health professional staff including but not limited to licensed nurses and other professionals available to MCO enrollees to provide basic health care services. The MCO shall cover nonparticipating providers at no extra cost to the enrollee if a plan has an insufficient number of providers within reasonable geographic distances and appointment times to

meet the medical needs of the enrollee.

B. Facility and Ancillary Health Care Services

1. The MCO shall maintain contracts or other arrangements acceptable to the Department with institutional providers which have the capability to meet the medical needs of enrollees and are geographically accessible. The network of providers shall include:

a) At least one licensed acute care hospital including at least licensed medical-surgical, pediatric, obstetrical, and critical care services in any service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

b) Surgical facilities including ~~acute care~~ hospitals ~~for major surgery, and for minor surgical procedures, hospitals,~~ licensed ambulatory surgical facilities, and/or physicians surgical practices. Such services shall be available in each service area no greater than thirty (30) miles or forty (40) minutes driving time from ninety percent (90%) of enrollees within the service area.

c) The MCO shall have a policy assuring access~~, as evidenced by contract or other agreement acceptable to the Department,~~ to the following specialized services, as determined to be medically necessary:~~.~~ ~~Such services shall be reasonably accessible and shall include:~~

(1) At least one hospital providing regional perinatal services;

(2) A hospital offering pediatric intensive care services;

(3) A hospital offering neonatal intensive care services;

(4) Therapeutic radiation provider;

(5) Magnetic resonance imaging center;

(6) Diagnostic radiology provider, including X-ray, ultrasound, and CAT scan;

(7) Emergency mental health service;

(8) Diagnostic cardiac catheterization services in a hospital;

(9) Specialty pediatric outpatient centers for conditions including sickle cell, hemophilia, cleft lip and palate, and congenital anomalies;

(10) Clinical Laboratory certified under CLIA; and

(11) Certified renal dialysis provider.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

~~d) The MCO shall make acceptable service arrangements with the provider and enrollee, at no extra cost to the enrollee, if the appropriate level of service is not available at no extra cost to the enrollee. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.~~

2. If offered by the plan, the MCO shall have a policy assuring access~~, as evidenced by contract or other agreement acceptable to the Department,~~ to the following specialized services, as determined to be medically necessary:~~.~~ ~~Such services shall be reasonably accessible and may include:~~

a) A licensed long term care facility with skilled nursing beds;

b) Residential substance abuse treatment center;

c) Inpatient psychiatric services for adults and children;

d) Short term care facility for involuntary psychiatric admissions;

e) Outpatient therapy providers for mental health and substance abuse conditions;

f) Home health agency licensed by the Department;

g) Hospice program licensed by the Department; and

h) Pharmacy services.

Such services shall be reasonably accessible. Evidence indicating such services shall include contracts or other agreements acceptable to the Department.

3. The MCO shall make acceptable service arrangements with the provider and enrollee, at no extra cost to the enrollee, if the appropriate level of service is not available within the geographical service area ~~at no extra cost to the enrollee~~. These services will not be limited to the State of Delaware. These services could include but are not limited to tertiary services, burn units and transplant services.

C. Emergency and Urgent Care Services

1. The MCO shall establish written policies and procedures governing the provision of emergency and urgent care which shall be distributed to each enrollee at the time of initial enrollment and after any revisions are made. These policies shall be easily understood by a layperson.

2. Enrollees shall have access to emergency care (~~as defined at~~ 69.10~~7~~**[15 14]**) twenty-four (24) hours per day, seven (7) days per week. The MCO shall cover emergency care necessary to screen and stabilize an enrollee and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition (~~as defined at~~ 69.10~~8~~**[16 15]**) existed.

3. Emergency and urgent care services shall include but are not limited to:

a) Medical and psychiatric care, which shall be available twenty-four (24) hours a day, seven (7) days a week;

b) Trauma services at any designated Level I or II trauma center as medically necessary. Such coverage shall continue at least until the enrollee is medically stable,

no longer requires critical care, and can be safely transferred to another facility, in the judgment of the attending physician. If the MCO requests transfer to a hospital participating in the MCO network, the patient must be stabilized and the transfer effected in accordance with federal regulations at 42 CFR 489.20 and 42 CFR 489.24;

c) Out of area health care for urgent or emergency conditions where the enrollee cannot reasonably access in-network services;

d) Hospital services for emergency care; and

e) Upon arrival in a hospital, a medical screening examination, as required under federal law, as necessary to determine whether an emergency medical condition exists.

D. All enrollees shall be provided with an up-to-date and comprehensive list of the provider network upon enrollment and upon request. ~~and an~~ Updates due to ~~on~~ provider changes must be provided at least quarterly.

69.403 Utilization Management

A. Utilization Management Functions

1. The MCO shall establish and implement a comprehensive utilization management program to monitor access to and appropriate utilization of health care and services. The program shall be under the direction of a designated physician and shall be based on a written plan that is reviewed at least annually. The plan shall identify at least:

a) Scope of utilization management activities;

b) Procedures to evaluate clinical necessity, access, appropriateness, and efficiency of services;

c) Mechanisms to detect under utilization;

d) Clinical review criteria and protocols used in decision-making;

e) Mechanisms to ensure consistent application of review criteria and uniform decisions;

f) System for providers and enrollees to appeal utilization management determinations in accordance with the procedures set forth; and

g) A mechanism to evaluate enrollee and provider satisfaction with the complaint and appeals systems set forth. Such evaluation shall be coordinated with the performance monitoring activities conducted pursuant to the continuous quality improvement program set forth.

2. Utilization management determinations shall be based on written clinical criteria and protocols reviewed and approved by practicing physicians and other licensed health care providers within the network. These criteria and protocols shall be periodically reviewed and updated, and shall, with the exception of internal or proprietary quantitative thresholds for utilization management, be readily available, upon request, to affected providers and enrollees. All materials including internal or proprietary materials for utilization management shall be available to the Department upon request.

3. Compensation to persons providing utilization review services for a MCO shall not contain incentives, direct or indirect, for these persons to make inappropriate review decisions. Compensation to any such persons may not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

B. Utilization Management Staff Availability

1. At a minimum, appropriately qualified staff shall be immediately available by telephone, during routine provider work hours, to render utilization management determinations for providers.

2. The MCO shall provide enrollees with a toll free telephone number by which to contact customer service staff on at least a five (5) day, forty (40) hours a week basis.

3. The MCO shall supply providers with a toll free telephone number by which to contact utilization management staff on at least a five (5) day, forty (40) hours a week basis.

4. The MCO must have policies and procedures addressing response to inquiries concerning emergency or urgent care when a PCP or her/his authorized on call back up provider is unavailable.

C. Utilization Management Determinations

1. All determinations to authorize services shall be rendered by appropriately qualified staff.

2. All determinations to deny or limit an admission, service, procedure or extension of stay shall be rendered by a physician. The physician shall be under the clinical direction of the medical director responsible for medical services provided to the MCO's Delaware enrollees. Such determinations shall be made in accordance with clinical and medical criteria and standards and shall take into account the individualized needs of the enrollee for whom the service, admission, procedure is requested.

3. All determinations shall be made on a timely basis as required by the exigencies of the situation.

4. An MCO may not retroactively deny reimbursement for a covered service provided to an enrollee by a provider who relied upon the written or verbal authorization of the MCO or its agents prior to providing the service to the enrollee, except in cases where the MCO can show that there was material misrepresentation, fraud or the patient was found not to have coverage.

5. An enrollee must receive upon request a written notice of all determinations to deny coverage or authorization for services required and the basis for the denial.

69.404 ~~Grievance/~~Appeal Procedure

A. Scope of Appeal

The following appeal procedure shall be utilized when the subject of the appeal is based upon medical

necessity (69.1~~[30 29]~~) or ~~[appropriateness of services~~ **disputable need]** (69.1~~[04 13]~~). For all other appeals, the MCO shall develop and implement written policies and procedures that require a review process and a written response to the appellant.

~~A. Enrollees Rights in Grievance/Appeal Procedure~~

~~1. All MCO enrollees, or any provider acting on behalf of an enrollee with the enrollee's consent, may appeal any utilization management determination resulting in a denial, termination, or other limitation of covered health care services. All enrollees and providers shall be provided with a written explanation of the appeal process upon enrollment, upon request and each time the methods and procedures are substantially changed and at least annually. The appeal process shall consist of an informal internal review by the MCO (Stage 1 appeal), a formal internal review by the MCO (Stage 2 appeal), and a formal external review (Stage 3 appeal) by an independent utilization review organization.~~

B. Appeal Procedure

1. Information Disclosure

An MCO shall provide enrollees with a written explanation of the appeal process upon enrollment, annually, upon request and each time the appeal process is substantially changed. An MCO shall also provide participating providers with a written explanation of the appeal process, upon initial participation with the MCO's network, upon request and each time the appeal process is substantially changed.

2. Stages of Appeal Process

[a)]An MCO shall establish an appeal process for appellants for review of coverage determinations based on medical necessity (69.1~~[30 29]~~) or ~~[appropriateness of services~~ **disputable need]** (69.1~~[04 13]~~). The appeal process shall consist of the following stages: an internal review by the MCO ("Stage 1 Appeal"), a second subsequent internal review by the MCO ("Stage 2 Appeal") and an external review ("Stage 3 Appeal").

[b)] Each stage **[of the appeal process]** shall provide for expedited review that shall not exceed seventy-two (72) hours ~~[. , for appeals that involve]~~

[i. In the event that the subject of the appeal conerns] an imminent, emergent, or serious threat to the appellant **[each stage (1,2 and 3) of the appeal process may take seventy-two (72) hours each.]**

[ii.] In the event that the subject of the appeal concerns an emergency medical condition (69.1~~[16 15]~~), both stages of internal review (stage 1 and 2) must be concluded within **[a total of]** seventy-two (72) hours. **[Stage 3 must be completed within an additional seventy-two (72) hours.]**

3. Petition for External Review form

All MCOs shall complete a DHSS approved form and forward it to the Department to initiate the Independent Health Care Appeals Program.

4. Waiver of Internal Review Process

In the event that the MCO fails to comply with any of the deadlines for completion of the Stage 1 or 2 appeals, or in the event that the MCO for any reason expressly waives its rights to an internal review of any appeal, then the appellant shall be relieved of his or her obligation to complete the MCO internal review process, and at the appellant's option, may proceed directly to the Stage 3 appeal process.

~~2. No enrollee who exercises the right to an appeal shall be subject to disenrollment, contract termination or otherwise penalized by the MCO solely on the basis of filing any such appeal.~~

~~3. At any stage of the appeal process, at the request of an enrollee, the MCO shall appoint a member of its staff, who has no direct involvement in the case, to represent the enrollee. An enrollee appealing a determination shall be specifically notified of the enrollee's right to have a staff member appointed to assist the enrollee.~~

5. Appellant Rights.

a) An MCO shall not disenroll, terminate or in any way penalize an enrollee who exercises the right to appeal solely on the basis of filing the appeal.

~~3.~~b) MCO Assistance

i. Upon the initiation of an appeal, an MCO shall notify an appellant of the right to have a staff member appointed to assist her/him with understanding the appeal process. Such assistance shall **[continue through** **be available during]** the appeal process.

ii. ~~At any stage of the appeal process, at the request of~~ An ~~enrollee~~ appellant may request such assistance at any stage of the appeal process.

iii. ~~the~~ Upon such request, an MCO shall appoint a member of its staff who has had no prior direct involvement in the case to ~~represent~~ assist the ~~enrollee~~ appellant.

c) After an adverse determination, an appellant shall have the right to discuss a coverage determination with the medical director, or physician designee, of the MCO who made the coverage determination.

~~4~~6. MCO Records

~~The~~ An MCO shall maintain written or electronic records to document all appeals received ~~(a "grievance register")~~. For each ~~grievance~~ appeal ~~the register~~ an MCO shall ~~contain~~ maintain, at a minimum, the following information:

a) A general description of the reason for the ~~grievance~~ appeal;

b) Date received;

c) Date of each review;

d) Resolution at each ~~level~~ stage of appeal;

e) Date of resolution at each ~~level~~ stage; and

f) Name and plan identification number of

the ~~enrollee~~ appellant for whom the ~~grievance~~ appeal was filed.

7. Reporting

An MCO shall submit the following information to the Department within thirty (30) days after the close of each calendar quarter:

a) The total number appeals (69.102) filed.

b) The number of Stage 1 appeals. This shall include only those appeals based upon medical necessity (69.1~~[~~**30 29]**) and/or **~~[appropriateness of services disputable need]~~** (69.1~~[~~**04 13]**).

c) The number of Stage 1 appeals upheld.

d) The number of Stage 1 appeals overturned.

e) The number of Stage 2 appeals. This shall include only those appeals based upon medical necessity (69.1~~[~~**30 29]**) and/or **~~[appropriateness of services disputable need]~~** (69.1~~[~~**04 13]**).

f) The number of Stage 2 appeals upheld.

g) The number of Stage 2 appeals overturned.

h) The number of petitions made to the Independent Health Care Appeals Program.

~~B~~C. ~~Informal Internal Utilization Management Appeal Process (Stage 1)~~ Stage 1 Appeal Procedure

1. Procedure

~~Each~~ An MCO shall establish and maintain an ~~informal~~ internal appeal ~~process (Stage 1)~~ procedure ~~whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent~~ in which an appellant, who is dissatisfied with ~~any MCO utilization management~~ a coverage determination by the MCO, that is based on medical necessity or **~~[appropriateness of services disputable need]~~**, shall have the opportunity to ~~discuss and~~ appeal ~~that~~ the determination. ~~with~~ This appeal is made to the MCO~~'s,~~ who will then assign the medical director and/or ~~the~~ a physician designee, ~~who rendered the determination~~. ~~All such Stage 1 appeals shall be concluded as soon as possible in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. All other Stage 1 appeals shall be concluded within five (5) business days. If the appeal is not resolved to the satisfaction of the enrollee at this level, the MCO shall provide the enrollee and/or the provider with a written explanation of his/her right to proceed to a Stage 2 appeal.~~ who has had no prior direct involvement with the appellant's case, to conduct the review.

2. Timeframes

A Stage 1 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than five (5) business days after receipt of the appeal. In no event shall appeals that involve an imminent, emergent, or serious threat to the health of the appellant exceed seventy-two (72) hours.

3. **~~[Written]~~** Notice of Determination

An MCO shall provide notice of the Stage 1 appeal determination to the appellant within five business days of receipt of the appeal. If such notice is provided verbally to the appellant, the MCO shall provide written notice of the determination to the appellant within five (5) business days of the verbal notice. In the event that the adverse determination is upheld, the written notice shall include the reason for the determination, an explanation of the appellant's right to proceed to a Stage 2 appeal and a review of the entire appeals process. This information shall include specific contact information (address and phone number) that is appropriate for each appeal stage.

~~C~~D. ~~Formal Internal Utilization Management Appeal Process (Stage 2)~~ Stage 2 Appeal Procedure

1. ~~Each~~ An MCO shall establish and maintain an ~~formal~~ internal appeal ~~process~~ procedure in which an appellant who is dissatisfied with a Stage 1 appeal determination by an MCO shall have the opportunity to appeal the determination to the MCO. ~~(Stage 2 appeal) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's consent, who is dissatisfied with the results of the Stage 1 appeal, shall have the opportunity to pursue his/her appeal before a~~ A panel, selected by the MCO, shall consist of at least two (2) physicians and/or other health care professionals ~~selected by the MCO who have not been involved in the utilization management determination at issue~~. having no direct involvement with the appellant's case prior to this review, one of who should be in the same or similar specialty that typically manages the care under review. If the same or similar physician/health care professional is not a member of the panel, such physician/health care professional must consult on the health care service at issue and report such consultation in writing to the panel for consideration. ~~An enrollee has the right to:~~

~~a) Attend the Stage 2 appeal;~~

~~b) Present his or her case to the review panel;~~

~~c) Submit supporting material both before and at the review meeting;~~

~~d) Ask questions of any representative of the MCO participating on the panel; and~~

~~e) Be assisted or represented by a person of his or her choice.~~

(See #4 below)

2. Written Notice of Meeting

An MCO shall acknowledge receipt of all Stage 2 appeals in writing to the appellant. This acknowledgement shall include the place, date and time of the Stage 2 appeal meeting and shall give the appellant at least fifteen (15) calendar days notice of the appeal meeting. The appellant may request a change in the meeting schedule to facilitate attendance.

3. Appeal Meeting

The MCO shall hold the Stage 2 appeal meeting during regular business hours at a location

reasonably accessible to the appellant. If a face-to-face meeting is not practical for geographic reasons, the MCO shall offer the appellant the opportunity to communicate with the review panel, at the MCO's expense, by conference call, video-conferencing, or other appropriate technology. The MCO shall not unreasonably deny a request for postponement of the meeting made by an appellant. The appellant's right to a fair review shall not be conditional on the appellant's appearance at the Stage 2 appeal meeting.

4. Appellant Rights

An appellant has the right to:

a) Attend the Stage 2 appeal,

b) Present his or her case to the review panel,

c) Submit supporting material both before and at the appeal meeting,

d) Ask questions of any representative of the MCO participating on the panel,

e) Be accompanied and supported by a person of her/his choice in addition to her/his representative, and

f) Review all relevant information that is not confidential, proprietary or privileged.

~~2. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.~~

(See #4 above)

~~3. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.~~

(See #3 above)

~~4. The formal internal utilization management appeal panel shall have available consultant practitioners who are trained or who practice in the same specialty as would typically manage the case at issue or such other licensed health care professional as may be mutually agreed upon by the parties. In no event, however, shall the consulting practitioner or professional have been involved in the utilization management determination at issue. The consulting practitioner or professional shall participate in the panel's review of the case if requested by the enrollee and/or provider.~~

(See #1 above)

~~5. All such Stage 2 appeals must be acknowledged by the MCO, in writing, to the enrollee or provider filing the appeal within fourteen (14) calendar days of receipt.~~

(See #2 above)

5. Timeframes

A Stage 2 appeal shall be concluded as soon as possible in accordance with the medical exigencies of the case but no more than thirty (30) calendar days after receipt of the request for the Stage 2 appeal. In no event shall a Stage 2 appeal involving an imminent, emergent or serious threat to the health of the appellant exceed seventy-two (72) hours.

~~6. All such Stage 2 appeals shall be concluded as soon as possible after receipt by the MCO in accordance with the medical exigencies of the case. In no event shall appeals involving an imminent, emergent or serious threat to the health of the enrollee exceed 72 hours. Except as set forth in paragraph (7) below, all other Stage 2 appeals shall be concluded within thirty (30) calendar days of receipt.~~

(See #5 above)

~~7~~6. Extensions

The MCO may extend the ~~review~~ Stage 2 appeal for up to an additional thirty (30) calendar days for reasonable cause by submitting ~~where it can demonstrate reasonable cause for the delay beyond its control and where it provides~~ a written ~~progress report and~~ explanation for the delay to the ~~enrollee and/or provider~~ Department within the original thirty (30) calendar day review period. An MCO honoring an appellant's request for extension for necessity or convenience shall be deemed a reasonable cause. In no event~~, however,~~ may an MCO extend the review period for an expedited appeal. ~~applicable to appeals from determinations regarding urgent or emergent care be so extended~~

~~8~~7. Written Notice of Determination

~~The review panel shall issue a written decision to the enrollee. The decision shall include:~~

An MCO shall provide written notice of the Stage 2 appeal determination to the appellant within five (5) business days of such determination. In the event of an adverse determination, such notice shall include:

a) The ~~names and titles~~ qualifications of the members of the ~~review~~ Stage 2 appeal panel;

b) A statement of the panel's understanding of the nature of the ~~grievance~~ appeal and all pertinent facts;

c) The rationale for the review panel's determination;

d) Reference to evidence or documentation considered by the panel in making that ~~decision~~ determination;

e) ~~In cases involving an adverse determination, the~~ Instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination; and

f) ~~A written notification of his/her~~ The appellant's right to proceed to a ~~an external~~ Stage 3 appeal.

~~9. In the event that the MCO fails to comply with any of the deadlines for completion of the internal utilization management determination appeals set forth or in the event that the MCO for any reason expressly waives its rights to an internal review of any appeal, then the enrollee and/or provider shall be relieved of his/her obligation to complete the MCO internal review process and may, at his/her option, proceed directly to the external appeals process.~~

(See B4 above)

~~D~~E. ~~Standard~~ External Utilization Appeal Process(Stage

~~3)~~ Independent Health Care Appeals Program (External Appeal Process/Stage 3)

1. ~~Each MCO shall establish and maintain a formal external review process (Stage 3) whereby any enrollee or any provider acting on behalf of an enrollee with the enrollee's written consent~~ Upon receipt of an adverse determination at Stage 2, any appellant who is dissatisfied with the results ~~of the Stage 2 appeal~~, shall have the opportunity to pursue her/his appeal before an independent utilization review organization.

2. The appellant must file the **[grievance request for appeal with the MCO]** within sixty (60) calendar days of receipt of the adverse determination from the internal review process.

3. Upon receipt of a request for external review, the MCO shall fax the Petition for External Review form as soon as possible but within no more than three (3) business days to the Department and shall send a hard copy of the request to the Department by mail.

4. The Department shall assign an approved IURO (69.1**[24 23]**) to conduct the external review and shall notify the MCO.

5. The assigned IURO shall, within five (5) calendar days of assignment, notify the appellant in writing by certified or registered mail, that the appeal has been accepted for external review. The notice shall include a provision stating that the appellant may submit additional written information and supporting documentation that the IURO shall consider when conducting the external review. **[Appellant shall submit S s]**uch written documentation **[must be submitted to the IURO]** within seven (7) calendar days following the date of receipt of the notice.

a) Upon receipt of any information submitted by the appellant, the assigned IURO shall as soon as possible but within no greater than two (2) business days, forward the information to the MCO.

[b) The IURO must accept additional documentation submitted by the MCO in response to additional written information and supporting documentation from the appellant.]

6. Within seven (7) business days after the receipt of the notification required in 69.404.E.4, the MCO shall provide to the assigned IURO, the documents and any information considered in making the internal appeal determination.

a) If the MCO fails to submit documentation and information or fails to participate within the time specified, the assigned IURO may terminate the external review and make a decision, with the approval of the Department, to reverse the internal appeal determination.

7. The external review may be terminated if the MCO decides to reverse its adverse determination and provide coverage or payment for the health care service that is the subject of the appeal.

a) Immediately upon making the decision to reverse its adverse determination, the MCO shall notify the appellant, the assigned IURO, and the Department in writing of its decision.

b) The assigned IURO shall terminate the external review upon receipt of the written notice from the MCO.

~~2.~~ 8. Within forty-five (45) calendar days after the receipt of the request for external review, the assigned IURO shall provide written notice of its decision to uphold or reverse the adverse determination to:

a) The appellant;

b) The MCO; and

c) The Department.

~~The review panel shall schedule and hold a review meeting within forty-five (45) calendar days of receiving a request from an enrollee for a Stage 3 appeal. The review meeting shall be held during regular business hours at a location reasonably accessible to the enrollee. In cases where a face-to-face meeting is not practical for geographic reasons, a MCO shall offer the enrollee the opportunity to communicate with the review panel, at the MCO's expense, by conference call, video conferencing, or other appropriate technology. The enrollee shall be notified, in writing, at least fifteen (15) calendar days in advance of the review date. The MCO shall not unreasonably deny a request for postponement of the review made by an enrollee.~~

~~3. Upon the request of an enrollee, a MCO shall provide to the enrollee all relevant information that is not confidential or privileged.~~

~~4. An enrollee has the right to:~~

~~a) Attend the Stage 3 review;~~

~~b) Present his or her case to the review panel;~~

~~c) Submit supporting material both before and at the review meeting;~~

~~d) Ask questions of any representative of the MCO participating on the panel; and~~

~~e) Be assisted or represented by a person of his or her choice.~~

~~5. The enrollee's right to a fair review shall not be made conditional on the enrollee's appearance at the review.~~

9. The IURO shall include the following information in the notice sent pursuant to 69.404.E.8:

a) The ~~names and titles~~ qualifications of the members of the review panel;

b) A general description of the reason for the request for external review;

c) The date the IURO received the assignment from the Department to conduct the external review;

d) The date(s) the external review was conducted;

e) The date of its decision;

f) The principal reason(s) for its decision;

g) ~~The rationale for its decision;~~

References to the evidence or documentation, including practice guidelines and clinical review criteria, considered in reaching its decision.

~~6. The review panel shall issue a written decision to the enrollee within five (5) business days of completing the review meeting. The decision shall include:~~

~~a) The names and titles of the members of the review panel;~~

~~b) A statement of the review panel's understanding of the nature of the grievance and all pertinent facts;~~

~~c) The rationale for the review panel's decision;~~

~~d) Reference to evidence or documentation considered by the review panel in making that decision; and~~

~~e) In cases involving an adverse determination, the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination.~~

10. The decision of the IURO is binding upon the MCO.

F. Expedited External Utilization Appeal Process

1. An appellant may request an expedited external review with the MCO at the time the enrollee receives a final adverse determination if the enrollee **~~[has a medical condition where the timeframe for completion of a standard external review would seriously jeopardize the life or health of the enrollee or would jeopardize the enrollee's ability to regain maximum function~~ suffers from a condition that poses an imminent, emergent or serious threat or has an emergency medical condition.]**

2. At the time the MCO receives a request for an expedited external review, the MCO shall immediately fax the Petition for External Review form to the Department and shall send a hard copy to the Department by mail.

3. If the Department determines that the review meets the criteria for expedited review, the Department shall assign an approved IURO to conduct the external review and shall notify the MCO.

4. At the time the MCO receives the notification of the assigned IURO, the MCO shall provide or transmit all necessary documents and information considered in making the final adverse determination to the assigned IURO electronically, by telephone, by facsimile or any other available expeditious method.

5. As expeditiously as the enrollee's medical condition permits or circumstances require, but in no event more than seventy-two (72) hours after the date of the receipt of the request for an expedited external review, the IURO shall:

a) Make a decision to uphold or reverse the final adverse determination; and

b) Immediately notify the appellant, the MCO, and the Department of the decision.

6. Within two (2) calendar days of the immediate notification, the assigned IURO shall provide written confirmation of the decision to the appellant, the MCO, and the Department

7. The decision of the IURO is binding upon the MCO.

G. **[~~Preliminary External Review~~ Petition to DHSS]**

1. If an MCO receives an appellant's request for access to the **[~~Independent Health Care Appeals Program for a benefit denial (69.107) appeal that is excluded within~~ IHCAP whose subject is a benefit that is a written exclusion from]** the enrollee's benefit package, the MCO may **[~~file a motion to dismiss~~ make a written request to have the appeal reviewed for appropriate inclusion in the IHCAP by the Department.]** The **[~~motion~~ request]** must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

[2. The Department shall review the petition and may, in its discretion:

a) dismiss the appeal and notify the appellant in writing that the appeal is inappropriate for the IHCAP; or,

b) appoint an IURO to conduct a preliminary review; or,

c) appoint an IURO to conduct a full external review.]

[~~G~~ H]. Preliminary External Review

1. If an MCO receives an appellant's request for access to the **[~~Independent Health Care Appeals Program~~ IHCAP]** for **[~~a benefit denial (69.107) appeal that is expressly excluded within the enrollee's benefit package~~ an appeal that it believes is not appropriate for inclusion in the IHCAP],** the MCO may file a motion to dismiss. The motion must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.

2. Upon the written request of an MCO, the Department shall **[~~have the discretion to appoint an IURO to hear the motion to dismiss~~ review the petition and:]**

[~~a) The request must be made in writing at the time the Petition for External Review Form is faxed to the Department and include any necessary supporting documentation.~~

a) Appoint an IURO to review the details of the motion to determine if the appeal is appropriate for inclusion in the IHCAP.]

[~~3. Once assigned, an IURO will rule upon the motion to dismiss.~~

~~4. If the motion to dismiss is denied, the external review procedure must be followed.~~]

[i. Appeals that are inappropriate for inclusion are dismissed.

ii. Appeals that are appropriate for inclusion are subject to a full external review.

b) Appoint an IURO to conduct a full external review.]

[~~H~~ I]. All costs for external IURO review shall be borne by the MCO. The MCO shall reimburse the Department for the cost of the review within ninety (90) calendar days of the receipt of the decision by the IURO.

~~**[E. I.The MCO shall include in its annual reports to the Department:**~~

~~**1. A description of the total number of grievances appeals handled;**~~

~~**2. The number of grievances appeals handled at each level of appeal;**~~

~~**3. A compilation of the causes underlying the appeals;**~~

~~**4. The resolution of the appeals; and**~~

~~**5. The number of appeals terminated during the external review as described in 69.404.E.7.]**~~

J. The Department shall approve IUROs eligible to be assigned to conduct external reviews.

1. Any IURO wishing to be approved to conduct external reviews shall submit an application form (as developed by the Department) and include with the form, all documentation and information necessary for the Department to determine if the IURO satisfies minimum qualifications.

2. The Department shall maintain a current list of approved IUROs.

69.405 Quality Assessment and Improvement

A. Continuous Quality Improvement

1. Under the direction of the Medical Director or her/his designated physician, the MCO shall have a system-wide continuous quality improvement program to monitor the quality and appropriateness of care and services provided to enrollees. This program shall be based on a written plan which is reviewed at least semi-annually and revised as necessary. The plan shall describe at least:

a) The scope and purpose of the program;

b) The organizational structure of quality improvement activities;

c) Duties and responsibilities of the medical director and/or designated physician responsible for continuous quality improvement activities;

d) Contractual arrangements, where appropriate, for delegation of quality improvement activities;

e) Confidentiality policies and procedures;

f) Specification of standards of care, criteria and procedures for the assessment of the quality of services provided and the adequacy and appropriateness of health care resources utilized;

g) A system of ongoing evaluation activities, including individual case reviews as well as pattern analysis;

h) A system of focused evaluation activities, particularly for frequently performed and/or highly specialized procedures;

i) A system of monitoring enrollee satisfaction and network provider's response and feedback on MCO operations;

j) A system for verification of provider's credentials, recertification, performance reviews and obtaining information about any disciplinary action against the provider available from the Delaware Board of Medical Practice or any other state licensing board applicable to the provider;

k) The procedures for conducting peer review activities which shall include providers within the same discipline and area of clinical practice; and

l) A system for evaluation of the effectiveness of the continuous quality improvement program.

2. There shall be a multidisciplinary continuous quality improvement committee responsible for the implementation and operations of the program. The structure of the committee shall include representation from the medical, nursing and administrative staff, with substantial involvement of the medical director of the MCO.

3. The MCO shall assure that participating providers have the opportunity to participate in developing, implementing and evaluating the quality improvement system.

4. The MCO shall provide enrollees the opportunity to comment on the quality improvement process.

5. The program shall monitor the availability, accessibility, continuity and quality of care on an ongoing basis. Indicators of quality care for evaluating the health care services provided by all participating providers shall be identified and established and shall include at least:

a) A mechanism for monitoring enrollee appointment and triage procedures including wait times to get an appointment and wait times in the office;

b) A mechanism for monitoring enrollee continuity of care and discharge planning for both inpatient and outpatient services;

c) A mechanism for monitoring the appropriateness of specific diagnostic and therapeutic procedures as selected by the continuous quality improvement program;

d) A mechanism for evaluating all providers of care that is supplemental to each provider's quality improvement system;

e) A mechanism for monitoring network adequacy and accessibility to assure the network services the

needs of their diverse enrolled population; and

f) A system to monitor provider and enrollee access to utilization management services including at least waiting times to respond to telephone requests for service authorization, enrollee urgent care inquiries, and other services required.

