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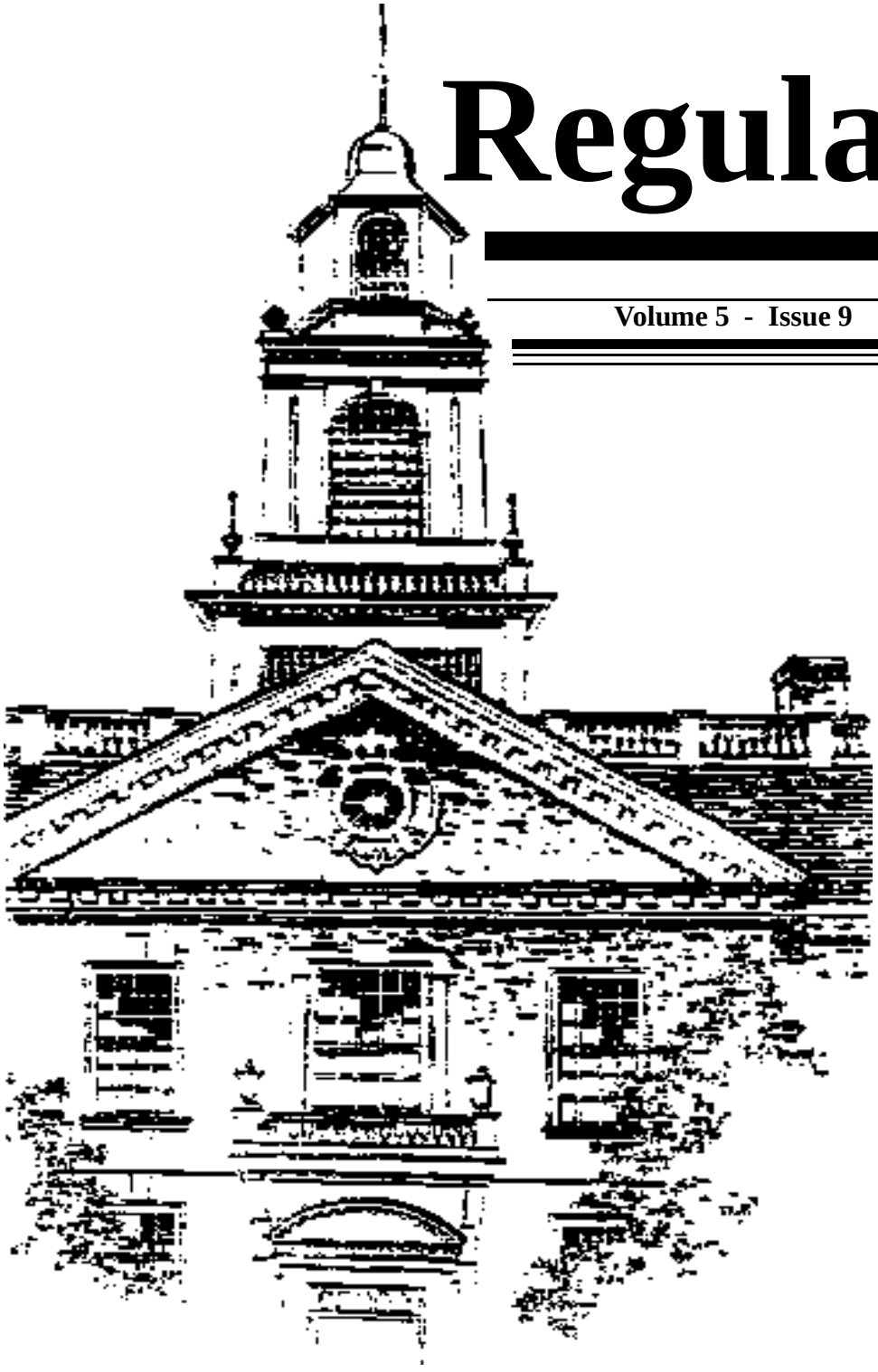

IN THIS ISSUE:

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 February 15, 2002.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

5 **DE Reg.** 1337 - 1339 (01/1/02)

Refers to Volume 5, pages 1337 - 1339 of the Delaware Register issued on January 1, 2002.

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CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is 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
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.

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ERRATA

DELAWARE STATE FIRE PREVENTION COMMISSION

PROPOSED

DEPARTMENT OF ADMINISTRATIVE SERVICES
PUBLIC SERVICE COMMISSION

DEPARTMENT OF EDUCATION

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH

DIVISION OF SOCIAL SERVICES

DEPARTMENT OF JUSTICE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
Division of Air & Waste Management

Division of Fish & Wildlife

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE

ADMINISTRATIVE OFFICE OF THE COURTS
VIOLENT CRIMES COMPENSATION BOARD

FINAL

DEPARTMENT OF ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION

DEPARTMENT OF AGRICULTURE
HARNESS RACING COMMISSION

THOROUGHBRED RACING COMMISSION

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH

OFFICE OF EMERGENCY MEDICAL SERVICES

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

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

DELAWARE STATE FIRE PREVENTION COMMISSION

Statutory Authority: 16 Delaware Code, Section 6712(g) (16 **Del.C.** §6712(g))

*** PLEASE NOTE: THE FOLLOWING PROPOSED REGULATION WAS NOT PUBLISHED WHEN IT WAS FINALIZED. IT IS THEREFORE BEING REPRODUCED AT THIS TIME.**

Summary of Evidence

A properly noticed public hearing was scheduled on November 20, 2001 at 9:00 a.m. and 1:00 p.m. pursuant to 16 **Del.C.** 6712(g) and **Del.C.** ch 101 in the Commission's Chamber at the Delaware State Fire School at the Delaware Fire Service Center, 1461 Chestnut Grove Road, Dover, Delaware to receive public comment on the proposed Criminal History Records Check Policy ("Policy"). The attendance sheets and transcript of public comment are attached to this order.

Testimony was received from Joseph L. Murabito, Director of the State Fire School, who testified on behalf of the Policy.

Findings of Fact

1. The Policy is a response to the amendments to 16 **Del.C.** Ch 67 enacting the requirement of a criminal history record check for certification as an ambulance attendant and emergency medical technicians.

The Law

The State Fire Prevention Commission's rulemaking authority is provided by 16 **Del.C.** §6712(g) that states:

> The Commission shall adopt regulations to implement this section setting forth the qualifications required for the certification of ambulance attendants and emergency medical technicians

Decision

The Commission hereby adopts the Policy as proposed. IT IS SO ORDERED this 8th day of December, 2001.

State Fire Prevention Commission

Kenneth H. McMahon, Chairman
W. (Bill) Betts, Jr., Vice Chairman
Robert Palmer
Carlton E. Carey, Sr.
Frances J. Dougherty
Daniel W. McGhee
James L. Cubbage, Jr.

Criminal History Records Check Policy

I. Authorized Governmental Designee for the Commission

A. The Delaware State Fire Prevention Commission authorizes the Director of the Delaware State Fire School to be its governmental designee to acquire and review State and Federal criminal history records submitted by the State Bureau of Identification for an applicant applying to become an Ambulance Attendant or a Delaware Emergency Medical Technician and to interview the applicant, if necessary.

II. Evaluation Procedure for Background Checks

A. The Director of the Fire School shall evaluate the criminal history records checks using the criteria established in 16 Del. C. § 6712(b). All criminal history records will be forwarded by the State Bureau of Identification to the Director of the Delaware State Fire School.

B. Should the Director of the Delaware State Fire School as a result of the criminal history records check find cause to recommend to the Commission that it deny the application of the person seeking certification as an Ambulance Attendant or as an Emergency Medical Technician, the Director shall notify the Commission of this decision.

C. The Commission shall advise the applicant that it intends to deny the application and state the reason therefor. The Commission will also advise the applicant of the right to review all information reviewed by the Director and the right to appeal the Commission's decision by requesting a hearing before the Commission.

III. Appeal Process for Denial of Certification or Decertification because of Criminal Conviction

A. Any Delaware EMT-B applicant or certificate holder notified by the Commission that the Commission intends to deny the application or decertify the certificate holder because of criminal history records check information may appeal the denial to the State Fire Prevention Commission. The process is:

1. Within 10 days after the postmark on the notification of the intent to deny certification or decertify a certificate holder, the applicant shall submit a written request for a hearing to the State Fire Prevention Commission stating the reason(s) supporting the appeal.

2. Notice of the hearing shall be given at least 20 days before the day of the hearing and comply with the provisions of 29 Del. C. § 10122.

3. he grievance hearing before the State Fire Prevention Commission will be conducted in accordance

with the Delaware Administrative Procedures Act 29 Del. C. ch 101.

4. The hearing will be closed to the public unless the applicant requests an open hearing. After the hearing, the Commission will inform the applicant of its decision.

IV. Requirements for Certification

A. Persons seeking certification as an Ambulance Attendant or as an Emergency Medical Technician must be eighteen (18) years of age at the time of application.

1. Individuals entering an EMT-B course must be eighteen (18) years of age at the start of the course.

B. An individual applying for certification must meet the requirement of Part X, Section V, Eligibility of Certification of the State Fire Prevention Commission Addendum to the Ambulance Service Regulations, BLS Ambulance Provider/First Responder.

C. Persons seeking certification must meet the criminal history record check as mandated in 16 Del C. § 6712(b), effective July 12, 2001 and follow the procedures outlined in this policy.

V. Administrative Policy Pertaining to Background Checks

A. All training announcements for EMT-B courses will include the statement "Criminal History Records checks will be required on or before the first night of class".

B. All Chiefs of Departments, Presidents or Ambulance Captains of volunteer rescue or ambulance squads or Operating Officers of private corporations which have students pre-registered for the class will be sent a notice to inform the student that a criminal history records check will be done on the first night of class and fingerprinting will be required.

C. Any student not pre-registered for the class will not be accepted as a walk-in.

D. All EMT-B students will sign a release provided by the State Bureau of Identification authorizing the criminal history records check. Any student failing to sign the designated form will not be allowed to participate in the course.

E. All students of new courses who are members of a volunteer fire, rescue or ambulance organization will sign the authorization of payment allowing the State Fire Prevention Commission to reimburse the State Bureau of Identification on their behalf for the cost of the criminal history records check.

F. Students who are members of a private ambulance service are required to pay the course tuition prior to the first night of class. The tuition is non-refundable unless the student drops out prior to the first night of class. The tuition includes the cost of the criminal history records check which will be paid to the State Bureau of Identification on the student's behalf by the State Fire School.

G. Any volunteer fire, rescue or ambulance company which registering a student who is denied certification pursuant to the provision of 16 Del. C. § 6712(b), shall be responsible to reimburse the Commission for the cost of the criminal history records check.

H. Any student accepted into the course who does not complete same will be required to reimburse the commission the cost of the criminal history records check and course textbook.

VI. Condition and Duration of Certification/De-certification

A. The State Fire Prevention Commission shall issue initial certification as an Ambulance Attendant and Delaware Emergency Medical Technician – Basic as prescribed in Part X, Section VI, Certification, of the State Fire Prevention Commission Regulations provided that:

1. The applicant passes the mandated criminal history record check.

2. Obtain all necessary immunizations.

3. Meet the course attendance requirement policy as prescribed by the Delaware State Fire School, if applicable.

4. Pass the National Registry of Emergency Medical Technician's Examination.

B. De-certification

1. The State Fire Prevention Commission shall decertify an Ambulance Attendant or Delaware EMT-B if:

a. The individual does not meet the re-certification requirements established in the State Fire Prevention Commission Regulation, Part X, section IX. Or

b. The individual is convicted of an offense as specified in 16 Del. C. § 6712(b) while currently certified and the procedures in section VII of this policy are followed.

VII. Procedure for De-certification for Criminal Offense

A. The State Fire Prevention Commission may decertify any currently certified Ambulance Attendant or EMT when it has reason to believe that the person has been convicted of a crime within the scope of §6712 of Title 16.

B. Upon receiving a written notice that an Ambulance Attendant or EMT was convicted of a crime within the provisions of §6712, Title 16 the Commission shall:

1. Immediately suspend the individual's certification pending an investigation into the allegations.

2. Notify the individual in writing of the allegations and suspensions and allow the certificate holder an informal opportunity to contest the allegations of a conviction.

3. Require the individual to obtain a current background check at their expense.

a. Background check information will be reviewed by the Director of the State Fire School, who will make determination if cause for de-certification exists. The

Director will notify the Commission of the findings.

4. Based on the information provided by the Director the Commission will either inform the certificate holder of the intent to de-certify the individual or lift the individual's suspension.

C. The individuals may appeal the de-certification using the procedure under section III, Appeal Process specified in this Policy.

VIII. Reciprocity Applicants for Certification as Ambulance Attendant or EMT

A. Applicants applying for reciprocity for Ambulance Attendant and Delaware EMT-B from another state shall meet the requirements of Part X, Section XII of the Delaware State Fire Prevention Commission Regulations

B. Applicants applying for reciprocity from another state must comply with the background check requirements as specified in 16 Del. C. § 6712.

IX. Reciprocity Applicants – Criminal History Records Check Procedures

A. Applicants seeking reciprocity to become Delaware Ambulance Attendant or EMT's must submit to a criminal history records check prior to applying for reciprocity certification.

1. Applicants will go to a Delaware State Police Troop and apply for a State and Federal criminal history records check. All reciprocity applicants will pay at the time of request. The criminal history records check must be done within 30 days of the reciprocity request.

2. Applicant will authorize the release of the criminal history records check information directly to the Director of the Delaware State Fire School.

3. Applicant will notify the Delaware State Fire School on the prescribed form they are seeking reciprocity and have applied for a criminal history records check.

4. Upon receipt by the Delaware State Fire School and evaluation of the criminal history records check the individual will be notified by the Fire School as to how to proceed with required testing and certification procedures.

5. Should the applicant be denied reciprocity because of criminal history records check information they will be advised of the appeal process in section III of this policy.

X. Funding of Reciprocity Background Checks

A. All applicants will pay for the criminal history records check at the time of their request.

1. It is the responsibility of the private providers, private individuals or City of Wilmington to pay all costs – they are not eligible for reimbursement.

2. Upon successful completion of the reciprocity process the State Fire Prevention Commission will reimburse the individual or the individual's volunteer fire, rescue or ambulance organization for the cost of the criminal history records check.

XI. Reciprocity for University of Delaware Students

A. The Delaware State Fire Prevention Commission will waive the criminal history records check requirements for all University of Delaware Students applying for certification as an Ambulance Attendant or as an Emergency Medical Technician.

1. The University Police Department will provide the Director of the Delaware State Fire School with a written document listing all eligible students and a statement that they have passed an internal background check at least equal to the requirement of 16 Del. C. § 6712.

XII. Confidentiality of Background Check Information

A. Information obtained pursuant to the background check is confidential and except as provided in Section C below, shall not be released from the Fire School under any circumstances to anyone.

B. All background check information that is reviewed by the Director of the Delaware State Fire School shall be retained in a locked file cabinet in the custody of the Director.

C. When a denial for certification is made, the information will be turned over to the State Fire Prevention Commission where it will be secured for at least 60 days or until the appeal process is completed.

1. If an appeal is not filed, at the end of 60 days, the information is to be returned to the Director.

D. Per 16 Del. C. § 6712 the individual may meet with the Director and after providing proof of identification including a photo identification, review their information. Copies will not be provided to anyone.

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

PUBLIC SERVICE COMMISSION

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

ORDER NO. 5868

This 29th day of January, 2002, the Commission determines and Orders the following:

1. By this Order, the Commission proposes several revisions and amendments to its 1997 "Regulations Governing Payphone Service Providers in Delaware," See Findings, Opinion & Order No. 4651 (Nov. 18, 1997).[1] The proposed changes focus on two areas. First, one revision codifies a prior decision by the Commission to allow payphone service providers (and now operator services providers) to orally disclose to the payphone consumer the price for obtaining directory assistance from the payphone's directory assistance provider. This oral disclosure option may be used in lieu of posting such price on, or near, the payphone instrument. Second, other amendments expand the scope of the Payphone Regulations to encompass operator services and Operator Services Providers ("OSPs") and require such OSPs to afford the payphone consumer the opportunity to obtain a real-time oral rate quote for a non-coin intrastate call made utilizing the assistance of the OSP. The goal of these OSP amendments is to have OSPs observe the same regulations in the context of interstate calls made from payphones that now govern such OSPs in their handling of interstate calls made from the same payphones. In addition to the above two areas, two new provisions will require payphone service providers to have procedures in place to make prompt refunds to consumers and to also promptly replace, or repair, damaged or inoperable payphones. Fourth, another revision makes minor changes to two other provisions to reflect recent changes in the federal regime for certifying "terminal equipment" (such as payphone) that can be connected to the public-switched network. Finally, the proposed revisions make changes in style, grammar, and format to several other sections of the present Payphone Regulations and delete one now-lapsed "transition" provision.

1. In this Order, these 1997 regulations will be referred to as the "Payphone Regulations."

I. Background

2. Until the 1980s, payphones and payphone service to the public was the almost exclusive domain of the local exchange carrier ("LEC"). That changed when, in the early 1980s, computer technology led to "smart payphones" and the Federal Communications Commission ("FCC") allowed such "instrument-controlled" payphones to be interconnected with the LEC's telephone network. This resulted in the emergence of independent payphone providers ("IPP's") who began competing with the LEC (which generally used central office controlled, payphone instruments) for placing payphones in the best remunerative locations.

3. In light of this change, this Commission adopted its COCOT Rules to govern IPPs providing payphone service to

the public in Delaware.[1] These COCOT Rules applied only to the services provided by IPPs and required separate registration of each new network-attached payphone. At the same time, the Commission continued to exercise regulatory control over the payphone services offered by the LEC as part of its general supervision of that utility.

4. In 1996, Congress directed the FCC to craft, and implement, rules which would bring regulatory and competitive parity to the payphone services offered by the IPPs and the LECs. See 47 U.S.C. § 276. As part of its implementing rules, the FCC "deregulated" the coin charge for local calls and directory assistance ("DA") from a payphone (whether IPP or LEC-owned), finding that such charges should be determined by the payphone service provider, acting in response to competitive market forces and released from rate regulation by state utility commissions.[2]

5. In response to these new federal directives, the Commission transformed its COCOT Rules into the Payphone Regulations. These new regulations not only adopted the deregulation of coin charges for local calls, but also applied uniform certification and operational rules to all payphone providers and their services, whether the provider be an IPP, the incumbent LEC, or some other telecommunications carrier.

II. The Proposed Amendments

6. The Staff has now proposed several revisions and amendments to the 1997 Payphone Regulations. As noted above, in the main, the proposed changes: (a) allow the price for directory assistance provided by the payphone to be disclosed orally to the payphone consumer, in lieu of posting such price on the payphone and (b) impose a requirement that payphone consumers be afforded the opportunity to obtain a real-time oral quote for the total cost of an intrastate call made utilizing an OSP, prior to the completion of such call.

A. Disclosure of Directory Assistance Charges by Payphone Service Provider

7. Under section 4(f)(9) of the current Payphone Regulations, the payphone service provider ("PSP") must post, on or near the payphone, the charge for obtaining directory assistance from the payphone service provider.[3] In PSC Order No. 5444 (May 23, 2000), the Commission granted Verizon Delaware Inc. ("Verizon") a waiver from this posting requirement. In that Order, the Commission granted Verizon the option to provide such DA price information orally to the payphone consumer as part of the call made to obtain directory assistance. By now revising sections 4(f) (9) and 6(b) of the new Regulations, the Commission proposes to extend this option to all payphone providers, thus allowing the payphone service provider to disclose its DA charge either by a written posting or by an oral disclosure (with the opportunity to terminate) made prior to providing such requested information.

B. Disclosure of Rates for Intrastate Calls Completed by Operator Services Provider

8. Typically, in providing its payphone service, a PSP contracts with a presubscribed operator service provider ("OSP") to provide operator-assisted from the payphone. Unless the payphone consumer "dials around" to use another carrier or OSP, this presubscribed OSP provides assistance to the payphone caller in completing collect, calling card, credit card, or third-party billing calls. The charges for these operated-assisted calls are set by the presubscribed OSP. In many instances, the OSP provides a bundled service to the PSP, offering not only the operator services but also acting as the long distance carrier for the payphone. For this right to be the "O+" carrier, the OSP often provides a share of the long distance proceeds garnished from the payphone to the service provider. When the PSP is itself a local exchange or other telecommuncations carrier, the PSP often provides its own operator services to its payphones, with the charges for such operator-assisted calls set by the underlying carrier.