6. The MCO shall develop a performance and outcome measurement system for monitoring and evaluating the quality of care provided to MCO enrollees. The performance and outcome measures shall include population-based and patient-centered indicators of quality of care, appropriateness, access, utilization, and satisfaction. Data for these performance measures shall include but not be limited to the following:

a) Indicator data collected by MCOs from chart reviews and administrative databases;

b) Enrollee satisfaction surveys;

c) Provider surveys;

d) Annual reports submitted by MCOs to the Department; and

e) Computerized health care encounter data.

7. The MCO shall follow-up on findings from the program to assure that effective corrective actions have been taken, including at least policy revisions, procedural changes and implementation of educational activities for enrollees and providers.

8. Continuous quality improvement activities shall be coordinated with other performance monitoring activities including utilization management and monitoring of enrollee and provider complaints.

9. The MCO shall maintain documentation of the quality improvement program in a confidential manner. This documentation shall be available to the Department and shall include:

a) Minutes of quality improvement committee meetings; and

b) Records of evaluation activities, performance measures, quality indicators and corrective plans and their results or outcomes.

B. External Quality Audit

1. Each MCO shall submit, as a part of its annual report due June 1, evidence of its most recent external quality audit that has been conducted **[or of acceptable accreditation status]**. External quality audits must be completed no less frequently than once every three (3) years. Such audit shall be performed by ~~a~~**n** nationally **[~~accredited~~ known accreditation organization or an]** independent quality review organization ~~approved by the Department~~ **[acceptable to the Department]**.

a) MCOs must submit the following information to the Department in order to receive approval for the **[nationally known accreditation organization or]** independent quality review organization that will conduct the triennial reviews **[or perform accreditation]** for the MCO:

i. evidence that the **[nationally known accreditation organization or]** independent quality review organization has **[~~been accredited by a nationally recognized private accrediting entity~~. experience performing external quality audits or accreditation of MCOs.]** and

ii. the current standards for independent quality review**[s ~~organizations~~ or accreditations of MCOs]** as established and maintained by the accrediting entity.

2. The report must describe in detail the MCO's conformance to performance standards and the rules within these regulations. The report shall also describe in detail any corrective actions proposed and/or undertaken by the MCO.

[3. In lieu of the external quality audit, the Department may accept evidence that each MCO has received and has maintained the appropriate accreditation from a nationally known accreditation organization or independent quality review organization.]

C. Reporting and Disclosure Requirements

1. The Board of Directors of the MCO shall be kept apprised of continuous quality improvement activities and be provided at least annually with regular written reports from the program delineating quality improvements, performance measures used and their results, and demonstrated improvements in clinical and service quality.

2. An MCO shall document and communicate information about its quality assessment program and its quality improvement program, and shall:

a) Include a summary of its quality assessment and quality improvement programs in marketing materials;

b) Include a description of its quality assessment and quality improvement programs and a statement of enrollee rights and responsibilities with respect to those programs in the materials or handbook provided to enrollees; and

c) Make available annually to providers and enrollees findings from its quality assessment and quality improvement programs and information about its progress in meeting internal goals and external standards, where available. The reports shall include a description of the methods used to assess each specific area and an explanation of how any assumptions affect the findings.

3. MCOs shall submit such performance and outcome data as the Department may request.

PART FIVE

SECTION 69.5 ENROLLEE RIGHTS AND RESPONSIBILITIES

69.501 The MCO shall establish and implement written

policies and procedures regarding the rights of enrollees and the implementation of these rights.

69.502 In the case of nonpayment by the MCO to a provider for a covered service in accordance with the enrollee's health care contract, the provider may not bill the enrollee. This does not prohibit the provider from collecting coinsurance, deductibles or co-payments as determined by the MCO. This does not prohibit the provider and enrollee from agreeing to continue services solely at the expense of the enrollee, as long as the provider clearly informs the enrollee that the MCO will not cover these services.

69.503 The MCO shall permit enrollees to choose their own primary care physician **[from the MCO network]**. This choice may be more flexible, depending on the type of health plan purchased by the enrollee. When MCOs maintain ~~from~~ a list of health care professionals within the plan~~.~~, ~~T~~this list shall be updated as health care professionals are added or removed and shall include:

A. a sufficient number of primary care physicians who are accepting new enrollees; and

B. a sufficient number of primary care physicians that reflects a diversity that is adequate to meet the diverse~~city~~ needs of the enrolled populations' varied characteristics including age, gender, language, race and health status.

69.504 The MCO shall provide each enrollee with an enrollee's benefit handbook which includes a complete statement of the enrollee's rights, a description of all complaint and ~~grievance~~ appeal procedures, a clear and complete summary of the evidence of coverage, and notification of their personal financial obligations for non-covered services. The statement of the enrollee's rights shall include at least the right:

A. To available and accessible services when medically necessary, including availability of care twenty-four (24) hours a day, seven (7) days a week for urgent or emergency conditions;

B. To be treated with courtesy and consideration, and with respect for the enrollee's dignity and need for privacy;

C. To be provided with information concerning the MCO's policies and procedures regarding products, services, providers, ~~grievance/~~appeal procedures and other information about the organization and the care provided;

D. To choose a primary care provider within the limits of the covered benefits and plan network, including the right to refuse care of specific practitioners;

E. To receive from the enrollee's physician(s) or provider, in terms that the enrollee understands, an explanation of her/his complete medical condition, recommended treatment, risk(s) of the treatment, expected results and reasonable medical alternatives. If the enrollee is not capable of understanding the information, the explanation shall be provided to her/his next of kin or guardian and documented in the enrollee's medical record;

F. To formulate advance directives;

G. To all the rights afforded by law or regulation as a patient in a licensed health care facility, including the right to refuse medication and treatment after possible consequences of this decision have been explained in language the enrollee understands;

H. To prompt notification, as required in these rules, of termination or changes in benefits, services or provider network;

I. To file a complaint or appeal with the MCO and to receive an answer to those complaints within a reasonable period of time; and

J. To file a complaint with the Department or the Commissioner.

69.505 The MCO shall establish and implement written policies and procedures regarding the responsibilities of enrollees. A complete statement of these responsibilities shall be included in the enrollee's benefit handbook.

69.506 The MCO shall disclose to each new enrollee, and any enrollee upon request, in a format and language understandable to a layperson, the following minimum information:

A. Benefits covered and limitations;

B. Out of pocket costs to the enrollee;

C. Lists of participating providers;

D. Policies on the use of primary care physicians, referrals, use of out of network providers, and out of area services;

E. Written explanation of the appeals process;

F. A description of and findings from the quality assurance and improvement programs;

G. The patterns of utilization of services; and

H. For staff model MCOs, the location and hours of its inpatient and outpatient health services.

69.507 The MCO shall provide culturally competent services to the greatest extent possible.

PART SIX

SECTION 69.6 REQUIREMENTS FOR STAFF MODEL MCOs

In addition to all other requirements of these regulations, staff model MCOs shall meet the requirements of this section.

69.601 Environmental Health and Safety

A. Office premises and other structures operated by the MCO must have appropriate safeguards for patients.

B. All buildings shall conform to all State and medical

codes and all regulations applicable to services being offered. These codes shall include but are not limited to:

1. State Plumbing Code.
2. Waste Disposal Regulations.
3. Public Water Supply Regulations.
4. Food Service Requirements.
5. Radiation Control Regulations.
6. Hazardous Waste Regulations.
7. Air and Water Pollution Regulations.
8. Hand washing facilities shall be installed in accordance with applicable State and local regulations and conveniently located.
9. Toilet facilities shall meet appropriate State and local regulations.
10. State Fire Code requirements.

C. The buildings must be architecturally accessible to handicapped individuals and comply with the Americans with Disabilities Act.

D. Measures must be taken to insure that facilities are guarded against insects and rodents.

E. Housekeeping

1. A housekeeping procedures manual shall be written and followed. Special emphasis shall be given to procedures applying to infectious diseases or suspect areas.
2. All premises shall be kept neat, clean, and free of litter and rubbish.
3. Walls and ceilings shall be maintained free of cracks and falling plaster and shall be cleaned and painted regularly.
4. Floors shall be cleaned regularly and in such a manner that it will minimize the spread of pathogenic organisms in the atmosphere; dry dusting and sweeping shall be prohibited.
5. Suitable equipment and supplies shall be provided for cleaning all surfaces.
6. Solutions, cleaning compounds and hazardous substances shall be properly labeled and stored in safe places.

69.602 Emergency Utilities or Facilities

A. The MCO shall be equipped to handle emergencies due to equipment failures. Emergency electrical service for lighting and power for equipment essential to life safety shall be provided in accordance with hospital regulations where appropriate. (Minimum Requirements for Construction of Hospital and Health Care Facilities, Section 7.32H.)

B. In facilities which provide hospital services, the emergency electrical system shall be so controlled that the auxiliary power is brought to full voltage and frequency and can be connected within ten (10) seconds.

C. Emergency utilities for MCOs and contract providers must be supplied according to procedures performed on the premises.

69.603 Construction

A. New construction or substantial modifications on an existing facility shall conform to applicable State, county and local codes, including the National Fire Protection Association Publication No. 101 - Life Safety Code, latest edition adopted by the State Fire Prevention Board.

B. Radiation requirements of the Authority on Radiation Protection shall be met.

C. Facility plans or modifications shall be submitted to the Department for review and approval prior to any work being begun.

69.604 Personnel

A. The office shall be staffed by appropriately trained personnel. Appropriate manuals shall be developed to serve as guidelines and set standards for patient care provided by nonprofessional personnel.

B. Offices with five (5) or more physicians shall have at least one (1) full time registered nurse (RN).

C. Ponprofessional personnel shall have appropriate in-service education on clinical operations and procedures. The in-service training program must be conducted at least annually.

D. Primary physician. There shall be at least one (1) full time or full time equivalent (F.T.E.) physician available on contract. There shall be at least one (1) F.T.E. primary physician for every 1,000 enrollees.

E. Medical Specialties. There shall be either full time or part-time physicians, other appropriate professional specialists, or written agreements adequate to ensure access to all needed services for enrollees.

69.605 Equipment

Each office operated by the MCO must have the necessary equipment and instruments to provide the required services. Equipment and instruments for services, when covered by written contract with medical specialists or other providers outside of the office, need not be present in the MCO's office. Where emergency services are provided in the office, equipment such as a defibrillator, laryngoscope and other similar equipment must be present.

69.606 Specialized Services

A. The MCO shall provide special services necessary for diagnosis and treatment such as ultra sound. Where it is not feasible to provide these services in the office, there shall be a written agreement for these services in a nearby location except for isolated rural areas where arrangements for these services shall be subject to review and approval by the Department.

1. The MCO's radiology services shall be supervised and conducted by a qualified radiologist, either full time or part-time; or, when radiology services are supervised and conducted by a physician who is not a

qualified radiologist, the MCO shall provide for regular consultation by a qualified radiologist, who is under contract with the MCO and is responsible for reviewing all X-rays and procedures. The number of qualified radiological technologists employed shall be sufficient to meet the MCO's requirements. If the MCO operates a radiology service and provides emergency services, at least one (1) qualified technologist shall be on duty or on call at all times.

2. Pharmaceutical services, when provided by the MCO, must be under the direct supervision of a registered pharmacist who is responsible to the administrative staff for developing, coordinating and supervising all pharmaceutical services; or, in the case of dispensing of pharmaceuticals by a physician, such dispensing shall not violate the requirements of State law. MCOs with a licensed pharmacy shall have a Pharmacy and Therapeutics Committee. Pharmaceutical services may be provided on the premises of the MCO or by contract with an independent licensed provider. The contract shall be available for inspection by the Department at all times.

3. When the MCO provides its own emergency services, facilities must be provided to ensure prompt diagnosis and emergency treatment including adequate Emergency Room space, separate from major surgical suites. In Emergency Room facilities provided for or arranged for by the MCO there shall be as a minimum: adequate oxygen, suction, CPR, diagnostic equipment, as well as standard emergency drugs, parenteral fluids, blood or plasma substitutes and surgical supplies. Radiology facilities, clinical laboratory facilities and current toxicology including antidotes shall be available at all times.

4. Personnel shall be trained and approved by an appropriate professional organization in the operation and procedures of emergency equipment.

69.607 Central Sterilizing and Supply

Autoclaves or other acceptable sterilization equipment shall be provided of a type capable of meeting the needs of the MCO and of a recognized type with approved controls and safety features. Bacteriological culture tests shall be conducted at least monthly. The maintenance program of the sterilization system shall be under the supervision of competent trained personnel.

PART SEVEN

SECTION 69.7 ADMINISTRATIVE REQUIREMENTS

69.701 Administration

The MCO shall designate an appropriate person or persons to handle the administrative functions of the MCO. These functions shall include the following responsibilities: interpretation, implementation and application of policies and programs established by the MCO's governing authority; establishment of safe, effective and efficient administrative management; control and operation of the services provided; authority to monitor or supervise the operation and in accordance with acceptable medical standards; and such other duties, responsibilities and tasks as the governing body or other designated authority may empower such individual(s).

69.702 Qualifications

Persons appointed to administrative positions in the MCO shall have the necessary current training and experience in the field of health care as appropriate to carry out the functions of their job descriptions.

69.703 Medical Privileges

Participating physicians shall have hospital privileges commensurate with their contractual obligations. Physicians must be licensed in Delaware.

69.704 Medical Records

The MCO must maintain or provide for the maintenance of a medical records system which meets the accepted standards of the health care industry and the regulations of the Department.

A. These records shall include the following information: name, identification number, age, sex, residence, employment, patient history, physical examination, laboratory data, diagnosis, treatment prescribed and drugs administered.

B. The medical record should also contain an abstract summary of any inpatient hospital care or referred treatment.

C. Regulatory agencies shall have access to medical records for purposes of monitoring and review of MCO practices.

D. Enrollees' records shall be filed for five (5) years following active status before being destroyed.

69.705 Reporting Requirements and Statistics

The MCO shall submit reports as required by these regulations.

A. The MCO shall disclose to its enrollees the following information:

1. the patterns of utilization of its services based on the information in 69.405 A 6.; and

2. the location and hours of its inpatient and outpatient health services.

B. The following information is required to be submitted to the Department on an annual basis:

1. Physician visits per enrollee per year.

2. Hospital admissions per year and per 1,000 enrollees per year.

3. Hospital days per year and per 1,000 enrollees per year.

4. Average length of stay per hospital

confinement.

5. Outside consultations per year and per 1,000 enrollees per year.

6. Emergency Room visits per year and per 1,000 enrollees per year.

7. Laboratory procedures per year and per 1,000 enrollees per year.

8. X-ray procedures per year and per 1,000 enrollees per year.

9. Total number of enrollees at the end of the year.

10. Total number of enrollees enrolled during the year.

11. Total number of enrollees terminated during the year.

12. Cost of operation.

13. Current provider directory including PCPs, specialists, facilities and ancillary health care services.

14. A statistical summary evaluating the network adequacy and accessibility to the enrolled population.

15. Annual ~~grievance/~~appeal report **[~~as outlined in 69.404.1~~]** ~~including total number of appeals, number of appeals at each grievance level, reason for appeals and resolution of appeals.~~**[of medical necessity and disputable need to include:**

a) Number of appeals at each level of appeal;

b) A compilation of causes underlying the appeals;

c) Resolution of the appeals; and,

d) Number of appeals terminated during the external review as described by 69.404E7.

16. Annual appeal report of all other appeals (not medical necessity or disputable need) to include:

a) Number of appeals at each level of appeal;

b) A compilation of causes underlying the appeals; and,

c) Resolution of the appeals.]

C. The following administrative reports are required by the Department whenever there is a change:

1. Full name of the Chief Executive Officer.
2. Full name of the Medical Director.
3. Address(es) of the office(s) in operation.
4. Name(s) of the hospital(s) used by the MCO

Appendix A

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEALTH FACILITIES LICENSING & CERTIFICATION 302-~~577-6666~~ 995-8521
Managed Care Organization APPLICATION FOR A CERTIFICATE OF AUTHOIRTY AND ANNUAL REPORT

A. IDENTIFYING INFORMATION

1. Name of applicant:_____
Address:_____
_____
_____
Telephone:_____
2. Chief Executive Officer: _____
3. Type of MCO: (Check one)
Staff Group Practice Individual Practice Assocaition Other_____
4. Anticipated date of operation:_____
5. Area of operation, i.e., county or statewide:_____

B. Statement of Certification and Acknowledgment:

I certify that the statements made in this application are accurate, complete, and current to the best of my knowledge and belief. I understand that this application does not relieve me of any responsibility under Part VIII, Title 16, Chapter 93 of the Delaware Code (~~Certificate of Need~~ Certificate of Public Review).

_____ _____
Signature of Chief Executive Officer Title Date

C. Fee Schedule (NOTE: Checks should be made payable to the State of Delaware)

Application Fee:$375.00
Filing of Annual Report:$250.00

D. Please return this application to:
Health Facilities Licensing & Certification
2055 Limestone Road, Suite 200
Wilmington, DE 19808

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122 (16 **Del.C.** 122)

ORDER

STATE OF DELAWARE RULES AND REGULATIONS PERTAINING TO THE CONTROL OF COMMUNICABLE AND OTHER DISEASE CONDITIONS

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt revisions to rules and Regulations for the Control of Communicable and Other Disease Conditions. The DHSS's proceedings to adopt

regulations were initiated pursuant to 29 Delaware Code Chapter 101 and authority as prescribed by 16 Delaware Code, Chapter 1, Section 122 (c); Chapter 5, Section 504; and Chapter 7, Section 707.

On March 1, 2001 (Volume 4, Issue 9), DHSS published in the Delaware Register of Regulations its notice of proposed regulations, pursuant to 29 Delaware Code Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by April 10, 2001, or be presented at a public hearing on April 9, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal and written comments were received and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

FINDINGS OF FACT

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The proposed regulations include modifications from those published in the March 1, 2001, Register of Regulations, based on comments received during the public notice period. These modifications are deemed not to be substantive in nature.

THEREFORE, IT IS ORDERED, that the proposed Rules And Regulations Governing the Control of Communicable and Other Disease Conditions are adopted and shall become effective July 10, 2001, after publication of the final regulation in the Delaware Register of Regulations.

6/12/01
VINCENT P. MECONI, SECRETARY

SUMMARY OF EVIDENCE

A public hearing was held on April 9 2001, at 4:15 PM, in the Auditorium of the Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover Delaware before Paul R. Silverman, Hearing Officer to discuss proposed Delaware Health and Social Services (DHSS) rules and regulations governing Control of Communicable and Other Disease Conditions. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Dr. Silverman of the Division of Public Health (DPH) made the agency's presentation. Public testimony was given at the public hearing and letters were received commenting on the proposed regulations during the comment period. Public comments and the DHSS (Agency) responses are as follows:

If the names of persons who test positive for HIV are reported, more people will be tested anonymously and that will diminish the value of epidemiologic information based only on reported infections.

***Agency Response*:** Studies find that HIV name-based reporting may discourage a very small percentage of people from being tested. For example, in 1998 Texas reported that only 2% of people seeking testing said fear of their name being reported to the government was the most important reason they had delayed or had not tested forHIV. An article published in the Journal of the American Medical Association documented that reporting by name did not appear to affect the use of HIV testing in publicly funded counseling and testing sites. Other states that have made this change have had a similar experience. Given these findings, the data should be sufficient to allow us to gauge significant epidemiologic changes.

References:

Nakashima, et al. Effect of HIV reporting by name on use of HIV testing in publicly funded counseling and testing programs. JAMA. 1998. 280:1421-1426.

Recommendations on HIV Infection Reporting – January 1998. Texas Department of Health.

Illinois published a report that suggested that that state has had success with their unique identifier system and Maryland has had success with their unique identifier system.

***Agency Response*:** The Illinois report was developed by a community-based organization (AIDS Foundation of Chicago). The report indicates Illinois' system is outperforming states with name-based reporting. However, a press release issued by the Illinois Department of Health (March 17, 2000) indicates the need for improvement. The HIV Identifier Trial in Illinois has had mixed results. Personal communication with county health officials in Maryland indicates the unique identifier system is not working on the county level.

References:

AIDS Foundation of Chicago. Promising Results: HIV Tracking by Unique Identifier in Illinois. November, 2000.

Illinois Department of Public Health, News Release, March 17, 2000. HIV Identifier Trial has mixed results.

If we are proposing a name-to-code HIV reporting system, we might as well just start with the codes.

Agency Response: Discussion with Delaware health care providers have given DPH insight into their ability to create and report coded information. The proposed name-to-code

reporting would allow providers to report using a patient's name, very similar to the current process of reporting AIDS patients. Therefore, private physicians and clinics will not need to develop a new system for reporting and tracking individuals by code in their respective offices. A system designed around a single entity such as DPH setting up and implementing a statewide reporting initiative is more likely to gather reports that are complete, error-free, and non-duplicative than one that is implemented by many individual providers. In addition, the name of the infected individual is important to help meet a goal of the regulations, which is to more timely and efficiently connect infected persons with available services – a process more cumbersome and inefficient based on code alone. However, in recognition of concerns about confidentiality, the regulations specify that DPH will destroy the name within 90 days of the report, once the code is created and services are offered.

Some agencies have established their own code system for managing their client records for minimal cost.

***Agency Response*:** The system referred to in this comment was set up for a single agency based on clients served by that agency, and for case management. There is no basis for the assumption that it would be suitable for a statewide reporting system. In a statewide HIV reporting system, reports must be accepted from multiple sources, duplicate reports must be eliminated, information in the report needs to be verified, duplicates eliminated, and aggregate data must be prepared in a timely manner for program planning and grant applications.

The proposed regulations will drive people away from testing using a name-based system, especially people that are at high risk and disenfranchised.

***Agency Response*:** Studies find that HIV name-based reporting may discourage a very small percentage of people from being tested. For example, in 1998 Texas reported that only 2% of people seeking testing said fear of their name being reported to the government was the most important reason they had delayed or had not tested for HIV. An article published in the Journal of the American Medical Association documented that reporting by name did not appear to affect the use of HIV testing in publicly funded counseling and testing sites. Other states that have made this change have had a similar experience. The regulations make clear the intent of DPH is to maintain anonymous testing sites to assure that the small percentage of people that would be discouraged have an alternative. DPH is also aware that outreach and education efforts will be needed to encourage disenfranchised populations to seek testing either anonymously or confidentially.

References:

Nakashima, et. Al. Effect of HIV reporting by name on use of HIV testing in publicly funded counseling and testing programs. JAMA. 1998. 280:1421-1426.

Recommendations on HIV Infection Reporting – January 1998. Texas Department of Health.

The Centers for Disease Control and Prevention says that we can go either with the unique identifier system or with names reporting.

***Agency Response*:** CDC is encouraging states to adopt HIV reporting systems that are based on good surveillance methodology and which can be evaluated. Their research suggests that named-based reporting systems are more likely to meet these criteria than are unique identifier systems. "… CDC has concluded that confidential name-based HIV/AIDS surveillance systems are most likely to meet the necessary performance standards, as well as to serve the public health purposes for which surveillance data are required. Therefore, CDC advises that state and local surveillance programs use the same confidential name-based approach for HIV surveillance as is currently used for AIDS surveillance nationwide." CDC says that they will work with states that have a unique identifier reporting, but clearly their recommendation is that states develop confidential, name-based systems.

References:

CDC. Guidelines for national human immunodeficiency virus case surveillance, including monitoring for human immunodeficiency infection and acquired immunodeficiency syndrome. MMWR 1999; 48 (RR-13).

A study that was sponsored by the Centers for Disease Control and Prevention - the Multistate Epidemiologic Survey of HIV - indicated that in states that require HIV reports with the client's name, testing delays have resulted in higher viral loads and lower T-cell counts.

***Agency Response*:** The MESH (Multistate Epidemiologic Survey of HIV) study, found that HIV infected individuals who used anonymous testing services got tested and entered care earlier than those who used confidential services. A CDC study (Nakashima) published at the same time also underscores the need for continued availability of anonymous testing. The latter indicates no significant declines in testing following the implementation of HIV reporting by name in the six states studied. These studies suggest that states who have a name-based HIV reporting system should also maintain anonymous testing for the small proportion of persons that may delay testing and care out of concern that their name will be reported. DPH intends to

maintain anonymous testing, and the regulations are clear that it is the not the intent to require reporting from anonymous testing programs.

References:

Bindman, et al., Multistate evaluation of anonymous HIV testing and access to medical care. JAMA. 1998. 280: 1416-1420.

Nakashima, et. Al. Effect of HIV reporting by name on use of HIV testing in publicly funded counseling and testing programs. JAMA. 1998. 280:1421-1426.

Our agency has been asking all the clients if they would be tested if their name was going to be reported, and 92 percent of the adults indicate that they would not be tested.

***Agency Response*:** Since clients came to the referenced agency for anonymous services, it is expected that the majority would decline testing if names would be reported. It is unlikely that this same finding would exist in the entire population of persons considering HIV testing (anonymously and confidentially). Under the proposed regulations, reporting of names from anonymous test sites is not required. Increased education efforts will need to be maintained to encourage persons to seek anonymous testing if they fear their name reported to DPH.

DPH does not have a reputation for being trusted. DPH will knock on the door <u>of</u> person's reported as HIV positive and ask for partners' names. Even if DPH does not do this, the public won't believe them.

***Agency Response*:** Disease Intervention Specialists (DIS) speak with infected individuals to encourage notifying their partners of increased risk of a sexually transmitted disease. DPH disease intervention specialists are specifically trained to provide partner notification services according to Delaware law, HIV Partner Notification Service Guidelines, and CDC standards that have been in place for many years.

DPH has made a number of changes based upon comments made when HIV reporting was first proposed in 1999.

***Agency Response*:** DPH acknowledges that the proposed regulations will not satisfy all the community concerns. However, this comment, made by persons both for and against the proposal, speaks to the significant efforts made to address as many concerns as possible.

There is some tension between Sec. 6.3.2.2 which requires labs to report results "suggestive" of a reportable disease (including HIV) and Sec 6.4.2.3 which only allows labs to report HIV "if confirmed with a western Blot or other confirmatory test." DPH may wish to exempt HIV from 6.3.2.2 since the lab reporting requirement is addressed at length in Sec. 6.4.2.2.

***Agency Response*:** Section 6.3 refers only to STDs designated as such in Appendix I. HIV is not designated as an STD in Appendix I and so no conflict with Section 6.4 exists.

There is similar tension between Sec 6.3.2.1 and Sec. 6.4.2.1. The former section requires physicians to report based on diagnosis, treatment or suspicion. In contrast, the HIV section contemplates reporting only if based on diagnosis or treatment. DPH may wish to exempt HIV from Sec 6.3.2.1 since the physician reporting requirement is addressed at length in Sec 6.4.2.1.

***Agency Response*:** Section 6.3 refers only to STDs designated as such in Appendix I. HIV is not designated as an STD in Appendix I and so no conflict with Section 6.4 exists.

Anonymous HIV testing is still authorized by Sec. 6.4.2.7. The underlying statute only allows HIV testing if there is informed consent. Obviously the patient should be informed: 1) that positive results will be reported to DPH and converted to code; 2)that partners may be informed of the patient's HIV status under 6.4.4; and 3) that anonymous testing is available.

***Agency Response*:** The comment is outside the scope of the regulations, which do not govern the performance of HIV testing and related counseling. The regulations only address reporting of positive results and the use of those results by DPH.

The Centers for Disease Control and Prevention issued draft revised guidelines regarding HIV testing on October 21, 2000 (65 Fed Reg. 65242).

***Agency Response*:** DPH has reviewed guidelines on HIV testing published by CDC October 17, 2000. The proposed regulations are consistent with the referenced guidelines.

The Federal Department of Health and Human Services published new rules on health privacy on December 28, 2000.

Agency Response: DPH is monitoring these health privacy rules not only in connection with these regulations, but also because of their broader implications. The HIPPA regulations are being approved in stages and therefore their potential relevance to these regulations is an evolving

situation. However, in general, HIPPA is not intended to disrupt basic public health functions, such as disease surveillance.

Regarding partner notification and reporting of partners to DPH, it should be noted that the physician is not necessarily the person who does the counseling.

***Agency Response*:** The comment points out that there is inconsistency in the language used in the proposed regulations which may lead to confusion. Section 6.3.2.1 indicates "a physician or any other health care professional", while Section 6.4.2.1 indicates " a physician or any other health care provider", and Section 6.4.4.1 indicates "any physician, or any other licensed health care professional". It is important that the professionals who are required to report be licensed. This will reduce the likelihood of reports being submitted based on rumor or some other non-scientific basis. Non-licensed individuals are almost always going to be employed in some institutional setting where they are subordinate to a licensed health care professional. In such a situation the institution or the licensed professional should be responsible for supervising the legitimacy of the reports. Therefore, the proposed regulation should be changed so that the phrase "licensed health care professional" is used in Sections 6.3 and 6.4 throughout.

The public comment period was open from March 1, 2001 to April 10, 2001.

Verifying documents are attached to the Hearing Officer's record. The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

Regulations for the Control of Communicable and Other Disease Conditions

DIVISION OF PUBLIC HEALTH

Adopted	August 2, 1984
Amended:	Jun 21, 1986
	Jan 6, 1989
	Jun 16, 1989
	Sep 1, 1989
	Jan 12, 1990
	Oct 19, 1990
	Dec 10, 1993
	Apr 13, 1995
	Mar 13, 2000
	[July 10, 2001]

PART I
Applicable Codes

These regulations are adopted by the Department of Health & Social Services pursuant to 16 Del. C. §122(1), (2), (3) (a and j), (4), (5); §128; §129; §151; §503; §504; §505; §507; §508; §702; §706 and 707. These regulations were originally adopted on August 2, 1984 effective September 1, 1984**,** and subsequently amended.

PART II
Definitions

When used in Parts II and III, the following terms shall mean:

1. **"Carrier"** - A person who harbors pathogenic organisms of communicable disease but who does not show clinical evidence of the disease and serves as a potential source of infection.

2. **"Case"** - A person whose body has been invaded by an infectious agent with the result that clinical symptoms have occurred.

3. **"Child Care Facility"** - Any organization or business created for, and having as its major purpose, the daily care and/or education of children under the age of 7 years.

4. **"Communicable Disease"** - An illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from a reservoir to a susceptible host either directly as from an infected person or animal or indirectly, through an intermediate plant or animal host, vector, or the inanimate environment.

5. **"Contact"** - A person or animal that has been in such association with an infected person or animal or a contaminated environment as to have had opportunity to acquire the infection.

6. **"Designee"** - The person named by the Director of the Division of Public Health to assume a specific responsibility.

7. **"Division Director"** - The Director of the Division of Public Health.

8. **"Directly Observed Therapy (DOT)"** - an adherence-enhancing strategy in which a health care worker or other designated person watches the patient swallow each dose of medication.

9. **"Epidemic" or "Outbreak"** - The occurrence in persons in a community, institution, region, or other defined area of cases of an illness of similar nature clearly in excess of normal expectancy.

10. **HIV Infection** – repeatedly reactive screening tests for HIV antibody (for example, enzyme immunoassay) with specific antibody identified by the use of supplemental tests such as Western Blot or immunofluorescence assay; or direct

identification of virus in host tissues by virus isolation (for example, culture); or HIV antigen detection (for example p24 antigen); or a positive result on any other highly specific licensed test for HIV.

11. **"Medical Examiner"** - A physician appointed pursuant to 29 **Del.C.** §4703 or 7903(a)(3) who is authorized to investigate the causes and circumstances of death.

12. **"Nosocomial Disease"** - A disease occurring in a patient in a health-care facility and in whom it was not present or incubating at the time of admission.

13. **"Notifiable Disease"** - A communicable disease or condition of public health significance required to be reported to the Division of Public Health in accordance with these Rules.

14. **"Notification"** - A written or verbal report as required by any section of these Rules.

15. **"Outbreak"** - Refer to definition of "Epidemic".

16. **"Post-Secondary Institution"** - Means and includes state universities, private colleges, technical and community colleges, vocational technical schools and hospital nursing schools.

17. **"Quarantine"** - An official order that limits the freedom of movement and actions of persons or animals in order to prevent the spread of notifiable disease or other disease condition. The Division Director or designee shall determine which persons or animals are subject to quarantine and shall issue appropriate instructions.

18. **"Resistant Organism"** - Any organism which traditionally was inactivated or killed by a drug but has, over time, developed mechanisms to render that drug ineffective.

19. **"Sensitive Situation"** - A setting, as judged by the Director of the Division of Public Health or designee in which the presence of a person or animal infected with or suspected of being infected with a notifiable or other communicable disease or condition which may affect the public health would increase significantly the probability of spread of such disease and would, therefore, constitute a public health hazard. Sensitive situations may include, but are not limited to, schools, child-care facilities, hospitals, and other patient-care facilities, food storage, food processing establishments or food outlets.

20. **"Source of Infection"** - The person, animal, object or substance from which an infectious agent passes directly to the host.

21. **"Suspect"** - A person or animal whose medical history and symptoms suggest that he or it may have or may be developing a communicable disease condition.

PART III
Regulations

Section 1. Notifiable Diseases or Conditions to be Reported

The notifiable diseases specified in the Appendices to these regulations are declared as dangerous to the public health. The occurrence or suspected occurrence of these diseases, including those identified after death, shall be reported as defined in Section 3 to the Division of Public Health. Such reports shall be made within 48 hours of recognition except as otherwise provided in these regulations. Reports shall be made by telephone or in writing except for certain specified diseases as indicated by a (T) which shall be reported immediately by telephone. Certain diseases are reportable in number only and are indicated by an (N). The Division of Public Health may list additional diseases and conditions on its reporting forms for which reporting is encouraged but not required.

Section 2. Report of Outbreaks

Any person having knowledge of any outbreak of any notifiable disease or clusters of any illness which may be of public concern, shall report such outbreaks within 24 hours to the Division Director or designee.

Section 3. Reporting of Notifiable Diseases

3.1 Attending Practitioners

Reports required by Sections 1 and 2 shall be made to the Division Director or designee by any attending practitioner, licensed or otherwise permitted in Delaware to practice medicine, osteopathic medicine, chiropractic, naturopathy, or veterinary medicine, who diagnoses or suspects the existence of any disease on the notifiable disease list or by the medical examiner in cases of unattended deaths.

3.2 Others

In addition to those who are required to report notifiable diseases, the following are requested to notify the Division Director or designee of the name and address of any person in his or her family, care, employ, class, jurisdiction, custody of control, who is suspected of being afflicted with a notifiable disease although no practitioner, as in Section 3.1 above, has been consulted: every parent, guardian, householder; every nurse, every dentist, every midwife, every superintendent, principal, teacher or counselor of a public or private school; every administrator of a public or private institution of higher learning; owner, operator, or teacher of a child-care facility; owner or manager of a dairy, restaurant, or food storage, food-processing establishment or food outlet; superintendent or manager of a public or private camp, home or institution; director or supervisor of a military installation; military or Veterans Administration Hospital, jail, or juvenile detention center.

3.3 Hospitals

3.3.1 The chief administrative officer of each civilian hospital, long-term care facility, or other patient-care facility shall (and the United States military and Veterans Administration Hospitals are requested to) appoint an individual from the staff, hereinafter referred to as "reporting

officer," who shall be responsible for reporting cases or suspect cases of diseases on the notifiable disease list in persons admitted to, attended to, or residing in the facility.

3.3.2 Such case reports shall be made to the Division Director or designee within 48 hours of recognition or suspicion, except as otherwise provided in these regulations.

3.3.3 Reporting of a case or suspect case of notifiable disease by a hospital fulfills the requirements of the attending practitioner to report; however, it is the responsibility of the attending practitioner to ensure that the report is made pursuant to Section 3.1.

3.3.4 The hospital reporting officer shall also report to the Division Director or designee communicable diseases not specified in Section 1, should the disease occur in a nosocomial disease outbreak situation which may significantly impact the public health. Such reports shall be made within 24 hours of the recognition of such a situation.

3.4 Laboratories

3.4.1 Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiological examination shall report results of laboratory examinations of specimens indicating or suggesting the existence of a notifiable disease to the Division of Public Health within 48 hours of when the results were obtained or as soon as possible, except as otherwise provided in these regulations.

3.4.2 The Director or designee may contact the patient or the potential contacts so identified from laboratory reports only after consulting with the attending practitioner, when the practitioner is known and when said consultation will not delay the timely control of the a communicable disease.

3.4.3 Laboratories identifying salmonella or shigella organisms in the stool specimens shall forward cultures of these organisms or the stool specimens themselves to the Public Health Laboratory for confirmation and serotyping.

3.4.4 Reporting of antibiotic resistant organisms

Any person in charge of a clinical or hospital laboratory, or other facility in which a laboratory examination of any specimen derived from a human body and submitted for microbiologic examination yields a non-susceptible species of microorganism as listed in Appendix II, will report the infected person's name, address, date of birth, race, sex, site of isolation, date of isolation and MIC/ Zone diameter to the Division of Public Health. In addition, the number of susceptible and non-susceptible isolates of any of these organisms shall be reported monthly to the Division of Public Health.

3.5 Confidentiality

Information identifying persons or institutions submitted in reports required in Sections 3.1 - 3.4 shall be held confidential to the extent permitted by law.

3.6 Information in Reports

Information included in reports required in Sections 3.1-3.4 shall contain sufficient information to contact the patient and/or the patient's attending physician. When available, the name, address, telephone number, date of birth, race, gender, and disease of the person ill or infected; the date of onset of illness; the name, address, and telephone number of the attending physician; and any pertinent laboratory information, shall be provided.

Section 4. Investigation of Case

4.1 Action to Be Taken

Upon being notified of a case or suspected case of a notifiable disease or an outbreak of a notifiable disease or other disease condition in persons or animals, the Director of the Division or designee may take action as permitted in these Rules, and additionally as deemed necessary to protect the public health. If the nature of the disease and the circumstances warrant, the Director of the Division or designee may make or cause to be made an examination of the patient to verify the diagnosis, make an investigation to determine the source of infection, and take other appropriate action to prevent or control the spread of the disease. These actions may include, but shall not be limited to, confinement on a temporary basis until the patient is no longer infectious, and obligatory medical treatment in order to prevent the spread of disease in the community.

4.2 Examination of Patient

Any person suspected of being afflicted with any notifiable disease shall be subject to physical examination and inspection by any designated representative of the Division of Public Health, except that a duly authorized warrant or court order shall be presented to show just cause in instances where the suspect refuses such examination and inspection. Such examination shall include the submission of bodily specimens when deemed necessary by the Division Director or designee.

4.3 Sensitive Situations

4.3.1 No person known to be infected with a communicable disease or suspected of being infected with a communicable disease shall engage in sensitive situations as defined in Part II of these regulations until judged by the Division Director or designee to be either free of such disease or no longer a threat to public health. Such action shall be in accord with accepted public health practice and reasonably calculated to abate the potential public health risk.

4.3.2 When, pursuant to Section 4.3.1, it is necessary to require that a person not engage in a sensitive situation because that person is infected or suspected of being infected with a communicable disease, the Division Director or designee shall provide, in writing, instructions specifying the nature of the restrictions and conditions

necessary to terminate the restrictions. These written instructions shall be provided to the person infected or suspected of being infected with a communicable disease and to that person's employer or other such individual responsible for the sensitive situation.

4.3.3 The Division Director or designee shall have the authority to exclude from attendance in a child care facility any child or employee suspected of being infected with a communicable disease that, in the opinion of the Division Director or designee, significantly threatens the public health. In addition, no person shall attend or be employed in a child care facility who has the following symptoms:

(a) unusual diarrhea, severe coughing, difficult or rapid breathing, yellowish skin or eyes, pinkeye, or an untreated louse or scabies infestation;

(b) fever (100×F by oral thermometer or 101×F by rectal thermometer or higher) accompanied by one of the following: unusual spots or rashes, sore throat or trouble swallowing, infected skin patches, unusually dark tea-colored urine, gray or white stool, headache and stiff neck, vomiting, unusually cranky behavior, or loss of appetite.

(c) any other symptoms which, in the opinion of the Division Director or designee suggest the presence of a communicable disease that significantly threatens the public health. Exclusion from a childcare facility in this case shall be effective upon written notification pursuant to Section 4.3.2.

Section 5. Quarantine

5.1 Establishment

When quarantine of humans is required for the control of any notifiable disease or other disease or condition, the Division Director or designee shall have the authority to initiate procedures to establish a quarantine.

5.2 Requirements

5.2.1 The Division Director or designee shall ensure that provisions are made for proper observations of such quarantined persons as frequently as necessary during the quarantine period.

5.2.2 Quarantine orders shall be in effect for a time period in accord with accepted public health practice.

5.3 Transportation

5.3.1 Transportation or removal of quarantined persons may be made only with prior approval of the Division Director or designee.

5.3.2 Transportation or removal of quarantined persons shall be made in accordance with orders issued by the Division Director or designee.

5.3.3 Quarantine shall be resumed immediately upon arrival of quarantined person at point of destination for the period of time in accord with accepted public health practices.

5.4 Disinfection

5.4.1Concurrent disinfection is required of infectious or potentially infectious secretions or excretions of any quarantined person or animal or of objects contaminated by such secretions or excretions. The collection, storage and disposal, of such contaminated matter and disinfection procedures shall be approved by the Division Director or designee.

5.4.2 Disinfection shall also be carried out at the termination of the period of quarantine and shall be applied to the quarter vacated. The disinfection procedures shall be as approved by the Division Director or designee.

Section 6. Control of Specific Communicable Diseases

6.1 Vaccine Preventable Diseases

6.1.1 All preschool children who are enrolled in a child care facility must be age-appropriately vaccinated against diseases prescribed by the Division Director. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation.

6.1.2 Any child entering private school must be age-appropriately vaccinated against diseases prescribed by the Division Director, prior to enrolling in school. For those diseases so prescribed, the most current recommendations of the federal Center's for Disease Control and Prevention's Advisory Committee on Immunization Practices' (ACIP) shall determine the vaccines and vaccination schedules acceptable for compliance with this regulation. This provision pertains to all children between the ages of 2 months and 21 years entering or being admitted to a Delaware private school for the first time including, but not limited to, foreign exchange students, immigrants, students from other states and territories and children entering from public schools.

6.1.3 Acceptable documentation of the receipt of immunization as required by Sections 6.1.1 - 6.1.2 shall include either a medical record signed by a physician, or a valid immunization record issued by the State of Delaware or another State, which specifies the vaccine given and the date of administration.

6.1.4 Immunization requirements pursuant to sections 6.1.1 - 6.1.2 shall be waived for:

(a) children whose physicians have submitted, in writing, that a specific immunizing agent would be detrimental to that child; and,

(b) children whose parents or guardians present a notarized document that immunization is against their religious beliefs.

6.1.5 Child care facilities and private schools (grades K-12) shall maintain on file an immunization record

for each child. The facility will also be responsible to report to the Division Director or designee on an annual basis the immunization status of its enrollees.

6.1.6 Parents whose children present immunization records which show that immunizations are lacking will be allowed l4 days (or such time as may be appropriate for a particular vaccination) to complete the required age-appropriate doses of vaccine for their children. In instances where more than l4 days will be necessary to complete the age-appropriate immunization schedule, an extension may be allowed in order to obtain the required immunizations. Extension of the 14-day allowance because of missed appointments to receive needed immunizations shall not be permitted.

6.1.7 When a child's records are lost and the parent states that the child has completed his/her series of immunizations, or a child has been refused admission or continued attendance at a child care facility or private school for lack of acceptable evidence of immunization as specified in this regulation, a written certification must be provided by a health care provider who has administered the necessary age-appropriate immunizations to the child according to the current ACIP immunization schedule.

6.1.8 It is the responsibility of the child care facility or private school to exclude a child prior to admission or from continued attendance who has failed to document required immunizations pursuant to this section.

6.1.9 Upon the occurrence of a case or suspect case of one of the vaccine preventable diseases specified in pursuant to sections 6.1.1 and 6.1.2, any child not immunized against that disease shall be excluded from the premises, until the Division Director or designee has determined that the disease risk to the unimmunized child has passed. Such exclusion shall apply to all those in the facility who are admitted under either medical or religious exemption as well as to those previously admitted who have not yet received vaccine against the disease which has occurred. If, in the judgment of the Division Director or designee, the continued operation of the facility presents a risk of the spread of disease to the public at large, he/she shall have the authority to close the facility until the risk of disease occurrence has passed.

6.1.10 All full-time students of post-secondary educational institutions and all full and part-time students in such educational institutions if engaged in patient-care related curriculums (included but not limited to nursing, dentistry and medical laboratory technology), shall be required to show evidence of immunity to measles, rubella and mumps prior to enrollment by the following criteria:

1. Measles immunity:

(a) persons born before January 1, 1957; or

(b) physician documented history of measles disease; or

(c) serological confirmation of measles immunity; or

(d) a documented receipt from a physician or health facility that two doses of measles vaccine were administered after 12 months of age.

2. Rubella immunity:

(a) persons born before January 1, 1957; except women who could become pregnant; or

(b) laboratory evidence of antibodies to rubella virus; or

(c) a documented receipt from a physician or health facility that rubella vaccine was administered on or after 12 months of age.

3. Mumps immunity:

(a) persons born before January 1, 1957; or

(b) physician diagnosed history of mumps disease; or

(c) laboratory evidence of immunity; or

(d) a documented receipt from a physician or health facility that mumps vaccine was administered on or after 12 months of age.

6.1.11 Immunization requirements pursuant to section 6.1.10 shall be waived for:

(a) A student whose licensed physician certifies that such immunization may be detrimental to the student's health;

(b) A student who presents a notarized document that immunization is against their religious beliefs.

6.1.12 The student health service, the admissions office and the office of the university or college registrar are jointly responsible for implementing Section 6.1.10 through notification of immunization requirements, the collection and verification of documented vaccine histories, identification and notification of students not in compliance and imposition of sanctions for non-compliance.

6.1.13 Students who can not show evidence of immunity to measles pursuant to ~~7.1.10~~ 6.1.10 and who cannot show documented receipt of ever having received measles vaccine shall be permitted to enroll on the condition that 2 doses be administered within 45 days or at the resolution of an existing medical contraindication. ~~However, measles vaccine shall not be given closer than 28 days apart.~~ Students who cannot show evidence of immunity to rubella and/or mumps or who have had only 1 dose of measles vaccine shall be permitted to enroll on the condition that measles, mumps and rubella immunizations be obtained within 14 days or at the resolution of an existing medical contraindication. However, in implementing these requirements, doses of a measles containing vaccine shall not be given closer than 28 days apart.

6.1.14 The Division Director may maintain a registry of the immunization status of persons vaccinated

against any vaccine preventable diseases (hereafter called an "immunization registry").

6.1.14.1 Physicians and other health care providers who give immunizations shall report information about the immunization and the person to whom it was given for addition to the immunization registry in a manner prescribed by the Division Director or designee.

6.1.14.2 The Division Director or designee may disclose information from the immunization registry without a patient's, parent's, or guardian's written release authorizing such disclosure to the following:

(a) The person immunized, or a parent or legal guardian of the person immunized, or persons delegated in writing by same.

(b) Employees of public agencies or research institutions, however only when it can be shown that the intended use of the information is consistent with the purposes of this section.

(c) Health records staff of school districts and child care facilities.

(d) Persons who are other than public employees who are entrusted with the regular care of those under the care and custody of a state agency including but not limited to operators of day care facilities, group, residential care facilities and adoptive or foster parents.

(e) Health insurers, however only when the person immunized is a client of the health insurer.

(f) Health care professionals or their authorized employees who have been given responsibility for the care of the person immunized.

6.1.14.3 If any person authorized in subsection 6.1.14.2 discloses information from the immunization registry for any other purpose, it is an unauthorized release and such person may be subject to civil and criminal penalty.

6.2 Ophthalmia Neonatorum

~~See 16 Del. C. §803 and the Department of Health and Social Services regulations promulgated thereunder entitled "Regulations Governing Treatment of the Eyes of Newborns".~~

Any physician, nurse, midwife, or other health care provider so permitted to under the law, who attends the birth of an infant in Delaware, shall provide or cause to be provided prophylactic treatment against inflammation of the eyes of the newborn. Said prophylactic treatment shall be provided within 1 hour of birth and consist of (1) 1% silver nitrate in single-dose containers, or (2) a 1-2 centimeter ribbon of sterile ophthalmic ointment containing tetracycline (1%) or erythromycin (0.5%) in single-use tubes, or (3) other treatment recommended for this purpose as published in the most recent edition of the U.S. Preventive Services Task Force, *Guide to Clinical Preventive Services.*

6.3 Sexually Transmitted Diseases (STDs)

6.3.1 ~~The following diseases~~ Appendix I lists STDs regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, or are of major public health concern~~s~~ such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as sexually transmitted and reportable pursuant to Title 16 **Del.C.**, Chapter 7. For the purposes of this section, a suspect is any person (a) having positive or clinical findings of a STD; or (b) in whom epidemiologic evidence indicates a~~n~~ STD may exist, or is identified as a sexual contact of a~~n~~ STD case, and is provided treatment for the STD on that basis.

~~6.3.1.1 Class A: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported individually.~~

~~Acquired Immune Deficiency Syndrome (AIDS), (only if satisfying the case definitionn of the federal Centers for Disase Control)~~

~~Chancroid~~

~~*Chlamydia trachomatis* infections~~

~~*Chlamydia trachomatis* infections of newborns~~

~~*Neisseria gonorrhea* infections (gonorrhea and related conditions)~~

~~Granuloma inguinale~~

~~Hepatitis B~~

~~Herpes (congenital only)~~

~~Lymphogranuloma venereum~~

~~Pelvic Inflammatory Disease (only gonococcal and/or chlamydial)~~

~~Syphilis~~

~~6.3.1.2 Class B: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported by number only in demographic categories (for example, age and sex) or methods prescribed and furnished by the Division of Public Health, and from health care professionals or health facilities specified by the Section.~~

~~Herpes (genital)~~

~~Human Immunodeficiency virus (HIV)*~~

~~Human papillomavirus (genital warts)~~

~~*Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.~~

~~6.3.1.3 Class C: STDs or suspected STDs or laboratory evidence suggestive of STDs to be reported immediately by telephone or other rapid means of communication.~~

~~Congenital syphilis~~

6.3.2 Reporting STDs

6.3.2.1 A physician or any other **[licensed]** health care professional who diagnoses, suspects or treats a reportable ~~Class A or Class C~~ STD and every administrator of a health facility or ~~state, county, or city~~ prison in which there is a case of a ~~Class A or Class C~~ reportable STD shall report such case to the Division of Public Health ~~specifying~~**.**

Unless reportable in number only as specified in Appendix I, reports provided under this rule shall specify the infected person's name, address, date of birth, gender and race as well as the date of onset, name and stage of disease, type and amount of treatment given and the name and address of the submitting **[licensed]** health **[care]** professional. ~~Reports of Class A diseases shall be placed into the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of diagnosis, suspicion or treatment. Reports of Class C disease shall be telephoned within one working day of diagnosis, suspicion or treatment.~~

6.3.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields microscopic, cultural, serological, or other evidence suggestive of a ~~Class A or Class C~~ reportable STD shall notify the Division of Public Health. ~~Reports of Class A diseases shall be placed in the United States mail, telephoned, or otherwise routed to the appropriate agency of the Division of Public Health within one working day of identification of evidence suggestive of a STD. Reports shall include~~ Unless reportable in number only as specified in Appendix I, reports provided under this rule shall specify the name, date of birth, race, gender and address of the persons from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory.

6.3.2.3 ~~All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report Human Immunodeficiency Virus (HIV) as a Class A STD. Tests which employ an ELISA technique to detect antibodies shall be reported only if confirmed with a Western Blot or other confirmatory test.~~

Reports required by this Section for STD's designated with the letter "T" in Appendix I shall be made by telephone, fax, or other rapid electronic means within 1 working day. Reports required by this Section for STD's designated with the letter "N" in Appendix I shall be made at the request of the Division of Public Health, in number only, and in demographic categories specified by the Division of Public Health. All other reports required by this Section for STD's listed in Appendix I shall be placed into the United States mail, faxed, telephoned, or otherwise routed to the Division of Public Health within one working day of diagnosis, suspicion, or treatment.

6.3.2.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del. Code, §710, and §711. From information received from laboratory notifications, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person from whom a specimen was obtained. However, if delays resulting from informing the physician may enhance the spread of the STD, or otherwise endanger the health of either individuals or the public, the Division of Public Health may contact the person without first informing the attending physician.

6.3.2.5 Any person or facility required to report a STD under this Section ~~laboratory that examines specimens for the purpose of finding evidence of an STD~~ shall permit the Division of Public Health to examine ~~the~~ records ~~of said laboratory~~ in order to evaluate compliance with this section.

6.4 Infection with Human Immunodeficiency Virus (HIV)

6.4.1 HIV infection is regarded to cause significant morbidity and mortality, can be screened, diagnosed and treated, and is of major public health concern, such that surveillance of the disease occurrence is in the public interest, and therefore shall be designated as notifiable and reportable pursuant to Title 16 Del. Code, Chapter 5.

6.4.2 Reporting HIV Infection

6.4.2.1 A physician or any other health care provider who diagnoses or treats HIV and every administrator of a health care facility or prison in which there is an HIV infected person shall report such information to the Division of Public Health. Reports provided under this rule shall specify the infected person's name, address, date of birth, gender, mode of transmission and race as well as the date of HIV positive laboratory result, and stage of disease, type and amount of treatment given and the name and address of the submitting health professional.

6.4.2.2 Any person who is in charge of a clinical or hospital laboratory, blood bank, mobile unit, or other facility in which a laboratory examination of any specimen derived from a human body yields serological, or other evidence of HIV, shall notify the Division of Public Health. Reports provided under this rule shall specify the name, date of birth, race, gender and address of the person from whom the specimen was obtained, laboratory findings, and the name and address of the physician and that of the processing clinical laboratory.

6.4.2.3 Reports made on the basis of an HIV test to detect antibodies shall only be made if confirmed with a Western Blot or other confirmatory test.

6.4.2.4 All facilities obtaining blood from human donors for the purpose of transfusion or manufacture of blood products shall report HIV consistent with 6.4.2.2.

6.4.2.5 Reports of HIV infection required by Section 6.4 shall be placed into the United States mail, using a special envelope that will be provided by the Division of Public Health, and routed to the Division within 48 hours of diagnosis or treatment. Any other reporting method must be approved in advance and must be in a time frame acceptable

to the Division.

6.4.2.6 Any laboratory that examines specimens, or reporting source finding evidence of HIV, shall permit the Division of Public Health to examine the records of said laboratory, facility, or office in order to evaluate compliance with this section.

6.4.2.7 As it is the intent of the Division of Public Health to continue the availability of anonymous HIV counseling and testing, and as it is not the practice to collect the name or other identifying information from a person who is anonymously tested for HIV, and therefore no name is available to be reported, nothing in these regulations shall preclude the performance of anonymous HIV testing.

6.4.3 Confidentiality of HIV Reports

6.4.3.1 The Division of Public Health will evaluate reports of HIV for completeness and potential referrals for service. Once this function is completed, the patient's name will be converted to a code and then destroyed. From that time forward, the code will be used in lieu of the name to determine if the patient has been previously reported. In carrying out this function, the Division shall destroy the name as expeditiously as possible, but not later than 90 days from receipt of the report.

6.4.3.2 The Division of Public Health will evaluate its procedures for HIV reporting on a continuous basis after implementation for timeliness, completeness of reporting, and security of confidential information.

6.4.3.3 The Division of Public Health will follow the December 10, 1999 Morbidity and Mortality Weekly Report Recommendations and Reports, "CDC Guidelines for National Human Immunodeficiency Virus Case Surveillance, Including Monitoring for Human Immunodeficiency Virus Infection and Acquired Immunodeficiency Syndrome" document as it pertains to patient records and confidentiality, or any subsequent revisions of said document.

6.4.3.4 All reports and notification made pursuant to this section are confidential and protected from release except under the provisions of Title 16 Del. Code, §710, §711 and §1201-4, §1201A-4A. Any person aggrieved by a violation of this Section shall have a right of action in the Superior Court and may recover for each violation:

a. Against any person who negligently violates a provision of this regulation, damages of $1,000 or actual damages, whichever is greater.

b. Against any person who intentionally or recklessly violates a provision of this subchapter, damages of $5,000 or actual damages, whichever is greater.

c. Reasonable attorneys' fees.

d. Such other relief, including an injunction, as the court may deem appropriate.

e. Any action under this regulation is barred unless the action is commenced within 3 years after the cause of action accrues. A cause of action will accrue when the injured party becomes aware of an unauthorized disclosure.

6.4.3.5 From information received from reports of HIV infection, the Division of Public Health may contact attending physicians. The Division of Public Health shall inform the attending physician, if the notification indicates the person has an attending physician, before contacting a person on whom the report is made. However, if delays resulting from informing the physician may enhance the spread of HIV, or otherwise endanger the health of any individuals, the Division of Public Health may contact the person without first informing the attending physician.

6.4.4 ~~6.3.3 Privilege to~~ Duty to Disclose the Identity of Sexual or Needle-sharing Partners of HIV Infected Patients ~~and Their Partners~~

6.4.4.1 ~~6.3.3.1~~ Any physician, or any other licensed health care professional ~~personnel~~ acting on the orders of a physician, (hereafter referred to as provider), diagnosing or caring for an HIV infected patient shall disclose the identity of the ~~patient or the~~ patient's sexual or needle-sharing partner(s) to the Division of Public Health so that the partner(s) may be notified of his or her risk of infection, provided that:

a. The patient's condition satisfies the Centers for Disease Control and Prevention definition of AIDS, or has an HIV infection as evidenced by a positive antibody test which is confirmed by Western Blot, or based upon other tests accepted by prevailing medical opinion, the patient is considered to be infected with HIV;

b. The provider knows of an identifiable partner at risk of infection who may not have been informed of their potential risk; and

c. The provider believes there is a significant risk of harm to the partner; and

~~d. The provider believes that the partner does not suspect that he or she is at risk; and~~

~~e.~~ d. Reasonable efforts have been made to counsel the patient pursuant to 16 Del. C. Section 1202(e), urging the patient to notify the partner, and the patient has refused or is considered to be unlikely to notify the partner; and

~~f.~~ e. The provider has made reasonable efforts to inform the patient of the intended disclosure and to give the patient the opportunity to express a preference as to whether the partner be notified by the provider, the patient, or the Division.

6.4.4.2 ~~6.3.3.2~~ Any provider diagnosing or caring for an HIV infected patient ~~may~~ shall also report to the Division of Public Health relevant facts about a ~~when disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division so that the partner may be notified of his or her risk of infection, when:~~

~~a. The patient requests the provider to make such notification for the purposes of obtaining assistance in the notification of a partner; or~~

~~b.~~ ~~The~~ patient that does not pose a threat to an identifiable partner but, in the professional judgment of the provider based upon stated intended acts, the patient may ~~be dangerous~~ threaten further spread of HIV to the general population. In this instance the conditions specified in Sections 6.~~3.3~~.4.4.1(a), 6.~~3.3~~.4.4.1 (d ~~c~~) and 6.~~3.3~~.4.4.1 (e ~~f~~) shall apply. Disclosure shall be for the purpose of providing appropriate counseling to the patient.

6.4.4.3 ~~6.3.3.3~~ Procedures for disclosing information pursuant to this section shall be specified by the Division. Such procedures shall (a) include the requirement that, prior to the Division identifying and notifying a partner, reasonable efforts be made by the Division to counsel the patient and urge the patient's voluntary notification of a partner; (b) specify Division employees permitted to receive the disclosed information; and (c) describe the manner in which partners will be notified pursuant to these regulations.

6.4.4.4 ~~6.3.3.4~~ The provider will prepare and maintain contemporaneous records of compliance with each element of these regulations.

~~6.3.3.5 Nothing in this section shall constitute a duty upon the provider to disclose the identity of the patient or the patient's sexual or needle-sharing partner to the Division for the purpose of notifying a partner of the risk of HIV infection. A cause of action shall not arise under this section for the failure to make such disclosure.~~

6.5 ~~6.4~~ Tuberculosis

6.5.1 ~~6.4.1~~ Any person afflicted with or suspected of being afflicted with tuberculosis disease and in need of hospitalization and unable to pay the cost, shall be hospitalized at public expense wherever and whenever facilities are available and provided that private or third party funds are not available for this purpose.

6.5.2 ~~6.4.2~~ Reporting Tuberculosis

6.5.2.1 ~~6.4.2.1~~ Physicians, pharmacists, nurses, hospital administrators, medical examiners, morticians, laboratory administrators, and others who provide health care services to a person with diagnosed, suspected or treated tuberculosis (TB) shall report such a case to the Division of Public Health specifying the infected person's name, address, date of birth, race, gender, date of onset, site of disease, prescribed anti-TB medications, and, in the case of laboratory administrators, the name and address of the submitting health professional. A report shall be telephoned into the Division of Public Health within two working days of the provision of service or laboratory finding.

6.5.2.2 ~~6.4.2.2~~ Any person who is in charge of a clinical or hospital laboratory or other facility in which a laboratory examination of sputa, gastric contents, or any other specimen derived from a human body yields microscopic, cultural, serological or other evidence suggestive of tubercle bacilli shall notify the Division of Public Health by telephone within two working days of the occurrence.

6.5.2.3 ~~6.4.2.3~~ Any provider who has knowledge about a person with multiple drug-resistant tuberculosis (MDR-TB), even if the confirmed or suspected TB cases had been previously reported, shall report the occurrence to the Division of Public Health within two days of the occurrence.

6.5.2.4 ~~6.4.2.4~~ Persons with TB who have demonstrated an inability or an unwillingness to adhere to a prescribed treatment regimen, who refuse medication, or who show other evidence of not taking anti-TB medications as prescribed, shall be reported to the Division of Public Health within two days of the occurrence.

6.5.3 ~~6.4.3~~ Diagnostic Examinations

6.5.3.1 ~~6.4.3.1~~ Any persons suspected of having infectious tuberculosis shall have a Mantoux tuberculin skin test, a chest radiograph, and laboratory examinations of sputum, gastric contents or other body discharges as may be required by the Division Director or designee to determine whether said patient represents an infectious case of tuberculosis.