9. In 1990, in response to complaints of excessive charges by presubscribed OSPs, Congress enacted the Telephone Operator Consumer Services Act, now condified as 47 U.S.C. § 226 ("the Act"). The Act, and the FCC's implementing regulations, not only impose a call "branding" obligation on OSPs and specific "posting" duties on aggregators such as PSPs, but they also bar PSPs and other aggregators from blocking the consumer's ability to "dial around" in order to utilize the services of another OSP or long distance carrier. See 47 U.S.C. § 226(b), (c); 47 C.F.R. §§ 64.703(a)(1)-(3) (branding), 64.704 (blocking). In 1998, when it appeared the initial branding and posting duties had

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1. See "Rules and Regulations Governing Service by Customer Owned Coin-Operated Telephones," adopted in PSC Order No. 2662 (July 9, 1985). In this Order, these 1985 regulations will be referred to as the "COCOT Rules."

2. See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd. 20541, Order on Recon., 11 FCC Rcd. 20233 (1996), affirmed as to local call coin charge deregulation sub nom., Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997).

3. The PSP may utilize DA services provided by the LEC or might offer DA utilizing the OSP presubscribed to the payphone.

not stemmed the flow of complaints about OSP charges, the FCC directed all OSPs to implement procedures that would allow the consumer the opportunity to promptly obtain from the OSP a rate quote for the total cost for an interstate operator-assisted call, prior to the call being completed. See 47 C.F.R. § 64.703(a)(2)-(4).

10. The Act, and the FCC's subsequent implementing regulations (including the obligation for the OSP to provide a real-time, oral rate disclosure) apply only to interstate OSP services and interstate calls. See 47 U.S.C. § 226(a)(2), (4), & (7); 47 C.F.R. § 64.708(b), (d), (g) & (h). In the original Payphone Regulations, this Commission adopted for Delaware payphones many of the posting and "no blocking" requirements imposed by the federal directives.[1] The revisions now being proposed continue this goal of uniformity between interstate and intrastate practices by now imposing on OSPs the same obligations - in the context of **intrastate** services from payphones - that now apply when the same OSP provides **interstate** operator services from the same payphone. Thus, the revisions add to the definitional section several new definitions to expand the scope and coverage of the Payphone Regulations to include intrastate "operator services" and OSPs.[2] More substantively, the proposed new section 6(c) imposes on OSPs the same "branding" and real time disclosure obligation in their handling of intra-Delaware calls as currently apply to interstate calls made from payphones located in Delaware. Similarly, the new section 7 imposes the same restrictions on OSP practices in conjunction with intrastate calls that now govern OSPs in their interstate call activities. Finally, the proposed revisions to the newly renumbered section 9 allow the Commission to take the same remedial actions against OSPs for their intrastate transgressions as are now authorized in the case of violations by payphone service providers.[3]

11. Staff suggests that this uniformity in the regulatory regime and disclosure procedure benefits consumers who probably do not appreciate the intrastate/interstate jurisdictional divide affecting calls from payphones. Moreover, in Staff's view, this convergence in OSP obligations, including the rate-disclosure duty, is now particularly appropriate given that the FCC has recently confirmed that the federal oral rate disclosure obligation applies to interstate, intraLATA calls made using the payphone's presubscribed OSP.[4]

C. Other Revisions

12. The proposed revisions add two new provisions, (f) and (g) to Section 3. These additions obligate payphones service providers to have in place procedures: (1) to ensure that prompt refunds are made to consumers and (2) to ensure prompt repair or replacement of damaged or inoperable payphones. In addition, in the last few years, the FCC has changed the mechanism for approving the "customer premises" or "terminal" equipment (categories which include payphones) which can be interconnected with the public switched network. In now "privatizing" that approval process, the FCC has abandoned the former FCC "registration" regime in favor of a new peer certification or self-certification process. See 47 C.F.R. §§ 68.1-68.614 (2001). In light of this shift in regimes, the proposed revisions make minor changes to Sections 2(d) and 4(a) of the Payphone Regulations to delete references to the now-abandoned "CPE registration" process. In addition, the proposed changes delete section 2(f) of the present regulations given that the basis for this transitional provision lapsed in 1997. Finally, many other present sections have been rephrased or reworked to improve style and grammar.

13. Pursuant to the authority granted by 26 Del. C. §§ 209(a) and 703(1) & (3), the Commission now proposes for adoption the revised "Regulations Governing Payphone Service Providers and Providers of Operator Services from Payphones" as set forth in Exhibit B to this Order.

Now therefore, **IT IS ORDERED:**

1. That, pursuant to 26 **Del.C**. §§ 209 and 703, the Commission proposes to revise and amend its present "Regulations Governing Payphone Service Providers in Delaware" so that such rules shall read as set forth in Exhibit "B" attached to this Order. Pursuant to the procedures set forth in 29 **Del.C.** §§ 209, 1133, 10115 and 10116, the

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1. Compare 47 C.F.R. §§ 64.703(b) and 64.704(b) with Payphone Regulations §§ 4(f)(1)-(4), (7) and 4(c)(3)-(4).

2. Under this new section, the OSP provisions will apply not just to "independent" OSPs offering services to IPP payphones, but also to operator services provided by a telecommunications carrier either to its own payphones or to payphones owned by IPPs.

3. In including OSP rules in these revisions, the Commission is not altering any other certification, tariffing, or pricing requirements applicable to OSPs under other statutes and Commission regulations. See, e.g., "Rules for the Provision of Telecommunications Services" (adopted in PSC Order No. 5833 (Nov. 6, 2001)); 26 Del. C. §§ 705(c)(8) & 709.

4. **See In the Matter of Billed Party Preference for InterLATA 0+ Calls,** Second Order on Recon., FCC 01-355 (Dec. 12, 2001). This ruling has special significance for Delaware given that its LATA is shared with areas in southeastern Pennsylvania and PSPs may presubscribe operator services on a LATA basis. In such case, the presubscribed OSP would handle both intrastate, as well as interstate, intraLATA calls.

Commission solicits comments and other materials about such proposed revisions and amendments. The Commission will accept all written suggestions, compilations of data, briefs, or other written materials submitted in a timely fashion. In addition, pursuant to 26 **Del.C.** § 209(a) the Commission will conduct a public hearing on such proposed revisions and amendments.

2. That the Secretary shall forthwith transmit a copy of this Order accompanied with a copy of the Commission's present "Regulations Governing Payphone Service Providers in Delaware" (Exhibit "A") and a copy of the proposed "Regulations Governing Payphone Service Providers and Providers of Operator Services for Payphones" (Exhibit "B") to the Registrar of Regulations for publication in the next appropriate **Register of Regulations**. In addition, the Secretary shall also transmit the Notice of Proposed Rulemaking, attached hereto as Exhibit "C," to the Registrar for publication in the next appropriate **Register of Regulations.**

3. That the Secretary shall cause the Notice of Proposed Rulemaking, attached as Exhibit C, to be published in **The News Journal** and **Delaware State News** newspapers on separate dates sometime after March 1, 2002 and before March 10, 2002. In addition, the Secretary shall, during such period, send a copy of such Notice to all persons or entities who have made requests for advance notice copies of this Commission's rulemaking proceedings. Finally, the Secretary shall post a copy of this Order, along with Exhibits A, B, and C, on the Commission's website under an appropriate heading or link sufficient to alert interested persons of the Commission's intent to revise and amend its present rules governing payphone service providers.

4. That, pursuant to 26 **Del.C.** § 502 and 29 **Del.C**. § 10116, Robert P. Haynes is appointed as the Hearing Examiner to organize, classify, and summarize the materials submitted by persons in this matter. In addition, Hearing Examiner Haynes shall conduct a public hearing on the proposed revisions and amendments on the date, time, and place set forth in Exhibit C. Hearing Examiner Haynes is specifically authorized to hold additional public hearings, upon notice, if he deems such additional hearings necessary to complete record in this matter. After such hearings, and after the close of the applicable comment period, Hearing Examiner Haynes shall submit a Report to the Commission summarizing the materials and testimony submitted and setting forth his recommendations concerning the proposed revisions and amendments.

5. That, Gary A. Myers, Deputy Attorney General, is directed to represent the Commission and the Staff in this proceeding.

6. That, pursuant to 26 **Del.C**. §§ 114 and 115, payphone service providers and operator services providers are put on notice that they may be assessed the costs of this rule-making proceeding.

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

By Order Of The Commission:

Arnetta McRae, Chair
Joshua M. Twilley, Vice Chair
Joann T. Conaway, Commissioner
Donald J. Puglisi, Commissioner
Jaymes B. Lester, Commissioner

Attest:

Connie S. McDowell, Acting Secretary

EXHIBIT "A"

~~Regulations Governing Payphone Service Providers In Delaware~~

~~Section 1: Definitions~~

~~(a) "Coin-operated payphone" means a payphone that requires the deposit of coins for calls other than those calls which are:~~

~~(1) billed to another telephone or to a calling card;~~

~~(2) 911 or telephone relay service calls; or~~

~~(3) to toll free numbers, such as 800 or 888 numbers.~~

~~(b) "Interexchange carriers" means telephone companies who provide long distance interstate and/or intrastate telephone service.~~

~~(c) "Payphone" means any telephone made available to the public on a feepercall basis, independent of any other commercial transaction, for the purpose of making telephone calls, whether the telephone is coinoperated or is activated either by calling collect or using a credit or calling card. The term "payphone" includes both instrument-implemented and central-office implemented telephones.~~

~~(d) "Payphone service provider" means a person or entity that offers payphone service as defined by Section 276 of the Telecommunications Act of 1996, Pub. L. No. 104104, 110 Stat. 56 (1996). The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange or interexchange carriers, who provide payphone service.~~

~~Section 2: Certification of Payphone Service Providers~~

~~(a) A person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.~~

~~(b) Except as permitted under paragraph (f) below, no person or entity shall offer payphone service in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity~~

("CPCN") to provide payphone service. One CPCN is required for each provider. Separate CPCNs are not required for each payphone.

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:

(1) the business name and address of the applicant;

(2) the name and address of a contact person or persons;

(3) the telephone and facsimile numbers and the e-mail address, if available, of the contact person;

(4) a description of the manner in which the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;

(5) a written statement affirming that the applicant has the required state and local business licenses;

(6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;

(7) the applicant's signature and the title of the person signing the application; and

(8) the date of signature of the application.

(d) A person or entity installing or offering for service a payphone shall comply with the provisions of 47 C.F.R Part 68 and any other order, rule, or regulation of the Federal Communications Commission related to telephone service offered from payphones, unless exempted from compliance by the Federal Communications Commission.

(e) If an applicant correctly completes and submits the application, has complied with the requirements of the Federal Communications Commission, and has paid the required application fee, upon execution by the Executive Director or the Chief of Technical Services, the application shall be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(f) Any person or entity providing payphone service on the effective date of these regulations pursuant to a previously-granted Certificate of Public Convenience and Necessity or pursuant to other legal authority may continue to provide such payphone service. Such person or entity shall, within ninety (90) days of the effective date of these regulations, file with the Commission an application under paragraph (c) of this section and the information required by paragraph (a) of Section 3.

(g) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by Sections 2(c)(1) through 2(c)(8).

(h) Each certificated payphone service provider shall provide written notice to the Commission ten (10) days prior to the cessation of all operations as a payphone service provider in Delaware.

(i) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars ($100). Such application fee is waived for persons or entities filing applications under paragraph (f) of this section.

Section 3: Location Reporting

(a) At the time of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission in writing the following information for each payphone to be installed and offered in Delaware:

(1) the make, model, and identification number for the payphone;

(2) the telephone number for the payphone; and

(3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(b) If after certification, a payphone service provider installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall notify the Commission in writing semi-annually, of all such new installations, relocations and removals. Such written notification shall state:

(1) the number of additional, relocated, or removed payphones by location;

(2) the telephone number for the additional, relocated, or removed payphone; and

(3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection.

(c) The Commission may request the information in paragraphs (a) and (b) of this Section to be submitted in electronic format.

(d) A payphone service provider shall not install or offer a payphone where the installation or maintenance of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

(e) All data provided in response to this section shall be considered proprietary information and shall not be released by the Commission; provided, however, that the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information relating to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters in the public interest.

Section 4: Payphone Equipment.

(a) All payphones shall be of a type registered with the Federal Communications Commission pursuant to 47 C.F.R. Part 68, unless such payphone has been exempted under an applicable order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, and the National Electrical Code and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

(1) dial tone;

(2) access to 911, any other emergency number, and an operator qualified to route emergency calls;

(3) access to a number for reporting repairs or service for the payphone; and

(4) telecommunications relay service.

(c) Providers of payphone service shall provide that each payphone shall:

(1) be equipped with an audible signaling device and receive incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction;

(2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and a dial 1 capability and/or 7digit or 10-digit dialing;

(3) permit dialing of subscriber "800" or "888" toll-free numbers without the advance deposit of coins, except those numbers that have been blocked in accordance with applicable law or regulations

(4) provide, without the advance deposit of coins, access to the caller's desired interexchange carrier or operator service provider by use of an "800," "888," or "950" access tollfree call or by use of a carrier access code; and

(5) permit calls using calling cards, collect calls, and calls billed to a third party without the advance deposit of coins and be provisioned to prohibit the billing of calling card, collect and third party calls to the payphone number, except, at the option of the payphone service provider;

(d) Payphones provided for inmates shall not be required to comply with Sections 3(b), 4(b), 4(c) or 4(f), including all subsections thereof.

(e) Coinless payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on or near the payphone, in plain view of callers:

(1) relevant emergency numbers;

(2) the rate, including the initial time increment, if any, for a local coin call;

(3) the telephone number of the payphone;

(4) the name, address, and toll-free number of the payphone service provider or presubscribed operator service provider;

(5) a free phone number for maintenance and repairs;

(6) any restrictions in making or receiving calls, and if the payphone does not accept incoming calls, a statement to that effect;

(7) the primary intrastate or intraLATA carrier and the primary interstate or interLATA carrier and tollfree telephone numbers to call for the presubscribed carriers' rate information, along with a statement that the rates for operator-assisted calls are available upon request;

(8) any other information necessary to facilitate calls, refunds or repairs;

(9) dialing instructions and the charges, if any, for directory assistance; and

(10) a statement that callers have the right to obtain access to the toll carrier of their choice and may contact their preferred carriers for information on how to access that carrier's service by use of the payphone.

(g) A payphone service provider shall change the posted information required by paragraph (f) of this Section within thirty (30) days of any such change.

(h) All coinimplemented payphones shall be shall be equipped to accept nickels, dimes and quarters and to return coins to the caller in case the call is not answered by the called party.

(i) All payphones shall be installed and maintained in a manner to assure the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones, including outdoor payphones, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and hearing aid compatibility.

Section 5: Local Coin Call Rates

(a) Payphone service providers need not file tariffs for local coin calling rates. The rate for local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not charge for a local coin call or for directory assistance greater than the rate posted on the payphone. A payphone service provider may not charge for an uncompleted call.

(b) The Commission reserves the right to seek to demonstrate to the FCC that there are market failures within the State that would not allow market-based rates.

Section 6: Reporting.

Each payphone service provider shall comply with the provisions of 26 Del. C.§ 115.

Section 7: Violations

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it shall issue an order to a payphone service provider :

~~(1) revoking, suspending or modifying its Certificate of Public Convenience and Necessity;~~

~~(2) imposing fines or penalties, or;~~

~~(3) requiring reparation to a customer or affected party; or~~

~~(4) providing for such other relief as the Commission may reasonably require.~~

~~(b) Good cause, pursuant to (a) above, shall include, but is not be limited to, the following actions by a payphone service provider:~~

~~(1) violation of these regulations, including the information disclosure requirements;~~

~~(2) conducting business in an unfair or deceptive manner; or~~

~~(3) actions which result in revocation of its registration by the Federal Communications Commission.~~

~~Section 7: Miscellaneous~~

~~These regulations shall become effective ten (10) days after publication in the Delaware Register. The effective date shall then be noted on the rules.~~

EXHIBIT "B"

Regulations Governing Payphone Service Providersand Providers Of Operator Services For Payphones

Effective Date:

Section 1: Definitions

(a) **"Call splashing"** means the transfer of a telecommunications or telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable, or unwilling, to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

(b) **"Coin-operated payphone"** means a payphone that requires the deposit of coins for calls other than those calls which are:

(1) billed to another telephone or to a credit or calling card;

(2) "911" or "711" telephone relay service calls; or

(3) to toll-free numbers, such as 800 or 888 numbers.

(c) **"Consumer" or "payphone consumer"** means a person initiating any intrastate telephone call or telecommunications call using a payphone. For purposes of section 6(c), the term "consumer" or "payphone consumer" shall include both the person on the initiating end of such call using operator services *and:*

(1) in the context of a collect call, the person on the terminating end of the call; and

(2) in the context of a call to be billed to a third person, the person to be billed if such person is contacted to secure billing approval prior to the completion of the call.

(d) **"Interexchange carrier"** means a telecommunications carrier which provides intrastate long distance telecommunications service.

(e) **"Operator Services"** means any intrastate telecommunications service initiated from a payphone that includes as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telecommunications through a method other than:

(1) automatic completion with billing to the payphone from which the telecommunication originated; or

(2) completion through an access code used by the consumer, with billing to an account previously established with that other carrier by the consumer.

(f) **"Payphone"** means any telephone or other telecommunications instrument made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purpose of making telephone calls or other telecommunication, whether the pay phone instrument is coin-operated or is activated either by calling collect or by using a credit or calling card. The term "payphone" includes both instrument-implemented and central-office implemented payphone instruments.

(g) **"Payphone service"** means the provision of intrastate telecommunications services as described in 47 U.S.C. § 276.

(h) **"Payphone service provider"** means a person or entity that offers payphone service as defined by 47 U.S.C. § 276(d). The term includes both independent owners or operators of payphones and telecommunications carriers, including local exchange or interexchange carriers, which provide payphones and payphone service.

(i) **"Presubscribed provider of operator services"** means the intrastate provider of operator services to which the consumer is connected when the consumer, without dialing an access code or other free number, initiates a call or other telecommunication from a payphone using a provider of operator services.

(j) **"Provider of operator services"** means any telecommunications service provider, telecommunications carrier, or public utility that provides operator services, or any other person determined by the Commission to be providing operator services.

Section 2: Certification of Payphone Service Providers

(a) Any person or entity providing intrastate payphone service shall be deemed to be a public utility under 26 Del. C. § 102(2) and shall be governed by these regulations.

(b) No person or entity shall offer payphone service in Delaware until that person or entity has received from the Commission a Certificate of Public Convenience and Necessity ("CPCN") to provide payphone service. A single

Certificate us required for each provider. A separate Certificate is not required for each payphone.

(c) Each applicant seeking a Certificate of Public Convenience and Necessity to provide payphone service shall make application on a form prescribed by the Commission. Each applicant seeking certification to provide payphone service shall supply the following:

(1) the business name and address of the applicant;

(2) the name and address of a contact person or persons;

(3) the telephone and facsimile numbers and the e-mail address, if available, of the contact person;

(4) a description of the manner in which the applicant will assure service and equipment maintenance for the payphones, including the name, address, and telephone number of the person or entity providing such services if different from the applicant;

(5) a written statement affirming that the applicant has the required state and local business licenses;

(6) a written statement affirming that the applicant agrees to comply with all the provisions of these regulations;

(7) the applicant's signature and the title of the person signing the application; and

(8) the date of the signature of the application.

(d) If an applicant accurately completes and submits the application, is in compliance with the applicable requirements of the Federal Communications Commission, and has paid the required application fee, the application shall, upon execution by the Executive Director or Chief of Technical Services, be deemed approved and shall act as a Certificate of Public Convenience and Necessity to provide payphone service within Delaware.

(e) A person or entity installing a payphone and other related terminal equipment shall ensure that such terminal equipment is of the type that has been approved pursuant to the certification and self-certification process set forth in 47 C.F.R. Part 68, unless such equipment has been excused from compliance by the Federal Communications Commission. A person or entity installing a payphone or other related terminal equipment, and a person or entity providing payphone services, shall comply with all orders, rules, or regulations of the Federal Communications Commission related to telephone service offered from payphones, unless exempted or excused from compliance by the Federal Communications Commission.

(f) Each certificated payphone service provider shall notify the Commission in writing within ten (10) days following the change of any information required by Section 2(c)(1) through 2(c)(8).

(g) Each certificated payphone service provider shall provide written notice to the Commission at least ten (10) days prior to the cessation of all operations as a payphone service provider in Delaware.

(h) The application fee for a Certificate of Public Convenience and Necessity to provide payphone service is one hundred dollars ($100).

Section 3. Location Reporting and Plans for Refunds and Repairs

(a) At the time of the submission of the application described in paragraph (c) of Section 2, the applicant shall provide to the Commission the following information, in writing, for each payphone to be installed and offered in Delaware:

(1) the make, model, and identification number for the payphone;

(2) the telephone number for the payphone; and

(3) the location of the payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection. A map of such locations may be provided.

(b) If after certification, a payphone service provider installs a payphone at an additional location, relocates an existing payphone to such an extent that its previously filed location description does not allow it to be readily located for inspection purposes, or removes a payphone from an existing location, the payphone service provider shall, on a semi-annual basis, notify the Commission, in writing, of all such new installations, relocations, and removals. Such written notification shall state:

(1) The number of additional, relocated, or removed payphones;

(2) the telephone number for the additional, relocated, or removed payphone; and

(3) the location of the additional, relocated, or removed payphone, described in sufficient detail to allow the payphone to be located for purposes of mapping and inspection. A map of such locations may be provided.

(c) The Commission may request the information in paragraphs (a) and (b) of this Section be submitted in electronic format.

(d) All data provided in response to this Section shall be considered proprietary information and shall not be released by the Commission. However, the Commission or its Staff may, at its discretion for good cause shown, provide for limited disclosure of necessary information related to specific payphones in order to respond to customer complaints, law enforcement inquiries, or similar matters related to the public interest.

(e) A payphone service provider shall not install or maintain, nor offer service from, a payphone where the installation or continued operation of the payphone would violate any state or local law designed to protect the health, safety, and welfare of citizens.

(f) A payphone service provider shall have established procedures for making refunds to consumers to ensure that such refunds are made promptly after receipt of a valid request.

(g) A payphone service provider shall have established procedures to respond to any notice that a payphone is out of service or in need of repair. A payphone reported, or found to be, out of service or in need of repair shall be returned to full service, repaired, or replaced in a reasonably prompt fashion.

Section 4: Payphone Equipment

(a) A payphone, and related terminal equipment, shall not be connected to the public switched network unless the payphone or other terminal equipment is of the type approved under the certification and supplier self-certification provisions of 47 C.F.R. Part 68, or has been exempted from such certification process by an order or ruling of the Federal Communications Commission. All payphones shall be installed in accordance with generally accepted telecommunications industry standards, applicable local codes, the National Electrical Code, and the National Electric Safety Code.

(b) All payphones shall provide, at no charge to the caller and without advance deposit of any coins:

(1) dial tone;

(2) access to "911" (or another appropriate emergency number) and access to an operator capable of routing calls to the relevant emergency number or agency;

(3) access to a no-cost telephone number for reporting the need for repairs or service to the payphone; and

(4) access to "711" (or other appropriate number) to access the telecommunications relay service center.

(c) All payphones shall:

(1) be equipped with an audible signaling device and be capable of receiving incoming calls at no charge, except that a payphone service provider may elect to bar the receipt of calls by a payphone if the provider posts notice of such restriction on the payphone;

(2) except as provided in (d) and (e) of this Section, provide access to the network by a dial 0 and dial 1 capability and/or 7-digit or 10-digit dialing;

(3) be hearing compatible in a manner complying with the applicable regulations of the Federal Communications Commission;

(4) permit dialing of subscriber "800," "888," or other toll-free numbers without the advance deposit of coins, except in instances where access to those numbers has been validly blocked in accordance with applicable law or regulations;

(5) provide, without the advance deposit of coins or other advance charge, access to the caller's desired interexchange carrier or provider of operator services by use of an “800,” "888," or "950" access toll-free call or by use of a carrier access code; and

(6) permit calls using calling cards, collect calls, and calls billed to a third party without the advance deposit of coins and be provisioned to prohibit the billing of calling card, collect, and third party calls to the payphone number, except at the option of the payphone service provider.

(d) Payphones provided for inmates need not comply with Sections 3(b), 4(b), 4(c), 4(f), 6(a), and 6(b) including all subsections thereof.

(e) Coin-less payphones shall not be required to provide dial 1 capability;

(f) Each payphone service provider shall post on or near the payphone, in a manner plainly visible to the payphone consumer:

(1) a listing of all relevant emergency numbers, with instructions how to call such numbers;

(2) the rate, including the initial time increment, if any, for a local coin call;

(3) the telephone number of the payphone;

(4) the name, address, and toll-free number of the payphone service provider;

(5) a free phone number to report information about maintenance and repairs to the payphone;

(6) a description of any restrictions in making or receiving calls and, if the payphone does not accept incoming calls, a statement to that effect such as “OUTGOING CALLS ONLY” or “NO INCOMING CALLS;”

(7) the name, address, and toll-free number of the prescribed provider of operator services or presubscribed interexchange carrier for the payphone. If a different provider of operator services or interexchange carrier is presubscribed for intrastate and interstate calls or for intraLATA and interLATA calls, the name, address, and toll-free number of each such provider or carrier shall be listed;

(8) any other information necessary to facilitate calls, refunds, or repairs;

(9) instructions for obtaining directory assistance from the directory assistance provider utilized by the payphone service provider and the charge, if any, for obtaining such assistance. Such charge need not be posted if the charge for directory assistance is available under the disclosure process permitted under Section 6(b);

(10) a statement that the rates for all operator-assisted calls handled by the presubscribed provider of operator services are available upon request;

(11) a statement that consumers have the right, by calling the appropriate toll-free number, to obtain access to the intrastate interexchange carrier or operator services provider of their choice and may contact their preferred carrier or provider for information on how to access that carrier’s or provider’s service from a payphone.

(g) A payphone service provider shall update the information required to be posted under Subsection 4(f) as soon as practicable following any change in the required information, but no later than thirty (30) days following any such change. This requirement may be satisfied by using a

temporary sticker, provided that such temporary sticker shall be replaced with a permanent posting during the next regularly scheduled maintenance visit.

(h) All coin-implemented payphones shall be equipped to accept nickels, dimes, and quarters and to return coins to the caller in case the call is not answered by the called party.

(i) All payphones shall be installed and maintained in a manner to assure that the privacy of use is not compromised through any type of electrical or acoustical coupling device, extension telephone, or similar instrument.

(j) All payphones, including payphones located in outdoor locations, shall comply with federal and state laws and regulations regarding accessibility by individuals with disabilities and shall also comply with federal and state regulations related to hearing aid compatibility.

Section 5: Local Coin Call Rates

(a) A payphone service provider need not file a tariff for its local coin calling rates. The rate for a local coin call for a payphone location may be determined by the payphone service provider. A payphone service provider may not impose a charge for a local coin call greater than the local coin rate posted on the payphone. A payphone service provider may not charge for an uncompleted local call.

(b) The Commission reserves the right to seek to demonstrate to the Federal Communications Commission that there are market failures within the State so that market-based local call rates should no longer be permitted.

Section 6. Disclosures of Charges

(a) Pursuant to Section 4(f)(2), the payphone service provider shall post the charge for a local coin call from such payphone on, or near, the payphone.

(b) The payphone service provider shall disclose the charge for obtaining directory assistance from the provider selected by the payphone service provider by either:

(1) posting the charge, if any, for such directory assistance on or near the payphone as set forth in Section 4(f)(9); or

(2) orally disclosing such charge, audibly and distinctly, at no charge to the consumer and without advance deposit of coins, prior to the delivery of the requested directory assistance information, and with the opportunity for the consumer to terminate the directory assistance request after the disclosure of the charge.

(c) Each provider of operator services offering services to a consumer shall:

(1) identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call;

(2) permit the consumer to terminate the telephone call at no charge before the call is connected;

(3) disclose immediately to the consumer, upon request and at no charge to the consumer:

(i) a quotation of its rates or charges for the call;

(ii) the methods by which such rates or charges will be collected; and

(iii) the methods by which complaints concerning such rates, charges, or collection practices will be resolved; and

(4) disclose, audibly and distinctly, to the consumer, at no charge and before connecting any intrastate non-access code operator service call, how to obtain the total cost of the call, including any payphone surcharge, or the maximum possible total cost of the call, including any payphone surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required here shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits, or by remaining on the line. As used here, the phrase "total cost" means the variable (duration-based) charges for the call and the total per call charges, exclusive of taxes, that the carrier or provider, or its billing agent, may collect from the consumer for the call.

Section 7. Providers of Operator Services

(a) A provider of operator services shall obtain and maintain a Certificate of Public Convenience and Necessity to Provide Intrastate Services under the Commission's "Rules for the Provision of Telecommunications Services." The provider of operator services shall comply with the applicable requirements in the Commission's "Rules for the Provision of Telecommunications Services."

(b) A telecommunications service provider which has elected to be governed by the Telecommunications Technology Investment Act, 26 Del. C. §§ 703-711, and which provides operator services, shall, in providing such operator services, comply with the Act and the applicable requirements in the Commission's "Rules and Regulations for Implementing the Telecommunications Technology Investment Act."

(c) A provider of operator services shall:

(1) not bill for unanswered telephone or telecommunication calls;

(2) not engage in call splashing, unless the consumer requests to be transferred to another provider of operator services, the consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location of the call, and the consumer then consents to be transferred; and

(3) except as provided in paragraph (c)(2) of this section, not bill for a call that does not reflect the location of the origination of the call.

(d) Upon receipt of any emergency telephone call, a provider of operator services, and any entity providing local operator services for a payphone, shall ensure immediate

connection of the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

Section 8. Reporting

Each payphone service provider shall comply with the provisions of 26 Del. C. § 115.

Section 9. Violations

(a) If, after notice and an opportunity to be heard, the Commission determines that good cause exists, it may issue an order to a payphone service provider or a provider of operator services:

(1) revoking, suspending, or modifying its Certificate of Public Convenience and Necessity;

(2) imposing fines or penalties;

(3) requiring reparations to a customer or affected party; or

(4) providing for such other relief as the Commission may reasonably require.

(b) Good cause, pursuant to (a) above, shall include, but is not to be limited to, the following actions by a payphone service provider or a provider of operator services:

(1) violation of these regulations, including the information disclosure requirements;

(2) conducting business in an unfair or deceptive manner;

(3) violations of any law or regulation of the Federal Communications Commission applicable to payphones, payphone service providers, or providers of operator services; or

(4) actions which result in revocation of its registration by the Federal Communications Commission.

Section 10. Miscellaneous

These regulations, and any later amendments, shall become effective ten (10) days after publication in the Delaware Register of Regulations or at such times as the Commission may direct. The effective date of the regulations shall be noted on the cover of the regulations.

EXHIBIT "C"

Notice Of Proposed Rulemaking Revising Rules Governing Payphone Service Providers And Operator Services Providers

To: Payphone Service Providers, Operator Services Providers, Local Exchange Carriers, And Other Interested Persons And Entities

In 1997, the Public Service Commission ("the Commission") adopted "Regulations Governing Payphone Service Providers in Delaware ("Payphone Rules"). See PSC Order No. 4651 (Nov. 18, 1997). Those Payphone Regulations governed payphone service provided by both independent payphone service providers and other telecommunications carriers. By PSC Order No. 5868 (Jan. 29, 2002), the Commission now proposes to make revisions and amendments to these 1997 Payphone Regulations. The Commission proposes the changes in light of developments in the payphone industry since 1997 and to bring uniformity to the regulation of intrastate and interstate calls made from payphones utilizing the services of an Operator Services Provider.

Summary of Proposed Changes

One proposed revision will allow a payphone service provider ("PSP") to disclose the charge for obtaining directory assistance from the payphone provider by either posting such price on the payphone or implementing an oral disclosure system which will provide the price before the requested information is provided. See proposed section 4(f)(9) & 6(b). Other proposed amendments expand the scope of the Payphone Regulations to encompass services provided by Operator Services Providers ("OSPs"). These proposed additions require the OSP serving a payphone to grant the payphone consumer an opportunity to obtain an oral real-time quote of the price for a collect, credit card, and third-party billed calls handled by the OSP. See Proposed Section 6(c). In doing so, the proposed revisions will apply to intrastate calls the same price disclosure (and other call routing) obligations that the Federal Communications Commission ("FCC") has imposed on OSPs in their handling of interstate calls from the payphone. See 47 C.F.R. § 64.703. Third, two new obligations are imposed on payphone service providers. Under the revisions, such providers must have in place procedures to ensure prompt refunds to consumers and to promptly repair or replace damaged or inoperable payphones. See Proposed Section 3(f) & (g). Fourth, several revisions are made to the present provisions related to the payphone equipment which can be connected to the public switched network. These changes reflect a change in the regime adopted by the FCC for approving such terminal equipment. See Proposed Sections 2(d) and 4(a). Finally, numerous other provisions have been rewritten to improve style and format.

Solicitation of Materials and Notice of Public Hearing

You may review a copy of these proposed revisions and amendments to the Payphone Regulations by consulting the March 1, 2002 edition of the **Delaware Register of Regulations.** You may also find an unofficial copy of PSC Order No. 5868, the existing Payphone Regulations, and the proposed revised Regulations posted on the Commission's website located at "www.state.de.us/delpsc." You may also obtain a written copy of the proposed Regulations and the

other relevant documents from the Commission at its Dover office during normal business hours. The address is set out below. The cost of such copies is $0.25 per page.

The Commission has the authority to adopt such rules under 26 **Del.C.** §§ 209 and 703.

Pursuant to 29 **Del.C.** §§ 10115 & 10116, the Commission solicits suggestions, comments, data, briefs, memoranda, and other documents concerning the proposed revisions and amendments to its Payphone Regulations. Twelve copies of such materials should be submitted to the Commission on or before Wednesday, April 10, 2002. The Commission's address is:

Public Service Commission
Regulation Docket No. 12
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

In addition, the Commission will conduct a public hearing on the proposed revisions and amendments to the Payphone Regulations, beginning at 9:30 AM on Wednesday, April 24, 2002. Such hearing will be conducted at the Commission's office at the address set out above. If you wish to participate in this proceeding, but will not file comments, you must file a Notice of Intent to Participate. Twelve copies of such notice must be submitted on or before Wednesday, April 10, 2002. Only persons who have filed written materials or such Notice to Participate will be provided individual notice of further proceedings in this matter.

If you are disabled and need assistance to review the documents in this matter or participate in the proceedings, please contact the Commission to discuss such aids or services. You can make such contact in person, by telephone (including TRS or text telephone), by Internet e-mail, or in written correspondence.

You can contact the Commission to discuss this proceeding by calling 1-800-282-8574 (toll-free in Delaware) or (302) 739-3227. Text telephone service is available at (302) 739-4247. You can also send inquiries by Internet e-mail to patstowell@state.de.us.

DEPARTMENT OF EDUCATION

14 DE Admin. Code 101

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §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 amendment is necessary in order to add section 9.0 Invalidations and Special Exemptions to the regulation. This section describes the conditions that must exist and the procedures that must be followed to establish that a student score can be declared invalid or that a student can receive a special exemption from taking the test.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses procedures for administering the DSTP not specific student achievement issues.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses procedures for administering the DSTP not equity issues.

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

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses procedures for administering the DSTP 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.

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 regulation? The new section must be part of the regulations on the Delaware Student Testing Program.

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 the local school boards for compliance with this amended regulation.

101 Delaware Student Testing Program

1.0 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.

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

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

2.0 Levels of Performance: There shall be five levels of student performance relative to the State Content Standards on the assessments administered to students in grades 3, 5, 8 and 10 in reading, mathematics and writing and to students in grades 4, 6, 8 and 11 in social studies and science. Said levels are defined and shall be determined as follows:

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

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

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

3.0 Other Indicators of Student Performance

3.1 Local school districts and charter schools may consider other indicators of student performance relative to the state content standards pursuant to 14 Del. C. § 153(b) when determining the placement of students who score at Level 1 or Level II on a mandated retake of a portion of the DSTP. The only other indicators of student performance that may be considered by a local school district or charter school are: student performance on district administered tests pursuant to 14 Del. C. 153(e)(1); student performance on end-of-course assessments; student classroom work products and classroom grades supported by evidence of student work that demonstrates a student's performance pursuant to 14 Del. C. 153(a).

3.2 Any local school district or charter school planning to use other indicators of student performance shall submit the proposed indicators to the Department of Education by September 1st of each year.

3.2.1 Any such submission must include a demonstration of how an indicator of student performance aligns with and measures state content standards and the level of performance required to demonstrate performance equivalent to meeting state content standards.

3.2.2 Any proposed indicators of student performance must be approved by the Department of Education following consultation with the Student Assessment and Accountability Committee and the State Board of Education.

3.3 An academic review committee composed of educators in the student's local school district or charter school may then determine if a student has demonstrated proficient performance relative to the state content standards using evidence from the other indicators of student performance as approved by the Department of Education.

3.3.1 The academic review committee shall be composed of two classroom teachers from the student's tested grade, one classroom teacher from the grade to which the student may be promoted, one guidance counselor or other student support staff member and two school building administrators.

3.3.2 The supervisor of curriculum or instruction for the school district or charter school or his/ her designee shall chair the committee.

3.3.3 Placement of students with disabilities who are eligible for special education and related services is determined by the student's IEP team.

4.0 Individual Improvement Plan (IIP)

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

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

4.2 The Individual Improvement Plan shall be on a form adopted by the student's school district or charter school. The IIP shall be placed in a student's cumulative file and shall be updated based on the results of further assessments. Such assessments may include further DSTP results as well as local assessments, classroom observations or inventories. For students with an Individualized Education Program (IEP), the IEP shall serve as the Individual Improvement Plan (IIP).

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

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

4.5 Disputes initiated by a student's parent or legal guardian concerning the student's IIP shall be decided by the academic review committee. Any dispute concerning the content of a student's IEP is subject to resolution in conformity with the Regulations, Children with Disabilities.

5.0 Summer school programs for students in grades 3,5, and 8 as required pursuant to 14 *Del. C.* § 153.

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

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

5.1.2 Where by mutual agreement of both districts or a charter school and the parent or guardian of the student

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. unless the districts or the charter school and parents or guardian agree otherwise. Requirements for secondary testing shall be met.

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

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

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

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

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

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

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

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

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

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

6.4.1 A student shall be awarded a Distinguished State Diploma upon attainment of a diploma index greater than or equal to 4.0 provided that the student has attained a Performance Level 3 or higher in each content area and provided that the student has met all other requirements for graduation as established by the State and local districts or charter schools.

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

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

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

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

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

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

7.3 Procedures for maintaining the security and confidentiality of a test shall be specified in the appropriate test administration materials in 14 Del.C. §170 through §174.

7.4 Procedures for Reporting Security Breaches

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

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

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

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

7.4.2.3 Within 10 days of the receipt of the

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

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

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

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

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

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

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

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

8.2 Parent/guardian(s) 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.

See 4 DE Reg. 464 9/1/00
See 5 DE Reg. 620 (9/1/01)

9.0 Invalidations and Special Exemptions

9.1 Invalidations are events or situations that occur during the administration of the DSTP assessments which may result in a statistically unreliable score report for one or more students. Invalidations may occur as a result of either: intentional student conduct, including but not limited to cheating and disruptive behavior; or unforeseen and uncontrollable events, including but not limited to onset of illness.

9.1.1 Reporting of situations that occur during testing.

9.1.1.1 The school buildingprincipal or designee shall notify the District Test Coordinator within 24 hours of events or situations that the principal reasonably believes may result in an invalid score report for a student(s).

9.1.1.2 The District Test Coordinator shall notify the Department of Education staff person assigned to the district for test security purposes as soon as the Coordinator learns of events or situations which may result in invalidation(s).

9.1.1.2.1 The District Test Coordinator shall submit a DSTP Incident Report Form within three business days of the events. Written reports from the building principal or designee and any staff must be included with the DSTP Incident Report Form.