6.5.3.2 ~~6.4.3.2~~ The Division Director or designee shall determine the names of household and other contacts who may be infected with tuberculosis and cause them to be examined for the presence of tuberculosis disease.

6.5.4 ~~6.4.4~~ Clinical Management

6.5.4.1 ~~6.4.4.1~~ In addition to fulfilling the reporting requirements of ~~6.4.1~~ 6.5.2, providers shall manage persons with active TB disease by following one of three courses of action:

(a) they shall immediately refer the client to the Division of Public Health for comprehensive medical and case management services; or

(b) they shall provide comprehensive assessment, treatment, and follow-up services (including patient education, directly observed therapy and contact investigation) to the client and his/her contacts consistent with current American Thoracic Society and the Centers for Disease Control and Prevention (ATS/CDC) guidelines; or

(c) they shall initiate appropriate medical treatment and refer the client to the Division of Public Health for coordination of community services and case management including directly observed therapy (DOT).

If the health care provider chooses (b) or (c) above, then the Division Director or designee may ask the health care provider for information about the care and management of the patient, and the health care provider shall assure that the requested information is communicated.

6.5.4.2 ~~6.4.4.2~~ Patients with infectious tuberculosis who are dangerous to public health may be

required by the Division Director or designee to be hospitalized, isolated, or otherwise quarantined. Whenever facilities for adequate isolation and treatment of infectious cases are available in the home and patient will accept said isolation, it shall be left to the discretion of the Division Director or designee as to whether these or other facilities shall be used.

Section 7. Preparation for Burial.

See 16 Del. C. Chapter 31 and Department of Health and Social Services regulations promulgated thereunder, entitled "Regulations Concerning Care and Transportation of the Dead".

Section 8. Disposal of Infectious Articles, Remains

No person shall dispose of articles, or human or animal remains known or suspected to be capable of infecting others with a communicable disease in such a manner whereby exposure to such infectious agents may occur. See also "Regulations Concerning Care and Transportation of the Dead", Section 10 ("Disposition of Amputated Parts of Human Bodies").

Section 9. Diseased Animals.

9.1 Importation and Sale

No person shall bring into this state or offer for sale domestic or wild animals infected or suspected to be infected with a disease communicable from animals to man.

9.2 Notification

It shall be the duty of persons having custody of care of animals infected or suspected to be infected with a disease transmitted from animals to man to notify the Division Director or designee of the infection.

Section 10. Notification of Emergency Medical Care Providers of Exposure to Communicable Diseases.

10.1 Definitions

For the purposes of this section, the following definitions shall apply.

a. “Emergency medical care provider” - fire fighter, law enforcement officer, paramedic, emergency medical technician, correctional officer, ambulance attendant, or other person who serves as employee or volunteer of an ambulance service and/or provides pre-hospital emergency medical service.

b. “Receiving medical facility” - hospital or similar facility that receives a patient attended by an emergency medical care provider for the purposes of continued medical care.

c. “Universal precautions” - those precautions, including the appropriate use of hand washing, protective barriers, and care in the use and disposal of needles and other sharp instruments, that minimize the risk of transmission of communicable diseases between patients and health care providers. Universal precautions require that all blood, body fluids, secretions, and excretions of care providers use appropriate barrier precautions to prevent exposure to blood and body fluids of all patients at all times.

10.2 Universal Precautions

10.2.1 Didactic Instruction

Education and training with respect to universal precautions shall be a mandatory component of any required training and any required continuing education for all emergency medical care providers who have patient contact. Training shall be appropriately tailored to the needs and educational background of the person(s) being trained. Training shall include, but not be limited to, the following:

a. Mechanisms and routes of transmission of viral, bacterial, rickettsial, fungal, and mycoplasmal human pathogens.

b. Proper techniques of hand washing, including the theory supporting the effectiveness of hand washing, and guidelines for waterless hand cleansing in the field.

c. Proper techniques and circumstances under which barrier methods of protection (personal protective equipment) from contamination by microbial pathogens are to be implemented. The instruction is to include the theory supporting the benefits of these techniques.

d. The proper techniques of disinfection and clean-up of spills of infectious material. This instruction is to include the use of absorbent, liquid, and chemical disinfectants.

e. Instruction regarding the reporting and documentation of exposures to infectious agents and the requirement for employers to have an exposure control plan.

f. The proper disposal of contaminated needles and other sharps. The instruction is to include information about recapping needles and using puncture-resistant, leak-resistant containers.

g. First aid and immediate care of wounds which may be incurred by an emergency medical care provider.

10.2.2 Practical or Laboratory Instruction

Practical sessions addressing the field application of the above didactic instruction must be part of the curriculum. The practical sessions shall provide a means of hands-on experience and training in the proper use of personal protective equipment, hand-washing disinfection, clean-up of infectious spills, handling and disposal of contaminated sharps, and the proper completion of reporting forms.

10.2.3 Approval of Curricula

Any provider of mandatory education and training and continuing education pursuant to this section must submit a curriculum for approval by the Division of Public Health and shall not utilize curricula that are not

regarded by the Division of Public Health to be in substantial compliance with 10.2.1 and 10.2.2.

10.3 Communicable Diseases

10.3.1 Communicable Disease Defined

Exposure to patients infected with the following communicable disease agents shall warrant notification to an emergency medical care provider pursuant to this section:

Human Immunodeficiency Virus (HIV)
Hepatitis B Virus
Hepatitis C Virus
Meningococcal disease
Haemophilus influenzae
Measles
Tuberculosis
Uncommon or rare pathogens

10.3.2 Infection Defined

A patient shall be considered infected with a communicable disease when the following conditions are satisfied:

10.3.2.1 Blood-borne pathogens

a. HIV - ELISA and western blot (or other confirmatory test accepted by prevailing medical opinion) tests must be positive.

b. Hepatitis B - positive for hepatitis B surface antigen.

c. Hepatitis C - (1) IgM anti-HAV negative, and (2) IgM anti-HBc negative or HBsAg negative, and (3) serum aminotransferase level more than two and one half times the upper limit of normal; or anti-HcB positive.

10.3.2.2 Air-borne pathogens

a. Meningococcal disease -compatible clinical findings and laboratory confirmation through isolation of *Neisseria meningitides* from a normally sterile site.

b. Haemophilus influenzae -compatible clinical findings of epiglottitis or meningitis and laboratory confirmation through isolation of *Haemophilus influenzae* from a normally sterile site or from the epiglottis.

c. Measles - compatible clinical findings with or without laboratory confirmation by one of the following methods: (1) presence of the measles virus from a clinical specimen, or (2) four-fold rise in measles antibody level by any standard serologic assay, or (3) positive serologic test for measles IgM antibody.

d. Tuberculosis - compatible clinical findings of pulmonary disease and identification of either acid-fast bacilli in sputum or the pathogen by culture.

10.3.2.3 Uncommon or rare pathogens

Infection with uncommon or rare pathogens determined by the Division of Public Health on a case-by-case basis.

10.3.3 Exposure Defined

10.3.3.1 Blood-borne pathogens

Exposure of an emergency medical care provider to a patient infected with a blood-borne pathogen as defined in ~~11.3.2.1~~ 10.3.2.1 shall include a needle-stick or other penetrating injury with an item contaminated by a patient's blood, plasma, pleural fluid, peritoneal fluid, or any other body fluid or drainage that contains blood or plasma. Contact of these fluids with mucous membranes or non-intact skin of the emergency medical care provider or extensive contact with intact skin shall also constitute exposure.

10.3.3.2 Air-borne pathogens

Exposure of an emergency medical care provider to a patient infected with an air-borne pathogen as defined in ~~11.3.2.2~~ 10.3.2.2 shall be as follows:

a. Meningococcal disease and haemophilus influenza - Close contact with an infected patient's oral secretions or sharing the same air space with an infected patient for one hour or longer without the use of an effective barrier such as a mask.

b. Measles - Sharing confined air space with an infected patient, regardless of contact time.

c. Tuberculosis- Sharing confined air space with an infected patient, regardless of contact time.

10.3.3.3 Uncommon or rare pathogens

The Division of Public Health shall determine definition of exposure to an uncommon or rare pathogen on a case-by-case basis.

10.3.3.4 Ruling on infection and exposure

When requested by the emergency medical care provider or receiving medical facility, the Division of Public Health shall investigate and issue judgment on any differences of opinion regarding infection and exposure as otherwise defined in 10.3.

10.4 Request for Notification

10.4.1 Every employer of an emergency medical care provider and every organization which supervises volunteer emergency medical care providers must register the name(s) of a designated officer who shall perform the following duties. The designated officer shall delegate these duties as may be necessary to ensure compliance with these regulations.

a. receive requests for notification from emergency medical care providers;

b. collect facts relating to the circumstances under which the emergency medical care provider may have been exposed;

c. forward requests for notification to receiving medical facilities;

d. report to the emergency medical care provider findings provided by the receiving medical facility; and

e. assist the emergency medical care provider to take medically appropriate action if necessary.

10.4.2 Receiving medical facilities must register

with the Division of Public Health the name or office to whom notification requests should be sent by an emergency medical care provider and who is responsible for ensuring compliance with this section.

10.4.3 If an emergency medical care provider desires to be notified under this regulation, the officer designated pursuant to ~~11.4.1~~ 10.4.1 shall notify the receiving medical facility within 24 hours after the patient is admitted to or treated by the facility on a form that is prescribed or approved by the State Board of Health.

10.5 Notification of Exposure to Air-borne Pathogens

10.5.1 Notwithstanding any requirement of 10.4.3, a receiving medical facility must make notification when an emergency medical care provider has been exposed to an air-borne communicable disease pursuant to 10.3.2.2 and 10.3.3.2. Such notification shall occur as soon as possible but not more that 48 hours after the exposure has been determined and shall apply to any patient upon whom such a determination has been made within 30 days after the patient is admitted to or treated by the receiving medical facility.

10.5.2 To determine if notification is necessary pursuant to this section, a receiving medical facility must review medical records of a patient infected with an air-borne communicable disease to determine if care was provided by an emergency medical care provider. If medical records do not so indicate, the receiving medical facility shall assume that no notification is required.

10.6 Notification of Exposure when Requested

10.6.1 When a request for notification has been made pursuant to 10.4.3, the receiving medical facility shall attempt to determine if the patient is infected with a communicable disease and if the emergency medical care provider has or has not been exposed. Information provided on the request for notification and medical records and findings in possession of the receiving medical facility shall be used to make this determination. If a determination is made within 30 days after the patient is admitted to or treated by the receiving medical facility, the receiving medical facility shall notify the officer designated pursuant to 10.4.1 as soon as possible but not more than 48 hours after the determination. The following information shall be provided in the notification:

a. The date that the patient was attended by the emergency medical care provider;

b. Whether or not the emergency medical care provider was exposed;

c. If the emergency medical care provider was exposed, the communicable disease involved.

10.6.2 If, after expiration of the 30-day period and because of insufficient information, the receiving medical facility has not determined that the emergency medical care provider has or has not been exposed to a communicable disease, the receiving medical care facility shall so notify the officer designated pursuant to Section 10.4.1 as soon as possible but not more than 48 hours after expiration of the 30-day period. The following information shall be provided in the notification:

a. The date that the patient was attended by the emergency medical care provider;

b. That there is insufficient information to determine if an exposure has occurred;

10.6.3 The receiving medical facility shall provide to the Division of Public Health a copy of each form completed pursuant to 10.4 which shall include information about whether or not the patient is infected, and if the emergency medical care provider is considered by the receiving medical facility to have been exposed.

10.7 Manner of Notification

A receiving medical facility must make a good faith effort, which is reasonably calculated based upon the health risks, the need to maintain confidentiality, and the urgency of intervention associated with the exposure, to expeditiously notify the officer designated pursuant to 10.4.1. If notification is by mail, and if, in the judgment of the receiving medical facility the circumstances warrant, the receiving medical facility shall ensure by telephone or other appropriate means that the designated officer of the emergency medical care provider has received notification.

10.8 Transfer of Patients

If, within the 30-day limitation defined in 10.5.1 and 10.6.1 a patient is transferred from a receiving medical facility to a second receiving medical facility, the receiving medical facility must provide the second facility with all requests for notification made by emergency medical care providers for that patient. The second receiving medical facility must make notification to the officer designated pursuant to 10.4.1 if the facility determines within the remaining part of the 30-day period that the patient is infected and shall otherwise comply with these regulations.

10.9 Death of Patient

If, within the 30-day limitation defined in 10.5.1 and 10.6.1, a patient is transferred from a receiving medical facility to a medical examiner, the receiving medical facility must provide the medical examiner with all requests for notification made by emergency medical care providers for that patient. The medical examiner must make notification to the designated officer if the medical examiner determines that the patient is infected with a communicable disease, and shall otherwise comply with these regulations.

10.10 Testing of Patients for Infection

Nothing in this regulation shall be construed to authorize or require a medical test of an emergency medical care provider or patient for any infectious disease.

10.11 Confidentiality

All requests and notifications made pursuant to

these regulations shall be used solely for the purposes of complying with these regulations and are otherwise confidential.

Section 11. Enforcement

11.1 Authorization

The Department of Health and Social Services or the Director of the Division of Public Health or their designated representatives are authorized to enforce these regulations to accomplish the following:

11.1.1 To insure compliance of persons who refuse to submit themselves or others for whom they are responsible, including their animals, to necessary inspection, examination, treatment, sacrifice of the animal, or quarantine.

11.1.2 To insure coordination of actions of individuals, local authorities, or state authorities in the control of communicable disease.

11.1.3 To insure the reporting of notifiable diseases or other disease conditions as required in these Rules.

11.2 Penalties

Except as otherwise provided by the Delaware Code or this regulation, failure to comply with the requirements of this regulation will be subject to prosecution pursuant to 16 Del. C., §107. The Department of Health and Social Services may seek to enjoin violations of this regulation.

APPENDIX I

NOTIFIABLE DISEASES

Acquired Immune Deficiency Syndrome (AIDS) (S)	Lymphogranuloma Venereum (S)
Anthrax (T)	Malaria
Botulism (T)	Measles (T)
Brucellosis	Meningitis (all types other than meningococcal)
Campylobacteriosis	Meningococcal Infections (all types) (T)
Chancroid (S)	Mumps (T)
Chlamydia trachomatis infection (S)	Nosocomial Disease Outbreak (T)
Cholera (T)	Pelvic Inflammatory Disease (resulting from gonococcal and/or chlamydial infections) (S)
Cryptosporidiosis	Pertussis (T)
Cyclosporidiosis	Plague (T)
Diphtheria (T)	Poliomyelitis (T)
E. Coli 0157:H7 infection (T)	Psittacosis
Encephalitis	Rabies (man, animal) (T)
Ehrlichiosis	Reye Syndrome
Foodborne Disease Outbreaks (T)	Rocky Mountain Spotted Fever
Giardiasis	Rubella (T)
Gonococcal Infections (S)	Rubella (congenital) (T)
Granuloma Inguinale (S)	Salmonellosis
Hansen's Disease (Leprosy)	Shigellosis
Hantavirus infection (T)	Streptococcal disease (invasive group A)
Hemolytic uremic syndrome (HUS)	Streptococcal toxic shock syndrome (STSS)
Hepatitis A (T)	Syphilis (S)
Hepatitis B (S)	Syphilis (congenital) (T) (S)
Hepatitis C & unspecified	Tetanus
Herpes (congenital) (S)	Toxic Shock Syndrome
Herpes (genital) (N)	Trichinosis
Histoplasmosis	Tuberculosis
Human Immunodeficiency Virus (HIV)	Tularemia
Human papillomavirus (genital warts) (N)	Typhoid Fever (T)
Influenza (N)	Vaccine Adverse Reactions
Lead Poisoning	Varicella (N)
Legionnaires Disease	Waterborne Disease Outbreaks (T)
Leptospirosis	Yellow Fever (T)
Lyme Disease	

(T) report by rapid means.
(N) report in number only when so requested
For all diseases not marked by (T) or (N):
(S) - sexually transmitted disease, report required in 1 day
Others - report required in 2 days

APPENDIX II

DRUG RESISTANT ORGANISMS REQUIRED TO BE REPORTED

Staphylococcus aureus intermediate or resistance to Vancomycin (MIC >8ug/ml)

Streptococcus pneumoniae drug-resistant, invasive disease

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** §505)

REVISION OF THE REGULATIONS OF DELAWARE'S TITLE XIX MEDICAID STATE PLAN ATTACHMENT 4.19-B, PAGE 13

NATURE OF THE PROCEEDINGS

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Program initiated proceedings to amend policies related to a Title XIX Medicaid State Plan change to the reimbursement methodology for Federally Qualified Health Centers (FQHCs). This change is made as a result of the Benefits Improvement and Protection Act (BIPA) of 2000 that repeals the reasonable cost-based reimbursement requirements for FQHC services and instead requires payment for FQHCs consistent with a new Prospective Payment System (PPS) described in section 1902(aa) of the Social Security Act. Under BIPA, the new Medicaid Prospective Payment System takes effect on January 1, 2001.

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, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the reimbursement methodology of Federally Qualified Health Centers are adopted and shall be final effective July 10, 2001.

6/15/01
Vincent P. Meconi, Secretary, DHSS

Methods and Standards for Establishing Payment Rates
Other Types of Care
Federally Qualified Health Centers
State Plan Amendment 4.19-b

~~Federally Qualified Health Centers are reimbursed 100% of their reasonable costs of providing health services to Medicaid beneficiaries.~~ The Health Care Financing Administration (HCFA) requires that Federally Qualified Health Centers (FQHCs) be reimbursed in compliance with the Benefits Improvement and Protection Act (BIPA) of 2000. Effective January 1, 2001, Delaware will pay 100% of reasonable cost based on an average of the Fiscal Year 1999 and 2000 audited cost report.

FQHCs are assigned a prospectively determined rate per clinic visit based on actual costs reported on their audited cost report from their ~~most recent~~ last fiscal year. Since the rates are calculated off of their cost reports, and they do not correspond with the Federal Fiscal Year, they would span more than one fiscal year. Starting July 1, 2001, the Medicare Economic Index will be used to inflate their rates.

Primary Care costs are separated from Administrative and General costs for purposes of rate calculation. The Administrative and General component is capped at 40% of the total cost. Each cost component is inflated by the current ~~U.S. Consumer Price~~ HCFA Medicare Economic Index. ~~The total inflated cost of the components is divided by the number of patient visits to determine the prospective reimbursement rate. Costs reports submitted by FQHCs are subject to audit by the State~~.

Medicaid will ensure 100% cost payment regardless of the payment mechanism.

The rate year for FQHC services is July 1 through June 30.

X The payment methodology for FQHCs will conform to section 702 of the BIPA 2000 legislation.

X The payment methodology for FQHCs will conform to the BIPA 2000 requirements Prospective Payment System.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** §505)

REVISION OF THE REGULATIONS OF DELAWARE'S DIVISION OF SOCIAL SERVICES MANUAL SECTIONS 7002.2, 7002.3, 7002.4, 7004.3, 7004.5, 7005

NATURE OF THE PROCEEDINGS

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following sections of the Division of Social Services Manual: Sections 7002.2, 7002.3, 7002.4, 7004.3, 7004.5, 7005. These changes are from the Final Rule entitled, Recipient Claim Establishment and Collection Standards, and was published in the Federal Register on July 6, 2000. The regulations aim to improve claims management in the Food Stamp Program and provide flexibility in efforts to increase claims collections. Some changes were mandated by the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. 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, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

The Final Order shows several grammatical clarifications reflecting comments received from Roger Waters, State Fair Hearing Officer, and they are indicated by **[bracketed bold language]**.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the Food Stamp Program Recipient Claim Establishment and Collection Standards are adopted and shall be final effective July 10, 2001.

6/15/01
Vincent P. Meconi, Secretary, DHSS

REVISION

7002.2 Food Stamp Claims

A recipient food stamp claim is an amount owed because benefits were overpaid or benefits were trafficked. Trafficking is the buying or selling of coupons or benefit cards for cash, or the exchange of firearms, ammunition, explosives, or controlled substances for coupons.

The following **[persons]** are responsible for paying ~~[a]~~ claim**[s]**:

- Each individual who was an adult member of the household when the overpayment or trafficking occurred;
- A sponsor of an alien household member ~~**is**~~ **if]** the sponsor is at fault;
- A person connected to the household, such as an authorized representative, who actually trafficks or causes an overpayment or trafficking.

~~All adult household members are jointly and severally liable for the value of any overissuance of benefits to the household. Establish a claim against any household that has received more food stamp benefits than it is entitled to receive or any household which contains an adult member who was an adult member of another household that received more food stamp benefits than it was entitled to receive.~~

There are three types of claims:

~~1)~~ Inadvertent Household Error (IHE) Claims – any claim for an overpayment resulting from a misunderstanding or unintended error on the part of the household. ~~Handle a claim as an inadvertent household error claim if the overissuance was caused by:~~

- ~~A misunderstanding or unintended error on the part of the household,~~
- ~~misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated, based on a change in net income and/or household size, or~~
- ~~SSA action or failure to take action which resulted in the household's categorical eligibility, provided a claim can be calculated based on a change in net income and/or household size.~~

~~2)~~ Agency ~~Administrative~~ Error (AE) Claims – Any claim for an overpayment caused by an action or failure to take action by DSS. ~~Handle a claim as an administrative error claim if the overissuance was caused by agency action or failure to take action, or in the case of categorical eligibility, an action by the Division which resulted in the household's improper eligibility for cash assistance, provided a claim can be calculated based on a change in net~~

~~income and/or household size.~~

3) Intentional Program Violation (IPV) Claims – Any claim for an overpayment or trafficking resulting from an individual committing an IPV. An IPV is defined in DSSM 2023. ~~Handle a claim as an intentional Program violation claim only if an administrative disqualification hearing official or a Court of appropriate jurisdiction has determined that a household member committed an intentional Program violation as defined in DSSM 2023.~~ **[Before we determine that a claim is the result of an ~~Prior to the determination of~~]** intentional Program violation, **[we will]** handle the claim against the household as an inadvertent household error claim.

7002.3 Criteria for Establishing ~~Inadvertent Household and Administrative Error~~ Claims

Time frames

For IHE and AE claims, calculate a claim back to at least twelve (12) months prior to when you became aware of the overpayment.

For IPV claims, calculate the claim back to the month the act of IPV first occurred.

For all claims, do not include any amounts that occurred more than six years before you became aware of the overpayment.

The agency must establish a claim before the last day of the quarter following the quarter in which the overpayment or trafficking incident was discovered.

90% of all claim referrals must be established or disposed of according to the above time frame.

~~Establish a claim against any household that received an overissuance due to an inadvertent household or administrative error if the criteria established in this section have been met.~~

~~Take action on those claims for which twelve (12) months or less have elapsed between the month an overissuance occurred and the month the overissuance was discovered.~~

Circumstances that may result in a claim may include the following:

A) Inadvertent Household Errors

~~Instances of inadvertent household error which may result in a claim include, but are not limited to, the following:~~

1) The household unintentionally failed to provide DSS with the correct complete information;

2) The household unintentionally failed to report to DSS changes in its household circumstances;

3) The household unintentionally received more benefits than it was entitled to receive pending a fair hearing decision because the household requested a continuation of benefits based on the mistaken belief that it was entitled to such benefits;

4) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it; or

5) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI;

B) Agency ~~Administrative~~ Errors

~~Instances of administrative error which may result in a claim include, but are not limited to, the following:~~

1) DSS failed to take prompt action on a change reported by the household;

2) DSS incorrectly computed the household's income or deductions, or otherwise assigned an incorrect allotment;

3) DSS incorrectly issued to a household duplicate benefits;

4) DSS continued to provide a household a food stamp allotment after its certification period had expired without benefit of a reapplication determination;

5) DSS failed to provide a household a reduced level of food stamp benefits because its Cash Assistance grant changed; or

6) DSS took an action or failed to take an appropriate action, which resulted in the household improperly receiving Cash Assistance.

[We will ~~Do~~] not establish either an agency ~~administrative~~ error claim or an inadvertent household error claim if an overissuance occurred ~~as a result of~~ the following due to DSS failing to ensure that a household fulfilled the following procedural requirements:

- ~~DSS failed to ensure that a household fulfilled the following procedural requirements:~~

a) Signed the application form,

b) Completed the current work registration form, or

c) Was certified in the correct project area.

C) Intentional Program Violation Errors

[We will handle a claim as an intentional Program violation claim only if an administrative hearing official ~~A claim will be handled as a intentional Program and violation claim only if an administrative disqualification hearing official~~] or a court of appropriate jurisdiction has determined that a household member committed intentional program violation as defined in Section 2023. Prior to the determination of intentional Program violation, the claim against the household will be handled as an inadvertent household error claim.

7002.4 Calculating Food Stamp Claims

For each month that a household received an overissuance due to an inadvertent household or **[~~administrative~~ agency]** error, **[we will]** determine the correct amount of food stamp benefits the household was entitled to receive. The amount of the inadvertent household or **[~~administrative~~ agency]** error claim is based on the amount of overissuance which occurred during the twelve (12) months preceding the date the overissuance was discovered. In cases involving reported changes, determine the month the overissuance initially occurred as follows:

A. Claims not related to trafficking.

Inadvertent Household and Agency Error Claims

1) If, due to an inadvertent error on the part of the household, the household failed to report a change in its circumstances within the required timeframes, the first month affected by the household's failure to report is the first month in which the change would have been effective had it been timely reported. However, in no event will DSS determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred.

2) If the household timely reported a change, but DSS did not act within the required timeframes, the first month affected by the Division's failure is the first month DSS would have made the change effective had it timely acted. However, in no event will the Division determine as the first month in which the change would have been effective any month later than two (2) months from the month in which the change in household circumstances occurred. If a notice of adverse action was required, but was not provided, assume for the purpose of calculating the claim, that the maximum advance notice period as provided in DSSM 9006 would have expired without the household requesting a fair hearing.

3) If the household received a larger allotment than it was entitled to receive, establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received. For categorically eligible households, determine a claim only when it can be computed on the basis of changed household net income and/or household size. Do not establish a claim if there was not a change in net income and/or household size.

4) When determining the amount of benefits the household should have received, do not apply the 20% earned income disregard for any income not reported in a timely manner after August 22, 1996. For agency error claims, apply the earned income deduction.

5) With Electronic Benefit Transfer (EBT) systems, reduce the overpayment amount by any EBT benefits expunged from the household's benefit account. The difference is the amount of the claim.

B. Intentional Program Violation Claims

1) For each month that a household received an overissuance due to an act of intentional Program violation, determine the correct amount of food stamp benefits, if any, the household was entitled to receive. The amount of intentional Program violation claim is calculated back to the month the act of intentional Program violation occurred, regardless of the length of time that elapsed until the determination of intentional Program violation was made. However, do not include in the calculation any amount of overissuance which occurred in a month more than six (6) years from the date the overissuance was discovered.

2) If the household member is determined to have committed Program violation by intentionally failing to report a change in its household circumstances, the first month affected by the household's failure to report is the month in which the change would have been effective had it been reported. However, in no event will the Division determine as the first month in which the change would have been effective, any month later than two (2) months from the month in which the changes in household circumstances occurred.

3) If the household received a larger allotment than it was entitled to receive, establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

4) When determining the amount of benefits the household should have received, do not apply the 20% earned income disregard for any income not reported in a timely manner after August 22, 1996.

5) With Electronic Benefit Transfer (EBT) systems, reduce the overpayment amount by any EBT benefits expunged from the household's benefit account. The difference is the amount of the claim.

~~Offsetting~~

~~After calculating the amount of the inadvertent household or administrative error claim, ARMS will offset the amount of the claim against any amount which has not yet been restored to the household in accordance with DSSM 9011 and DSSM 7002.1. ARMS will then initiate collection action for the remaining balance, if any.~~

~~Once the amount of the intentional Program violation claim is established, ARMS will offset the claim against any amount of lost benefits that have not yet been restored to the household per DSSM 9011.~~

[~~B.~~ C.] Claims related to trafficking.

Claims due to trafficking-related offenses will be the amount of the trafficked benefits. The amount of the trafficked benefit is determined by:

1) The individual's own admission;

2) Adjudication; or

3) The documentation that forms the basis for the trafficking determination.

7004.3 Collection and Management of ~~Collecting~~ Food Stamp Claims

[~~DSS~~ We] shall collect any overissuances of food stamps issued to a household by:

a) reducing the allotment of the household;

b) withholding amounts from unemployment compensation from a member of the household;

c) recovering from Federal pay or a Federal income tax refund;

d) any other means;

unless **[~~DSS/~~]** ARMS determines ~~can demonstrate~~ that all of the means listed above are not cost effective.

Cost effective determination:

DSS/ARMS can opt to not establish any claim if the claim referral is $125 or less; unless the household is currently participating or the claim has already been established or discovered in a Quality Control review.

Criteria for initiating collection action on inadvertent household and agency ~~administrative~~ error claims

1) ARMS will initiate collection action (proper notice should have been sent prior to submittal to ARMS, except for food stamps) against the household on all inadvertent household or agency ~~administrative~~ error claims unless the claim is collected through offset or one of the following conditions apply:

- The total amount of the claim is less than $125, and the claim cannot be recovered by reducing the household's allotment;
- Documentation can be provided which shows that the household cannot be located.

2) ARMS will postpone collection action on inadvertent household error claims where an overissuance is being referred for possible **[criminal]** prosecution ~~**[in Superior Court ([**~~ or an administrative disqualification hearing~~**),]** and it is determined collection action will prejudice the case.

Criteria for Initiating Collection Action of Intentional Program Violation Claims

If a household member is found to have committed intentional Program violation (by an administrative disqualification hearing officer or a Court of appropriate jurisdiction), ARMS will initiate collection action against the individual's household. In addition, a personal contact will be made, if possible.

A claim will be handled as intentional Program violation claim only if an administrative disqualification hearing official or a court of appropriate jurisdiction has determined that a household member committed intentional Program violation as defined in DSSM 2023. Prior to the determination of intentional Program violation, the claim against the household will be handled as an inadvertent household error claim.

ARMS will initiate such collection action unless:

- The household has repaid the overissuance already;
- DSS or ARMS has documentation that the household cannot be located; or
- It has been determined that collection action will prejudice the case against a household member referred for prosecution.

ARMS will initiate collection action for an unpaid or partially paid claim even if collection action was previously initiated against the household while the claim was being handled as an inadvertent household error claim. ARMS will issue any benefit restorations when the amount of the claim is lower than the amount repaid.

In cases where a household member was found guilty of misrepresentation or fraud by a Court, the Deputy Attorney General handling the case will request that the matter of restitution and length of disqualification be brought before the Court.

Initiating Collection on Claims

The Accounting Section of ARMS will initiate collection action by providing the household **[with]** a written**[, dated]** demand letter. The demand letters, including the demand letter sent following a fair hearing decision which upheld the claim, must include the following ~~shall inform households that~~:

1) The amount of the claim;

2) The intent to collect from all adults in the household when the overpayment occurred;

3) The type (IPV, IHE, or AE) and reason for the claim;

4) The time period of the claim;

5) How the claim was calculated;

6) The phone number to call for more information about the claim;

7) That, if the claim is not paid, it will be sent to other collection agencies, who will various collection methods to collect the claim;

8) The opportunity to inspect and copy records related to the claim;

9) Unless the amount of the claim was established at a fair hearing, the opportunity for a fair hearing on the decision related to the claim. The household will have 90 days to request a fair hearing;

10) That if not paid, the claim will be referred to the Federal government for federal collection action;

11) That the household can make a written agreement to repay the amount of the prior to it being referred for Federal collection action; that is the claim becomes delinquent, the household may be subject to additional processing charges;

12) That the State agency may reduce any part of the claim if the agency believes that the household is not able to repay the claim;

13) A due date or time frame to either repay or make arrangements to repay the claim, unless the State agency is to impose allotment reduction;

14) If allotment reduction is to be imposed, the percentages to be used and the effective date; and

15) The due date or time frame for repayment must not be later than 30 days after the date of the initial written notification or demand letter.

~~1) Unless the household responds to the demand letter and elects a method of repayment or timely requests a fair hearing and continued benefits, its allotment will be reduced;~~

~~2) How the allotment reduction will affect the household benefits;~~

~~3) That if the household elects allotment reduction, the reduction will begin with the first allotment issued after the election, and;~~

~~4) That if the household fails to make a election, or to timely request a fair hearing and continued benefits, the reduction will begin with the first allotment issued after the demand letter and notice of adverse action is sent.~~

~~Action Against Households Which Fail to Respond~~

~~Participating households which have collection actions initiated against them for repayment of an overissuance will have their allotment reduced subsequent to the demand letter and notice of adverse action being sent to the household.~~

Repayment Agreements

Any repayment agreement for any claim must contain due dates or time frames for the periodic submission of payments.

The agreement must specify that the household will be subject to involuntary collection action(s) if the payment is not received by the due date and the claim becomes delinquent.

Determining delinquency

A claim must be considered delinquent if:

A. The claim has not been paid by the due date and a satisfactory payment arrangement has not been made; or

B. A payment arrangement has been established and a scheduled payment has not been made by the due date. The date of the delinquency for a claim is the due date of the missed installment payment. The claim will remain delinquent until payment is received in full, allotment reduction is invoked, or the agency determines to either resume or re-negotiate the repayment schedule.

A claim will not be considered delinquent if another claim for the same household is currently being paid either through an installment agreement or allotment reduction, and the agency expects to begin collection on the claim once the prior claim is settled.

A claim is not subject to the requirements for delinquent debts if the agency is unable to determine delinquency status because collection is coordinated through the court system.

Fair hearings and claims

A claim awaiting a fair hearing must not be considered delinquent.

If the fair hearing official determines a claim does exist, the agency will re-notify the client of the claim and establish a new due date.

If the fair hearing official determines a claim does not exist, the claim is terminated and written-off.

Methods of Collecting Food Stamp Payments

ARMS will collect payments for claims against households as follows:

1) Lump Sum - If the household is financially able to repay the claim at one time, ARMS will collect a lump sum cash payment. However, the household will not be required to liquidate all of its resources to make this one lump sum payment. If the household is financially unable to repay the entire amount of the claim at one time and prefers to make a lump sum cash payment as partial payment of the claim, ARMS will accept this method of repayment. If the household chooses to make a lump sum payment of food stamp coupons as full or partial repayment of the claim, ARMS will accept this method of repayment.

2) Installments - ARMS may ~~will~~ negotiate a repayment schedule with the household for repayment of any amounts of the claim not repaid through a lump sum payment. Payments will be accepted by ARMS in regular

installments. The household may use food stamp coupons as full or partial repayment of any installment. If the full claim or remaining amount of the claim cannot be liquidated in three (3) years, ARMS may compromise the claim by reducing it to an amount that will allow the household to repay the claim in three (3) years. ARMS may use the full amount of the claim (including any amount compromised) to offset benefits in accordance with DSSM 9011.

If the household fails to make a payment in accordance with the established repayment schedule (either in a lesser amount or no payment), ARMS will send the household a notice explaining that no payment or an insufficient payment was received. The notice will inform the household that it may contact ARMS to discuss renegotiations of the repayment schedule. The notice will also inform the household unless the overdue payments are made, or ARMS is contacted to discuss renegotiations of the repayment reschedule, the allotment of a currently participating household against which an agency ~~administrative~~ error, inadvertent household error, or intentional Program violation claim has been established may be reduced without a notice of adverse action.

If the household responds to the notice, ARMS will take one of the following actions as appropriate:

a) If the household makes the overdue payments and wishes to continue payments based on the previous schedule, permit the household to do so;

b) If the household requests renegotiations, and if ARMS concurs with the request, negotiate a new repayment schedule;

c) If the household requests renegotiations of the amount of its repayment schedule, but ARMS believes that the household's economic circumstances have not changed enough to warrant the requested settlement, ARMS may continue renegotiations until a settlement can be reached. ARMS may invoke allotment reduction against a currently participating household for repayment of an administrative error, inadvertent household error, or intentional Program violation claim if a settlement cannot be reached.

ARMS may also invoke allotment reduction if such a household responds by requesting renegotiations of the amount of its repayment schedule but ARMS believes that the household's economic circumstances have not changed enough to warrant the requested settlement. If the allotment reduction is invoked, no notice of adverse action is required.

In cases where the household is currently participating in the Program and a repayment schedule is negotiated for repayment of an agency ~~administrative~~ error, inadvertent household error, or intentional Program violation claim, ARMS will ensure that the negotiated amount to be repaid each month through installment payments is not less than the amount which could be recovered through allotment reduction. Once negotiated, the amount to be repaid each month through installment payments will remain unchanged regardless of subsequent changes in the household's monthly allotment. However, both ARMS and the household have the option to initiate renegotiations of the repayment schedule if they believe that the household's economic circumstances have changed enough to warrant such action.

3) Allotment Reduction - **[~~DMS~~ ARMS]** will collect payments for agency ~~administrative~~ error claims, inadvertent household error claims and intentional Program violation claims from households currently participating in the Program by reducing the household's food stamp allotment, unless the claim is being regularly collected at a higher amount or another household is already having it's allotment reduced for the same claim. The amount of Food stamps to be recovered each month through allotment reduction will be determined as follows:

a) Agency ~~Administrative~~ Error and Inadvertent Household Error Claims - The amount of food stamps will be the greater of ten (10) percent of the household's monthly allotment, or $10 per month, unless the household agrees to a higher amount. Round all figures with amounts to the next highest dollar.

b) Intentional Program Violation Claims - The amount of food stamps will be the greater of twenty (20) percent of the household's monthly entitlement, or ~~$10~~ $20 per month, unless the household agrees to a higher amount. Round all figures with the next highest dollar.

c) The provision for a $10 minimum benefit level for households with one and two members only as described in DSSM 9066 applies to the allotment prior to reduction.

d) Do not reduce the initial allotment when the household is first certified unless the household agrees to this reduction.

e) Do not use additional involuntary collection methods against individuals in a household that is already having it's allotment reduced unless the additional payment is irregular and unexpected such as a State tax refund or lottery winnings offset.

f) ARMS may collect using allotment reduction from two separate household for the same claim. ARMS must make sure that the recouped amounts do not exceed the total amount of the claim.

g) ARMS may continue to use any other collection method against any individual who is not a current member of the household that is undergoing allotment reduction as long as the amounts collected to not exceed the total amount of the claim.

The procedure for effecting an allotment reduction is as follows:

1) ARMS Accounting Section will enter the necessary

information into the DCIS system and call the grant calculator to compute the monthly withholding amount. DCIS will generate two (2) copies of the TD, a grant calculator worksheet, and a client notice.

2) ARMS will reinstate the DSS Pool code the following day and post-audit the documents produced in Step 1, making any corrections. Unresolved discrepancies in grant amount or case status that result when the allotment reduction information is entered by ARMS will be forwarded to the Pool for handling. It is imperative that the Pools review such cases promptly and respond to ARMS prior to the next authorization date.

3) Following the resolution of any problems, ARMS will send the worker a copy of the client notice and a copy of the TD.

4) As a result of the data entry performed by ARMS, allotment reduction information will appear on the DCIS file even through periods of inactivity until the claim is satisfied. Any cash payments made by the household will be entered by ARMS, using the DCIS collections screen.

This action will be reflected in the balance figure shown in Section 12. A claims activity report generated by DCIS will alert ARMS when an inactive case returns to active status.

During the time that a household's allotment is reduced to recover an overissuance, DSS will be required to handle any case maintenance required. Changes to financial data performed by the DCIS Grant Calculator will be governed by the allotment reduction indicator. The system will apply the appropriate percentage reduction to the calculated allotment whenever a change is made. When the recoupment balance falls below the monthly withholding amount, the DCIS system will withhold the remaining balance. When the balance is reduced to zero, the system will automatically cancel the recoupment feature.

4) Benefits from EBT accounts.

ARMS must allow a household to pay its claim using benefits from its EBT benefit account as follows:

a) Collecting from active (or reactivated) EBT benefits – the agency needs written permission or oral permission for one-time reductions with the agency sending the household a receipt of the transaction within ten (10) days.

The written permission must include:

1. A statement that this collection activity is strictly voluntary;

2. The amount of the payment;

3. The frequency of the payments;

4. The length (if any) of the agreement;

5. A statement that the household may revoke this agreement at any time.

b) Collecting from stale EBT benefits – the agency must mail or otherwise deliver tot he household written notification that the agency intends to apply the benefits to the outstanding claim and give the household at least ten (10) days to notify the agency that it doesn't want to use these benefits to pay the claim.

c) Making an adjustment with expunged EBT benefits – the agency must adjust the amount of any claim by subtracting any expunged amount from the EBT benefit account and this can be done anytime.

5) Offsetting

After calculating the amount of the inadvertent household or administrative error claim, ARMS will offset the amount of the claim against any amount which has not yet been restored to the household in accordance with DSSM 9011 and DSSM 7002.1. ARMS will then initiate collection action for the remaining balance, if any.

Once the amount of the intentional Program violation claim is established, ARMS will offset the claim against any amount of lost benefits that have not yet been restored to the household per DSSM 9011.

6) Intercept of unemployment compensation benefits

The agency may intercept unemployment compensation benefits for the collection of any claim as part as a repayment agreement or by obtaining a court order.

7) Public Service

The value of a claim may be paid by the household performing public service when authorized by a court.

8) Other collection actions

The agency may employ any other collection actions to collect claims. These actions include, but are not limited to, referrals to collection agencies, state tax refund, lottery offsets, wage garnishments, property liens, and small claims court.

9) Unspecified joint collections

When an unspecified joint collection is received for a combined public assistance/food stamp recipient claim, each program must receive its pro rata share of the amount collected. An unspecified joint collection is when funds are received by a household where there is both a public assistance overpayment and a food stamp claim and the household does not specify to which claim to apply the funds.

7004.5 Acceptable forms of payment

ARMS may collect a claim by:

A. Reducing benefits prior to issuance. This includes allotment reductions and offsets to restored benefits.

B. Reducing benefits after issuance. These are benefits from electronic benefit transfer accounts.

C. Accepting cash or any of its generally accepts equivalents. These equivalents include check, money order, and credit or debit cards.

D. Accepting paper food coupons.

E. Conducting other offsets and intercepts like wage garnishments and intercepts of various State payments.

F. Requiring the household to perform public service when ordered by a court

G. Participating in the Treasury Offset Program.

7005 ~~Suspending and~~ Terminating and writing-off ~~Collection of~~ claims

~~1) Suspending collection of inadvertent household and administrative error claims - Such a claim may be suspended if no collection action was initiated because of conditions specified in DSSM 7004.3. If collection action was initiated and at least one demand letter has been sent, further collection action of an inadvertent household error claim against a non-participating household or of any administrative error claim may be suspended when:~~

~~a) The household cannot be located; or~~

~~b) The cost of further collection is likely to exceed the amount that can be recovered.~~

~~2) Suspecting Collection of Intentional Program Violation Claims - ARMS may suspend collection action on intentional Program violation claims at any time it has documentation that the household cannot be located. If ARMS has sent at least one (1) demand letter for claims under $100, at least two (2) demand letters for claims between $100 and $400, and at least three (3) demand letters for claims of more than $400, further collection action of any intentional Program violation claim against a non-participating household may be suspended when the cost of further collection action is likely to exceed the amount that can be recovered.~~

~~3) Terminating Collection of Claims - A claim may be determined uncollectible after it is held in suspense for three (3) years. ARMS may use a suspended or terminated claim to offset benefits in accordance with DSSM 9011.~~

A terminated claim is a claim in which all collection action has ceased.

A written-off claim is no longer considered a receivable subject to continued Federal and State agency reporting requirements.

Claim termination policy is as follows:

A. If the agency finds that the claim is invalid, the agency must discharge the claim and reflect the event as a balance adjustment rather than a termination unless it is appropriate to pursue the overpayment as a different type of claim, like as an IHE rather than an IPV claim.

B. If all household members die, the agency must terminate and write-off the claim unless the agency plans to pursue the claim against the estate.

C. If the claim balance is $25 or less and the claim has been delinquent for 90 days or more, the agency must terminate and write-off the claim unless other claims exist against the household resulting in an aggregate claim total greater than $25.

D. If the agency determines it is not cost effective to pursue the claim any further, the agency must terminate and write-off the claim.

E. If the claim is delinquent for three years or more, the agency must terminate and write-off the claim unless the agency plans to continue to pursue the claim through Treasury's Offset Program.

F. If the household cannot be located, the agency may terminate and write-off the claim.

G. If a new collection method or a specific event such as winning the lottery substantially increases the likelihood of further collections, the agency may reinstate a terminated and written-off claim.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** §505)

REVISION OF THE REGULATIONS OF DELAWARE'S DIVISION OF SOCIAL SERVICES MANUAL SECTIONS 2015 - 2019

NATURE OF THE PROCEEDINGS

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Delaware's A Better Chance and General Assistance Programs initiated proceedings to amend policies in the Division of Social Services Manual Sections 2015 through 2019. These changes relate to medical assistance eligibility rules for cash assistance recipients. 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, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May

31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to medical assistance eligibility rules for cash assistance recipients are adopted and shall be final effective July 10, 2001.

6/15/01
Vincent P. Meconi, Secretary, DHSS

REVISION

~~2015 Medicaid Eligibility for AFDC and GA Recipients~~

~~Medicaid is a medical assistance program available to needy persons who meet the technical and financial eligibility requirements of the program. Persons automatically eligible for Medicaid are:~~

~~1. ABC recipients,~~
~~2. ABC-Two-parent family recipients,~~
~~3. GA recipients under the age of 19.~~

~~Each month the payee of a public assistance unit receives a Medicaid Card for each Medicaid eligible unit member. The Medicaid cards are mailed in a mailer separate from the monthly public assistance check. It must be presented to the medical service provider each time a medical service is requested.~~

~~Medicaid normally pays for the following expenses provided within the State of Delaware.~~

~~1. Hospital care~~
~~2. X-rays and laboratory services~~
~~3. Physician and Specialist Services~~
~~4. Prescription drugs and some over the counter drugs~~
~~5. Home health services - including physical therapy, occupational therapy and speech therapy.~~
~~6. Podiatric Services~~
~~7. Long Term nursing home care~~
~~8. Prenatal care and family planning services~~
~~9. Children's health screening program~~
~~10. Some medical equipment and supplies~~
~~11. Eye exam's, eyeglasses, and dental care for children~~
~~12. Dialysis.~~

~~Most medicaid recipients are now required to enroll in a managed care organization and choose a primary physician in order to receive benefits.~~

~~2016 Other Persons Eligible for Medicaid~~

~~In addition to recipients of cash assistance, the following groups of people are also eligible for Medicaid.~~

~~1. Persons eligible for ABC, ABC-Two-parent family program, and persons under age 19 eligible for GA, but who do not receive a grant because their need for assistance is less than $10.~~

~~2. Pregnant women from the date of medical verification of pregnancy if the pregnant woman's income falls below the ABC income and resource Standard of Need for two people.~~

~~If the pregnant woman lives with the father of her child, the family's income must fall below the ABC standard for three people.~~

~~3. Children who are ineligible for ABC because of income deemed to them in the step parent budgeting process.~~

~~4. Children of minor parents who are ineligible for ABC because of the deeming of grandparent or legal guardian income.~~

~~Note:The minor parent in this situation is not Medicaid eligible.~~

~~5. Children who are ineligible for ABC because of the mandatory inclusion in the assistance of unit of a sibling with income.~~

~~6. Legally admitted aliens who are ineligible because of the deeming of sponsor income.~~

~~2017 Retroactive Medicaid~~

~~All ABC and ABC-Two-parent family applicants, and GA applicants that are excluded from the Diamond State Health Plan because they have other accessible managed care coverage or medicare who claim unpaid medical bills that were incurred any time in the period three (3) months prior to the month of application are eligible for Medicaid in the month the bill was incurred if:~~

~~1. The applicant would have been eligible for ABC, ABC-Two parent family program or GA in the month that the bill was incurred; and~~

~~2. The bill is for a medical service that Medicaid covers; and~~

~~3. The bill has not been placed with a collection agency for payment; and~~

~~4. The bill is not the responsibility of a third party;~~

~~and~~

~~5. The provider of the medical services is a participant in the Delaware Medicaid Program.~~

~~The intake worker will refer requests for payment of such unpaid bills to the Medicaid Unit by forwarding a copy of Form 402 and a TD that indicates the current status of the case.~~

~~NOTE: A family may be ineligible for assistance in the month of application, but be eligible for retroactive Medicaid coverage in an earlier month. It is appropriate to make referrals for retroactive Medicaid when it appears that a family would have been eligible in a prior month even if the family's current circumstances renders it ineligible for assistance.~~

~~2018 Prospective Medicaid - Child Support~~

~~Any ABC recipient whose case is closed solely because of an initial or increased child support payment may be eligible for four (4) months of continued Medicaid eligibility.~~

~~2019 Transitional Medicaid _ Employment~~

~~Recipients of ABC and ABC UP are eligible for continued Medicaid coverage when their public assistance cases are closed if:~~

~~1. The case is closed solely because of new employment or an increase in income from current employment, or loss of 30 or 1/3 disregard; and~~

~~2. The family correctly received ABC in at least three (3) months of the six (6) month period that precedes the month that new employment or increased earnings began.~~

~~Eligible families can receive Transitional Medicaid for a period not to exceed twelve (12) months. Eligibility begins in the month that the earned income exceeds the ABC standard.~~

2015 Medical Assistance Eligibility for Cash Assistance Recipients

Please refer to the following sections of DSSM 13000 Medical Assistance Program Overview 14000 Common Eligibility, 15000 Family and Community Eligibility, and 16000 Federal Poverty Level Related Programs.

2016 Reserved
2017 Reserved
2018 Reserved
2019 Reserved

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** §505)

REVISION OF THE REGULATIONS OF DELAWARE'S DIVISION OF SOCIAL SERVICES MANUAL SECTIONS 13402, 13403, 15110.1, 14110.8.1, 14300, 14320.1, 16100.1.2, 18100.2, 14900, 14950.6, 15120.1.2, 15200, 15200.6.2.1, 15200.6.3, 15200.8.2,16100.1.2, 16230.1.4, 16270.1 and, 16500.1

NATURE OF THE PROCEEDINGS

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Program initiated proceedings to amend the following Medicaid policies related to eligibility: clarification about the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) delinking of Medicaid from Welfare; clarification about state residency; clarification that adults in the expanded population are not eligible for emergency services and labor and delivery only; presumptively eligible pregnant women do not enroll in managed care; clarification that Medicaid families must cooperate with medical support not child (cash) support; clarification about dependent care expenses; there is no post partum extension for illegally residing pregnant alien women; and, DSS is adding age limits between ages 16-50 to the Family Planning extension.

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, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

FINDINGS OF FACT

The Department finds that the proposed changes as set forth in the May, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the clarification of Medicaid policies are adopted and shall be final effective July 10, 2001.

6/15/01
Vincent P. Meconi, Secretary, DHSS

REVISION

13402 Delaware's A Better Chance Welfare Reform Program

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established at Section 1931 of the Social Security Act added by section 114 of PRWORA.

~~Section 1931 also gives States more flexibility in determining Medicaid eligibility. This means that any family eligible for and receiving cash assistance under A Better Chance Welfare Reform Program is also eligible for Medicaid under Section 1931.~~

~~**13403 AFDC Applicants With A Budgeted Need Of Less Than $10**~~

~~Anyone who is otherwise eligible for ABC cash assistance but does not receive cash because their need for assistance is less than $10.00, is still eligible for Medicaid under Section 1931.~~

14110.8.1 Prohibitions

A State cannot deny Medicaid eligibility:

a) to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

b) because of a durational residence requirement.

c) to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

d) or terminate a resident's Medicaid eligibility due to temporary absence from the State if the person intends to return when the purpose of the absence has been accomplished, unless another State has determined that the person is a resident there for purposes of Medicaid.

e) or wait to approve Medicaid eligibility in situations where the individual has moved to Delaware from another State and the Medicaid case is still open in the former State. The individual is no longer a resident of the former State and is ineligible in that State. The case may not be closed yet due to administrative processes.

14300 Citizenship and Alienage

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) enacted on August 22, 1996, significantly changed Medicaid eligibility for individuals who are not citizens of the United States. The legislation revised the categories of noncitizens who may be determined eligible for Medicaid. The legislation identifies noncitizens as qualified aliens or nonqualified aliens. The term qualified refers to groups of aliens whose members may establish Medicaid eligibility under certain circumstances and subject to certain limitations. For specific groups of aliens identified as nonqualified, eligibility is limited to the treatment of an emergency medical condition as defined in this section.

In State Fiscal Year 1998, (SFY 98), the Delaware legislature appropriated STATE ONLY FUNDS to provide coverage of full Medicaid benefits to legally residing noncitizens who are ineligible for full Medicaid benefits because of PRWORA. Coverage for these aliens will be provided on a fee for service basis and is subject to the availability of state funding. In the event state funding is exhausted, the benefits will be reduced to coverage of emergency services and labor and deliver only.

Aliens who may be found eligible for full Medicaid coverage using the state funds include legally residing nonqualified aliens and qualified aliens subject to the 5 year bar. Illegally residing aliens and ineligible aliens ARE NOT ELIGIBLE for full Medicaid coverage, but remain eligible for emergency services and labor and delivery only.

All applicants, whether aliens or citizens, must meet the technical and financial eligibility criteria of a specific eligibility group such as SSI related group, AFDC related group, or poverty level related group. Not every alien, qualified or nonqualified, will be eligible for Medicaid, emergency services and labor and delivery only, or the state funded benefits. The adult expansion population, under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the state funded benefits.

Receipt of Medicaid benefits cannot be considered by the Immigration and Naturalization Service (INS) when making public charge determinations.

14320.1 Medicaid Eligibility for Qualified Aliens (PRWORA and/or State Funds)

Effective January 1, 1998, all qualified aliens, regardless of the date of entry into the U.S., may be found eligible for full Medicaid benefits. This does NOT include long term care services. Legally residing nonqualified aliens may be found eligible for Medicaid long term care services upon residing in the United States for five years. Certain qualified aliens will be Medicaid eligible. Other qualified aliens will receive state funded benefits. The adult expansion population, under the 1115 demonstration waiver entitled Diamond State Health Plan, is not eligible for emergency services and labor and delivery only or the state funded benefits.

14900 Enrollment in Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration for a Section 1115 Demonstration Waiver that is known as the Diamond State Health Plan. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The Diamond State Health Plan is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

The majority of the Medicaid population receiving noninstitutional services will be enrolled into the Diamond State Health Plan. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in Diamond State Health Plan:

a) Individuals entitled to or eligible to enroll in Medicare

b) Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)

c) individuals covered under the home and community based waivers

d) non lawful and non qualified non citizens (aliens)

e) individuals who have CHAMPUS

f) presumptively eligible pregnant women

14950.6 Termination of Guaranteed Eligibility

The six-month period of eligibility terminates the earliest of: the last day of the sixth month following the effective date of enrollment in the DSHP or the last day of the month in which the individual:

a) dies

b) moves out-of-state or is no longer a Delaware resident

c) becomes an inmate of a public institution

d) requests termination of Medicaid eligibility and/ or managed care enrollment

~~e) fails to complete the final determination as a presumptively eligible pregnant woman~~

e) becomes eligible for long term care Medicaid

f) becomes eligible for or entitled to Medicare

g) becomes eligible for CHAMPUS

h) becomes eligible for another comprehensive medical managed care program administered by the Delaware Medical Assistance Program

i) is otherwise ineligible for the DSHP.

15110.1 Medicaid Eligibility

Before the passage of PRWORA, anyone receiving cash assistance under AFDC was automatically entitled to Medicaid. Under the new law, persons receiving assistance under the block grant (TANF) are not automatically entitled to Medicaid. A new Medicaid eligibility group for low income families with children is established at Section 1931 of the Social Security Act added by section 114 of PRWORA. These families will receive Medicaid if they meet the AFDC eligibility criteria in effect as of 7/16/96. The eligibility criteria for this new group is described in the section, "Low Income Families with Children under Section 1931".

~~Section 1931 also gives States more flexibility in determining Medicaid eligibility. Delaware has used the authority in Section 1931 to ensure that any family eligible for and receiving cash assistance under A Better Chance is also eligible for Medicaid under Section 1931 without having to complete a separate Medicaid eligibility determination.~~

Families who are eligible for Medicaid under Section 1931 may be receiving ABC cash assistance or may be Medicaid only families.

15120.1.2 ~~Child~~ Medical Support Cooperation

Deprivation is not an eligibility requirement for this group. If the child is deprived of parental support, a referral to the Division of Child Support Enforcement for medical support is required.

15200 Transitional Medicaid

The Family Support Act of 1988, PL 100-485, mandated that effective April 1, 1990, states provide health care coverage known as Transitional Medical Assistance for up to twelve months for families who become ineligible for AFDC due to increased earnings, increased hours of employment, or loss of earned income disregards.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, repealed the AFDC program and replaced it with a program of block grants to states for Temporary Assistance for Needy Families (TANF). Delaware implemented its TANF program, A Better Chance Welfare Reform Program (ABC), on March 10, 1997.

Prior to PRWORA, a family's eligibility for Transitional Medicaid was linked to receipt of AFDC. Under PRWORA, a family's eligibility for transitional Medicaid is linked to receipt of Medicaid under Section 15120, "Low Income Families with Children under Section 1931". (See DSSM 15120)

The eligibility group described in "Low Income Families with Children under Section 1931", will be referred

to as “receiving Medicaid under Section 1931” throughout this section. Any family eligible for and receiving ABC benefits is also eligible for Medicaid under Section 1931 and may be found eligible for Transitional Medicaid. This means references to “Medicaid under Section 1931” also refers to families receiving ABC.

Delaware's welfare reform waiver, "A Better Chance Welfare Reform Program" (ABC) includes a modification to the length of the Transitional Medicaid period. The ABC waiver extends Transitional Medicaid benefits for up to 24 months.

Families must meet the initial eligibility requirements described in this section to receive the first 12 months of coverage. Families can be eligible when their income exceeds either 185% of the standard of need or the standard of need. The standard of need used is the same as the ABC standard of need.

To continue to receive Medicaid for the second 12 months, the family's gross earned income less ~~child~~ dependent care costs must be at or below 185% FPL. Dependent care costs are for the care of dependent children or incapacitated persons living in the home. Family income will be budgeted prospectively.

15200.6.2.1 Good Cause for Terminating Employment

Good cause for terminating employment is:

1. Circumstances beyond the individual's control such as but not limited to illness, illness of another family member requiring the wage earner's presence, a household emergency, the unavailability of transportation, and the lack of adequate ~~child~~ dependent care.

2. Instances in which employment was unsuitable such as:

- wages offered less than the Federal minimum wage,
- employment on a piece-rate basis and the average hourly yield the employee receives is less than the Federal minimum wage,
- unreasonable degree of risk to one's health and safety,
- the individual is physically or mentally unfit to perform the employment as documented by medical evidence or reliable information from other sources,
- the distance from the individual's house to place of employment is unreasonable considering the expected wage and the time and cost of commuting,
- the working hours or nature of employment interferes with the members religious observance, convictions or beliefs.

3. Discrimination by an employer based on age, race, sex, disability, religious belief, national origin, or political belief.

4. Work demands or conditions that are unreasonable such as working without being paid on schedule.

5. Acceptance of other employment or enrollment at least half-time in a school, training program, or college.

6. Resignations by persons under the age of 60 that are recognized by the employer as retirement.

7. Leaving a job in connection with patterns of employment in which workers move from one employer to another as in migrant farm labor or construction work.

15200.6.3 Limit on Gross Monthly Earnings

The family's gross monthly earnings (less the monthly costs of necessary ~~child~~ dependent care) are at or below 185% of the Federal Poverty Level (FPL) and continue to be at or below 185% FPL throughout the second 12-month period. The FPL is effective each July for Transitional Medicaid.

There are no limits on necessary ~~child~~ dependent care costs. Prospective budgeting is used to determine family income. Do not add unearned income to earned income. Count the earned income of all family members living in the home who were members of the family unit the month the family became ineligible for Medicaid under Section 1931 and any individual who would be included in the caretaker relative's assistance unit if the family were now applying for Medicaid under Section 1931.

Exception: Do not count the earned income of a dependent child, regardless of student status.

15200.8.2 Second 12-Month Period

Eligibility for Transitional Medicaid will be terminated if:

- the family no longer has a child living in the home
- the caretaker relative is no longer employed and good cause does not apply
- the family's monthly gross earned income minus ~~child~~ dependent care costs exceeds 185% FPL.

We must explore eligibility for any other Medicaid program before Transitional Medicaid is terminated.

16100.1.2 Initial Eligibility Determination

The two criteria for finding an applicant presumptively eligible are: a medically verified pregnancy and self-reported family income at or below 185% of the Federal Poverty Level. Countable family income is determined using the rules in this section including the $90 earned income deduction and any self-reported ~~child~~ dependent care expenses. State residency is established for presumptive eligibility by the applicant writing a home address on the application that is a Delaware residence.

Note: Women who are nonqualified aliens or illegally residing in the U.S. are not eligible for presumptive Medicaid.

Verifications of all other factors of eligibility are

postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. Under unusual circumstances, the deadline date for postponed verifications may be extended. The reason for the extension must be documented in the case record. The verifications that were postponed are required to determine final eligibility for Medicaid benefits. Presumptive eligibility continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility under the presumptive period ends.

~~Pregnant women who are determined presumptively eligible are required to enroll in the Diamond State Health Plan unless otherwise exempt.~~

16230.1.4 Deductions from Earned Income

- $90 earned income deduction per month per earner
- ~~actual child care expenses up to $175 per month per child for age two and older; up to $200 per child for under age two. Convert weekly amount to a monthly amount. The dependent child must be related to the wage earner or must be included in the budget unit in order to allow the child care deduction.~~
- actual monthly dependent care expenses for the care of each dependent child or incapacitated adult living in the same home. Monthly dependent care expenses cannot exceed $175 for each dependent child age two and older and each incapacitated adult and cannot exceed $200 for each dependent child under age two.
- There is a special income disregard for pregnant teens. Exclude one-half of the gross parental income (includes earned and unearned income) in the eligibility determination for the pregnant teen.