9.1.1.3 The Director of Assessment for the Department of Education shall determine whether the reported events warrant invalidating a student(s) score.

9.1.1.3.1 If the Director determines that the events also warrant a security investigation the matter will be referred to the Department of Education staff person assigned to the district for test security purposes.

9.1.2 Consequences of invalidations.

9.1.2.1 If the Director of Assessment for the Department of Education determines that a student's test score is invalid for the entire DSTP or content area(s), whether as a result of intentional conduct or uncontrollable events, the student will be assigned a performance Level 1 (Well Below Standard) for the invalidated portions of the assessment and be subject to consequences pursuant to 14 *Del. Code* 153.

9.1.2.1.1 Students whose test scores are invalidated in whole or part shall retest at the next official testing opportunity.

9.2 Special Exemptions.

9.2.1 A special exemption may be available when a student's short-term, physical or mental condition prevents the student from participating in the DSTP assessments even with accommodations, or when an emergency arising before the start of the test prevents the student's participation.

9.2.2 Special exemptions for students who are tested according to the Department of Education's *Guidelines for Inclusion of Students with Disabilities and Students with Limited English Proficiency* are also available as provided in the Guidelines.

9.2.3 Requests for special exemptions based on physical or mental condition.

9.2.3.1 Special exemptions based on a student's physical or mental condition may be available for students suffering from terminal illnesses or injuries or receiving extraordinary short-term medical treatment for either a physical or psychiatric condition. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which; describes the nature of the terminal condition or extraordinary treatment; confirms that the terminal condition or the extraordinary treatment arose more than 60 calendar days before the test administration for which the exemption is requested and has substantially prevented the student from accessing educational services since its inception ; and confirms that the condition or treatment is expected to be resolved or completed within 12 months of the test administration.

9.2.3.2 The District Test Coordinator shall submit a completed Request for Special Exemption Form to the Director of Assessment for the Department of Education at least 60 calendar days before the first day of testing. A copy of the physician's statement required in the preceding subsection will accompany the request.

9.2.3.2.1 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.3.2.2 The Associate Secretary shall decide whether a request for a special exemption based on physical or mental conditions should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.4 Request for special exemptions based on emergency.

9.2.4.1 Emergencies are unforeseen events or situations arising no more than 60 calendar days before the start of the test administration. They may include, but are not limited to, death in a student's immediate family, childbirth, accidents, injuries and hospitalizations.

9.2.4.2 Special exemptions due to an emergency may be requested for the entire test or for one or more content areas, as the district determines appropriate.

9.2.4.3 The District Test Coordinator shall notify the Director of Assessment for the Department of Education as soon as the Coordinator learns of events or situations which may result in a request for a special exemption due to an emergency.

9.2.4.3.1 The District Test Coordinator shall submit a completed DSTP Request for Special Exemption Form to the Director of Assessment for the Department of Education within 7 calendar days of the last day for make up testing. Requests for exemptions on these grounds shall be accompanied by a signed statement from the student's treating physician which describes the nature of the situation.

9.2.4.3.2 The Director of Assessment shall convene a review committee of not less than three Department of Education staff to review requests for special exemptions due to an emergency. The Director shall submit a recommendation on each request to the Associate Secretary for Assessment and Accountability.

9.2.4.3.3 The Associate Secretary shall decide whether a request for a special exemption based on an emergency should be granted. The Associate Secretary shall notify the District Test Coordinator of the decision. The Associate Secretary's decision shall be final.

9.2.5 Consequences of Special Exemptions.

9.2.5.1 Any special exemption granted by the Department of Education is limited to the testing period for which it was requested and does not carry forward to future test administrations.

9.2.5.2 Students who are granted a special exemption shall not be reported or counted in the school's test scores for any purpose, including school and district accountability.

9.2.5.3 Students who are granted a special exemption shall not be subject to any of the student testing consequences for students in grades 3, 5, or 8 for the testing period to which the exemption applies.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 3103 (16 **Del.C.** §3103)

PLEASE NOTE: ON JANUARY 1, 2002 (5 DE REG. 1337 (1/1/02)) THE DEPARTMENT PROMULGATED EMERGENCY REGULATIONS REGARDING REGULATIONS GOVERNING THE CARE AND TRANSPORTATION OF THE DEAD. THE DEPARTMENT IS NOW PROPOSING THESE REGULATIONS.

Nature of the Proceedings

These regulations, "State of Delaware Regulations Governing the Care and Transportation of the Dead," replace by revision the current " State of Delaware Regulations Governing the Care and Transportation of the Dead" previously adopted in 1953.

In light of recent anthrax deaths and public health risks associated with handling dead bodies from such high-risk diseases, the Division of Public Health (DPH) determined that these revised rules should be adopted. These rules use the strictest interpretation when handling a dead body from high-risk disease. If a death occurs from a designated high-risk disease, these rules require immediate notification from the physician, other provider, or hospital to DPH, the family and the funeral director handling the body. Specific and complete instructions are provided for the preparation, labeling, handling, transport and disposal of said bodies.

Additional proposed changes involve the addition of language to comply with current names and responsibilities within the Department of Health and Social Services and the deletion of language in several sections that is either redundant or unnecessary.

Notice Of Public Hearing

The Office of Vital Statistics, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the State of Delaware Regulations Governing the Care and Transportation of the Dead. This public hearing will be held on March 26, 2002 at 1:00 PM in the 3rd Floor Conference Room, Jesse Cooper Building, 417 Federal Street, Dover, Delaware 19901.

Copies of the proposed revisions are available for review by contacting:

Office of Vital Statistics
Jesse Cooper Building
417 Federal Street
Dover, Delaware 19901
Telephone: (302) 739-4721

Anyone wishing to present his or her oral comments at this hearing should contact Dave Walton at (302) 739-4701 by close of business March 19, 2002. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business April 1, 2002 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

Regulations Governing Care And Transportation Of The Dead

Originally adopted May 23, 1953
Amended: January 25, 1968;
Xxx, xx, 2002.

Adopted as amended by the Delaware State Board of Health in official session on January 25, 1968, under authority of Title 16, Chapter 31 Section 3168 Delaware Code of 1953. Originally adopted May 23, 1953.
AUTHORITY: 16 Delaware Code, Section 3103

Section 1. Definitions

~~a. State Board of Health shall mean Delaware State Board of Health, its Executive Secretary, or Registrar of Vital Statistics, or any authorized agent thereof.~~

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

b. State Registrar shall mean Director, Division of Public Health.

c. Funeral Director shall mean an Undertaker or Mortician licensed in the State of Delaware.

d. A Dead Body shall mean any human dead body, including any products of human conception expelled weighing 350 grams or more, or after twenty (20) weeks of gestation, whether born dead or dying thereafter.

e. Premises In which Interments Are Made shall mean burying grounds, cemeteries, tombs or vaults, or any other places where disposal of bodies may be made.

Section 2. Burial Permit Required

No manager, superintendent, caretaker, sexton or other person in charge of any premises in which interments, entombment, cremations or other dispositions of any dead body are made, shall permit the interment, entombment, cremation or other disposition of such body unless it is accompanied by a burial or cremation permit or a temporary certificate authorizing burial signed by a licensed funeral director. Upon receipt of the burial permit, the person in charge of the premises or by the funeral director, if there is no person in charge, shall sign the permit and retain same as a permanent record of authorization for burial. In the event that the person in charge of the premises receives a temporary certificate authorizing burial, said certificate shall be retained until the burial permit is received. Upon receipt of the burial permit, both the temporary certificate and the burial permit shall be retained by the person in charge of the premises as a permanent record of authorization for burial. If the person in charge of the premises does not receive the burial permit from the funeral director within a period of ten (10) days after burial takes place, he shall notify the State Registrar of Vital Statistics, Dover, Delaware.

Section 3. Burial Of The Dead

Except as hereinafter provided, all human bodies dead within the State of Delaware shall be cremated or buried, or placed within a receiving vault within five (5) days after death. Any dead human body to be kept longer than twenty-four (24) hours shall be embalmed or placed in a hermetically sealed casket which will not be opened at any time after this twenty-four (24) hour period, except when medical or legal investigation necessitates a longer period. The State Board of Health Department shall issue a special permit in such cases. Application for such a permit shall be made to the State Registrar of Vital Statistics, Dover. Bodies to be kept more than twenty-four (24) hours under this exception must be stored in suitable, approved refrigeration facilities.

Section 4. Depth Of Graves

No interment of any human body shall be made in any public or private burial ground unless the distance from all parts of the top of the outer case containing the coffin or casket be not less than eighteen (18) inches from the natural surface of the ground. EXCEPTION: Per Section 6, subpsection c., of this regulation, bodies dead of designated high-risk diseases (Anthrax, Small Pox, Plague and the various Hemorrhagic Fevers) must be buried at a depth of at least 2 meters.

The superintendent, sexton, caretaker, or other person in charge of a cemetery or burial ground shall be responsible that graves are of the depth required by this regulation. In the event that there be no such person in charge, it shall become the responsibility of the person burying the body.

Section 5. Permanent Entombment Facitilites And Receivng Vaults

Permanent Entombment Facilities:

When a body is placed in a permanent entombment facility, all exterior facings of the facility must be firmly and securely closed.

Receiving vaults may be used for a period not exceeding fifteen (15) days for the reception of bodies provided the bodies are properly embalmed by a licensed funeral director. Beyond this period, special permission from the ~~State Board of Health~~ Department is required. In every case, the death certificate must be filed immediately after death.

The responsible person in charge of the receiving vault shall make written application to the State Registrar of Vital Statistics, Dover, for special permission at least one week prior to the expiration of the fifteen (15) day period.

This section shall not apply to bodies turned over to ~~bonifide~~ bona fide medical and surgical groups for anatomical or study purposes.

~~**Section 6. Preparation Of Bodies Dead Of Certain Diseases**~~

~~In the preparation for burial of the body of any person who has died of smallpox, plague, anthrax, or other disease which the State Board of Health may specify, it shall be the duty of the funeral director or person acting as such to accomplish the following:~~

~~a. To wash the surface of the body with an approved germicidal solution.~~

~~b. To effectively plug all body orifices immediately.~~

~~c. To embalm by arterial and cavity injection with an approved disinfectant fluid. No preparation containing arsenic shall be used for this purpose.~~

~~It shall be the duty of every funeral director engaged for or in charge of the preparation and burial of the body of a person who died of smallpox, plague, anthrax, or other disease which the State Board of Health may specify, or of the bringing of the dead body of any such person to Delaware, to give immediate notice thereof to the State Board of Health. No burial, cremation or transit permit for the body of any person who had died of these diseases shall be granted by telephone, but must be obtained in accordance with those regulations. Such body shall be immediately placed in a metal lined coffin or casket and the same shall be immediately and permanently sealed by the funeral director. If metal linings coffins or caskets are unobtainable, the casket is to be constructed so as to not allow any seepage whatsoever therefrom and it is to be sealed as hereinbefore directed.~~

~~If it is desired to cremate the body of a person who has died of smallpox, plague, anthrax, or other diseases which the State Board of Health may specify, the casket need not be metal lined, but must be sealed as herein provided and removed tot he crematory for immediate cremation. It shall be unlawful to invite or permit any person or persons other than the members of the immediate family on the premises where such deceased person has died of said diseases of where the body of such person has been held or prepared for burial. In the case of a person who has died of smallpox, plague, anthrax, or other diseases which the State Board of Health may specify, no public funeral shall be permitted.~~

Section 6. Preparation, Transport, And Disposal Of Bodies Dead Of Designated High-risk Diseases.

The Director of the Division of Public Health or Designee shall designate communicable diseases determined to be high-risk from the point of view of handling after death. Currently designated diseases include Anthrax, Smallpox, Plague, and the various Hemorrhagic Fevers.

Should death occur before a definitive diagnosis can be made and when there is even the remote suspicion of one of these illnesses, the physician or hospital should consult with the Chief Medical Examiner or the Director of Public Health. Should it be necessary to hold a body for longer than six hours pending completion of definitive diagnostic work, the body should be sealed immediately following the taking

of such specimens as may be needed. The sealing should be completed as described in *Preparation a.* (below) and held in isolation (refrigerated when possible) pending removal. Otherwise, removal, transport, and cremation should proceed as prescribed by these regulations.

Whenever death occurs from a designated high-risk disease, immediate notification shall be provided by the reporting physician, other provider, or the hospital to the Division of Public Health, next of kin, and the funeral director who will have responsibility to handle, transport, or dispose of said body. These reports may be made by fax, telephone, or electronic mail. After business hours, the Division of Public Health emergency line is (302) 739-4700.

The Chief Medical Examiner, hospital or funeral director shall ensure that anyone handling a body so designated shall follow strict universal precautions in a manner that minimizes contact between the body, other persons, and the environment. For information concerning universal precautions contact the Office of Vital Statistics.

Preparation:

a. The body shall be wrapped in a sheet saturated with a suitable disinfectant. This may be concentrated commercial disinfectant approved for such purpose or it may be embalming powder or high index cavity fluid. This shall be followed by enclosure in a heavy-duty impervious bag designed for such purpose to assure against leakage.

b. For transport, the body prepared as in subsection "a." shall be placed in a suitable firm container such as a "cremation container" in which case it shall be cremated therein, or it may be transported in a temporary firm protective container from which it may be removed for cremation.

c. For burial or other exempted disposition, the body shall be enclosed in a metal casket liner or a casket that is constructed so as to not allow any seepage whatsoever therefrom and is to be sealed. Burial of bodies dead of designated high-risk disease must be at a depth of at least 2 meters.

Labeling:

It will be the responsibility of the funeral director to ensure that there are attached to the body and its containers in several visible places labels bearing in prominent legible letters the words, "This body is infected with a designated high-risk disease specified by the Division of Public Health and must be handled and transported in accordance with the precautions required by these regulations".

Handling:

Neither embalming nor autopsy shall be performed on such bodies unless specifically authorized by the Chief Medical Examiner or designee.

Transport:

Transport of a body so designated must be under the conditions described above with the addition that the body must be protected in such a way as to assure that it shall not become uncovered in any reasonably foreseeable accident. Transport out of state shall be prohibited unless approved by the Director of Public Health or designee and the receiving jurisdiction.

Removal:

A body may be removed from the firm protective container in which it was transported once it has reached the funeral home or crematory where the body shall be prepared for cremation or other disposition if authorized. Such container used exclusively for transport may be re-used following suitable disinfection.

Services:

No viewing of the body or public services in the presence of the body shall be permitted.

Cremation is the disposal method of choice for any designated high-risk communicable disease. If burial is permitted as an exception, it must be promptly performed and the body must remain sealed as described above throughout the burial process.

The Director of Public Health or designee upon request may waive any requirement of these regulations in order to accommodate religious or traditional practices if he or she is satisfied that the proposed practices present no substantial additional risk to any person or the environment.

~~**Section 7. Acts Tending To Promote Sperad Of Disease Prohibited**~~

~~No funeral director shall needlessly expose himself or any other persons who may come into contact with a dead body of communicable disease which is transmissible by direct contact.~~

~~Any physician or hospital caring for an individual who dies of smallpox, plague, anthrax or other diseases which the State Board of Health may specify must notify the funeral director on the death certificate or by other written notice of the danger involved before the funeral director takes possession of such a body.~~

Section ~~8~~ 7. Shipment Of Bodies Dead Of Non-contagious Diseases

The body of any person dead of a non-contagious disease shall not be removed by common carrier from the registration district in which death occurred except under the following conditions:

a. When the remains have been thoroughly embalmed and disinfected or when shipped to such a point as can be reached within twenty-four (24) hours after death, the dead body shall be placed in a substantially constructed

casket or coffin ~~and the said box made of good sound lumber not less than seven eighths (7/8) of an inch thick – a~~; every outside case holding any dead body offered for transportation by common carrier shall be an approved shipping case.

b. When the bodies are not embalmed or the destination cannot be reached within twenty-four (24) hours after death, either the casket or outside case must be metal or metal lined and permanently sealed.

c. When body is removed by common carrier, the State law requires a transit permit, which will be secured from the local or deputy registrars Office of Vital Statistics.

Section ~~9~~ 8. Burial-transit Permit

A burial-transit permit will be issued by ~~local or deputy registrars~~ the Office of Vital Statistics upon the compliance of the funeral director with the provisions of Section ~~8~~ 7 and the presentation of the death certificate.

Section ~~10~~ 9. Disinterments

~~No dead body shall be removed from its place of original interment:~~

1. No dead body shall be removed from its place of original interment ~~U~~unless a permit from the State Registrar marked "Disinterment Permit" is secured by a licensed funeral director in charge of the disinterment (EXCEPTION– Title 16, ~~3159~~ 3154 of the Delaware Code). The qualified person making the application shall present to the State Registrar the correct name, age, date of death and cause of death of the body to be disinterred, place of disinterment (hundred and county), together with written consent of next of kin. The State Registrar may require legal proof of such kinship.

2. All disinterment permits shall be void after the expiration of thirty (30) days from the date of issue.

3. Procedures:

a. The disinterment and removal must be under the direction of a licensed funeral director and in accordance with the rules governing the transportation of the dead.

b. The casket in which disinterred bodies are contained shall not be opened at any time.

c. The funeral director authorized to conduct a disinterment shall be held personally responsible for the enforcement of these requirements.

4. Special Provision:

A separate permit shall be secured in respect to each body to be disinterred, except that under special conditions the ~~Board of Health of the State of Delaware~~ Department may make special provisions for the mass removal of a number of bodies from a cemetery or burial ground.

Section ~~11~~ 10. Disposition Of Amputated Parts Of Human Bodies

An amputated part of a human body recovered at an operation or accident may be kept for anatomical purposes and/or disposed of by burial in a cemetery or by cremation in a licensed crematory. If the hospital or institution has facilities for incinerating, the amputated part or parts may be incinerated in such hospital or institution upon the written approval of the patient or next of kin. Where a patient or his next of kin desires such amputated part to be buried in a cemetery or cremated in a licensed crematory, a permit shall be secured by the funeral director from the ~~proper local or deputy registrar~~ Office of Vital Statistics upon presentation of a duly executed "Certificate of Amputation".

The director of the hospital or institution wherein the amputation was performed shall have completed a "Certificate of Amputation" on a form furnished by the State ~~Board of Health~~ Department for immediate delivery to the funeral director, who shall file said "Certificate of Amputation" within forty-eight (48) hours with the Office of Vital Statistics. Such "Certificate of Amputation" may be signed by the operating surgeon or by the intern who assisted in the case. No regular death certificate shall be filed for amputated parts.

Section ~~12~~ 11. Date Of Effect

These regulations shall be in full force and effect immediately upon their approval and adoption by the State Board of Health Department.

~~State Of Delaware~~
~~Department Of Health And Social Services~~
~~Division Of Public Health~~
~~Robbins Building~~
~~802 Silver Lake Boulevard And Walker Road~~
~~Dover, De 19901~~

~~M E M O R A N D U M~~

~~TO: Mike Richards~~
~~THRU:Dr. Donald R. Cowan~~
~~FROM: Paul Silverman~~
~~DATE: September 25, 1986~~

~~SUBJECT: Paragraph 2, Section 7 of the Regulations Governing Care and Transportation of the Dead.~~

~~On September 19, 1986, the Board of Health approved the following rewritten version of the above paragraph:~~

~~Any physician or hospital caring for an individual who dies, and at the time of death was infected, or suspected of being~~

~~infected with a notifiable disease as declared by the State Board of Health or any other potentially dangerous communicable disease, must notify the funeral directors by written notice of the danger involved before the funeral director or his agent takes possession of such a body.~~

~~This will be effective October 15, 1986.~~

~~Correspondence from Dr. Olsen will inform acute and long-term health care facilities and associations representing funeral directors. This note is for your information and so you can update any relevant documents.~~

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 505 (31 **Del.C.** §505)

PUBLIC NOTICE
Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual, Sections 9079.1 and 9079.7

Summary Of Changes

DSSM 9079.1 - Providing Replacement Issuances

- Benefits sent by registered or certified mail are not replaced when anyone in the household, anyone living with the household, or anyone visiting the household signed for the original benefit.

DSSM 9079.7 - Delivery of Coupons

- Households who are given a replacement benefit because they did not get the original benefit in the mail will have to go to an issuance site to pick up the replacement and all future benefits.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by March 31, 2002.