16270.1 Postpartum Period

The postpartum period is a mandatory extension of benefits for women who were determined eligible for Medicaid in the month of birth or in a month prior to the month of birth (while still pregnant). A woman cannot apply and be found eligible for the postpartum period alone. The postpartum period is an extension of Medicaid coverage that was provided because of pregnancy. Illegally residing aliens are not eligible for the postpartum extension.

In most cases, a pregnant woman must apply in the month of birth or in a month prior to the month of birth (while still pregnant) in order to have Medicaid coverage for the delivery and postpartum period. This is because most pregnant women are required to enroll in managed care and are not eligible for retroactive Medicaid coverage. A woman who is excluded from managed care and therefore potentially eligible for retroactive coverage, could apply up to 3 months after the month of birth and be found eligible for the delivery and postpartum period.

If a pregnancy is terminated through miscarriage or a federally funded abortion, the woman is still entitled to the post-partum period. If a mother delivers a child who dies a few days after birth, she is still entitled to the post-partum period. The deceased child must be added to the case through DCIS to cover any bills he may have incurred between birth and death. Both birth and death verifications are waived in this instance.

If a pregnant woman plans to put her baby up for adoption, she will receive the regular post-partum period. The baby will also be eligible through the mother's post-partum period. The baby may then be eligible for Medicaid under the Adoption Assistance Program. The adoption agency should apply for Medicaid for the infant while the child is awaiting an adoptive home.

The post-partum period is increased from 60 to 90 days as part of the demonstration waiver under the *Diamond State Health Plan.* Effective 10/1/95 the post partum period extends 90 days beginning on the last day of pregnancy. Any woman whose post partum period ends 9/30/95 or later will have the post partum period extended. This means that any woman who delivers on 8/1/95 or later will get 90 days post partum.

Medicaid eligibility related to the post partum extension ends on the last day of the month in which the 90 day period ends.

16500.1 Eligibility Requirements

Women may receive Family Planning services if they meet the following conditions:

1. are ~~of childbearing age~~ age 16 through age 50
2. were receiving Medicaid but lost Medicaid eligibility on or after 12/31/95 for non fraudulent reasons. Females who lose eligibility as a QMB, SLMB, or QI or who were eligible for emergency services and labor and delivery only, are not eligible for the family planning extension. Fraud is defined by Section 1128B of the Social Security Act. The individual must be convicted of fraud by a court of competent jurisdiction.
3. continue to meet Delaware residency requirements
4. are not inmates of a public institution such as a correctional facility or mental health institution
5. for the second year of the extension, have countable family income at or below 300% of the Federal Poverty Level. See Procedures for Implementation of Eligibility Rules for income limits at 300% of the FPL.

Family income will be determined using the methodology of the Federal Poverty Level related programs. Resources are not counted.

18100.2 Alien Status

The DHCP does not provide state-funded benefits to qualified aliens subject to the 5 year PRWORA bar or to

legally residing nonqualified aliens. The DHCP does not provide coverage of emergency and labor and delivery services to illegally residing and ineligible aliens. Receipt of or Delaware Healthy Children Program benefits cannot be considered by the Immigration and Naturalization Service (INS) when making public charge determinations.

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Section 311, 316(b) (18 **Del. C.** 311, 316(b))

ORDER

A public hearing was held on May 30, 2001, to receive comments on proposed Regulation 84 relating to the privacy of non-public personal financial information. By my order of April 20, 2001, F.L. Peter Stone, Esquire, was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearing and publication of Proposed Regulation 84 in the Register of Regulations was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND THE INFORMATION SUBMITTED

The need to promulgate regulations relating to the privacy of non-public financial information arises from the passage of the Gramm-Leach-Bliley Act ("GLBA"), Public Law 102-106 by the U.S. Congress. The proposed regulation substantially tracks the model regulation approved by the National Association of Insurance Commissioners ("NAIC model") on September 28, 2000. The proposed regulation does not include provisions contained in the NAIC model that relate to non-public personal health information. The authority of the Commissioner to adopt this regulation is found in 18 *Del. C.* Chapter 3. The summary of the evidence and the information submitted as set forth in the FINDINGS, CONCLUSIONS AND RECOMMENDED DECISION of the hearing officer is incorporated into this Order.

Public comment in both written and oral form was submitted to the hearing officer who specifically declined to recommend any suggestion that deviated from the NAIC model. He recommended two non-substantive changes: one which deleted any references to health information and the other which excluded from the regulation's provisions any company that does business exclusively outside the territorial limits of the United States.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

1. Title V of GLBA requires that at least twenty-nine states adopt regulations relating to the privacy of non-public personal financial information of or before July 1, 2001. The adoption of this regulation constitutes Delaware's compliance with GLBA.

2. In order to meet the uniformity requirements applicable to such regulations, I find that the NAIC model is the appropriate model to follow and adopt with the minor technical changes that reflect references applicable to Delaware law.

3. I find that the hearing officer's recommendation to delete any references to health information to be non-substantive and that those deletions remove inadvertent and misleading terms from the regulation.

4. I find that the hearing officer's recommendation to modify the definition of a licensee in Section 4.N(1) to be a technical change which does not substantively change the regulation or enlarge the class of entities subject to the provisions thereof.

5. I find that the other oral and written comments received by the hearing officer do not warrant a change from the provisions of the NAIC model. The National Association of Insurance Commissioners published the NAIC model after significant discussion and comment from industry and consumer representatives. Changes to this regulation that deviate from the NAIC model could have the effect of establishing a basis to argue that this regulation does not conform to the uniformity requirements required by GLBA. I find that the model regulation upon which this regulation is based is complete and in compliance with GLBA and the changes suggested by the comments and written submissions are not warranted in fact or in law.

6. I adopt the findings of fact and recommendations of F.L. Peter Stone, the hearing officer and incorporate them by reference.

DECISION AND EFFECTIVE DATE

I hereby adopt Regulation 84 as modified by the changes herein to be effective ten days following final publication in the Register of Regulations.

TEXT AND CITATION

The text of Regulation 84 appears in the Register of Regulations Vol. 4, Issue 11, May 1, 2001 as modified by the deletion of references to health information in the title of the regulation and in Sections 4.Q(2)(a), 4R.(2)(b)(1) and 18A, and the modification of the definition of "Licensee" in Section 4N(1).

DATED: June 14, 2001
Donna Lee H. Williams, Insurance Commissioner

Regulation No. 84
Privacy of Consumer Financial and Health Information Regulation

Adopted and signed on June 14, 2001.
Effective July 11, 2001

ARTICLE I. GENERAL PROVISIONS

Section 1. Authority

This regulation is promulgated pursuant to the authority granted by Sections 311 and 535 of Title 18, Delaware Code.

Section 2. Purpose and Scope

A. Purpose. This regulation governs the treatment of nonpublic personal financial information about individuals by all licensees of the state insurance department. This regulation:

(1) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(2) Describes the conditions under which a licensee may disclose nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(3) Provides methods for individuals to prevent a licensee from disclosing that information.

B. Scope. This regulation applies to:

Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family or household purposes from licensees. This regulation does not apply to information about companies or about individuals who obtain products or services for business, commercial or agricultural purposes.

C. Compliance. A licensee domiciled in this state that is in compliance with this regulation in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act (PL 102-106) may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act in such other state.

Section 3. Rule of Construction

The examples in this regulation and the sample clauses in Appendix A of this regulation are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this regulation.

Section 4. Definitions

As used in this regulation, unless the context requires otherwise:

A. "Affiliate" means any company that controls, is controlled by or is under common control with another company.

B. (1) "Clear and conspicuous" means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) Examples.

(a) Reasonably understandable. A licensee makes its notice reasonably understandable if it:

(i) Presents the information in the notice in clear, concise sentences, paragraphs, and sections;

(ii) Uses short explanatory sentences or bullet lists whenever possible;

(iii) Uses definite, concrete, everyday words and active voice whenever possible;

(iv) Avoids multiple negatives;

(v) Avoids legal and highly technical business terminology whenever possible; and

(vi) Avoids explanations that are imprecise and readily subject to different interpretations.

(b) Designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

(i) Uses a plain-language heading to call attention to the notice;

(ii) Uses a typeface and type size that is easy to read;

(iii) Provides wide margins and ample line spacing;

(iv) Uses boldface or italics for key words; and

(v) In a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars.

(c) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text, graphics, hyperlinks or sound) do not distract attention from the notice, and the licensee either:

(i) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(ii) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

C. "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

D. "Commissioner" means the Insurance Commissioner of Delaware.

E. "Company" means a corporation, limited liability

company, business trust, general or limited partnership, association, sole proprietorship or similar organization.

F. (1) "Consumer" means an individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative.

(2) Examples.

(a) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(b) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.

(c) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(d) An individual is a licensee's consumer if:

(i) (I) the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(II) the individual is a claimant under an insurance policy issued by the licensee;

(III) the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(IV) the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

(ii) the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under Sections 14, 15 and 16 of this regulation.

(e) Provided that the licensee provides the initial, annual and revised notices under Sections 5, 6 and 9 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under Sections 14, 15 and 16 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

(i) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary;

(ii) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee; or

(iii) A beneficiary in a workers' compensation plan.

(f) (i) The individuals described in Subparagraph (e)(i) through (iii) of this Paragraph are consumers of a licensee if the licensee does not meet all the conditions of Subparagraph (e).

(ii) In no event shall the individuals, solely by virtue of the status described in Subparagraph (e)(i) through (iii) above, be deemed to be customers for purposes of this regulation.

(g) An individual is not a licensee's consumer solely because he or she is a beneficiary of a trust for which the licensee is a trustee.

(h) An individual is not a licensee's consumer solely because he or she has designated the licensee as trustee for a trust.

G. "Consumer reporting agency" has the same meaning as in Section 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

H. "Control" means:

(1) Ownership, control or power to vote twenty-five percent (25%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

I. "Customer" means a consumer who has a customer relationship with a licensee.

J. (1) "Customer relationship" means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(2) Examples.

(a) A consumer has a continuing relationship with a licensee if:

(i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) The consumer obtains financial, investment or economic advisory services relating to an insurance product or service from the licensee for a fee.

(b) A consumer does not have a continuing relationship with a licensee if:

(i) The consumer applies for insurance but does not purchase the insurance;

(ii) The licensee sells the consumer airline travel insurance in an isolated transaction;

(iii) The individual is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(iv) The consumer is a beneficiary or claimant under a policy and has submitted a claim under a

policy choosing a settlement option involving an ongoing relationship with the licensee;

(v) The consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;

(vi) The customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

(vii) The individual is an insured or an annuitant under an insurance policy or annuity, respectively, but is not the policyholder or owner of the insurance policy or annuity; or

(viii) For the purposes of this regulation, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

K. (1) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

L. (1) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

M. (1) "Insurance product or service" means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(2) Insurance service includes a licensee's evaluation, brokerage or distribution of information that the licensee collects in connection with a request or an application from a consumer for a insurance product or service.

N. (1) "Licensee" means all licensed insurers, producers and other persons licensed or required to be licensed, or authorized or required to be authorized, or registered or required to be registered pursuant to the Insurance Law of this state, and health maintenance organizations holding a certificate of authority pursuant to **[~~Section [insert section] of this state's Public Health Law.~~ Title 16, Chapter 91 of the Delaware Code. A licensee does not include a domestic insurer transacting insurance in foreign countries only, under the laws and regulations of a foreign country only, and not transacting insurance in any state as defined in Title 18 Section 103 of the Delaware Code.]**

(2) (a) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in Articles I, II, III and IV of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

(i) The principal otherwise complies with, and provides the notices required by, the provisions of this regulation; and

(ii) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by this regulation.

(b) Examples of employee, agent or other representative of a principal:

(i) An insurance broker, public adjuster or other licensee who is employed by another insurance broker, public adjuster or other licensee;

(ii) An independent adjuster adjusting a claim or benefit on behalf of an insurer;

(iii) An insurance agent of an insurer;

(iv) An insurance broker that has binding authority for an insurer; or

(v) A sublicensee of a licensee, whether or not the sublicensee is licensed in any other capacity.

(3) (a) Subject to Subparagraph (b), "licensee" shall also include an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to the Delaware Insurance Code.

(b) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial

information set forth in Articles I, II, III and IV of this regulation provided:

(i) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under Section 14 of this regulation, except as permitted by Section 15 or 16 of this regulation; and

(ii) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in 16-point type:

PRIVACY NOTICE

"NEITHER THE U.S. BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW.

O. (1) "Nonaffiliated third party" means any person except:

(a) A licensee's affiliate; or

(b) A person employed jointly by a licensee and any company that is not the licensee's affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(2) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in Section 4(k)(4)(H) or insurance company investment activities of the type described in Section 4(k)(4)(I) of the federal Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

P. "Nonpublic personal information" means nonpublic personal financial information.

Q. (1) "Nonpublic personal financial information" means:

(a) Personally identifiable financial information; and

(b) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.

(2) Nonpublic personal financial information does not include:

~~[(a) Health information;]~~

~~[(b)~~ (a)] Publicly available information, except as included on a list described in Subsection T(1)(b) of this section; or

~~[(c)~~ (b)] Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

(3) Examples of lists.

(a) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(b) Nonpublic personal financial information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution.

R. (1) "Personally identifiable financial information" means any information:

(a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

(2) Examples.

(a) Information included. Personally identifiable financial information includes:

(i) Information a consumer provides to a licensee on an application to obtain an insurance product or service;

(ii) Account balance information and payment history;

(iii) The fact that an individual is or has been one of the licensee's customers or has obtained an insurance product or service from the licensee;

(iv) Any information about the licensee's consumer if it is disclosed in a manner that indicates that the individual is or has been the licensee's consumer;

(v) Any information that a consumer provides to a licensee or that the licensee or its agent otherwise obtains in connection with collecting on a loan or servicing a loan;

(vi) Any information the licensee collects through an Internet cookie (an information-collecting device from a web server); and

(vii) Information from a consumer report.

(b) Information not included. Personally identifiable financial information does not include:

~~[(i) Health information;]~~

~~[(ii)~~ (i)] A list of names and addresses of

customers of an entity that is not a financial institution; and

~~[(iii)~~ **(ii)]** Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

S. (1) "Publicly available information" means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state or local government records;

(b) Widely distributed media; or

(c) Disclosures to the general public that are required to be made by federal, state or local law.

(2) Reasonable basis. A licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(a) That the information is of the type that is available to the general public; and

(b) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(3) Examples.

(a) Government records. Publicly available information in government records includes information in government real estate records and security interest filings.

(b) Widely distributed media. Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(c) Reasonable basis.

(i) A licensee has a reasonable basis to believe that mortgage information is lawfully made available to the general public if the licensee has determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(ii) A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed you that the telephone number is not unlisted.

ARTICLE II. PRIVACY AND OPT OUT NOTICES FOR FINANCIAL INFORMATION

Section 5. Initial Privacy Notice to Consumers Required

A. Initial notice requirement. A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(1) Customer. An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in Subsection E of this section; and

(2) Consumer. A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by Sections 15 and 16.

B. When initial notice to a consumer is not required. A licensee is not required to provide an initial notice to a consumer under Subsection A(2) of this section if:

(1) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by Sections 15 and 16, and the licensee does not have a customer relationship with the consumer; or

(2) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

C. When the licensee establishes a customer relationship.

(1) General rule. A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(2) Examples of establishing customer relationship. A licensee establishes a customer relationship when the consumer:

(a) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer or insurance broker, obtains insurance through that licensee; or

(b) Agrees to obtain financial, economic or investment advisory services relating to insurance products or services for a fee from the licensee.

D. Existing customers. When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, the licensee satisfies the initial notice requirements of Subsection A of this section as follows:

(1) The licensee may provide a revised policy notice, under Section 9, that covers the customer's new insurance product or service; or

(2) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under Subsection A of this section.

E. Exceptions to allow subsequent delivery of notice.

(1) A licensee may provide the initial notice

required by Subsection A(1) of this section within a reasonable time after the licensee establishes a customer relationship if:

(a) Establishing the customer relationship is not at the customer's election; or

(b) Providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(2) Examples of exceptions.

(a) Not at customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) Substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

(c) No substantial delay of customer's transaction. Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

F. Delivery. When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to Section 10. If the licensee uses a short-form initial notice for non-customers according to Section 7D, the licensee may deliver its privacy notice according to Section 7D(3).

Section 6. Annual Privacy Notice to Customers Required

A. (1) General rule. A licensee shall provide a clear and conspicuous notice to customers that accurately reflect its privacy policies and practices not less than annually during the continuation of the customer relationship. Annually means at least once in any period of twelve (12) consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(2) Example. A licensee provides a notice annually if it defines the twelve-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

B. (1) Termination of customer relationship. A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship.

(2) Examples.

(a) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee.

(b) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve (12) consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials.

(c) For the purposes of this regulation, a licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(d) A licensee no longer has a continuing relationship with a customer in the case of providing real estate settlement services, at the time the customer completes execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

D. Delivery. When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to Section 10.

Section 7. Information to be Included in Privacy Notices

A. General rule. The initial, annual and revised privacy notices that a licensee provides under Sections 5, 6 and 9 shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(1) The categories of nonpublic personal financial information that the licensee collects;

(2) The categories of nonpublic personal financial information that the licensee discloses;

(3) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under Sections 15

and 16;

(4) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under Sections 15 and 16;

(5) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 (and no other exception in Sections 15 and 16 applies to that disclosure), a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(6) An explanation of the consumer's right under Section 11A to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that the licensee makes under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosures of information among affiliates);

(8) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosure that the licensee makes under Subsection B of this section.

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under Sections 15 and 16, the licensee is not required to list those exceptions in the initial or annual privacy notices required by Sections 5 and 6. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples.

(1) Categories of nonpublic personal financial information that the licensee collects. A licensee satisfies the requirement to categorize the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(a) Information from the consumer;

(b) Information about the consumer's transactions with the licensee or its affiliates;

(c) Information about the consumer's transactions with nonaffiliated third parties; and

(d) Information from a consumer reporting agency.

(2) Categories of nonpublic personal financial information a licensee discloses.

(a) A licensee satisfies the requirement to categorize nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in Paragraph (1), as applicable, and provides a few examples to illustrate the types of information in each category. These might include:

(i) Information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;

(ii) Transaction information, such as information about balances, payment history and parties to the transaction; and

(iii) Information from consumer reports, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal information that the licensee discloses.

(3) Categories of affiliates and nonaffiliated third parties to whom the licensee discloses.

(a) A licensee satisfies the requirement to categorize the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of businesses in which they engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee also may categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(4) Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic personal financial information under the exception in Section 14 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A(5) of this section if it:

(a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of

Subsection A(2) of this section, as applicable; and

(b) States whether the third party is:

(i) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(ii) A financial institution with whom the licensee has a joint marketing agreement.

(5) Simplified notices. If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under Sections 15 and 16, the licensee may simply state that fact, in addition to the information it shall provide under Subsections A(1), A(8), A(9), and Subsection B of this section.

(6) Confidentiality and security. A licensee describes its policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

D. Short-form initial notice with opt out notice for non-customers.

(1) A licensee may satisfy the initial notice requirements in Sections 5A(2) and 8C for a consumer who is not a customer by providing a short-form initial notice at the same time as the licensee delivers an opt out notice as required in Section 8.

(2) A short-form initial notice shall:

(a) Be clear and conspicuous;

(b) State that the licensee's privacy notice is available upon request; and

(c) Explain a reasonable means by which the consumer may obtain that notice.

(3) The licensee shall deliver its short-form initial notice according to Section 10. The licensee is not required to deliver its privacy notice with its short-form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short-form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to Section 10.

(4) Examples of obtaining privacy notice. The licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice if the licensee:

(a) Provides a toll-free telephone number that the consumer may call to request the notice; or

(b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand that the licensee provides to the consumer immediately upon request.

E. Future disclosures. The licensee's notice may include:

(1) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

F. Sample clauses. Sample clauses illustrating some of the notice content required by this section are included in Appendix A of this regulation.

Section 8. Form of Opt Out Notice to Consumers and Opt Out Methods

A. (1) Form of opt out notice. If a licensee is required to provide an opt out notice under Section 11A, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(a) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(b) That the consumer has the right to opt out of that disclosure; and

(c) A reasonable means by which the consumer may exercise the opt out right.

(2) Examples.

(a) Adequate opt out notice. A licensee provides adequate notice that the consumer can opt out of the disclosure of nonpublic personal financial information to a nonaffiliated third party if the licensee:

(i) Identifies all of the categories of nonpublic personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information, as described in Section 7A(2) and (3), and states that the consumer can opt out of the disclosure of that information; and

(ii) Identifies the insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(b) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(i) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(ii) Includes a reply form together with the opt out notice;

(iii) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to

the electronic delivery of information; or

(iv) Provides a toll-free telephone number that consumers may call to opt out.

(c) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(i) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(ii) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(d) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

B. Same form as initial notice permitted. A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with Section 5.

C. Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with Section 5, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

D. Joint relationships.

(1) If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer (as explained in Paragraph (5) of this subsection).

(2) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(a) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(b) Permit each joint consumer to opt out separately.

(3) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) Example. If John and Mary are both named policyholders on a homeowner's insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but it shall explain in its opt out notice which opt out policy the licensee will follow:

(a) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(b) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(c) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) It shall permit John and Mary to opt out for each other;

(ii) If both opt out, the licensee shall permit both of them to notify it in a single response (such as on a form or through a telephone call); and

(iii) If John opts out and Mary does not, the licensee may only disclose nonpublic personal financial information about Mary, but not about John and not about John and Mary jointly.

E. Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

F. Continuing right to opt out. A consumer may exercise the right to opt out at any time.

G. Duration of consumer's opt out direction.

(1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

H. Delivery. When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to Section 10.

Section 9. Revised Privacy Notices

A. General rule. Except as otherwise authorized in this regulation, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under Section 5, unless:

(1) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(2) The licensee has provided to the consumer a new opt out notice;

(3) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

B. Examples.

(1) Except as otherwise permitted by Sections 14,

15 and 16, a licensee shall provide a revised notice before it:

(a) Discloses a new category of nonpublic personal financial information to any nonaffiliated third party;

(b) Discloses nonpublic personal financial information to a new category of nonaffiliated third party; or

(c) Discloses nonpublic personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if the licensee discloses nonpublic personal financial information to a new nonaffiliated third party that the licensee adequately described in its prior notice.

C. Delivery. When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to Section 10.

Section 10. Delivery

A. How to provide notices. A licensee shall provide any notices that this regulation requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

B. (1) Examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(a) Hand-delivers a printed copy of the notice to the consumer;

(b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(2) Examples of unreasonable expectation of actual notice. A licensee may not, however, reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(a) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(b) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

C. Annual notices only. A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(1) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(2) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

D. Oral description of notice insufficient. A licensee may not provide any notice required by this regulation solely by orally explaining the notice, either in person or over the telephone.

E. Retention or accessibility of notices for customers.

(1) For customers only, a licensee shall provide the initial notice required by Section 5A(1), the annual notice required by Section 6A, and the revised notice required by Section 9 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) Examples of retention or accessibility. A licensee provides a privacy notice to the customer so that the customer can retain it or obtain it later if the licensee:

(a) Hand-delivers a printed copy of the notice to the customer;

(b) Mails a printed copy of the notice to the last known address of the customer; or

(c) Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

F. Joint notice with other financial institutions. A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

G. Joint relationships. If two (2) or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements of Sections 5A, 6A and 9A, respectively, by providing one notice to those consumers jointly.

ARTICLE III. LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 11. Limits on Disclosure of Nonpublic Personal Financial Information to Nonaffiliated Third Parties

A. (1) Conditions for disclosure. Except as otherwise authorized in this regulation, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated

third party unless:

(a) The licensee has provided to the consumer an initial notice as required under Section 5;

(b) The licensee has provided to the consumer an opt out notice as required in Section 8;

(c) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) Opt out definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by Sections 14, 15 and 16.

(3) Examples of reasonable opportunity to opt out. A licensee provides a consumer with a reasonable opportunity to opt out if:

(a) By mail. The licensee mails the notices required in Paragraph (1) of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within thirty (30) days from the date the licensee mailed the notices.

(b) By electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph (1) of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within thirty (30) days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(c) Isolated transaction with consumer. For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in Paragraph (1) of this subsection at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

B. Application of opt out to all consumers and all nonpublic personal financial information.

(1) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship.

(2) Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

C. Partial opt out. A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Section 12. Limits on Redisclosure and Reuse of Nonpublic Personal Financial Information

A. (1) Information the licensee receives under an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in Sections 15 or 16 of this regulation, the licensee's disclosure and use of that information is limited as follows:

(a) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(c) The licensee may disclose and use the information pursuant to an exception in Sections 15 or 16 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(2) Example. If a licensee receives information from a nonaffiliated financial institution for claims settlement purposes, the licensee may disclose the information for fraud prevention, or in response to a properly authorized subpoena. The licensee may not disclose that information to a third party for marketing purposes or use that information for its own marketing purposes.

B. (1) Information a licensee receives outside of an exception. If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in Sections 15 or 16 of this regulation, the licensee may disclose the information only:

(a) To the affiliates of the financial institution from which the licensee received the information;

(b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(c) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(2) Example. If a licensee obtains a customer list from a nonaffiliated financial institution outside of the exceptions in Sections 15 or 16:

(a) The licensee may use that list for its own purposes; and

(b) The licensee may disclose that list to another nonaffiliated third party only if the financial institution from which the licensee purchased the list could have lawfully disclosed the list to that third party. That is, the licensee may disclose the list in accordance with the privacy policy of the financial institution from which the licensee received the list, as limited by the opt out direction

of each consumer whose nonpublic personal financial information the licensee intends to disclose, and the licensee may disclose the list in accordance with an exception in Sections 15 or 16, such as to the licensee's attorneys or accountants.

C. Information a licensee discloses under an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in Sections 15 or 16 of this regulation, the third party may disclose and use that information only as follows:

(1) The third party may disclose the information to the licensee's affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in Sections 15 or 16 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

D. Information a licensee discloses outside of an exception. If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in Sections 15 or 16 of this regulation, the third party may disclose the information only:

(1) To the licensee's affiliates;

(2) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Section 13. Limits on Sharing Account Number Information for Marketing Purposes

A. General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

B. Exceptions. Subsection A of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

(1) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(2) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(3) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

C. Examples.

(1) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(2) Policy or transaction account. For the purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

ARTICLE IV. EXCEPTIONS TO LIMITS ON DISCLOSURES OF FINANCIAL INFORMATION

Section 14. Exception to Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Service Providers and Joint Marketing

A. General rule.

(1) The opt out requirements in Sections 8 and 11 do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(a) Provides the initial notice in accordance with Section 5; and

(b) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in Sections 15 or 16 in the ordinary course of business to carry out those purposes.

(2) Example. If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of Paragraph (1)(b) of this subsection if it prohibits the institution from disclosing or using the nonpublic personal financial information except as necessary to carry out the joint marketing or under an exception in Sections 15 or 16 in the ordinary course of business to carry out that joint marketing.

B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

C. Definition of "joint agreement." For purposes of this section, "joint agreement" means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse or sponsor a financial product or

service.

Section 15. Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information for Processing and Servicing Transactions

A. Exceptions for processing transactions at consumer's request. The requirements for initial notice in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer; or

(4) Reinsurance or stop loss or excess loss insurance.

B. "Necessary to effect, administer or enforce a transaction" means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(a) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(b) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(c) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(d) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(e) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects or as otherwise required or specifically permitted by federal or state law; or

(f) In connection with:

(i) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(ii) The transfer of receivables, accounts or interests therein; or

(iii) The audit of debit, credit or other payment information.

Section 16. Other Exceptions to Notice and Opt Out Requirements for Disclosure of Nonpublic Personal Financial Information

A. Exceptions to opt out requirements. The requirements for initial notice to consumers in Section 5A(2), the opt out in Sections 8 and 11, and service providers and joint marketing in Section 14 do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2) (a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, and the Federal Trade Commission), self-regulatory

organizations or for an investigation on a matter related to public safety;

(5) (a) To a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7) (a) To comply with federal, state or local laws, rules and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan or a workers' compensation plan.

(9) When the licensee is in liquidation or receivership.

B. Example of revocation of consent. A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under Section 8F.

ARTICLE V. ADDITIONAL PROVISIONS

Section 17. Protection of Fair Credit Reporting Act

Nothing in this regulation shall be construed to modify, limit or supersede the operation of the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), and no inference shall be drawn on the basis of the provisions of this regulation regarding whether information is transaction or experience information under Section 603 of that Act.

Section 18. Nondiscrimination

[A.] A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the provisions of this regulation.

[B. A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.]

Section 19. Violation

Repeated failure to comply with this Regulation will be grounds for investigation and enforcement as unfair practices in the insurance business pursuant to Chapter 23, Title 18, Delaware Code.

Section 20. Severability

If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

Section 21. Effective Date

A. Effective date. This regulation is effective as of July 11, 2001.

B. (1) Notice requirement for consumers who are the licensee's customers on the compliance date. By November 1, 2001, a licensee shall provide an initial notice, as required by Section 5, to consumers who are the licensee's customers on July 11, 2001.

(2) Example. A licensee provides an initial notice to consumers who are its customers on November 1, 2001, if, by the licensee has established a system for providing an initial notice to all new customers and has mailed the initial notice to all the licensee's existing customers.

C. Two-year grandfathering of service agreements. Until July 11, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of Section 14A(1)(b) of this regulation, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 11, 2000.

APPENDIX A – SAMPLE CLAUSES

Licensees, including a group of financial holding company affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice. (Note that disclosure of certain information, such as assets, income and information from a consumer reporting agency, may give rise to obligations under the federal Fair Credit Reporting Act, such as a requirement to permit a consumer to opt out of disclosures to affiliates or designation as a consumer reporting agency if disclosures are made to nonaffiliated third parties.)

A-1–Categories of information a licensee collects (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of Section 7A(1) to describe the categories of

nonpublic personal information the licensee collects.
Sample Clause A-1:
We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates or others; and
- Information we receive from a consumer reporting agency.

A-2–Categories of information a licensee discloses (institutions that disclose outside of the exceptions)
A licensee may use one of these clauses, as applicable, to meet the requirement of Section 7A(2) to describe the categories of nonpublic personal information the licensee discloses. The licensee may use these clauses if it discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.
Sample Clause A-2, Alternative 1:
We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premiums, and payment history"]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Sample Clause A-2, Alternative 2:
We may disclose all of the information that we collect, as described [describe location in the notice, such as "above" or "below"].

A-3–Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)
A licensee may use this clause, as applicable, to meet the requirements of Sections 7A(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in Sections 15 and 16.
Sample Clause A-3:
We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4–Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)
A licensee may use this clause, as applicable, to meet the requirement of Section 7A(3) to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16, as well as when permitted by the exceptions in Sections 15 and 16.
Sample Clause A-4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as "life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents"];
- Non-financial companies, such as [provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"]; and
- Others, such as [provide illustrative examples, such as "non-profit organizations"].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5–Service provider/joint marketing exception
A licensee may use one of these clauses, as applicable, to meet the requirements of Section 7A(5) related to the exception for service providers and joint marketers in Section 14. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.
Sample Clause A-5, Alternative 1:
We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as "your name, address, social security number, assets, income, and beneficiaries"];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as "your policy coverage, premium, and payment history"]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as "your creditworthiness and credit history"].