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

Revision

9079.1 Providing Replacement Issuances

Subject to the restrictions in DSSM 9079.2, DSS must replace an issuance to a household when the household reports that:

- Its coupons were not received in the mail or were stolen from the mail, were destroyed in a household misfortune, or were improperly manufactured or mutilated; or
- Food purchased with food stamps was destroyed in a household misfortune.
- Do not provide replacement issuances to households when:
- Coupons are lost, stolen, or misplaced after receipt;
- Coupons are totally destroyed after receipt in other than a disaster or misfortune; ~~or~~
- Coupons sent by registered or certified mail are signed for by anyone residing with or visiting the household; or
- The household or its authorized representative has not signed the Affidavit Form 324. Whenever an affidavit is signed by an authorized representative, use this format:

"_____" for "_____"
(authorized representative) (household head)

Where FNS has issued a disaster declaration and the household is eligible for disaster food stamp benefits, the household cannot receive both the disaster allotment and a replacement allotment for a misfortune.

In order for a replacement to be considered non-countable, the replacement must not result in a loss to the Program.

9079.7 ~~Hand~~ Delivery of Coupons

After the first report of non-receipt <u>of a mailed benefit</u>, or when circumstances exist that indicate that the household may not receive its coupons through the mail, <u>benefits must be sent to the over-the-counter issuance sites.</u> ~~offer to arrange for the household to pick up its coupons at a specified issuance site. After two (2) requests for replacement of original or replacement coupons reported as non-delivered in a six-month period, require the household~~

~~to pick up its future benefits at a specified issuance site. The two (2) requests may be for either an original or replacement benefit.~~

~~Require the household to pick up its coupons for the length of time considered to be necessary. Return the household to mail delivery when circumstances leading to the loss have changed and the risk of loss has lessened.~~ The requirement for a household to pick up its coupons and the length of time for which we require the household to pick up its benefits are not subject to the fair hearing process.

DEPARTMENT OF JUSTICE

DIVISION OF SECURITIES

Statutory Authority: 6 Delaware Code, Sections 7306(a)(17), 7307, 7309(b)(2), 7309(b)(9), 7309(c), 7309A(f), 7312, 7314(b)(4), 7317(c), 7325(b) (6 **Del.C.** §§7306(a)(17); 7307; 7309(b)(2), (b)(9), (c); 7309A(f); 7312, 7314(b)(4), 7317(c), 7325(b))

Notice of Proposed Revisions to the Rules and Regulations Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to amend sections 600, 601, 608 and 700 of the Rules and Regulations Pursuant to the Delaware Securities Act and to add a new section 610.

Persons wishing to comment on the proposed regulations may submit their comments in writing to:

James B. Ropp, Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed regulations will be held open for a period of thirty days from the date of publication of this notice in the Delaware Register of Regulations.

Summary of the Proposed Revisions

1. Canadian Broker-Dealer Exemption: The Securities Division proposes to revise the Canadian broker-dealer registration exemption as set forth at section 608 of the Rules and Regulations Pursuant to the Delaware Securities Act to extend Canadian broker-dealer agents the benefit of the exemption. The proposed revision is consistent with the model regulation as drafted by the North American Securities Administrators Association ("NASAA"). These revisions are being proposed to correct what appears to have been an inadvertent oversight when the exemption was originally promulgated.

2. Registration Requirements for Sole Proprietorships: The Securities Division proposes to revise the registration requirements for broker-dealers and investment advisors to clarify that a person conducting a brokerage or investment advisory business as a sole proprietor need not register an agent or representative with the Securities Commissioner.

Proposed Revisions

Part F. Broker-Dealers, Broker-Dealer Agents, and Issuer Agents

§600 Registration of Broker-Dealers

(a) A person applying for a license as a broker-dealer in Delaware shall make application for such license on Form BD (Uniform Application for Broker-Dealer Registration). Amendments to such applications shall also be made on Form BD.

(b) An applicant who is registered or registering under the Securities Exchange Act of 1934 shall file its application, together with the fee required by Section 7314 of the Act, with the NASD Central Registration Depository ("CRD") and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) An applicant who is not registered or registering under the Securities Exchange Act of 1934 shall file its application; the fee required by Section 7314 of the Act; and an audited financial statement prepared in accordance with 17 C.F.R. §240.17a-5(d) with the Commissioner, together with such other information as the Commissioner may reasonably require.

(d) ~~A broker-dealer registered with the Commissioner shall register at least one agent] with the Commissioner.~~ Except for a broker-dealer that is a sole proprietorship or the substantial equivalent, a broker-dealer registered with the Commissioner shall register with the Commissioner at least one broker-dealer agent.

(e) Registration expires at the end of the calendar year. Any broker-dealer may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

See 1 DE Reg 1978 (6/1/98)

§601 Registration of Broker-Dealer Agents

(a) A person applying for a license as a broker-dealer agent in Delaware shall make application for such license on Form U-4 (Uniform Application for Securities Industry Registration or Transfer). Amendments to such application shall also be made on Form U-4.

(b) An applicant for registration as an agent for a broker-dealer that is a member of the NASD shall file his or her application, together with the fee required by Section 7314 of the Act, with the NASD CRD and shall file with the Commissioner such other information as the Commissioner may reasonably require.

(c) Any applicant for registration as an agent for a broker-dealer that is not an NASD member shall file his or her application, together with the fee required by Section 7314 of the Act, with the Commissioner, together with such other information as the Commissioner may reasonably require.

~~(d) Any applicant for a broker-dealer agent license must also successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 66) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.~~

~~(e)~~ (d) Registration expires at the end of the calendar year. Any broker-dealer agent may renew its registration by filing with the NASD CRD, or with the Commissioner in the case of a broker-dealer agent employed by a broker-dealer not registered under the Securities Exchange Act of 1934, such information as is required by the NASD, together with the fee required by Section 7314 of the Act.

See 1 DE Reg 1978 (6/1/98)

§608 Registration Exemption for Certain Canadian Broker-Dealers

(a) A Canadian broker-dealer which meets the conditions of this rule as set forth below shall be exempt from the registration requirement of Section 7313 of the Act.

(b) To be eligible for this exemption, the broker-dealer must be resident in Canada, have no office or other physical presence in Delaware, and comply with the following conditions:

(1) Only effects or attempts to effect transactions in securities with, or for, one or more of the following;

(i) A person from Canada who is temporarily present in Delaware, with whom the Canadian broker-dealer had a bona fide business-client relationship before the person entered Delaware;

(ii) A person from Canada who is present in Delaware, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor; or

(iii) ~~A "U.S. institutional investor" or a "major U.S. institutional investor" to the extent permitted by SEC Reg. §240.15a-6 (17 CFR §240.15a-6);~~ As otherwise permitted by the Act; and

(2) Is registered in its home province or territory, and a member in good standing of a self-regulatory organization or stock exchange in Canada;

(3) Files with the Securities Commissioner a notice in the form of the current application required by the jurisdiction in which its head office is located;

(4) Files with the Securities Commissioner a consent to service of process in a form which complies with the requirements of Section 7327 of the Act.

(5) Discloses to its clients in Delaware that it is not subject to the full regulatory requirements of the Act; and

(6) Is not in violation of Sections 7303 or 7316 of the Act or any rules promulgated thereunder.

(c) Exempt transactions. Offers or sales of any security effected by a broker-dealer who is exempt from registration under this Regulation are exempt from the registration requirements of Section 7304 of the Act and the filing requirements of Section 7312 of the Act.

(d) Agent exemption: An agent who represents a Canadian broker-dealer who exempt from registration under this Regulation is also exempt from the registration requirement of Section 7313 of the Act, provided such agent maintains his or her provincial or territorial registration in good standing.

§610 Examination Requirement

An individual applying to be registered as a broker-dealer or a broker-dealer agent under the Act must successfully complete the Uniform Securities Agent State Law Examination (Series 63 or 68) administered by the NASD. The Commissioner may waive the exam requirement upon good cause shown.

Part G. Investment Advisers and Investment Adviser Representatives

§700 Registration of Investment Advisors

(a) A person applying for a license as an investment adviser in Delaware shall make application for such license on Form ADV (Uniform Application for Investment Adviser Registration under the Investment Advisers Act of 1940). Amendments to such application shall also be made on Form ADV.

(b) The applicant shall file the following items with the Commissioner: (i) the application on Form ADV; (ii) the fee required by Section 7314 of the Act; (iii) a balance sheet prepared in accordance with Schedule G of Form ADV; (iv) a list of all investment adviser representatives employed by the investment adviser; and (v)proof of compliance with Rule 710 by filing an Investment Adviser Affidavit available at http://www.state.de.us/securities or by contacting the Division of Securities; and (vi) such other information as the Commissioner may reasonably require.

(c) Registration expires at the end of the calendar year. Any investment adviser may renew its registration by filing with the Commissioner an updated Form ADV, together with the fee required by Section 7314 of the Act and a list of all investment adviser representatives employed by the investment adviser.

~~(d) Every investment adviser must have at least one investment adviser representative registered with the Commissioner to obtain or to maintain its license as an investment adviser.~~

(d) Except for an investment adviser that is a sole proprietorship or the substantial equivalent, an investment adviser registered with the Commissioner shall register with the Commissioner at least one investment adviser representative.

See 4 DE Reg 510 (9/1/00)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANGEMENT

AIR QUALITY MANAGEMENT SECTION

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

1. Title Of The Regulations:

Regulation 38 - "Emission Standards For Hazardous Air Pollutants For Source Categories"

2. Brief Synopsis Of The Subject, Substance And Issues:

Federal regulations at 40 CFR Part 63 Subpart B implement sections 112(g) and 112(j) of the Clean Air Act. Both sections require State agencies to approve on a case-by-case basis maximum achievable control technology (MACT) emission limitations for major sources when there are no federal standards in place. The Department adopted section 112(g) requirements in April 1998 as subpart B of Regulation 38.

Federal section 112(j) requires State agencies to issue equivalent MACT emission limitations whenever the EPA Administrator fails to promulgate a MACT emission standard for a source category within 18 months of its scheduled promulgation date. This will happen on May 15, 2002.

The Department is proposing to amend existing Subpart B of Regulation 38 by promulgating regulatory requirements to implement the section 112(j) requirements.

3. Possible Terms Of The Agency Action:

None

4. Statutory Basis Or Legal Authority To Act:

7 Delaware Code, Chapter 60

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

The public comment period for this proposed amendment will extend through April 1, 2002. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, March 21, 2002 beginning at 6:00 PM in the Air Quality Management Office, 156 S. State Street, Dover, DE.

7. Prepared By:

James R. Snead (302) 323-4542February 5, 2002

Regulation No. 38
Emission Standards For Hazardous
Air Pollutants For Source Categories

~~4/22/98~~ 5/11/02

Subpart B Requirements for Case-By-Case Control Technology Determinations for Major Sources

5/11/02

Overview Of Subpart B

Subpart B of Regulation No. 38 consists of two separate sets of requirements. One set of requirements, which are included in Sections 63.40 through 44, implement the section 112(g)(2)(B) provisions of the Clean Air Act. These requirements apply to owners or operators who construct or reconstruct a major source of hazardous air pollutants after June 29, 1998. The Department adopted these requirements into Regulation No. 38 in April 1998.

The other set of requirements, which are included Sections 63.50 through 56, implement the section 112(j) provisions of the Clean Air Act. These requirements apply to owners or operators of any collection of equipment defined in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline and the collection of equipment is located at a source that is subject to Regulation 30.

Sections 63.45 through 49 of this subpart have been reserved.

4/22/98

Section 112(g)(2)(B) Requirements

The provisions of Sections 63.40 through 63.44 in Subpart B, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1997 are hereby adopted by reference with the following changes:

(a) "Regulation 30" shall replace "title V" wherever it appears.

(b) Paragraph 63.40(b) shall be replaced with the following language: "The requirements of Secs. 63.40 through 63.44 of this subpart apply to any owner or operator who constructs or reconstructs a major source of hazardous air pollutants after June 29, 1998 unless the major source in question has been specifically regulated or exempted from regulation under a standard issued pursuant to section 112(d), section 112(h), or section 112(j) and incorporated in another subpart of part 63, or the owner or operator of such major source has received all necessary air quality permits for such construction or reconstruction project before June 29, 1998.

(c) The opening sentence of Section 63.41 shall be replaced with the following language: "Terms used in Secs. 63.40 through 63.44 that are not defined in this section have the meaning given to them in the Act and in subpart A of this regulation.

(d) The opening of the definition of Available information found in Section 63.41 shall be replaced with the following language: "*Available information* means, for purposes of identifying control technology options for the affected source, information contained in the following information sources as of the date of issuance of the construction permit which incorporates the final and effective case-by-case MACT determination:".

(e) The following errata found in Section 63.41 as published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) "for" in definition (3) of Available information shall be replaced with "from";

(ii) HAP's" in definition of Construct a major source shall be replaced with "HAP";

(iii) "*suite*" in definition of Greenfield suite shall be replaced with "*site*";

(iv) deduction" in definition of Maximum achievable control technology (MACT) emission limitation for new sources shall be replaced with "reduction"; and

(v) "that potential" in definition of Reconstruct a major source shall be replaced with "the potential".

(f) "Administrator" in the definition of Available information found in Section 63.41 shall be replaced with "Administrator or Department."

(g) Paragraph (2)(ii)(A) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented best available control technology (BACT) or lowest achievable emission rate (LAER) under Regulation 25 of the State of Delaware "Regulations Governing the Control of Air Pollution" for those HAP to be emitted by the process or production unit; or".

(h) Paragraph (2)(ii)(B) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT or LAER determination);".

(i) Paragraph (2)(iv) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "The permitting authority has provided notice and an opportunity for public comment concerning its determination that criteria in paragraphs (2)(i), (2)(ii), and (2)(iii) of this definition apply and concerning the continued adequacy of any prior LAER or BACT determination;".

(j) Paragraph (2)(v) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "If any commenter has asserted that a prior LAER or BACT determination is no longer adequate, the permitting authority has determined that the level of control required by that prior determination remains adequate; and ".

(k) Paragraph (2)(vi) in the definition of Construct a major source found in Section 63.41 shall be replaced with the following language: "Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations are made by the permitting authority are applicable requirements under section 504(a) of the Act and under Section 6 of Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution" and either have been incorporated into any existing Regulation 30 permit for the affected facility or will be incorporated into such permit upon issuance or revision."

(l) The definition of Construction permit is added to the list of definitions found in Section 63.41 with the following language: "*Construction permit* means a construction permit issued pursuant to Regulation 2 and/or 25 of the State of Delaware "Regulations Governing the Control of Air Pollution."

(m) The opening of the definition of Control technology found in Section 63.41 shall be replaced with the following language: "*Control technology* means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants in a way that would --".

(n) The definition of Effective date of section 112(g)(2)(B) in a State or local jurisdiction found in Section

63.41 shall be deleted.

(o) The definition of Electric utility steam generating unit found in Section 63.41 shall be replaced with the following language: "*Electric utility steam generating unit* means any fossil fuel fired combustion unit that serves a generator with a nameplate capacity of more than 25 megawatts that produces electricity for sale. A unit that co-generates steam and electricity and supplies more than one-third of its nameplate electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale shall be considered an electric utility steam generating unit."

(p) The definition of HAP is added to the list of definitions found in Section 63.41 with the following language: "*HAP* means a hazardous air pollutant (i.e., any chemical listed in or pursuant to section 112(b) of the Act)."

(q) The definition of Notice of MACT Approval found in Section 63.41 shall be deleted.

(r) The definition of Permitting authority found in Section 63.41 shall be replaced with the following language: "*Permitting authority* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended."

(s) The entire content of Paragraph 63.42(a) as promulgated shall be deleted and its heading shall be replaced with the following language: "(a) [Reserved]."

(t) The entire content of Paragraph 63.42(b) as promulgated shall be deleted and its heading shall be replaced with the following language: "(b) [Reserved]."

(u) Paragraph 63.42(c) shall be replaced with the following language: "After June 29, 1998, no person may begin actual construction or reconstruction of a major source of HAP unless: ".

(v) The following errata published in the Federal Register and Code of Federal Regulations shall be corrected as follows:

(i) "owner and operator" in paragraph 63.42(c)(1) shall be replaced with "owner or operator";

(ii) "63" in paragraph 63.42(c)(1) shall be deleted; and

(iii) "the anticipated" in paragraph 63.43(e)(2)(v) shall be replaced with "The anticipated".

(w) Paragraph 63.42(c)(2) shall be replaced with the following language: "The permitting authority has issued a construction permit which incorporates a final and effective case-by-case determination pursuant to the provisions of Sec. 63.43; requiring the emissions from the constructed or reconstructed major source to be controlled to a level no less stringent than the maximum achievable control technology emission limitation for new sources."

(x) Paragraph 63.43(b) shall be replaced with the following language: "When a case-by-case determination of MACT is required by Sec. 63.42(c), the owner and operator shall obtain from the permitting authority an approved MACT determination pursuant to paragraph (c) of this section."

(y) Paragraph 63.43(c)(1) shall be replaced with the following language: "[Reserved]."

(z) Paragraph 63.43(c)(2) shall be replaced with the following language: "The owner or operator shall follow all procedures in Regulation 2 and/or 25, except that --".

(aa) Paragraph 63.43(c)(2)(i) shall be replaced with the following language: "the provisions of Section 2.2 of Regulation 2 do not apply to any owner or operator that is subject to the requirements of Secs. 63.40 through 63.44 and".

(bb) Paragraph 63.43(c)(2)(ii) shall be replaced with the following language: "in addition to the provisions of Section 11.10 of Regulation 2, the final MACT determination and the construction permit shall expire if construction or reconstruction has not commenced within 18 months of permit issuance. The owner or operator may request and the permitting authority may grant an extension which shall not exceed an additional 12 months."

(cc) Paragraph 63.43(c)(3) shall be replaced with the following language: "When desiring alternative operating scenarios, an owner or operator may request approval of case-by-case MACT determinations for each alternative operating scenario. Approval of such determinations satisfies the requirements of section 112(g) for each such scenario."

(dd) Paragraph 63.43(c)(4) shall be replaced with the following language: "The MACT emission limitation and requirements established in the approved construction permit shall be effective as required by paragraph (j) of this section, consistent with the principles established in paragraph (d) of this section, and supported by the information listed in paragraph (e) of this section. The owner or operator shall comply with the requirements in paragraphs (k) and (l) of this section, and with all applicable requirements in subpart A of this regulation."

(ee) The opening to Paragraph 63.43(d) shall be replaced with the following language: "The following general principles shall govern preparation by the owner or operator of each construction permit application requesting a case-by-case MACT determination concerning construction or reconstruction of a major source, and all subsequent review of and actions taken concerning such an application by the permitting authority:".

(ff) Paragraph 63.43(e)(1) shall be replaced with the following language: "An application for a MACT determination shall be submitted at the same time as the construction permit application and shall specify a control technology selected by the owner or operator that, if properly operated and maintained, will meet the MACT emission limitation or standard as determined according to the principles set forth in paragraph (d) of this section. At the time of submittal, the owner or operator shall request that

the permit application be processed pursuant to Section 11.2 (i) or 11.2 (j) of Regulation 2, whichever is appropriate."

(gg) The opening to Paragraph 63.43(e)(2) shall be replaced with the following language: "In each instance where a constructed or reconstructed major source would require additional control technology or a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:".

(hh) Paragraph 63.43(e)(2)(xiii) shall be replaced with the following language: "Any other relevant information required pursuant to subpart A of this regulation."

(ii) The opening to Paragraph 63.43(e)(3) shall be replaced with the following language: "In each instance where the owner or operator contends that a constructed or reconstructed major source will be in compliance, upon startup, with case-by-case MACT under this subpart without a change in control technology, the application for a MACT determination shall contain, independent of the permit application, the following information:".

(jj) The entire content of Paragraph 63.43(f) as promulgated shall be deleted and its heading shall be replaced with the following language: "(f) [Reserved]."

(kk) The entire content of Paragraph 63.43(g) as promulgated shall be deleted and its heading shall be replaced with the following language: "(g) [Reserved]."

(ll) The entire content of Paragraph 63.43(h) as promulgated shall be deleted and its heading shall be replaced with the following language: "(h) [Reserved]."

(mm) Paragraph 63.43(i) shall be replaced with the following language: "The permitting authority shall send notice of any approvals pursuant to paragraph (c)(2) of this section to the Administrator through the appropriate Regional Office, and to all other State and local air pollution control agencies having jurisdiction in affected States."

(nn) Paragraph 63.43(j) shall be replaced with the following language: "The effective date of a MACT determination shall be the date the permitting authority issues the construction permit which incorporates the final and effective MACT determination."

(oo) Paragraph 63.43(l)(1) shall be replaced with the following language: "An owner or operator of a constructed or reconstructed major source that is subject to a MACT determination shall comply with all requirements in the issued construction permit, including but not limited to any MACT emission limitation or MACT work practice standard, and any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements."

(pp) Paragraph 63.43(l)(2) shall be replaced with the following language: "An owner or operator of a constructed or reconstructed major source which has obtained a MACT determination shall be deemed to be in compliance with section 112(g)(2)(B) of the Act only to the extent that the constructed or reconstructed major source is in compliance with all requirements set forth in the issued construction permit. Any violation of such requirements by the owner or operator shall be deemed by the permitting authority and by EPA to be a violation of the prohibition on construction or reconstruction in section 112(g)(2)(B) for whatever period the owner or operator is determined to be in violation of such requirements, and shall subject the owner or operator to appropriate enforcement action under the Act."

(qq) Paragraph 63.43(m) shall be replaced with the following language: "Within 60 days of the issuance of a construction permit, the permitting authority shall provide a copy of such permit to the Administrator, and shall provide a summary in a compatible electronic format for inclusion in the MACT data base."

(rr) The phrase "under any of the review options available" in paragraph 63.44(a) shall be deleted.

(ss) The phrase "40 CFR part 70 or part 71, whichever is relevant," in 63.44(b) shall be replaced with the following language: "Regulation 30."

Secs. 63.45 through 49 [Reserved].

5/11/02

Section 112(j) Provisions

Sec. 63.50 Applicability.

(a) General applicability.

(1) The requirements of Secs. 63.50 through 56 of this subpart implement section 112(j) of the Act.

(2) The requirements of Secs. 63.50 through 56 of this subpart apply to owners or operators of affected 112(j) sources that are located at a major source that is subject to Regulation 30 of the State of Delaware "Regulations Governing the Control of Air Pollution."

(3) The requirements of Secs. 63.50 through 56 of this subpart do not apply to research or laboratory activities as defined in Sec. 63.51 of this subpart.

(b) Relationship to other State and Federal requirements.

The requirements of Secs. 63.50 through 56 of this subpart are additional to all other applicable State and Federal requirements.

Sec. 63.51 Definitions.

Terms used in Secs. 63.50 through 56 of this subpart that are not defined in this section have the meaning given to them in the Act or in subpart A of this regulation.

Affected 112(j) source means the collection of equipment, activities or both within a single contiguous area and under common control that is in a section 112(c) source category for which the Administrator has failed to promulgate an emission standard by the section 112(j) deadline.

Available information means, for purposes of conducting a MACT floor finding and identifying control technology options under Secs. 63.50 through 56 of this subpart, any information contained in the following information sources as of issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart:

(1) A relevant proposed regulation, including all supporting information.

(2) Relevant background information documents for a draft or proposed regulation.

(3) Any relevant regulation, information or guidance collected by the Administrator establishing a MACT floor finding and/or MACT determination.

(4) Relevant data and information available from the Clean Air Technology Center developed according to section 112(l)(3) of the Act.

(5) Relevant data and information contained in the Aerometric Information Retrieval System (AIRS) including information in the MACT database.

(6) Any additional information that can be expeditiously provided by the Administrator or Department.

(7) Any information provided by applicants in an application for a permit, permit modification or administrative amendment according to the requirements of Secs. 63.50 through 56 of this subpart.

(8) Any additional relevant information provided by the applicant or others prior to or during the public comment period for a final and legally effective case-by-case MACT determination for an affected or a new affected 112(j) source.

Control technology means measures, processes, methods, systems or techniques to limit the emission of hazardous air pollutants which:

(1) Reduce the quantity of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;

(2) Enclose systems or processes to eliminate emissions;

(3) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point;

(4) Are design, equipment, work practice or operational standards; or

(5) Are a combination of paragraphs (1) through (4) of this definition.

Equivalent emission limitation means an emission limitation, established under this subpart, which is equivalent to the MACT standard that the EPA would have promulgated under section 112(d) or (h) of the Act, had they done so by the section 112(j) deadline.

Existing source maximum achievable control technology (MACT) requirements means the requirements, which include, where feasible, an equivalent emission limitation, reflecting the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reductions and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies. These requirements shall be based upon available information and shall not be less stringent than the MACT floor.

Maximum achievable control technology (MACT) floor means:

(1) For existing sources:

(i) The average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Department and/or Administrator has emissions information), excluding those sources that have, within 18 months before the Department issues a final and legally effective MACT determination under this subpart, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in section 171 of the Act) applicable to the source category and prevailing at the time, in the category, for categories of stationary sources with 30 or more sources, or

(ii) The average emission limitation achieved by the best performing five sources (for which the Department and/or Administrator has emissions information) in the category, for categories with fewer than 30 sources.

(2) For new sources, the emission limitation achieved in practice by the best controlled source in the section 112(c) source category, where such sources is equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected 112(j) source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected 112(j) source.

New affected 112(j) source means the collection of equipment, activities or both, that if constructed after the issuance of a final and legally effective case-by-case MACT determination according to paragraph 63.55(a) of this subpart, is subject to the applicable new source MACT requirements. According to paragraph 63.52(f)(3)(i) of this subpart, each permit shall define the term "new affected 112(j) source," which will be the same as the "affected 112(j) source" unless a different collection is warranted based on consideration of factors including:

(1) Emission reduction impacts of controlling individual sources versus groups of sources;

(2) Cost effectiveness of controlling individual

equipment;

(3) Flexibility to accommodate common control strategies;

(4) Cost/benefits of emissions averaging;

(5) Incentives for pollution prevention;

(6) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices);

(7) Feasibility and cost of monitoring; and

(8) Other relevant factors.

New source maximum achievable control technology (MACT) requirements means the requirements, which include, where feasible, an equivalent emission limitation, which shall be based upon available information and shall not be less stringent than the MACT floor and which reflects the maximum degree of reduction in emissions of hazardous air pollutants that the Department, taking into consideration the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines is achievable by sources in the category to which such MACT standard applies.

Research or laboratory activities means activities whose primary purpose is to conduct research and development into new processes and products; where such activities are operated under the close supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner and where the source is not in a source category, specifically addressing research or laboratory activities, that is listed according to section 112(c)(7) of the Act.

Section 112(j) deadline means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under 40 CFR part 63, except that for all major sources listed in those source categories scheduled to be promulgated by November 15, 1994, the section 112(j) deadline is November 15, 1996 and for all major sources listed in those source categories scheduled to be promulgated by November 15, 1997, the section 112(j) deadline is December 15, 1999.

Sec. 63.52 Approval process for new and existing affected 112(j) sources.

(a) Sources that are major affected 112(j) sources on the section 112(j) deadline.

(1) Except as provided for in 63.52(a)(2), the owner or operator of any source that is a major affected 112(j) source on the section 112(j) deadline shall comply with the following.

(i) Submit to the Department by the section 112(j) deadline:

(A) A Part 1 MACT application according to paragraph 63.53(a) of this subpart or

(B) If desired, a request for an applicability determination by the Department of whether a source is a major affected 112(j) source.

(ii) Submit to the Department a Part 2 MACT application according to paragraph 63.53(b) of this subpart not later than 6 months following:

(A) The submittal of the Part 1 MACT application or

(B) The receipt of the Department's positive applicability determination according to paragraph (d)(1) of this section.

(iii) If desired, include with the Part 2 MACT application submitted according to paragraph (a)(1)(ii) of this section, a Part 3 MACT application according to paragraph 63.53(c) of this subpart.

(2) The owner or operator of any source that has received a final and legally effective case-by-case MACT determination under Section 112(g) according to Sec. 63.43 of this subpart on or before the section 112(j) deadline shall submit a Part 1 MACT application to the Department by the section 112(j) deadline.

(b) Sources that become major affected 112(j) sources after the section 112(j) deadline and that do not have a permit addressing the section 112(j) requirements.

(1) The owner or operator of any source shall comply with the paragraphs (b)(2) and (3) of this section, when section 112(g) requirements are not invoked and when that source would become a major affected 112(j) source due to:

(i) Construction, reconstruction or modification;

(ii) Relaxation of any state or federally enforceable permit limitation; or

(iii) The Department, under subpart A of this regulation, or the Administrator, under section 112(a)(1) of the Act, establishes a lesser quantity emission threshold that results in an area affected 112(j) source becoming a major affected 112(j) source.

(2) The owner or operator of any source identified in paragraph (b)(1) or (c)(2)(i) of this section shall submit the following to the Department:

(i) Part 1, Part 2 and Part 3 MACT applications according to paragraphs 63.53(a) through (c) of this subpart.

(ii) One of the following requests, as appropriate.

(A) A request that any associated Regulation 2 construction permit be processed according to paragraph 11.2(j) of Regulation 2.

(B) A request that the relaxation of any existing permit limitation specified in a Regulation 30 permit be processed as a significant permit modification.

(C) A request that the relaxation of any existing permit limitation specified in a Regulation 2 operating permit, where there is an associated pending initial Regulation 30 permit, be processed according to paragraph 11.2(j) of Regulation 2.

(3) Where the relaxation of any existing permit limitation specified in a Regulation 2 operating permit is requested, and there is not an associated Regulation 30 or pending initial Regulation 30 permit, operation as a major affected 112(j) source shall not commence until a Regulation 30 permit that addresses the section 112(j) requirements is issued by the Department.

(4) The owner or operator of any source that would become a major affected 112(j) source due to construction or reconstruction and section 112(g) requirements are invoked shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

(c) Sources that have a permit addressing the section 112(j) requirements.

The requirements of paragraphs (c)(1) and (2) of this section apply to major affected 112(j) sources that have a permit addressing the section 112(j) requirements according to Secs. 63.50 through 56 of this subpart, but where changes to equipment, activities or both, subsequently, occur at the source.

(1) If the existing permit already provides the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, then that source shall comply with the applicable new source MACT requirements, and the section 112(j) requirements are thus satisfied.

(2) If the existing permit does not provide the appropriate requirements that address the subsequent changes that are to occur under paragraph (c) of this section, the owner or operator shall comply with paragraph (c)(2)(i) or (ii) of this section, whichever appropriate.

(i) If section 112(g) requirements are not invoked, the owner or operator of that source shall comply with the provisions of paragraph (b)(2) of this section.

(ii) If section 112(g) requirements are invoked, the owner or operator of that source shall apply for and obtain a final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart.

(d) Applicability and equivalency determinations.

(1) The Department shall review any request for an applicability determination when requested to do so according to paragraph (a)(1)(i)(B) of this section. If the Department's applicability determination is positive, the owner or operator shall comply with paragraphs (a)(1)(ii) and (iii) of this section. If the Department's applicability determination is negative, no further action by the owner or operator is necessary.

(2) For any Part 1 application received pursuant to paragraph (a)(2) of this section, the Department shall review the final and legally effective case-by-case MACT determination approved according to Sec. 63.43 of this subpart. If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall retain the existing emission limitations in the permit as the emission limitations to effectuate section 112(j) by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable . If the Department determines that the emission limitations in that final and legally effective case-by-case MACT determination are not substantially as effective as the emission limitations which the Department would otherwise adopt to effectuate section 112(j) for that source, then the Department shall impose the requirements specified in paragraph (f)(3) of this section by reopening the Regulation 30 permit for cause or amending the Regulation 2 permit following the procedures in paragraphs 12.4 through 12.6 of Regulation 2, as applicable.

(3) In issuing any final and legally effective case-by-case MACT determination according to Sec. 63.43 of this subpart after the section 112(j) deadline (i.e., according to paragraph (b)(4) or (c)(2)(ii) of this section), the Department shall specify in that determination that the associated emission limitations effectuate both section 112(g) and section 112(j) requirements.

(e) Completion determination and application shield.

(1) Within 60 days of the receipt of the Part 2 and/or Part 3 MACT application(s), the Department shall notify the owner or operator in writing whether the application is complete or incomplete. The Part 2 and/or Part 3 MACT application(s) shall be deemed complete unless the Department notifies the owner or operator in writing within 60 days of the submittal that the application is incomplete.

(2) Following submittal of any application, the Department may request additional information from the owner or operator. The owner or operator shall respond to such requests in a timely manner.

(3) If the owner or operator has submitted a timely and complete application as required by this section, any failure to have a Regulation 30 permit addressing the section 112(j) requirements shall not be a violation of section 112(j), unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application. Once a complete application is submitted, the owner or operator shall not be in violation of the requirement to have a Regulation 30 permit addressing the section 112(j) requirements.

(f) Permit issuance and content.

(1) For each Part 2 application received according to paragraph (a) of this section, the Department shall reopen the source's Regulation 30 permit for cause according to the requirements of Regulation 30 and shall impose the requirements in paragraph (f)(3) of this section, as appropriate, through the Regulation 30 permit. If the

Department has not yet issued a Regulation 30 permit, the Department shall revise the applicable Regulation 2 operating permit(s) using the procedures in paragraphs 12.4 through 12.6 of Regulation 2.

(2) For each Part 2 application received according to paragraph (b) or (c) of this section, the Department shall issue a Regulation 2 construction or operating permit using the procedures of paragraph 11.2(j) of Regulation 2, shall reopen the source's Regulation 30 permit for cause, shall revise the source's Regulation 30 permit as a significant permit revision or shall issue a Regulation 30 permit, as applicable, to impose the requirements in paragraph (f)(3) of this section, as appropriate:

(3) Permit requirements for affected 112(j) sources.

(i) Identification of the affected 112(j) source and the new affected 112(j) source.

(ii) An equivalent emission limitation established by the Department that reflects existing source MACT requirements, for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and operated properly.

(iii) An equivalent emission limitation established by the Department that reflects new source MACT requirements for the equipment and activities within the affected 112(j) source, based on the degree of emission reductions that can be achieved if the control technologies or work practices are installed, maintained and operated properly.

(iv) In lieu of paragraphs (f)(ii) and (f)(iii) of this section, any specific design, equipment, work practice or operational standard or combination thereof, when the Administrator or Department determines that hazardous air pollutant cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(v) The appropriate provisions of subpart A of this regulation and the information specified in paragraphs (f)(3)(v)(A) through (C) of this section.

(A) Any additional emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation.

(B) Compliance certifications, testing, monitoring, reporting and recordkeeping requirements that are consistent with requirements established according to Regulation 30.

(C) Compliance dates by which the owner or operator shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit.

(I) The owner or operator of a major affected 112(j) source subject to paragraphs (a), (b) or (c)(2) of this section shall comply with existing source MACT requirements by the date established in the source's Regulation 30 or Regulation 2 permit, as applicable. The compliance date shall not be later than 3 years after the issuance of the permit for that source, except where the Department issues a permit that grants an additional year to comply in accordance with section 112(i)(3)(B) of the Act or unless otherwise specified in section 112(i).

(II) The owner or operator of a new affected 112(j) source subject to paragraph (c)(1) of this section shall comply with new source MACT requirements immediately upon startup of the new affected 112(j) source.

(g) Permit issuance dates.

(1) Except as specified in paragraph (g)(2) of this section, the Department shall issue a Regulation 30 or Regulation 2 permit, as applicable, addressing the requirements of this subpart within 24 months of the submittal of the Part 1 MACT application.

(2) The Department shall issue a Regulation 30 or Regulation 2 permit, as applicable, addressing the requirements of this subpart within 18 months of receipt of the complete Part 2 and/or Part 3 MACT application(s) from the owner or operator of an affected 112(j) source receiving a positive applicability determination or a negative equivalency determination under paragraph (d)(2) of this section.

(h) MACT emission limitations.

(1) Owners or operators of affected 112(j) sources subject to paragraph (a), (b) or (c)(2) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to affected 112(j) sources, including the compliance date for affected 112(j) sources established in paragraph (f)(3)(v)(C)(I) of this section.

(2) Owners or operators of new affected 112(j) sources subject to paragraph (c)(1) of this section shall comply with all requirements of Secs. 63.50 through 56 of this subpart that are applicable to new affected 112(j) sources, including the compliance date for new affected 112(j) sources established in paragraph (f)(3)(v)(C)(II) of this section.

Sec. 63.53 Application content for case-by-case MACT determinations.

(a) Part 1 MACT Application.

The Part 1 application for a MACT determination shall contain the information in paragraphs (a)(1) through (4) of this section.

(1) The name and address (physical location) of the major source.

(2) A brief description of the major source and an

identification of the relevant source category.

(3) An identification of the types of sources belonging to the relevant source category.

(4) An identification of any affected 112(j) sources for which an application has been made for a final and legally effective case-by-case MACT determination under section 112(g) according to Secs. 63.40 through 44 of this subpart.

(b) Part 2 MACT Application.

The Part 2 application for a MACT determination shall contain the information in paragraphs (b)(1) through (5) of this section.

(1) For an affected 112(j) source subject to construction, reconstruction or modification, the expected commencement date of installation, the expected completion date of installation and the anticipated date of startup of the affected 112(j) source.

(2) The hazardous air pollutants emitted by each affected 112(j) source in the relevant source category and an estimated total uncontrolled and controlled emission rate for hazardous air pollutants from the affected 112(j) source.

(3) Any existing Federal, State or local limitations or requirements applicable to the affected 112(j) source.

(4) For each piece of equipment, activity or source, an identification of control technology in place.

(5) Information relevant to establishing the MACT floors.

(c) Part 3 MACT Application.

The Part 3 application for a MACT determination shall contain the information in paragraphs (c)(1) through (3) of this section.

(1) Recommended MACT floors, an emission standard or emission limitation that is equivalent to existing source MACT requirements and an emission standard or emission limitation that is equivalent to new source MACT requirements for the affected 112(j) source, and supporting information consistent with paragraph 63.52(f) of this subpart. The owner or operator may recommend a specific design, equipment, work practice, operational standard or combination thereof, as an emission limitation.

(2) Proposed control technology that, if properly operated and maintained, will meet, at minimum, the existing source and new source MACT requirements, including identification of the affected 112(j) sources to which the control technology shall be applied.

(3) Relevant parameters to be monitored and frequency of monitoring to demonstrate continuous compliance with the MACT emission limitation over the applicable reporting period.

Sec. 63.54 Pre-construction review procedures for affected 112(j) sources.

The owner or operator who constructs, reconstructs or modifies an affected 112(j) source after the section 112(j) deadline shall follow the procedures established under Regulations 2, 25 and/or 30 before commencing construction, reconstruction, or modification of the affected 112(j) source.

Sec. 63.55 Maximum achievable control technology (MACT) determinations for affected 112(j) sources subject to case-by-case determination of equivalent emission limitations.

(a) Determination of case-by-case MACT requirements.

The Department shall issue final and legally effective case-by-case MACT determinations for affected 112(j) and new affected 112(j) sources that are consistent with the existing source MACT and the new source MACT requirements, as defined in Sec. 63.51 of this subpart.

(b) Reporting to the Administrator.

The owner or operator shall submit copies of the Part 1, Part 2 and Part 3 MACT applications to the Administrator at the same time these applications are submitted to the Department.

Sec. 63.56 Requirements for case-by-case determination of equivalent emission limitations after promulgation of subsequent MACT standard.

(a) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source before the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Regulation 30 permit shall contain the promulgated standard rather than the emission limitation determined under Sec. 63.52 of this subpart, and the owner or operator shall comply with the promulgated standard by the compliance date in the promulgated standard.

(b) If the Administrator promulgates a relevant emission standard that is applicable to one or more affected 112(j) sources that are located at a major source on or after the date that the Department has issued a final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, the Department shall incorporate requirements of that standard in the Regulation 30 permit upon its next renewal. The Department shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but not longer than 8 years after such standard is promulgated or 8 years after the issuance of the final and legally effective case-by-case MACT determinations according to paragraph 63.55(a) of this subpart, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.