Sample Clause A-5, Alternative 2:
We may disclose all of the information we collect, as described [describe location in the notice, such as "above" or

"below"] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6–Explanation of opt out right (institutions that disclose outside of the exceptions)
A licensee may use this clause, as applicable, to meet the requirement of Section 7A(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in Sections 14, 15 and 16.
Sample Clause A-6:
If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)].

A-7–Confidentiality and security (all institutions)
A licensee may use this clause, as applicable, to meet the requirement of Section 7A(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.
Sample Clause A-7:
We restrict access to nonpublic personal information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

DEPARTMENT OF LABOR

DIVISION OF EMPLOYMENT & TRAINING

COUNCIL ON APPRENTICESHIP AND TRAINING

Statutory Authority: 19 Delaware Code, Section 202(a) (19 **Del. C.** §202(a))

ORDER

A public hearing was held on June 12, 2001 before the Council on Apprenticeship and Training to receive comments relating to proposed changes to Regulation 106.5 **Standards of Apprenticeship**. At the regularly scheduled meeting that followed the hearing, the Council voted to recommend that the Secretary of Labor adopt the proposal as it was published in the Register of Regulations, Vol. 4, Issue 11, May 1, 2001.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

1. Bill McCloskey of the Delaware Building Trades Council spoke in support of the proposed change.

2. Duane L. Wayman II, President of Wayman Fire Protection, Inc., stated that 10 years ago the industry standard for sprinklers fitters changed from 2 to 1 and became 1 to 1. He was not aware that he was violating any state regulations in Delaware and appreciates the help of the Department of Labor in resolving the discrepancy.

Mr. Wayman explained the reasons for the 1 to 1 industry standard. A more restrictive ratio would adversely affect the two person crew size. In his view, the best way to train is one on one. The higher ratio drives up the cost of labor. His comments were submitted in writing in a letter dated June 12, 2001 and submitted at the public hearing.

RECOMMENDED FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

1. Those commenting support the proposed change.
2. The change as it relates to sprinkler fitters adopts the industry standard and insures effective training of apprentices.

The Council on Apprenticeship and Training recommends that the Secretary of Labor adopt the changes to Regulation 106.5 to clarify the ratio requirements.

COUNCIL ON APPRENTICESHIP AND TRAINING

B. Eugene Battaglia
Thomas Archie
Lewis Atkinson, Ed.D.
James T. Clothier

DECISION AND EFFECTIVE DATE

Having reviewed the record of the Public Hearing and adopted the recommendations of the Council on Apprenticeship and Training, the changes to Regulation 106.5 are hereby promulgated to be effective 10 days following publication of the final regulations in the Register of Regulations.

TEXT AND CITATION

The text of the Rules and Regulations appears in the Register of Regulations, Vol. 4, Issue 11, May 1, 2001.

DEPARTMENT OF LABOR

Harold E. Stafford
Secretary of Labor
Dated: June 14,2001

SEC. 106.5 Standards of Apprenticeship

(D) The ratio of Apprentices to Journeypersons should be consistent with proper supervision, training and continuity of employment or applicable provisions in collective bargaining agreements.

(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. ~~More restrictive ratios will be granted upon request. More liberal ratios may be granted only after the requesting Sponsor has demonstrated that the number of Apprentices to be trained shall be in relation to:~~

~~(1) The needs of the plant and/or trade in the community with consideration for growth and expansion:~~

~~(2) The facilities and personnel available for training are adequate; and~~

~~(3) A reasonable opportunity that employment of skilled workers on completions exists:~~

~~The following rations will be recognized as standard for the trades of:~~

~~Apprentice Up to Journeyperson~~

~~Carpenter~~	~~1~~	~~5~~
~~Plumber/Pipefitter~~	~~1~~	~~5~~
~~Sheet Metal Worker~~	~~1~~	~~4~~
~~Insulation Worker~~	~~1~~	~~4~~
~~Electician~~	~~1~~	~~3~~

~~If a "collective bargaining agreement" exists and stipulates a ration of Apprentices to Journeypersons, it shall prevail. Provided the Bargaining Ratio is not lower than the State standard.~~

(2) The following have been recognized to be the industry standard for the listed trades:

Ratio of Apprentice to 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	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.

(3) Exceptions.

a. 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.

b. A deviation from the established standard may be granted by the Administrator upon written request after considering the needs of the plant and/or trade with consideration for growth, the availability of relevant training, and the opportunity for employment of skilled workers following the completion of their training. Such exception shall last no more than one year but may be renewed upon written request.

OFFICE OF LABOR LAW ENFORCEMENT

Statutory Authority: 29 Delaware Code, Section 8503(7) (29 **Del.C.** §8503(7))

ORDER

Nature of the Proceedings

1. Pursuant to notice in accordance with 29 **Del.C.** § 10115, the Department of Labor proposed an amendment to the Prevailing Wage Regulations. The Prevailing Wage Regulations implement the provisions of Delaware's Prevailing Wage Law, 29 **Del.C.** §6960, "Prevailing wage requirements." A copy of the amendment is attached as Exhibit "A".

2. A public hearing was held at 9:00 a.m. on Tuesday, May 22, 2001, in Conference Room 203 of the Department of Labor Office Building, 4425 North Market Street, Wilmington, Delaware, the time and place designated to receive written and oral comments.

3. As designated by the Secretary of Labor, Harold E. Stafford, Susan S. Anders, Administrator of the Office of Labor Law Enforcement, was present to receive testimony and evidence at the hearing.

Summary of the Evidence

4. The individuals testifying at the May 22, 2001 hearing in Wilmington, Delaware, and a summary of said testimony is as follows:

5. Mr. Ralph Degli Obizzi, Jr., President, Ralph G. Degli Obizzi & Sons, Inc., Mechanical Contractors, and also representing Associated Builders and Contractors, Inc., stated that he opposed Section 1 of the amendment relating to deleting the current classification of "Roofer" and adding the worker classification of "Roofer-Composition" and "Roofer–Shingle Slate and Tile" to the prevailing wage worker classifications.

Mr. Degli Obizzi stated that, during his 29 years of experience in construction, he has observed the same roofers installing different types of roofs, rather than workers who specialized in installing composition or shingle, slate and tile roofs. He further stated that, "…this attempt to reclassify roofing is merely an attempt to try and manipulate the prevailing wage process…" Mr. Degli Obizzi submitted a written copy of his comments which is made a part of the record and is attached as Exhibit "B".

6. Mr. Edward Capodanno, Executive Director, Associated Builders and Contractors, Inc., Delaware Chapter, stated that, on behalf of the members of his organization, he opposed the amendment.

Mr. Capodanno stated that he believed that adding worker classifications would reverse the trend to reduce the number of prevailing wage worker classifications which has been the Department of Labor's policy over the years. He further expressed concern that adding new classifications would encourage other trades to propose adding classifications.

Mr. Capodanno, a member of the Department of Labor's Prevailing Wage Advisory Council, also raised the issue that the Council had voted not to increase worker classifications twice during April and May 2000. According to Mr. Capodanno's testimony, the recommendation leading to this amendment was passed at a Council meeting when three (3) representatives from his organization were not present and, therefore, the vote was not reflective of the recommendation of the entire Council.

7. William McCloskey, President of the Delaware Building and Construction Trades Council, stated that, on behalf of members of the 20 Building Trades Unions, he supported the proposed amendment.

Mr. McCloskey testified that he believed that an "honest error" was made in 1992 when the Department of Labor reduced the prevailing wage worker classifications from 40 to 22. He further stated that when the classification of "Roofer-Composition" was eliminated in 1992, that trade's prevailing wage rate was severely impacted, has suffered ever since, and the change proposed by the amendment is necessary to correct that condition. Mr. McCloskey also pointed out that the change would conform Delaware's worker classifications to the United States Department of Labor's classifications, and those in the surrounding states of Pennsylvania, New Jersey and Maryland.

8. Mr. Thomas Crosley, Business Agent for Roofers Local 30 of the United Union of Roofers, Waterproofers, and Allied Workers, testified that, on behalf of the members of his organization, he supported the amendment. Mr. Crosley stated that he has taught separate training classes for Shingle, Slate and Tile Roofers and Composition Roofers and that the skills involved were different in the two classifications. Mr. Crosley also concurred with Mr. McCloskey's testimony concerning the reduction in the Roofer's prevailing wage rate over the past ten (10) years as a result of combining the two Roofer classifications into one.

9. Mr. Richard Harvey, Executive Director of the Roofing Contractors Association/Industry Fund, stated that, on behalf of the roofing contractors who are represented by his organization and the members of Local 30 of the United Union of Roofers, Waterproofers, and Allied Workers who are signatory to collective bargaining agreements with the roofing contractors, he supported the amendment.

Mr. Harvey testified that by adopting the proposed amendment, Delaware's prevailing wage classifications would conform to the national distinction in the roofer's crafts which is recognized by the United States Department of Labor, New Jersey, and Pennsylvania and would also recognize a "long-standing established area practice."

Further, according to Mr. Harvey's testimony, approval of the amendment would enable the Department of Labor to more accurately evaluate and apply the prevailing wage data submitted for roofers, which will ultimately benefit the state by ensuring quality workmanship on public works roofing projects, encourage bid competition among commercial roofing contractors, and increase employment opportunities for skilled roofers. Mr. Harvey submitted a written copy of his comments which is made a part of the record and is attached as Exhibit "C".

10. Mr. Kenneth Johnson, a representative from Asbestos Workers Local 42, asked whether the change in the Insulator's classification was related to the changes in the Roofers' classification. Ms. Anders responded that there was no connection between the Insulator and Roofers classification changes.

11. There was no other testimony. Ms. Anders stated that the record would be held open until the end of the day on May 31, 2001 in order to receive further written submissions.

12. Following the hearing, written submissions opposing the proposed amendment were received from:

Mr. John McLaughlin, President, H.K. Griffith Inc. Roofing and Sheet Metal Contractor;

Mr. Edward J. Capodanno, Executive Director, Associated Builders and Contractors, Inc.; and

Mr. Nick Sanna, President, Tri-State The Roofers.

These written submissions have been made a part of the record and are attached as Exhibit "D".

13. Following the hearing, written submissions supporting the proposed amendment were received from:

Mr. William McCloskey, President, Delaware Building and Construction Trades Council; and

Mr. Mike McCann, Business Manager, Roofers Local 30, United Union of Roofers, Waterproofers and Allied Workers.

These written submissions have been made a part of the record and are attached as Exhibit "E".

Findings of Fact

Recommendations were given to the Secretary of Labor following the public hearing process and consideration of all oral testimony and written documentation received. The Department of Labor's findings regarding the issues raised at the hearing are as follows:

14. Based upon the oral testimony and written submissions from the hearing, the Department of Labor wishes to adopt its proposal to amend the Prevailing Wage Regulations.

Conclusions of Law

15. The Department of Labor proposed the amendments to the Prevailing Wage Regulations pursuant to its authority granted in 29 **Del.C.** § 8503.

Decision To Adopt

16. It is the decision and order of the Department of Labor that the proposed amendment to the Prevailing Wage Regulations, a true and correct copy of which is attached hereto as Exhibit "A" is hereby **ADOPTED**.

SO ORDERED, this _____ day of June, 2001.

Harold E. Stafford
Secretary of Labor

III. CONCEPTS AND DEFINITIONS

This section presents definitions and explanations to provide a basic understanding of elements inherent in collecting wage data and issuing wage determinations, and enforcing prevailing rates.

A. Activity Covered. 29 **Del.C.** §6960 applies to every contract or aggregate of contracts relating to a public works project in excess of $100,000 for now construction (including painting or decorating) or $15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction (including painting and decorating of building or works) to which this State or any subdivision thereof is a party and for which the State appropriated any part of the funds and which requires or involves the employment of mechanics and/or laborers.

See 1 DE Reg. 519 (11/1/97)

B. "Building" or "Work". The terms "building" or "work" generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment is not a "building" or "work" within the meaning of the regulations unless conducted at the site of such a building or work.

C. Laborers and Mechanics. The terms "laborer" and "mechanic" includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term "laborer" or "mechanic" includes apprentices and Supportive Service Program (SSP) trainees. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity are not deemed to be laborers or mechanics. Working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are deemed to be laborers and mechanics for the time so spent.

The terms "laborers" and "mechanics" do not apply to watchmen, guards, dispatchers, or weighmasters. The following classifications of workers are recognized by the Department:

Asbestos Workers
Boilermakers
Bricklayers
Carpenters
Cement Finishers
Electricians
Elevator Constructors
Glaziers
Insulator
Iron Workers
Laborers

Millwrights
Painters
Plasterers
Plumbers/Pipefitters/Steamfitters
Power Equipment Operators
~~Roofers~~
Roofer - Composition
Roofer - Shingle, Slate and Tile
Sheet Metal Workers
Soft Floor Layers
Sprinkler Fitters
Terrazzo/Marble/Tile Setters
Terrazzo/Marble/Tile Finishers
Truck Drivers

Definitions for each classification are contained in a separate document entitled, "Classifications of Workers Under Delaware's Prevailing Wage Law." Workers shall be classified by the Department of Labor with the advice of the Prevailing Wage Advisory Council members. Classification determinations shall be recorded by the Department as they are made and shall be published annually.

See 4 DE Reg. 1186 (1/1/01)

Laborers and mechanics are to be paid the appropriate wage rates for the classification of work actually performed, without regard to skill.

D. Apprentices and Supportive Service Program Trainees.

1. Definitions. As used in this section:

a. The term "apprentice" means persons who are indentured and employed in a bona fide apprenticeship program and individually registered by the program sponsor with the Delaware Department of Labor.

b. The term "apprenticeship agreement" means a written agreement between an apprentice and either his/her employer or a joint apprenticeship committee which contains the terms and conditions of the employment and training of the apprentice.

c. The term "apprenticeship program" means a complete plan of terms and conditions for the employment and training of apprentices.

d. The term "Joint apprenticeship committee" means a local committee equally representative of employers and employees which has been established by a group of employers with a bona fide bargaining agent or agents to direct the training of apprentices with whom it has made agreements.

e. The term "SSP Trainee" or "trainee" means a participant in the "Supportive Service Program" mandated by the Federal Highway Administration for federally aided state highway projects.

f. The term "registration" means the approval by the Department of Labor of an apprenticeship program or agreement as meeting the basic standards adopted by the Bureau of Apprenticeship and Training, United States Department of Labor. The term "registration" for SSP Trainees means the individual registration of a participant in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

2. Employment of Apprentices and SSP Trainees on State Projects.

a. Apprentices and SSP Trainees will be permitted to work as such on State contracts in excess of $100,000 for new construction or $15,000 for alteration, repair, renovation, rehabilitation, demolition or reconstruction only when they are registered with the Department of Labor or an approved SSP Training Program.

b. The mechanic's rate on all such State contracts is that rate determined by the Department of Labor. The percentage of the mechanic's rate that the registered apprentice or SSP Trainee receives will be the percentage that the apprentice or trainee qualifies for under the terms of the individual's formal Apprenticeship/Trainee agreement.

c. Any person employed at an apprentice or trainee wage rate who is not registered as above, shall be paid the wage rate determined by the Department of Labor for the classification of work (s)he actually performed.

d. The ratio of apprentices to mechanics on the site of any work covered by 29 Del.C. §6960 in any craft classification may not be greater than the ratio permitted to the contractor for the entire workforce under the registered apprenticeship program. Any apprentice performing work on the job site in excess of the ratio permitted under the registered program must be paid not less than the wage rate that the applicable wage determination specifies for the work (s)he actually performs. Entitlement to mechanic's wages shall be based upon seniority in the apprenticeship program or (in the case of equal seniority) seniority on the job site.

See 1 DE Reg. 519 (11/1/97)

3. Records.

a. Every employer who employs an apprentice or SSP trainee under this part must keep the records required by Title 19, Delaware Code, Chapters 9 and 11, including designation of apprentices or trainees on the payroll. In addition, every employer who employs apprentices or SSP trainees shall preserve the agreements under which the individuals were employed.

b. Every joint apprenticeship committee or SSP Program sponsor shall keep a record of the cumulative amount of work experience gained by the apprentice or trainee.

c. Every joint apprenticeship committee shall keep a list of the employers to whom the apprentice was assigned and the period of time (s)he worked for each. Every SSP Program sponsor shall keep a list of the projects to which the trainee was assigned and the period of time (s)he worked on each.

d. The records required by paragraphs (a), (b), and (c) of this section shall be maintained and preserved for at least three (3) years from the termination of the apprenticeship or training period. Such records shall be kept safe and accessible at the place or places of employment or at a central location where such records are customarily maintained. All records shall be available at any time for inspection and copying by the Department of Labor.

E. Working Foremen. 29 Del.C. §6960 does not apply to (and therefore survey data are not collected for) workers whose duties are primarily administrative, executive or clerical, rather than manual. However, working foremen who devote more than twenty (20) percent of their time during a workweek to mechanic or laborer duties are laborers and mechanics for the time so spent and data will be collected for the hours spent as laborers or mechanics.

See 1 DE Reg. 519 (11/1/97)

F. Helpers. Helper classifications are not recognized by the Department of Labor. All laborers and mechanics are to be paid the appropriate wage rate for the classification of work actually performed, without regard to skill.

G. Construction Projects. In the wage determination process, the term "project" refers to construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work away from the site of the work and consists of all construction necessary to complete a facility regardless of the number of contracts involved so long as all contracts awarded are closely related in the purpose, time and place. For example, demolition or site clearing work preparatory to construction is considered a part of the project.

1. Character Similar. 29 Del.C. §6960 requires the predetermination of wage rates which are prevailing on projects of a "character similar to the construction work." As a general rule, the Department identifies projects by end use type and classifies then into three major categories:

See 1 DE Reg. 519 (11/1/97)

a. Building Construction. Building construction generally is the construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction of such structures, the installation of utilities and the installation of equipment, both above and below grade level as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment shall not change the project's character as a building. Examples: Alterations and additions to nonresidential buildings; Apartment buildings (5 stories and above); Arenas (enclosed); Auditoriums; Automobile parking garages; Banks and financial buildings; Barracks; Churches; Hospitals; Hotels; Industrial buildings; Institutional buildings; Libraries; Mausoleums; Motels; Museums; Nursing and convalescent facilities; Office buildings; outpatient clinics; Passenger and freight terminal buildings; Police stations; Post offices; City halls; civic centers; Commercial buildings; Court houses; Detention facilities; Dormitories; Farm buildings; Fire stations; Power plants; Prefabricated buildings; Remodeling buildings; Renovating buildings; Repairing buildings; Restaurants; Schools; Service stations; Shopping centers; Stores; Subway stations; Theaters; Warehouses; Water and sewage treatment plants (building only).

b. Heavy Construction. Heavy projects are those that are not properly classified as either "building" or "highway". Unlike these classifications, heavy construction is not a homogeneous classification. Examples of Heavy construction: Antenna towers; Bridges (major bridges designed for commercial navigation); Breakwaters; Caissons (other than building or highway); Canals; Channels; Channel cut-offs; Chemical complexes or facilities (other than buildings); Cofferdams; Coke ovens; Dams; Demolition (not incidental to construction); Dikes; Docks; Drainage projects; Dredging projects; Electrification projects (outdoor); Flood control projects; Industrial incinerators (other than building); Irrigation projects; Jetties; Kilns; Land drainage (not incidental to other construction); Land leveling (not incidental to other construction); Land reclamation; Levees; Locks, Waterways; oil refineries; Pipe lines; Ponds; Pumping stations (pre-fabricated drop-in units); Railroad construction; Reservoirs; Revetments; Sewage collection and disposal lines; Sewers (sanitary, storm, etc.); Shoreline maintenance; Ski tows; Storage tanks; swimming pools (outdoor); Subways (other than buildings); Tipples; Tunnels; Unsheltered piers and wharves; Viaducts (other than highway); Water mains; Waterway construction; Water supply lines (not incidental to building); Water and sewage treatment plants (other than buildings); Wells.

c. Highway Construction. Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, greenway projects and other similar projects not incidental to building or heavy construction. Examples: Alleys; Base courses; Bituminous treatments; Bridle paths; Concrete pavement; Curbs; Excavation and embankment (for road construction); Fencing (highway); Grade crossing elimination (overpasses or underpasses); Parking lots; Parkways; Resurfacing streets and highways; Roadbeds; Roadways; Shoulders; Stabilizing courses; Storm sewers incidental to road construction; Street Paving; Guard rails on highway; Highway signs; Highway bridges (overpasses; underpasses; grade separation); Medians; Surface courses; Taxiways; Trails.

d. Multiple Categories. In some cases a project includes construction items that in themselves encompass different categories of construction. Generally, a project is considered mixed and a "multiple schedule" used if the construction items are substantial in relation to project

cost, i.e. more than twenty (20) percent. Only one schedule is used if construction items are "incidental" in function to the overall character of a project (e.g., paving of parking lots or an access road on a building project), and if there is not a substantial amount of construction in the second category.

2. Site of Work. A basic characteristic of the construction industry is the continual shift in the site of employment. 29 Del.C. §6960 provides that prevailing wages are to be paid to "...all mechanics and laborers employed directly upon the site of the work ..." (emphasis added). The site of the work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed.

See 1 DE Reg. 519 (11/1/97)

H. Prevailing Wage Rates. Every contract and the specifications for every contract to which section 6960 applies are required to contain a provision stating the minimum wages to be paid various classes of laborers and mechanics. These rates are to be based upon the wages that the Department of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the county in which the work is to be performed, as reported in the Department's annual prevailing wage survey.

See 1 DE Reg. 519 (11/1/97)

The prevailing wage shall be the wage paid to a majority of employees performing similar work as reported in the Department's annual prevailing wage survey or, in the absence of a majority, the weighted average wage paid to all employees reported.

I. Wages. The term "wages" means the basic hourly rate of pay plus fringe benefits as defined below.

J. Fringe Benefits. Fringe benefits may be considered in determining whether an employer has met his/her prevailing wage obligations. As a general rule, any fringe benefit may be considered as long as the employer is not legally required to provide it. Therefore, benefits such as health, welfare or retirement benefits, vacation, holiday pay or sick leave pay could be considered fringe benefits. Employer payments for unemployment insurance, workers' compensation, FICA, etc. (which are required by law) would not be considered fringe benefits.

In order to be considered a valid fringe benefit, payments must be made either in cash, or contributed to an irrevocable escrow account at least once each month. "Irrevocable" means that the benefit may not be forfeited. However, a benefit plan can be considered by the Department provided that payments to the plan are made irrevocably by the employer, even though certain employees may forfeit their individual rights to the benefits under certain prescribed conditions. Thus, if payments are made by the employer, and no return of those payments is possible, the plan would be acceptable, even though individual employees might not receive the benefits under certain situations. Benefits forfeited by such employees remain in an escrow account for the use of the other employees.

The actual cost of the benefit to the employer is the basis for evaluating the value of the fringe benefit. Administration costs are not considered fringe benefits.

The cost of the benefits must be apportioned between employment on both public and private projects. Thus, the total value of the benefit would be divided by the total amount of time worked. This will result in benefit per unit of time which would be equally applicable to public and private employment projects. Example: an employee works two weeks (80 hours) on a public project and two weeks (80 hours) on a private project. The employer pays $160 for the employee's health insurance for the month. The value of the benefit is $1.00 per hour. The employer is not permitted to apply the entire premium to the public project alone.

K. Peak Week. In determining prevailing wages, the Department utilizes a "peak week" survey concept to ensure that wage and fringe benefit data obtained from employers reflects for each classification, the payroll period during which the greatest number of workers in each classification are used on a project. The survey solicits the number of employees and wages paid at each given rate during the peak week. The contractor or reporting organization selects the week (between July 1 to December 31 of the previous year) during which the greatest number of each classification of laborers and mechanics was working. Peak weeks may be different for each classification of worker.

L. Wage Determinations. A "wage determination" is the listing of wages (including fringe benefits) for each classification of laborers and mechanics, which the Administrator has determined to be prevailing in a given county and type of construction. Wage determinations are issued annually.

M. Maintenance Work. To "maintain" means to preserve or keep in an existing state or condition to prevent a decline, lapse, or cessation from that state or condition. Wages paid to workers performing maintenance work shall not be used in determining prevailing wage rates.

N. Area. The term "area" in determining wage rates under 29 Del.C. §6960 shall mean the county of the State in which the work is to be performed. The term "area" in determining classifications of workers under 29 Del.C. §6960 shall mean the State of Delaware.

See 1 DE Reg. 519 (11/1/97)

O. Secretary. "Secretary" means the Secretary of Labor for the State of Delaware.

P. Administrator. "Administrator" means the Administrator of the Office of Labor Law Enforcement for the Delaware Department of Labor, Division of Industrial Affairs.

Q. Department. "Department" means the Delaware Department of Labor.

See 1 DE Reg. 519 (11/1/97)

VI. Issuing Wage Determinations.

A. Publication of Preliminary Determination.

On or before February 15th of each year, the Department shall publish a "Preliminary Determination of Prevailing Wage Rates." In the event that February 15th falls on a Saturday, Sunday, or legal holiday, the Department shall issue the preliminary results on the next Department business day following February 15th.

B Appeals.

From February 15th to February 25th, the Administrator of the Office of Labor Law Enforcement will consider protests and inquiries relating to the preliminary results. An interested person seeking review or reconsideration of a wage determination must present a request in writing accompanied by a statement with any supporting data or other pertinent information.

Requests for reconsideration must be substantive and specific in order to be considered by the Department. For example: A request stating that, "the highway rates don't look right", would not be considered substantive or specific. However, a request stating that, "residential rates appear to have been erroneously included for carpenters in New Castle County Building Construction" would be considered substantive and specific.

From February 25th to March 1st, the Department will attempt to gather information necessary to resolve objections and requests for reconsideration. However, no appeals, objections, or requests will be considered if received by the Department after the February 25th deadline. The Department will respond in writing to all interested persons who submit a written request for review.

An appeal from the Administrator's decision must be made in writing and received by the Secretary of Labor within five calendar days from the date of the postmark on the Administrator's decision. The Secretary or his/her designee shall render a final decision in writing.

C. Issuance of Determination

On or before March 15th of each year, the Department shall publish its annual "Prevailing Wage Determination." The Determination shall be valid for a period of one year or until subsequent rates or amendments are issued by the Department.

Public agencies (covered by the provisions of 29 Del.C. §6960) are required to use the rates which are in effect on the date of the publication of specifications for a given project. "Date of publication" means the date on which the specifications are made available to interested persons (as specified in the published bid notice). In the event that a contract is not executed within one hundred and twenty (120) days from the earliest date the specifications were published, the rates in effect at the time of the execution of the contract shall be the applicable rates for the project.

See 1 DE Reg. 519 (11/1/97)

D. Post Determination Actions. Wage determinations will be modified only for the purpose of correcting errors. Determinations will not be modified to include survey data received after the close of the survey period.

1. Amendment to Correct Errors of Inadvertence.

Amendments may be issued to correct inadvertent errors in the written text of a wage determination. The sole purpose is to correct wage schedules so that the wage determination will accurately and fully reflect the actual rates prevailing in the locality at the time the wage determination-was issued. Such amendments (which may be issued at any time) are used to correct errors due to transposition of rates and other clerical mistakes made in processing the schedule; they are not used to correct errors in judgment. Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten (10) days prior to a bid opening may be disregarded.

2. Amendment to Correct Errors in Survey Data.

Amendments which affect the validity of a wage determination may be issued to correct errors in rates resulting from erroneous information submitted by survey participants.

When the Department of Labor is notified in writing that a survey participant has submitted erroneous data (with regard to wages, fringe benefits, characterization of project, classification of workers, or county in which the work was performed), the Department shall determine the validity of the data. Corrections, if warranted, shall be made in the form of amended determinations at the end of each calendar quarter (beginning with the date the wage determination was issued). Contracts which have already been awarded will not be affected by such amendments. Amendments issued more than ten (10) days prior to a bid opening must be used. Amendments issued less than ten days prior to a bid opening may be disregarded.

3. Incorrect Wage Determinations: Before Contract Award.

If notification is received from the Department of Labor any time prior to the contract award that the bid documents contain the wrong wage schedule, such schedule or wage determination shall no longer be valid and may not be used - without regard to whether the bid opening has occurred.

If the bid documents contain no wage schedule, it is the contractor's (or subcontractor's) responsibility to contact the Department of Labor for the correct wage schedule. Such requests must be in writing. Responses to such requests will be in writing. Any contractor or subcontractor found using an incorrect wage schedule will be required to pay the correct wages based upon the proper classification of work as determined by the Department of Labor.

4. Lack of Valid Wage Determination: After Contract Award. If a contract is awarded without a wage determination or awarded with an incorrect wage determination, the contractor is responsible for the payment of the appropriate prevailing wage rates as determined by the Department of Labor.

5. Additional Classifications. Any class of laborers or mechanics which is not listed in the applicable wage determination but which is to be employed under the contract is to be classified by the Department of Labor in accordance with the procedures set forth in Part III, Section C, of these regulations.

6. Determination of Wages for Classifications for Which No Rates Are Published. Whenever a public project requires the services of a laborer or mechanic for which no rate has been published, the Department shall be notified in writing and shall determine the worker classification (from among the ~~21~~ 24 classifications recognized by the Department of Labor) and the rate to be paid. The rate shall be determined as follows:

a. Using "Building Construction" rates as the baseline rate in each county, the Department of Labor will determine the relationship between the "Building Construction" rates and the rates of the type of construction for which the rate is sought. To determine the relationship, (which is to be expressed as a percentage), the Department will use only those rates which were determined by data received in the relevant survey.

b. The Department will compare only those classifications for which corresponding rates were determined.

c. The total of the corresponding rates will be determined for each type of construction. The Heavy or Highway total will be divided into the Building rate to find the percentage of the Heavy or Highway rate to the Building rate.

d. The Department of Labor will multiply the Building rate for the requested classification of worker by the percentage determined in "c" to establish the applicable prevailing wage rate.

Hypothetical example:

A plumber's rate is needed for a New Castle County project. The Department of Labor has not published a rate for this classification.

The Department of Labor will determine the relationship between New Castle County Highway rates and Building rates, comparing only corresponding rates which were actually determined by the relevant survey (rates carried forward from previous years due to lack of sufficient data are not to be used).

	N.C.C. Building	N.C.C. Highway
Bricklayers	$19.65	$12.29
Carpenters	23.37	21.69
Cement Finishers	23.55	15.52
Laborers	3.62	10.60
Power Equipment Operator	22.94	15.77
Truck Drivers	15.15	13.75
	$118.28	$89.62

$89.62 ÷ 118.28=75.77%

The plumber's rate for New Castle County Building is $26.54. $26.54 x 75.77% = $20.11

The plumber's rate for New Castle County Highway = $20. 11

The same method can be used between corresponding types of construction when the Building construction rates do not contain a rate for the requested classification of worker; i.e., Heavy construction rates in Sussex County can be compared with Heavy construction rates in New Castle."