(c) Notwithstanding the requirements of paragraph (a)

or (b) of this section, the requirements of paragraphs (c)(1) and (2) of this section shall apply.

(1) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determination is issued according to paragraph 63.55(a) of this subpart, the Department is not required to change the emission limitation in the permit to reflect the promulgated standard if the Department determines that the level of control required in that prior case-by-case MACT determinations is substantially as effective as that required by the promulgated standard according to Sec. 63.1(e) of subpart A.

(2) If the Administrator promulgates an emission standard under section 112(d) or (h) of the Act that is applicable to an affected 112(j) source after the date a final and legally effective case-by-case MACT determinations is issued according to paragraph 63.55(a) of this subpart and the level of control required by the promulgated emission standard is less stringent than the level of control required by that prior case-by-case MACT determination, the Department shall not incorporate any less stringent emission limitation of the promulgated standard in the Regulation 30 permit applicable to such source(s) and shall consider any more stringent provisions of that prior case-by-case MACT determination to be applicable legal requirements when issuing or revising such a Regulation 30 permit.

DIVISION OF FISH & WILDLIFE

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

SAN# 2002-03&04

1. Title Of The Regulations:
Amendments To Shellfish Regulations

2. Brief Synopsis Of The Subject, Substance And Issues:
Oyster harvesting regulations need to be updated to cover the harvest season; the harvestable amount of oysters and areas where oysters may be landed in 2002. It is also proposed to make it illegal to take crabs from fish pots because recreational crabbers are using fish pots to take crabs in addition to their allowable two crab pots.

3. Possible Terms Of The Agency Action:
None

4. Statutory Basis Or Legal Authority To Act:
7 **Del.C.** §1902, 7 **Del.C.** §2106

5. Other Regulations That May Be Affected By The Proposal:
None

6. Notice Of Public Comment:
Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on March 27, 2002 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 12:00 PM, March 31, 2002.

7. Prepared By:
Charles A. Lesser, (302)739-3441, January 22, 2002

Proposed New Shellfish Regulation Pertaining To The Unlawful Harvest Of Crabs With Fish Pots

S-32 Fish Pots – Illegal Harvest Of Crabs

It shall be unlawful to harvest crabs in a fish pot, fish trap or minnow trap as defined in §906(26), 7 Del.C.

Proposed Amendments To Shellfish Regulations Pertaining To Oysters

S-63 Oyster Harvesting Seasons

It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during the ~~period~~ season beginning at sunrise on ~~November 1, 2001 and ending at sunset on December 31, 2001~~ Note: One of the following; September 1 and ending at sunrise on April 30 or July 1 and ending at sunset on December 31 or July 1 and ending at sunset on June 30.

S-65 Oyster Landing Areas

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

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

S-67 Oyster Harvesting Gear

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

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

(c) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster

beds with more than two oyster dredges overboard at the same time.

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

S-69 Oyster Minimum Size Limit

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

S-71 Oyster Harvesting Control Dates

(a) ~~The Department shall consider a~~ A person ~~eligible~~ is authorized to participate in the ~~2001~~ seasonal harvest of oysters for direct sale from the State's natural oyster beds provided said person complies with the following criteria:

1. He/she has ~~obtained~~ a valid oyster harvesting license and meets the eligibility requirements in §2103, 7 Del. C.

2. He/she has indicated in writing to the Department no later than 4:30 PM on ~~October 22, 2001~~ a date at least 30 days prior to the opening date of the oyster harvesting season that he/she will participate. ~~in the 2001 harvest of oysters~~.

3. He/she pays the ~~annual~~ harvest fee of $1.25 per bushel for his/her individual allotment of oysters no later than 4:30 PM on ~~November 1, 2001.~~ a date at least 10 days prior to the opening date of the oyster harvesting season.~~-~~

(b) In the event a person who indicates in writing to the Department that he/she will participate in the ~~2001~~ next seasonal harvest of oysters from the State's natural oyster beds and then fails to pay his or her oyster harvest fee ~~no later than 4:30 PM on November 1, 2001,~~ on time said person's share of oysters shall be pooled and made available for subsequent allocations to individuals who have paid their oyster harvest fees ~~prior to 4:30 PM on November 1, 2001~~. on time. The quantity of the subsequent allocation of oysters shall be determined by dividing the pooled allotments by the number of paid participants. Interested participants may obtain no more than one subsequent allocation by paying the oyster harvest feel of $1.25 per bushel prior to harvesting same.

S-73 Oyster Harvesting Licensee Requirements

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

(b) It shall be unlawful for any person licensed to harvest oysters from the State's natural oyster beds for direct sale to not attach an oyster harvesting tag in the locked position through the fabric of a bushel bag containing oysters.

S-75 Oyster Harvest Quota

The oyster harvest quota for ~~2001~~ the 2002-2003 season is ~~24,795~~ 24,445 bushels.

DIVISION OF FISH & WILDLIFE

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

REGISTER NOTICE
SAN# 2002-01

1. Title Of The Regulations:
Tidal Finfish Regulations

2. Brief Synopsis Of The Subject, Substance And Issues:

The Coast Wide Requirements For recreational black sea bass fishermen in 2002 is a 11.5 inches minimum size length with a 25 fish creel limit and no closed season. Delaware currently has an eleven inch minimum size limit, a 25 fish creel and closed season of March 1 through May 9. It is proposed to amend Tidal Finfish Regulation No. 23 to increase the minimum size limit in black sea bass from 11 inches to 11.5 inches for recreational fishermen and eliminate the closed season from March 1 through May 9.

There are no proposed changes to the weakfish fishery management plan. Nevertheless, the calendar dates for the periods it is unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Bay or Ocean with any fishing equipment other then a hook and line must be updated from 2001 to 2002. It is proposed to amend Tidal Finfish Regulation No. 10 so the closure dates in 2001 match the same time closures in 2001.

The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2002. Delaware is obligated to achieve an additional 3.5 percent reduction to the 48 percent reduction required in 2001, relative to the 1998 landings. This can be achieved by either a spring or fall closure for a relatively short period of time. Another option would be to decrease the minimum size from 17.5 to 17 inches and implement a longer closure in the spring or fall. Reducing

the creel limit lower than four is not considered acceptable. In any case, Tidal Finfish Regulation No. 4 will be amended to account for an additional 3.5 percent reduction to the 2001 reduction.

3. Possible Terms Of The Agency Action:

Delaware is required to comply with specific Fishery Management Plans approved by the Atlantic States Marine Fisheries Commission. Failure to do so could result in a complete closure of a specific fishey in Delaware.

4. Statutory Basis Or Legal Authority To Act:

7 **Del. C. §** 903, 7 (e)(2)(a)

5. Other Regulations That May Be Affected By The Proposal:

None

6. Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 19901, (302) 739-3441. A public hearing on these proposed amendments will be held on March 21, 2002 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 1, 2002.

7. Prepared By:

Charles A. Lesser, (302)739-3441, February 6, 2002

Proposed Amendments To Tidal Finfish Regulations

No. 4, Summer Flounder Size Limits; Possession Limits; Seasons.

a) It shall be ~~lawful~~ unlawful for any recreational fisherman or any commercial hook and line fisherman to take and reduce to possession or to land summer flounder ~~at any time. Effective 12:01 AM on May 5, 2001~~. (Note closed season to be determined in combination with creel and minimum size limit.)

b) It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ (Note: Creel limit to be determined in combination with seasonal closure and size limit.) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than ~~seventeen and one half (17.5)~~ (Note: minimum size limit to be determined in combination with seasonal closure and creel limit.) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, while on board a vessel, to have in possession any part of a summer flounder that measures less than ~~seventeen and one-half (17.5)~~ (Note: minimum size limit to be determined in combination with seasonal closure and creel limit.) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) Is omitted intentionally.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder.

2) A receipt from a licenses or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

4) A valid commercial food fishing license and a foodfishing equipment permit for gill nets.

g) Is omitted intentionally.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ~~four (4)~~ Note: creel limit to be determined in combination with seasonal closure and size limit.) summer flounder at or between the place where said summer flounder were caught and said persons personal abode or temporary or transient place of lodging.

Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to reduce recreational summer flounder harvest in Delaware in 2002

by 3.5 percent.

Option	Opening Day	Final Day	Number of Open Days	Bag Limit	Minimum Size
1	01-Jan	31-Jul	212	7	16”
2	01-Jan	06-Aug	218	5	16.5”
3	01-Jan	23-Aug	235	5	17”
4	25-May	02-Aug	70	7	16”
5	25-May	09-Aug	77	5	16.5”
6	25-May	27-Aug	95	5	17”
7	16-May	31-Dec	230	4	17.5”
8	01-Jan	23-Sep	266	4	17.5”

No. 10, Weakfish Size Limits; Possession Limits; Seasons

a) It shall be unlawful for any person to possess weakfish **Cynoscion regalis** taken with a hook and line, that measure less than fourteen (14) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial foodfishing license and a food fishing equipment permit for hook and line to have more than fourteen (14) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person’s food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measures less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than fourteen (14) weakfish, not to include weakfish in one’s personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of fourteen (14) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than hook and line during the following periods of time:

Beginning at 12:01 AM on ~~May 1, 2001~~ May 1, 2002 and ending at midnight on ~~May 9, 2001~~ May 12, 2002;

~~beginning at 12:01 AM on May 11, 2001 and ending at midnight on May 13, 2001 ;~~

beginning at 12:01 AM on ~~May 18, 2001~~ May 17, 2002 and ending at midnight on ~~May 20, 2001~~ May 19, 2002;

beginning at 12:01 AM on ~~May 25, 2001~~ May 24, 2002 and ending at midnight on ~~May 27, 2001~~ May 26, 2002;

beginning at 12:01 AM on ~~June 1, 2001~~ May 31, 2002 and ending at midnight on ~~June 3, 2001~~ June 2, 2002;

beginning at 12:01 AM on ~~June 8, 2001~~ June 7, 2002 and ending at midnight on ~~June 10, 2001~~ June 9, 2002;

beginning at 12:01 AM on ~~June 15, 200~~1 June 14, 2002 and ending at midnight on ~~June 17, 2001~~ June 16, 2002;

and beginning 12:01 AM on June 24, ~~2001~~ 2002 and ending at midnight on June 20, ~~2001~~ 2002.

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of fourteen (14) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than fourteen (14) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person’s food fishing equipment permit for hook and line specifies the same day of the week for taking in excess of fourteen (14) weakfish.

No. 23, Black Sea Bass Size Limits; Trip Limits; Seasons; Quotas

a) It shall be unlawful for any person to have in possession any black sea bass **Centropritis striata** that measures less than ten (10) inches, total length.

b) It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than ~~eleven (11)~~ eleven and one-half (11.5) inches total length.

c) It shall be unlawful for any person to posses on board a vessel at any time or to land after one trip more than the quantity of black sea bass determined by the Atlantic States Marine Fisheries Commission for any quarter. The Department shall notify each individual licensed to land black sea bass for commercial purposes of the quarterly trip limits established by the Atlantic States Marine Fisheries Commission.

One trip shall mean the time between a vessel leaving its home port and the next time said vessel returns to any port in Delaware.

d) It shall be unlawful for any person to fish for black sea bass for commercial purposes or to land any black sea

bass for commercial purposes during any quarter after the date in said quarter that the Atlantic States Marine Fisheries Commission determines that quarter's quota is filled." The Department shall notify each individual licensed in Delaware to land black sea bass for commercial purposes of any closure when a quarterly quota is filled.

e) ~~It shall be unlawful for any recreational fisherman to take and reduce to possession or to land any black sea bass during the period beginning at 12:01 AM on March 1 and ending at midnight on May 9, next ensuing.~~

f) It shall be unlawful for any recreational fisherman to have in possession more than 25 black sea bass at or between the place where said black sea bass were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

EXECUTIVE DEPARTMENT

DELAWARE ECONOMIC DEVELOPMENT OFFICE

Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 62(i)(C)

Notice Of Proposed Information Technology Training Grant Program Regulation

Title Of Regulation

Information Technology Training Grant Program Regulation

Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation

In accordance with procedures set forth in 29 **Del.C.,** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Delaware Economic Development Office ("DEDO") is proposing to adopt a regulation for the administration and operation of the Information Technology Training Grant Program established in 73 **Del. Laws**, c. 74, § 62(i)(C) (June 28, 2001) and administered by the Workforce Development Section of DEDO. The proposed regulation sets forth the rules governing eligibility for grants under the Program and for the administration of the Program.

Statutory Basis And Legal Authority To Act

29 **Delaware Code**, § 5005(11); 73 **Del. Laws**, Ch. 74, § 62(i)(C) (June 28, 2001).

Other Regulations Affected

None.

How To Comment On The Proposed Regulation

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Ms. Helen Groft, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901, phone (302) 672-6807, or facsimile (302) 739-2028. Members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Helen Groft at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before April 2, 2002.

Proposed Information Technology Training Grant Program Regulation

1.0 Introduction.

This regulation is promulgated under the authority granted to the Director of the Delaware Economic Development Office ("DEDO") by 29 Del. C., §5005(11) to make regulations for the administration and operation of DEDO. One of the programs administered by DEDO through its Workforce Development Section is the Information Technology Training Grant Program established in 73 Del. Laws, Ch. 74, § 62(i)(C) (June 28, 2001) (the "Program"). The Program is designed to provide customized information technology training to small- and medium-sized businesses through grants made by the Workforce Development Section of DEDO. This regulation sets forth the definition of certain terms used in the Program and describes (i) the eligibility requirements for persons desiring to participate in the program, and (ii) other administrative features of the Program.

2.0 Definitions

The terms defined in Section 1 hereof shall have the meanings set forth therein.

"Blue Collar Program" means the employment and pre-employment training grant program operated by DEDO under the Delaware Economic Development Training Act, 29 Del. C., Subchapters 5070 – 7073.

"Information technology training" means pre-employment or employment training that provides meaningful computer-related job skills to trainees.

"Small- or medium-sized business" means a corporation, limited liability company, general or limited partnership, business trust, common law trust, proprietorship, unincorporated association or other form of organization conducting a for-profit or not-for-profit enterprise in the State of Delaware and having five hundred (500) or fewer employees.

"Training grant" means a grant of up to One Hundred Thousand Dollars ($100,000) for the purpose of providing information technology training to employees of a small- or medium-sized business.

3.0 Persons Eligible for Training Grants under the Program

Only a small or medium-sized business may apply for a training grant under the Program.

4.0 Program Administration.

4.1 General Principles. DEDO intends to operate the Program as part of its employment and pre-employment training programs operated by its Workforce Development Section under the Blue Collar Program. Accordingly, DEDO intends that the statutory and regulatory provisions of the Blue Collar Program will apply to the Program, with the modifications set forth in this regulation. Persons seeking training grants under the Program should contact the Director of the Workforce Development Section of DEDO regarding possible grants and application material at 99 Kings Highway, Dover, DE 19901, phone (302) 672-6807, facsimile (302) 739-2028. Training grants will be available only if sufficient funds are available for the purpose of making such grants.

4.2 Program Variance from Blue Collar Program.

4.2.1 For purposes of the Program, an "eligible applicant," as defined in 29 Del. C. §5070(g) shall be a small- or medium-sized business, as defined in Section 1.0 of this regulation.

4.2.2 Employees receiving training under the Program are not limited to entry-level through first-line supervisory positions.

4.2.3 Small or medium-sized businesses are not required to pay Delaware Unemployment Insurance Tax in order to qualify for a training grant, unless other provisions of Delaware law require them to do so.

ADMINISTRATIVE OFFICE OF THE COURTS

VIOLENT CRIMES COMPENSATION BOARD

The Violent Crimes Compensation Board proposed to amend several regulations. A public hearing is scheduled for:

March 28, 2002, 6:30 P.M. – 8:00 P.M.
Site: Delaware Technical and Community College
Corporate and Community Programs
Terry Campus, Dover DE

Comments: Written comments will be accepted until March 30, 2002, and may be sent to:

Delaware Violent Crimes Commission
240 N. James Street, Suite 203
Wilmington, DE 19804

Proposed Amendments

RULE X – HEARINGS

(A) Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board at least seven days prior to the scheduled hearing date. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.

(B) The Board may receive as evidence, any statements, documents, information, or material it finds relevant and of such nature as to afford the claimant a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc. as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

(C) Any claimant claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing and must be received in the office of the Violent Crimes Compensation Board within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.

(D) The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physician's fee shall be paid directly by the Board.

(E) All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all witnesses.

(F) Claim hearings shall be open to the public. However, the Board may hold private deliberations under the following circumstances:

(1) When the claim to be considered derives from any sexual offense;

(2) When the claim to be considered derives from any offense by a child unless such child has been deemed amenable to the jurisdiction of a criminal court;

(3) When the claim to be considered derives from any matter not yet adjudicated.

(G) A claim under $5,000.00 may be heard by one Board member.

(H) A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than $5,000.00. If the reopen request for compensation is more than $5,000.00, the request to reopen shall be heard by a quorum of the Board.

(I) If a claim is filed more than one (1) year after the crime occurrence, or if the crime was reported more than 72-hours after the crime, then the claim may be reviewed by one member to accept or deny for processing.

(J) Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of decision rendered by the Board.

(K) Where a victim applies for additional compensation for expenses incurred more than one(1) year from the crime occurrence, the Board may require a new physical or mental examination in order to ascertain causal connection to the original occurrence.

JUSTIFICATION: The Board finds that the mere passage of time may require current medical and mental examination in order to determine whether compensation should be paid.

RULE XXVII – BURIAL AWARDS

The aggregate award for funeral and burial shall not exceed ~~$6,000.00~~ $8,500.00 including:

A. ~~$4,000.00~~ $6,000.00 for funeral expenses including up to ~~$150.00~~ $200.00 for flowers.

B. $750.00 for the costs of opening and closing of the grave.

C. ~~$750.00~~ $1,000.00 for the purchase of a cemetery plot.

D. ~~$500.00~~ $750.00 for the purchase of a grave marker.

Burial award adopted by Board on 6/2/88. Revised by Board 10/25/90, 3/14/91, 5/7/92, and 2/4/99.

JUSTIFICATION: The Board finds that the increase in the amounts included within Rule XXVII reflext increasing costs of burial.

RULE XXX – TRAVEL AWARDS

The Board may award reasonable expenses for a victim's travel to and from medical and mental health providers where the round trip distance is more than 10 miles from the victim's place of residence.

JUSTIFICATION: The Board finds that payment of reasonable travel expenses for treatment purposes promotes the welfare of victims of crime.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. **[~~Bracketed stricken through~~]** indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

REAL ESTATE COMMISSION

24 DE Admin. Code 2925

Statutory Authority: 24 Delaware Code, Section 2905(a)(1) & 2911(b), (24 **Del.C.** §2905(a)(1), §2911(b))

ORDER ADOPTING GUIDELINES FOR FULFILLING THE DELAWARE REAL ESTATE EDUCATION REQUIREMENTS

AND NOW, this 14th day of February, 2002, in accordance with 29 *Del.C.* § 10118 and for the reasons stated hereinafter, the Real Estate Commission of the State of Delaware ("the Commission") enters this Order adopting amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements.

I. Nature of the Proceedings

Pursuant to the Commission's authority under 24 *Del.C.* §§ 2905(a)(1), and 2911(b), the Commission proposed to revise its existing Guidelines for Fulfilling the Delaware Real Estate Education Requirements to revise the quorum requirement for the Education Committee, and to permit members of the Education Committee attending at least eighty percent (80%) of Committee meetings in a biennial license period the opportunity to receive up to six (6) elective credit hours of continuing education. Notice of the public hearing to consider the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements was published in the Delaware *Register of Regulations* dated December 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on January 10, 2002 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Commission was present. The Commission deliberated and voted on the proposed revisions to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements. This is the Commission's Decision and Order ADOPTING the amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements as proposed.

II. Evidence and Information Submitted

The Commission received written comments from Richard H. Nelson, a member of the Education Committee. Mr. Nelson's January 7, 2002 letter to the Commission's Administrative Assistant was marked as Commission Exhibit 4. Mr. Nelson indicated that he was "not in favor" of changing the quorum requirement from seven members to five members. Mr. Nelson provided comments suggesting a change to another portion of Guideline 4.4.2 instead of changing the quorum requirement. At the January 10, 2002

hearing, no public comment was received.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements and offered an adequate opportunity to provide the Commission with comments. The Commission received and considered written comments.