PUBLIC SERVICE COMMISSION

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

IN THE MATTER OF THE ADOPTION OF RULES CONCERNING THE IMPLEMENTATION OF 72 DEL. LAWS CH. 402 (2000) GRANTING THE THE COMMISSION THE JURISDICTION TO GRANT AND REVOKE THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR PUBLIC UTILITY WATER UTILITIES (FILED NOVEMBER 21, 2000)	PSC REGULATION DOCKET NO. 51

ORDER NO. 5730

AND NOW, to-wit, this 5th day of June, A.D. 2001;

WHEREAS, pursuant to 72 Delaware Laws Ch. 402, 26 **Del.C.** §209(a), and 29 **Del.C.** §§ 10111 **et seq.**, the Public Service Commission ("the Commission") has undertaken to promulgate proposed Regulations Governing Water Utilities subject to the jurisdiction of the Commission; and

WHEREAS, the Commission issued Order No. 5646 on January 30, 2001, directing the Registrar of Regulations to publish proposed Regulations in the **Delaware Register** that were prepared by Staff after comments and discussion at a workshop on November 30, 2000; and

WHEREAS, public notice was provided in *The News Journal* and the *Delaware State News* newspapers inviting public comment on the proposed regulations, and G. Arthur Padmore was designated as the Hearing Examiner to conduct a public hearing on the proposed Regulations to make proposed findings and regulations; and

WHEREAS, Hearing Examiner Padmore conducted a duly noticed public hearing on March 28, 2001, and subsequently issued a report dated April 9, 2001, recommending that the Commission adopt a set of Regulations, as modified in light of the public comments and the public hearing; and

WHEREAS, the Commission issued Order No. 5709 on April 24, 2001, pursuant to 29 **Del.C.** § 10118(b)(1), adopting the Recommendations of the Hearing Examiner and the modified Regulations attached to his report, and directing the publication in the Delaware Register of the modified "Regulations Concerning Water Utilities Including the Public Service Commission's Jurisdiction to Grant and Revoke Certificates of Public Convenience and Necessity" in the form recommended by the Hearing Examiner; and

WHEREAS, the Commission also directed that public notice be published in *The News Journal* and *Delaware State News* newspapers soliciting written public comments regarding the modified Regulations; and

WHEREAS, the Commission has not received any additional public comments regarding the modified Regulations within 30 days after their publication in the **Delaware Register**; and

WHEREAS, the Commission held a public hearing on June 5, 2001 to consider final adoption of the Regulations as recommended by Hearing Examiner Padmore; now, therefore,

IT IS ORDERED THAT:

1. The Secretary of the Commission shall transmit to the Registrar of Regulations for publication in the Delaware Register on July 1, 2001, the proposed Regulations attached hereto as Exhibit "A." The Commission hereby adopts and approves the proposed Regulations, attached hereto as Exhibit "A," as the Regulations that will govern the Commission's jurisdiction to grant and revoke Certificates of Public Convenience and Necessity concerning water utilities subject to the Commission's jurisdiction. The proposed Regulations shall become effective July 10, 2001 (being the same Regulations that were approved and published pursuant to Order No. 5709).

2. The Commission retains jurisdiction in this matter, including the authority to make such further Orders as may be just or proper.

BY ORDER OF THE COMMISSION:
Robert J. McMahon, Chairman
Joshua M. Twilley, Vice Chairman
Arnetta McRae, Commissioner
Donald J. Puglisi, Commissioner
John R. McClelland, Commissioner

ATTEST:
Karen J. Nickerson, Secretary

EXHIBIT "A"

IN THE MATTER OF THE ADOPTION OF RULES CONCERNING THE IMPLEMENTATION OF 72 DEL. LAWS CH. 402 (2000) GRANTING THE THE COMMISSION THE JURISDICTION TO GRANT AND REVOKE THE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR PUBLIC UTILITY WATER UTILITIES (FILED NOVEMBER 21, 2000)	PSC REGULATION DOCKET NO. 51

REGULATIONS CONCERNING WATER UTILITIES INCLUDING THE PUBLIC SERVICE COMMISSION'S JURISDICTION TO GRANT AND REVOKE CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

10.101 Scope of Regulations.

These regulations are intended to govern certain practices and procedures before the Delaware Public Service Commission relating to water utilities.

10.102 Definitions.

As used in these regulations:

"Commission" means the Delaware Public Service Commission.

"CPCN" means a Certificate of Public Convenience and Necessity.

"DPH" means the Delaware Division of Public Health.

"DNREC" means the Delaware Department of Natural Resources and Environmental Control.

"Staff" means the Staff of the Delaware Public Service Commission.

"Secretary" means the Secretary of the Delaware Public Service Commission.

10.103 Application for Certificate of Public Convenience and Necessity.

(a) An application for a Certificate of Public Convenience and Necessity to begin the business of a water utility or to extend or expand the business or operations of

any existing water utility shall be made in writing and filed with the Commission. The application shall include all information and supporting documentation required by statute, the Rules of Practice and Procedure of the Commission, these regulations, and shall not be considered complete until all such information and supporting documentation has been filed with the Commission. At the time of filing, the application shall:

(1) Contain a statement explaining the reason(s) why the Commission should grant the CPCN, and citations to all statutory and regulatory authority upon which the application is based, or upon which the applicant relies to support the application;

(2) Clearly state the relief sought by the application;

(3) State the name, address, telephone number, and e-mail address (if any) of the person to be notified in the event the Staff determines there are deficiencies in the application;

(4) Contain the supporting documentation required by 26 **Del.C**. § 203C, including evidence that all the landowners of the proposed territory have been notified of the application;

(5) Include a complete list of county tax map parcel number(s) for the area covered by the application;

(6) Include (along with a complete list of tax map number(s)) corresponding names and addresses of property owners and a copy of all tax map(s) for the area;

(7) For any proposed extension of service, contain a certification by the applicant that the extension will satisfy the provisions of 26 **Del. C.** § 403C, including the following:

(i) The applicant is furnishing water to its present customers or subscribers in this State in such fashion that water pressure at every house supplied is at least 25 pounds at all times at the service connection;

(ii) The applicant shall furnish water to the house or separate location of each new customer or subscriber in this State at the pressure of at least 25 pounds at each such location or house at all times at the service connection while continuing also to supply each old customer or subscriber at the pressure of at least 25 pounds at each house at all times at the service connection;

(iii) The applicant is not subject to a finding by the appropriate federal or state regulatory authority that it has materially failed to comply with applicable safe drinking water or water quality standards; and

(iv) The applicant is not subject to any Order issued by the Commission finding that the company has materially failed to provide adequate or proper safe water services to existing customers; and

(8) For applications submitted under 26 **Del. C.** § 203C(e), include a statement indicating whether the applicant has determined if a majority of the landowners of the proposed territory to be served object to the issuance of a CPCN to the applicant, and the documentation relied upon to support the applicant's determination.

(b) If an application for a CPCN involves a water utility project or service that requires the review, approval or authorization of any other state or federal regulatory body, including DNREC, the State Fire Marshal or DPH, the application to the Commission shall so state and shall include the following:

(1) A statement of the current status of such application;

(2) If the application to the other regulatory body or bodies has already been filed, a copy of any permit, order, certificate, or other document issued by the regulatory body relating thereto; and

(3) If such an application or amendment thereof is filed with another state or federal regulatory body or a determination is made by any such regulatory body subsequent to the date of filing the CPCN application with the Commission, but prior to its determination, a copy of any permit, order, certificate or other document that has been issued relating thereto shall be filed with the Commission.

(c) An applicant for a CPCN – other than a municipality or other governmental subdivision – shall provide with the application (if not presently on file with the Commission) the following:

(1) A corporate history including dates of incorporation, subsequent acquisitions and/or mergers;

(2) A complete description of all relationships between the applicant and its parent, subsidiaries, and affiliates. Furnish a chart or charts which depict(s) the inter-company relationships;

(3) A map identifying all areas, including all towns, cities, counties, and other government subdivisions to which service is already provided;

(4) A statement identifying any significant element of the application which, to the applicant's knowledge, represents a departure from prior decisions of the Commission;

(5) Annual reports to stockholders for applicant, its subsidiaries, and its parent for the last two years;

(6) The applicant's audited financial statements, 10K's, and all proxy material for the last two years; and

(7) Any reports submitted by the applicant within the preceding twelve months to any state or federal authorities in any proceedings wherein an issue has been raised about the applicant's failure to comply with any statute, regulation, rule, or order related to the provision of safe, adequate and reliable water service, including the water quality of water provided to existing customers.

(d) A municipality or other governmental subdivision applying for a CPCN shall provide with the application (if not presently on file with the Commission) the statement and documents identified in subsections (c)(3), (4) and (7) hereof.

(e) After a completed application has been filed and during the course of the Staff investigation of an application, the Commission may require an applicant to furnish additional information specifically related to the statutory standards for Commission review and consideration of an application, including the provision of safe, adequate, and reliable water service.

(f) Supporting documentation not filed with the application must be made available for Staff inspection upon request.

10.104 Additional requirements for an application filed by a new water utility.

(a) If the applicant for a CPCN is a new water utility that has not previously been awarded a CPCN in Delaware, the application, in addition to meeting the requirements of section 10.103, shall include the following:

(1) Evidence that it possesses the financial, operational, and managerial capacity to comply with all state and federal safe drinking requirements and that it has, or will procure, adequate supplies of water to meet demand, even in drought conditions, by maintaining supply sufficient to meet existing and reasonably anticipated future peak daily and monthly demands;

(2) A certified copy of the applicant's certificate of incorporation;

(3) Details of plant as to type, capacity, cost, status of plant construction, construction schedule, and estimated number of customers to be served; and

(4) A map showing the location and size, in acres or square feet, of the proposed territory, and the composition, diameter, length, and location of pipes to be initially installed.

(b) If the applicant for a CPCN is a new water utility that is an unincorporated proprietorship, the applicant shall be subject to a rebuttal presumption that the applicant lacks the financial, operational, and managerial capacity to comply with the requirements for a CPCN.

10.105 Review of application; deficiencies in the application.

(a) The Staff shall review all CPCN applications for compliance with applicable statutes and these regulations. The Staff will, within twenty-one days after the date of filing, specifically identify any deficiencies in the application, and immediately request the Secretary to promptly notify the applicant of the alleged deficiencies. The applicant shall have thirty days from the date of the receipt of the notice from the Secretary of the deficiencies in the application to file a corrected or supplemental application. The Commission may, in its discretion, extend the period to cure deficiencies in the application for an additional thirty days.

(b) Only upon the applicant's filing of a corrected or supplemental application correcting the deficiencies shall such application be deemed completed and filed with the Commission for purposes of the time limits for action by the Commission under 26 **Del. C.** §203C(h). In the event the alleged deficiencies are not cured within the time provided hereunder, Staff may move the Commission to reject the utility's application for non-compliance with these regulations.

(c) Nothing in this regulation shall prevent an applicant from filing an application in draft form for Staff's informal review and comment without prejudice, such informal review and comment not to be unreasonably withheld by Staff; nor shall this regulation affect or delay the filing date of applications that comply with applicable statutes and these regulations, or whose non-compliance is deemed minor or immaterial by the Commission or its Staff.

10.106 Filing of application with DNREC, the State Fire Marshal, and DPH; coordination and cooperation.

An applicant for a CPCN shall file a copy of the application and the supporting documentation required by section 10.103(a)(5) and (6) with DNREC, the State Fire Marshal, and DPH within three days of filing the same with the Commission. The Staff shall send written requests to DNREC, the State Fire Marshal, and DPH soliciting immediate written comment as to whether they are aware of any matters indicating that the applicant has been unwilling or unable to provide safe, adequate and reliable drinking water service to existing customers. The Staff shall coordinate and cooperate with DNREC, the State Fire Marshal, and DPH during the process of reviewing an application for a CPCN. The Staff shall also coordinate and cooperate with other interested state, local, and federal authorities.

10.107 Provision of notice to all landowners of the proposed territory.

(a) Pursuant to the provisions of 26 **Del.C.** §203C(d)(1) and (e)(1), prior to filing the application with the Commission, the applicant shall provide written notice to all landowners of the proposed territory of the anticipated filing of the application.

(b) The written notice required by 26 **Del.C.** 203C(d)(1) and (e)(1) shall be sent to all landowners of the proposed territory not more than sixty days and not less than thirty days prior to the filing of the application.

10.108 Landowners who object, opt-out, and/or request a public hearing; time limits; extension of time.

(a) In proceedings involving an application submitted under 26 **Del.C.** §203C(e), any landowner whose property, or any part thereof, is located within the proposed territory to be served shall be permitted to (i) object to the issuance of the CPCN; (ii) opt-out of inclusion in the territory; and/or

(iii) request a public hearing. The applicant shall inform the Commission of the name and address of all landowners who notify the applicant of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall file with the Commission any written notices received from such landowners. The Commission shall maintain records identifying all landowners who have provided written notice of their objection to the issuance of the CPCN, their intention to opt-out of inclusion in the territory, and/or request a public hearing, and shall make such records available to the applicant.

(b) A landowner shall notify the Commission, in writing, if the landowner (i) objects to the issuance of the CPCN; (ii) intends to opt-out of inclusion in the territory; and/or (iii) requests a public hearing. The notice to the Commission from the landowner must be filed with the Commission within (i) sixty days from the date of the landowner's receipt of a written notice from the water utility that complies with applicable statutes and these regulations, of the landowner's inclusion in the service territory; or (ii) thirty days of the filing of the completed application, whichever period is greater. The Commission may, in the exercise of its discretion, extend the time to object, opt-out, and/or request a public hearing even though the period in which to do so has expired. The Commission shall accept for filing written notices from landowners that were sent to the applicant and transmitted by the applicant to the Commission.

10.109 Notification to all landowners of the proposed territory of their rights to object, opt-out, and/or request a public hearing.

(a) Pursuant to 26 **Del.C.** §203C(e), and for the purposes of notification to all landowners of the proposed territory encompassed by the CPCN, the notice sent to the landowners of the proposed territory must include, at a minimum, the following statement:

"(1) Pursuant to Title 26, §203C(e) of the Delaware Code, an application for a Certificate of Public Convenience and Necessity (CPCN) will be submitted to the Delaware Public Service Commission on or about {enter date of intended submission}. Your property has been included within an area {enter name of your organization} intends to serve with public water and we are required to inform you of certain information. The area to be served is {provide a shorthand description of the service area}. If you agree to the inclusion of your property in the proposed service area, no action on your part is required.

(2) Pursuant to current law, you may file an objection to receiving water service from {enter name of your organization}. Under Delaware law, the Public Service Commission cannot grant a CPCN to {enter name of your organization} for the proposed service area, including your property, if a majority of the landowners in the proposed service area object to the issuance of the CPCN. If you object to receiving water service from {enter the name of your organization}, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(3) Pursuant to current law, you may also elect to opt-out of inclusion in the proposed service area. The term "opt-out" means that you decide that you do not want to receive water service from {enter name of your organization}, even if a majority of the landowners in the proposed service area do elect to receive water service from {enter name of your organization}. If you decide that you do not want to receive water service from {enter name of your organization} and instead wish to opt-out, you must notify the Commission, in writing, within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(4) You may also request a public hearing on this matter. A request for a public hearing must be made in writing to the Commission within sixty days of your receipt of this notice or within thirty days of the filing of the completed application for a CPCN, whichever is greater.

(5) The written notice of your decision to object to the issuance of the CPCN, to opt-out of receiving water service from {enter name of your organization}, and/or your written request for a public hearing, shall be sent to the Secretary of the Delaware Public Service Commission at the following address:

Secretary
Delaware Public Service Commission
{insert the address of the Secretary of the Delaware Public Service Commission}

(6) Any written notice you send to the Commission must include the description of the service area referred to in paragraph (1) above and the name of the applicant so the Commission will be able to identify the CPCN application to which your notice is related.

(7) Questions regarding objections, opt-outs, and hearings may be directed to: {enter the name or title, and the address and telephone number of the

Commission's contact person(s)}."

(b) If a landowner sends a written notice directly to the applicant, the applicant shall file the notice with the Commission.

10.110 Suspension or revocation of CPCN for good cause.

(a) Pursuant to the provisions of 26 **Del.C.** § 203C(k) and (l), the Commission may suspend or revoke a CPCN, or a portion thereof, for good cause. Good cause shall consist of:

(1) A finding by the Commission of material non-compliance by the holder of a CPCN with any provisions of Titles 7, 16, or 26 of the Delaware Code dealing with obtaining water or providing water and water services to customers, or any order or rule of the Commission relating to the same; and

(2) A finding by he Commission that, to the extent practicable, service to customers will remain uninterrupted under an alternative water utility or a designated third party capable of providing adequate water service, including a trustee or receiver appointed by the Delaware Court of Chancery; and

(3) Either (i) a finding by the Commission that there are certain methods to mitigate any financial consequences to customers served by the utility subject to suspension or revocation and the adoption of a plan to implement those methods; or (ii) a finding by the Commission that there are no practicable methods to mitigate the financial consequences to customers.

(b) In addition to the factors required by section 10.110(a)(1), (2) and (3), the Commission may consider one or more of the following factors in determining whether to suspend or revoke a CPCN:

(1) Fraud, dishonesty, misrepresentation, self-dealing, managerial dereliction, or gross mismanagement on the part of the water utility; or

(2) Criminal conduct on the part of the water utility; or

(3) Actual, threatened or impending insolvency of the water utility; or

(4) Persistent, serious, substantial violations of statutes or regulations governing the water utility in addition to any finding of non-compliance required by paragraph (a)(1) above; or

(5) Failure or inability on the part of the water utility to comply with an order of any other state or federal regulatory body after the water utility has been notified of its non-compliance and given an opportunity to achieve compliance; or

(6) Such other factors as the Commission deems relevant to the determination to suspend or revoke a CPCN.

10.111 Proceedings to suspend or revoke a CPCN for good cause.

(a) Proceedings before the Commission to suspend or revoke a CPCN for good cause shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III.

(b) Unless the Commission finds, pursuant to proceedings conducted in accordance with subsection (a) above, that (i) the conduct of a water utility poses an imminent threat to the health and safety of its customers; or (ii) a water utility is unable to provide safe, adequate, and reliable water service, the Commission will not suspend or revoke a CPCN for good cause without first affording the water utility a reasonable opportunity to correct the conditions that are alleged to constitute the grounds for the suspension or revocation of the CPCN.

10.112 Compliance with 29 Del. C. Ch. 101, Subchapter III.

Proceedings before the Commission involving Certificates of Public Convenience and Necessity for water utilities shall be conducted in accordance with the procedures set forth in 29 **Del.C.** Ch. 101, Subchapter III, including any proceedings related to any findings under 26 Del. C. § 203C(f) that an applicant is unwilling or unable to provide safe, adequate, and reliable water service to existing customers, or is currently subject to such a Commission finding.

10.113 Waiver of requirements of sections 10.103 and 10.104.

The Commission may, in the exercise of its discretion, waive any of the requirements of sections 10.103 and 10.104 above.

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Agriculture	Mr. Michael Scuse, Secretary	Pleasure of the Governor
Board of Chiropractic	Dr. Michael P. Kelman	05/16/04
Board of Medical Practice	Dr. Karl Winston McIntosh	05/25/04
Deferred Compensation Council	Mr. Oliver Gumbs	05/17/04
	Mr. Donald Ward	05/17/04
Delaware Advisory Council on Cancer Incidence and Mortality	Mr. William Bowser, Esq.	Pleasure of the Governor
	Mr. Matthew Denn, Esq.	Pleasure of the Governor
	The Honorable Nicholas DiPasquale	Pleasure of the Governor
	Dr. Stephen Grubbs	Pleasure of the Governor
	Dr. Bethany Hall-Long	Pleasure of the Governor
	Dr. Patricia Hoge	Pleasure of the Governor
	The Honorable David McBride	Pleasure of the Governor
	Dr. Rita Meek	Pleasure of the Governor
	Dr. Julio Navarro	Pleasure of the Governor
	The Honorable John Schroeder	Pleasure of the Governor
	The Honorable Liane Sorenson	Pleasure of the Governor
	Dr. Ulder Tillman	Pleasure of the Governor
	The Honorable Stephanie Ulbrich	Pleasure of the Governor
Delaware Alcohol Beverage Control Appeals Commission	The Honorable William C. Torbert	Pleasure of the Governor
Delaware Arts Council	Mrs.Theda Blackwelder	05/14/04
	Mrs. Thomas Graves	05/14/04
	Mr. C. Lawler Rogers	05/10/04
	Mrs. Susan Shipley	05/10/04
Delaware Bicycle Council	Mr. Thomas M. Pleasanton	05/10/04
	Mrs. Amy Wilburn	05/10/04
Delaware Commission on Veteran Affairs	Mrs. Ruth B. Harden	09/23/03

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Greenways and Trails Council	Mr. Paul Layton	05/17/04
	Mr. Paul Morrill, Chairperson	11/18/01
Delaware Nursing Home Residents Quality Assurance Commission	Mr. Thomas P. McGonigle, Chairperson	Pleasure of the Governor
Delaware River and Bay Authority	Ms. Verna Hensley	07/01/04
	Mr. Samuel Lathem	07/05/05
Delaware Solid Waste Authority	Mr. Richard V. Pryor, Chairperson	Pleasure of the Governor
Delaware Technology Park	Mr. J. Michael Bowman, Chairperson	Pleasure of the Governor
Environmental Appeals Board	Dr. Stanley Tocker	06/25/03
Family Court in and for New Castle County	Mr. Robert B. Coonin, Associate Judge	05/16/13
Foster Care Review Board	Ms. Barbara Blair	05/25/04
	Ms. Stacia Girley	05/25/04
	Ms. Linda M. Hall	05/25/04
	Ms. Joan C. Herman	05/25/04
	Ms. Karla B. Jensen	05/25/04
	Ms. Carolyn M. Karney	05/25/04
	Mrs. Stephanie Liguori	05/25/04
	Ms. Joanne Littlefield	05/25/04
	Ms. Pearl J. Maull	05/25/04
	Ms. Judith F. Melman	05/25/04
	Ms. Bonita E. Porter	05/25/04
	Ms. Bettie Ralph	05/25/04
	Ms. Alice R. Rasmussen	05/25/04
	Ms. Robin Ryan	05/25/04
	Ms. Gertrude Jean Shipp	05/25/04
Greater Wilmington Convention and Visitors Bureau	Mr. Vincent DiFonzo	05/31/04
	Mr. Peter Morrow	05/31/04
	Mr. David Tuttleman	06/30/03
Newark Housing Authority	Mr. Thomas D. Runnels	05/25/04
Parks and Recreation Council	Mr. Ronald Breeding	05/16/04
	Mr. Charles Clark	05/18/04
	Mr. Ronald Mears	05/18/04
	Mrs. Leah Roedel	05/17/04
Public Advocate	Mr. G. Arthur Padmore	Pleasure of the Governor

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Public Integrity Commission	Ms. Mary Jane Willis	04/02/04
Recycling Advisory Council	Mr. Paul R. Bickhart	04/26/04
State Board of Accountancy	Mr. Brian Dolan	08/03/03
State Board of Education	Mr. Robert Gilsdorf Mrs. Valarie Pepper	04/21/03 06/15/05
Superior Court	Mrs. Jan R. Jurden, Associate Judge	Twelve Years to begin from date of swearing in
Sussex County Vocational Technical School Board of Education	Mr. Charles Mitchell	07/01/08
Tax Appeal Board	Mr. Donald Gregory	07/08/01
Violent Crimes Compensation Board	Mrs. Stephanie Liguori	04/12/04
Wastewater Facilities Advisory Council	Mrs. Peggy J. Baunchalk	04/12/04

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF ACCOUNTANCY

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 105(1) and 105(5), the Delaware Board of Accountancy proposes to revise its Rules and Regulations. The proposed amendments implement and clarify the requirements for firm permits to practice by revising Section 9.0 in its entirety, including proposed rules to implement 24 **Del.C.** 112 regarding professional responsibility standards. Other proposed changes include clarifying the definition of "firm," and deleting language from the rules and regulations relating to the conduct of hearings.

A public hearing will be held on the proposed Rules and Regulations on Wednesday, August 22, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Mary Paskey at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Mary Paskey at the above address by calling (302) 739-4522, extension 207.

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

BOARD OF MASSAGE & BODYWORK

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del. C.** Sections 5306(1) and 5312(c), the Delaware Board of Massage and Bodywork proposes to revise its Rules and Regulations. The proposed revisions increase the period of time within which a licensed massage and bodywork therapist or a certified massage technician may still renew such license or certificate, notwithstanding the fact that such licensee or certificate holder has failed to renew on or before the renewal date. The proposed increase in the period of time is from ninety (90) days to one (1) year. In addition, the proposed revisions clarify that prior to renewal, the licensee or certificate holder will be required to demonstrate compliance with the continuing education requirements.

A public hearing will be held on the proposed Rules and Regulations on Thursday, August 2, 2001 at 1:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

DEPARTMENT OF AGRICULTURE

THOROUGHBRED RACING COMMISSION

The Commission proposes this amendment pursuant to 3 **Del.C.** §10103(c) and 29 **Del.C.** §10115. The proposed amendment to Rule 13.01 would permit a horse to be claimed by any owner who is good standing and in possession of a valid Delaware license.

The Commission will accept written comments on the proposed rule amendment from July 1, 2001 until July 30, 2001. Written comments should be sent to the Delaware Thoroughbred Racing Commission, 2320 S. DuPont Highway, Dover, DE 19901, att: John Wayne. Copies of the Commission's existing rules and the proposed rule can be obtained by contacting the Commission office at 302-698-4600.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, July 20, 2001 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

OFFICE OF EMERGENCY MEDICAL SERVICES

Notice Of Public Hearing

The Office of Emergency Medical Services, Division of Public Health of the Department of Health and Social

Services, will hold a public hearing to discuss proposed changes to the Trauma System Rules & Regulations.

Delaware's Trauma Center Standards are modeled after the American College of Surgeons' (ACS) Trauma Center Standards, which have been revised. The proposed changes allow Delaware's regulations to remain consistent with the current ACS Trauma Center Standards and avoid the need for frequent future revisions. The state Trauma System Committee developed this revised format.

One new summary page will replace the seventeen existing pages of Delaware Trauma Center Standards. In the existing Delaware regulations, the entire American College of Surgeons' document was typed into the regulations. The revised format references the ACS Trauma Center Standards and specifies only the Delaware changes. Methods of accessing the full ACS document are included in the revision for those wishing to see a copy or purchase it from the American College of Surgeons.

This public hearing will be held July 24, 2001 at 10:00 AM in the Conference Room at the Delaware Office of Emergency Medical Services, Blue Hen Corporate Center, Suite 4-H, 655 S. Bay Road, Dover, Delaware

Copies of the proposed regulation are available for review by calling:

Office of Emergency Medical Services
Blue Hen Corporate Center, Suite 4-H
655 Bay Road,
Dover, Delaware 19901
Telephone: (302) 739-4710

Anyone wishing to present his or her oral comments at this hearing should contact Debbie Vincent at (302) 739-4710 by close of business July 20, 2001. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business July 31, 2001 to:

David Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19901

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

TITLE OF THE REGULATIONS:

Amendment to Regulation 31.

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Regulation 31 (Low Enhanced Inspection and Maintenance Program) as follows:

a. Put forth new testing requirements for model year 1996 and newer light duty vehicles that replaces the tail pipe test and pressure test with the on-board diagnostic (OBD) systems check. The on-board diagnostic system will be checked by the inspection lane technician by plugging into the vehicle's data link connector (DLC). This will indicate if the vehicle's emission will provide the customer with a printout of the "diagnostic trouble codes" (DTC) that will aid in the repair of the vehicle.

A failure of the OBD systems check will require the owner to repair his or her vehicle if one of the following conditions exists with the vehicle's "malfunction indicator light" (MIL) or the DLC:

The MIL does not light when the ignition key is in the "on" position

The MIL is lit for any DTC while the engine is running.

The DLC is missing, tampered or inoperable monitors are ready to detect problems with the emission control systems. The vehicle's ignition will be turned on and the vehicle's engine turned on briefly. If the vehicle fails the check according to the criteria below the inspection lane technician

b. To revise the technical procedure for the evaporative system integrity (pressure) test.

NOTICE OF PUBLIC COMMENT:

Public Hearing is on July 25, 2001, 6 pm Richardson and Robbins Auditorium, 89 Kings Highway, Dover

DEPARTMENT OF STATE

OFFICE OF THE STATE BANKING COMMISSIONER

Public Hearing:

A public hearing on the proposed new and amended regulations will be held at the Office of the State Bank Commissioner, 555 E. Loockerman Street, Suite 210, Dover, Delaware 19901, on Wednesday, August 1, 2001 at 10:00 a.m.

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

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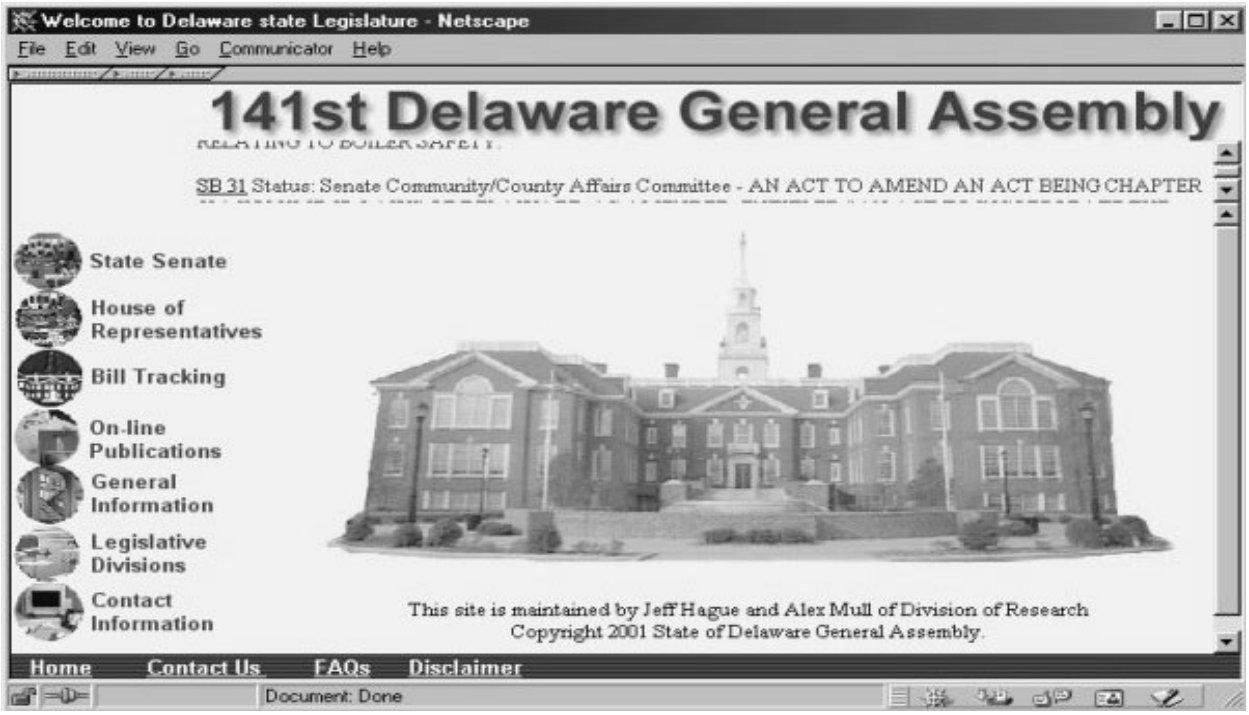

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