2. The proposed amendments to the Guidelines for Fulfilling the Delaware Real Estate Education Requirements are necessary to change the quorum requirement for the Education Committee and to provide Education Committee members attending at least eighty percent (80%) of the Committee's meetings during a license period with up to six (6) continuing education credit hours applicable to elective credits. The proposed amendments will enable the Education Committee to continue to effectively assist the Commission by encouraging membership in the Committee and by recognizing the ability of five members to make recommendations to the Commission.

3. The Commission concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del.C.* § 2905(a)(1), and to publish guidelines as to acceptable courses of instruction, seminars and lectures in accordance with 24 *Del.C.* § 2911(b).

4. For the foregoing reasons, the Commission concludes that it is necessary to adopt amendments to its Guidelines for Fulfilling the Delaware Real Estate Education Requirements, and that such amendments are in furtherance of its objectives set forth in 24 *Del.C.* Chapter 29.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Commission, **IT IS ORDERED**, that the Guidelines for Fulfilling the Delaware Real Estate Education Requirements 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 Real Estate Commission

(As authenticated by a quorum of the Commission)
Mary B. Parker, Chairperson, Public Member
Marvin R. Sachs, Vice Chairperson, Professional Member
Joseph P. Connor, Jr., Secretary, Professional Member
John R. Giles, Professional Member
James D. McGinnis, Professional Member
Judy L. Bennett, Public Member
Marcia Shihadeh, Public Member
Harry W. Kreger, Professional Member
James D. Weldin, Public Member

Guidelines for Fulfilling the Delaware Real Estate Education Requirements

1.0 Introduction -- Mandate for Continuing Education

1.1 24 **Del.C.** §2911(b) sets forth a requirement that "...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses....."

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall be informed of the completion of the continuing education requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

2.0 Objective

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

3.0 Administration

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

4.0 Education Committee

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall serve one year terms. Election of said officers will be held in January.

4.4 Term of Office

4.4.1 Each appointment shall be for four (4) full years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

4.4.2 ~~A majority of members (7)~~ Five (5) members shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend at least half of all regular business meetings without valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

4.5 Committee Responsibilities

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

4.5.6 Notwithstanding any rule, regulation, or guideline to the contrary, members of the Education Committee who attend at least eighty percent (80%) of the meetings of the Education Committee during a biennial licensure period may receive up to six (6) continuing education credit hours applicable to elective credit hours only. This guideline will become effective beginning May 1, 2002.

5.0 Course Approval

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program. That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within fifteen (15) calendar days of completion of the program.

6.0 Program Criteria

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Courses of instruction which Are Not acceptable for credit include, but are not limited to:

6.1.2.1 Offerings in mechanical office and business skills such as typing, business machines and computer operations.

6.1.2.2 Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

6.1.2.3 Correspondence courses and program learning courses not under the direct supervision of a certified instructor, except those courses that have been certified through The Association of Real Estate License law Officials (ARELLO) Distance Education Certification Program.

6.1.2.4 General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

6.1.2.5 Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

6.1.2.6 Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered accreditable continuing education activities. Examples of such activities are, but not limited to:

6.1.2.6.1 membership or service in a professional, occupational or other society or organization;

6.1.2.6.2 attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

6.1.2.6.3 writing or presentation of articles or research papers;

6.1.2.6.4 a program or other type of organizational assignment;

6.1.2.6.5 self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered accreditable educational activities.

See 5 DE Reg. 1171 (11/1/01)

7.0 Course Approval Process

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, at least sixty (60) days prior to the date that the course is to be held. Failure to file within the appropriate time limit may be cause

for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining the standards required in these guidelines

8.0 Provider Responsibilities

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in “Maintenance and Availability of Records”.

8.2 The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity. This guideline shall not apply to courses that have been certified through ARELLO’s Distance Education Certification Program.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- Student Name
- Sponsors Name
- Topic Area Name
- Course Title
- Date course was completed
- Number of Credit Hours
- Course Approval Number
- Instructor Name(s)
- Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission’s Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

See 5 DE Reg. 1171 (11/1/01)

9.0 Instructor Qualifications

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.13 a professional designation such as, but not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI (Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

10.0 Instructor Approval Process

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date**. Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10027 (3 **Del.C.** §10027)

ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10027, the

Delaware Harness Racing Commission ("the Commission") hereby issues this Order adopting a portion of proposed amendments to the Commission's Rules of Racing. Following notice and a public hearing held on January 3, 2002, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the proposed rule amendments in the December 1, 2001 Register of Regulations, and in the Delaware Capital Review and the Delaware State News. The proposal contained proposed amendments to Rules 6.2.2.9, 6.3.1.1, 6.4.4.17, 8.3, and 8.3.2. The proposed amendment to Rule 6.2.2.9 would prohibit trailing horses on half-mile tracks and limit the field to only one trailer on larger tracks. The proposed amendment to Rule 6.3.1.1 would delete the existing rule and substitute the comparable U.S.T.A. rule requiring that a trainer warrant that he has authorization to enter his horse in the claiming race. The proposed amendment to Rule 6.4.4.17 would provide that the maximum field shall be one trailer and the event shall be split if there is more than one trailer. The proposed amendment to Rule 8.3 would detail additional factors for the State Steward to consider in assessing penalties for medication violations. The proposed amendment to Rule 8.3.2 would revise and increase the penalty schedule for medication violations involving class 1-5 drugs.

2. State Steward Harold Frazier submitted a letter on December 10, 2001 stating there was no danger from nine horse fields and there was no record of accidents due to nine horse fields. Salvatore DiMario, Executive Director of the Delaware Standardbred Owners Association ("DSOA") submitted comments at the public hearing. Mr. DiMario submitted the proposed amendments to Rules 6.2.2.9, 6.3.1.1, and 6.4.4.17. Mr. DiMario stated that the full board of the DSOA was in favor of the amendment to Rule 6.2.2.9 because nine horse fields are not safe on 1/2mile tracks. Mr. DiMario stated that the Rule 6.3.1.1 would do away with claiming authorizations and would be consistent with the U.S.T.A. rules. Mr. DiMario opposed the proposed amendment to Rule 8.3 because it would be a departure from the RCI guidelines.

Jim Boese, General Manager of Harrington Raceway stated that there are no safety concerns from running nine horse fields at Harrington's half-mile track. Mr. Boese reviewed the track's accidents for the last three years. During that period, there were seventeen accidents during the races. Four of these races were nine horse races and the accidents in those races all occurred beyond the 3/8 pole. There were no accidents in any nine horse race that occurred during the first turn of the race. Mr. Boese stated that the elimination of nine horse fields would eliminate racing slots for about 376 horses or the equivalent of four race days. Harrington also uses nine horse fields as part of its superfecta betting which would be negatively impacted by the proposed rule amendment.

Steve Warrington stated that nine horse fields create a lot of traffic on the track at Harrington. The drivers are forced to do some maneuvering around the first turn on the Harrington track. Mr. Warrington stated that nine horse fields should be allowed for stake races but all races should be split for ten horse fields. Mr. Warrington also offered into evidence a letter signed by drivers opposed to nine horse fields at Harrington.

Jim King stated that safety is a very important in driving and he is very uncomfortable with nine horse fields. Mr. King did not believe the amount bet supported the need for nine horse fields.

Valerie Warnick stated that there are three times as many accidents at Harrington as compared with Dover Downs.

William Chasanov, Esquire spoke as a Director at Harrington Raceway. Mr. Chasanov stated that the owners of the horses do benefit from nine horse fields. The nine horse fields allow an owner an extra chance to enter a horse. There is no evidence of accidents before the first turn in any nine horse race at Harrington. Mr. Chasanov further stated that the nine horse fields add to the handle and provide more money back to the owners.

Charles Lockhart, General Manager of Dover Downs, stated that Dover Downs track patrons do place significant bets on nine horse fields. There was no proof that nine horse fields are more dangerous. Mr. Lockhart stated that splitting ten horse fields would not result in attractive races and would be contrary to the conditions of the stake. Mr. Lockhart favored the amendments to Rule 8.3 and 8.3.2. He stated that most states do adopt separate penalty schedules for medication violations. Mr. Lockhart stated that sanctions for medication violations are needed to act as a deterrent.

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments. A summary of the testimony is contained in paragraph #2.

4. With regard to the proposed amendment to Rule 6.3.1.1, the proposed amendment is consistent with an existing U.S.T.A. rule and the Commission received no comments in opposition to the proposed rule. The Commission will adopt the Rule amendment as proposed.

As to Rule 6.2.2.9, the rule amendment as proposed would prohibit nine horse fields at Harrington Raceway

which is the only track in Delaware with a 1/2 mile track. The Commission received a division of comments concerning this amendment. The Rule was submitted by DSOA as a needed safety measure. The proposed amendment to Rule 6.4.4.17 was also submitted as part of the horsemen's position that nine horse fields represent a safety problem. The Commission finds a lack of convincing evidence that nine horse fields present added safety risks. The evidence from Harrington Raceway convincingly demonstrated that there were no accidents in nine horse fields in the last three years before the 3/8 pole in any race. There was some testimony about the perceived danger of nine horse fields but this testimony does not contradict the persuasive testimony offered by Mr. Boese. The Commission also received testimony about the impact of nine horse fields on the handle. However, at this point, the Commission does consider possible impacts on the handle as justification to eliminate all nine horse fields at Harrington. In short, the Commission is not convinced that there is a safety issue that requires adoption of the amendment to Rule 6.2.2.9. Similarly, the Commission finds an insufficient basis to adopt the companion proposed amendment to Rule 6.4.4.17.

As to the proposed amendments to Rule 8.3 and 8.3.2, the Commission finds that the proposed amendments would act as a much needed deterrent for licensees who commit medication violations. The testimony from Charles Lockhart indicated that other states have adopted their own penalty schedules to address medication violations. The Commission does not find persuasive the comments of Salvatore DiMario that the Commission should not deviate from RCI guidelines. The Commission believes that the proposed amendments to Rule 8.3 and 8.3.2 should be adopted as proposed.

5. The Commission concludes that the proposed amendments to Rules 6.3.1.1, 8.3, and 8.3.2 are necessary for the effective regulation of harness racing and the proposed amendments are in the best interests of the public. The Commission adopts the amendments to Rules 6.3.1.1, 8.3, and 8.3.2 as proposed. The Commission will not adopt the proposed amendments to Rules 6.2.2.9 and 6.4.4.17 for the reasons previously outlined. The Commission does intend to monitor the matter of nine horse fields and will reconsider any rule amendments upon sufficient proof of a needed rule change.

6. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on March 1, 2001. A copy of the enacted Rules is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this **4th** day of February, 2002.

Beth Steele, Chair
Mary Ann Lambertson, Commissioner
Thomas Conaty, IV, Esquire, Commissioner
Robert Everett, Commissioner
Kenneth Williamson, Commissioner

6.0 Types of Races

6.1 Types of Races Permitted

In presenting a program of racing, the racing secretary shall use exclusively the following types of races:

6.1.1 Overnight events which include:

6.1.1.1 Conditioned races;

6.1.1.2 Claiming races;

6.1.1.3 Preferred, invitational, handicap, open or free-for-all races;

6.1.1.4 Schooling races; and

6.1.1.5 Matinee races

6.1.2Added money events which include:

6.1.2.1 Stakes;

6.1.2.2 Futurities;

6.1.2.3 Early closing events; and

6.1.2.4 Late closing events

6.1.3 Match races

6.1.4 Qualifying Races (See Rule 7.0 --"Rules of the Race")

6.1.5 Delaware-owned or bred races as specified in 3 Del. C.§10032

6.2 Overnight Events

6.2.1 General Provisions

6.2.1.1 For the purpose of this rule, overnight events shall include conditioned, claiming, preferred, invitational, handicap, open, free-for-all, schooling or matinee races or a combination thereof.

6.2.1.2 At extended meetings, condition sheets must be available to participants at least 18 hours prior to closing declarations to any race program contained therein. At other meetings, conditions must be posted and available to participants at least 18 hours prior to closing declarations.

6.2.1.3 A fair and reasonable racing opportunity shall be afforded both trotters and pacers in reasonable proportion from those available and qualified to race.

6.2.1.4 Substitute races may be provided for each race program and shall be so designated in condition books sheets. A substitute race may be used when a regularly scheduled race fails to fill.

6.2.1.5 Regularly scheduled races or substitute races may be divided where necessary to fill a program of racing, or may be divided and carried over to a subsequent racing program, subject to the following:

6.2.1.5.1 No such divisions shall be used in the place of regularly scheduled races which fill.

6.2.1.5.2 Where races are divided in order to fill a program, starters for each division must be determined by lot after preference has been applied, unless the conditions provide for divisions based upon age, performance, earnings or sex may be determined by the

racing secretary.

6.2.1.5.3 However, where necessary to fill a card, not more than three races per day may be divided into not more than three divisions after preference has been applied. The divisions may be selected by the racing secretary. For all other overnight races that are divided, the division must be by lot unless the conditions provide for a division based on performance, earnings or sex.

6.2.2 Conditions

6.2.2.1 Conditions may be based only on:

6.2.2.1.1 horses' money winnings in a specified number of previous races or during a specified previous time;

6.2.2.1.2 horses' finishing positions in a specified number of previous races or during a specified period of time;

6.2.2.1.3 age, provided that no horse that is 15 years of age or older shall be eligible to perform in any race except in a matinee race;

6.2.2.1.4 sex;

6.2.2.1.5 number of starts during a specified period of time;

6.2.2.1.6 special qualifications for foreign horses that do not have a representative number of starts in the United States or Canada;

6.2.2.1.7 the exclusion of schooling races; or

6.2.2.1.8 Delaware-owned or bred races as specified in 3 **Del. C.** §10032; or

6.2.2.1.9 any one or more combinations of the qualifications herein listed.

6.2.2.2 Conditions shall not be written in such a way that any horse is deprived of an opportunity to race in a normal preference cycle. Where the word preference is used in a condition, it shall not supersede date preference as provided in the rules. Not more than three also eligible conditions shall be used in writing the conditions for overnight events.

6.2.2.3 The Commission may, upon application from the racing secretary, approve conditions other than those listed above for special events.

6.2.2.4 In the event there are conflicting published conditions and neither one nor the other is withdrawn by the association, the one more favorable to the declarer shall govern.

6.2.2.5 For the purpose of eligibility, a racing season or racing year shall be the calendar year. All races based on winnings will be programmed as Non-Winners of a multiple of $100 plus $1 or Winners over a multiple of $100. Additional conditions may be added. When recording winnings, gross winnings shall be used and cents shall be disregarded. In the case of a bonus, the present value of the bonus shall be credited to the horse as earnings for the race or series of races for which it received the bonus. It shall be the responsibility of the organization offering the bonus to report the present value of the bonus to the United States Trotting Association in a timely manner.

6.2.2.6 Records, time bars shall not be used as a condition of eligibility.

6.2.2.7 Horses must be eligible when declarations close subject to the provision that:

6.2.2.7.1 Wins and winnings on or after the closing date of declarations shall not be considered;

6.2.2.7.2 Age allowances shall be given according to the age of the horse on the date the race is contested.

6.2.2.7.3 In mixed races, trotting and pacing, a horse must be eligible under the conditions for the gait at which it is stated in the declaration the horse will perform.

6.2.2.8 When conditions refer to previous performances, those performances shall only include those in a purse race. Each dash or heat shall be considered as a separate performance for the purpose of condition races.

6.2.2.9 In overnight events, not more than one trailer shall be permitted, regardless of the size of the track except with the approval of the Commission. ~~**[on a half-mile racetrack, there shall be no trailing horses. On a track larger than a half-mile racetrack, there shall be no more than one trailing horse.]**~~ At least eight feet per horse must be provided the starters in the front tier.

6.2.2.10 The racing secretary may reject the declaration to an overnight event of any horse whose past performance indicates that it would be below the competitive level of other horses declared to that particular event.

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 ~~No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.~~ Claiming Procedure and Determination of Claiming Price. -- The trainer or authorized agent entering a horse in a claiming race warrants that he/she has authorization from the registered owner(s) to enter said horse in a claiming race for the designated amount. In the event of a claim, the owner(s) or authorized agent shall submit a signed registration to the State Steward or Presiding Judge prior to receiving proceeds from the claim and the registration shall be immediately forwarded to the U.S.T.A. registrar for transfer.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in

claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

6.3.2.8 No person shall claim more than one

horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected. Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules. The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation, and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race the track where claimed for a period of 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing

Secretary.

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

6.3.3.18 Mares and fillies who are in foal are ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

6.4 Added Money Events

6.4.1 General Provisions

6.4.1.1 For the purpose of this rule, added money events include stakes, futurities, early closing events and late closing events.

6.4.1.2 All sponsors and presenters of added money events must comply with the rules and must submit to the Commission the conditions and other information pertaining to such events.

6.4.1.3 Any conditions contrary to the provisions of any of these rules are prohibited.

6.4.2 Conditions

Conditions for added money events must specify:

6.4.2.1 which horses are eligible to be nominated;

6.4.2.2 the amount to be added to the purse by the sponsor or presenter, should the amount be known at the time;

6.4.2.3 the dates and amounts of nomination, sustaining and starting payments;

6.4.2.4 whether the event will be raced in divisions or conducted in elimination heats, and;

6.4.2.5 the distribution of the purse, in percent, to the money winners in each heat or dash, and the distribution should the number of starters be less than the number of premiums advertised; and

6.4.2.6 whether also eligible horses may be carded prior to the running heats or legs of added money events.

6.4.3 Requirements of Sponsors/Presenters

6.4.3.1 Sponsors or presenters of stakes, futurities or early closing events shall provide a list of nominations to each nominator or owner and to the associations concerned within sixty (60) days after the date on which nominations close, other than for nominations payable prior to January 1st of a horse's two-year-old year.

6.4.3.2 In the case of nominations for futurities payable during the foaling year, such lists must be forwarded out prior to October 15th of that year and, in the case of nominations payable in the yearling year, such lists must be forwarded out not later than September 1 of that year.

6.4.3.3 Sponsors or presenters of stakes, futurities or early closing events shall also provide a list of horses remaining eligible to each owner of an eligible within 45 days after the date on which sustaining payments are payable. All lists shall include a resume of the current financial status of the event.

6.4.3.4 The Commission may require the sponsor or presenter to file with the Commission a surety bond in the amount of the fund to ensure faithful performance of the conditions, including a guarantee that the event will be raced as advertised and all funds will be segregated and all premiums paid. Commission consent must be obtained to transfer or change the date of the event, or to alter the conditions. In any instance where a sponsor or presenter furnishes the Commission with substantial evidence of financial responsibility satisfactory to the Commission, such evidence may be accepted in lieu of a surety bond.

6.4.4Nominations, Fees and Purses

6.4.4.1 All nominations to added money events must be made in accordance with the conditions.

6.4.4.2 Dates for added money event nominations payments are:

6.4.4.2.1 Stakes: The date for closing of nominations on yearlings shall be May 15th. The date foreclosing of nominations to all other stakes shall fall on the fifteenth day of a month.

6.4.4.2.2 Futurity: The date for closing of nominations shall be July 15th of the year of foaling.

6.4.4.2.3 Early Closing Events: The date for closing of nominations shall fall on the first or fifteenth day of a month. Nominations on two-year-olds shall not be taken prior to February 15th.

6.4.4.2.4 Late Closing Events: The date for closing of nominations shall be at the discretion of the sponsor or presenter.

6.4.4.3 Dates for added money event sustaining payments are:

6.4.4.3.1 Stakes and Futurities: Sustaining payments shall fall on the fifteenth day of a month. No stake or futurity sustaining fee shall become due prior to (Month) 15th of the year in which the horses nominated become two years of age.

6.4.4.3.2 Early and Late Closing Events: Sustaining payments shall fall on the first or fifteenth day of a month.

6.4.4.4 The starting fee shall become due when a horse is properly declared to start and shall be payable in accordance with the conditions of the added money event. Once a horse has been properly declared to start, the starting fee shall be forfeited, whether or not the horse starts. Should payment not be made thirty (30) minutes before the post time of the event, the horse may be scratched and the payment shall become a liability of the owner who shall, together with the horse or horses, be suspended until payment is made in full, providing the association notifies the Commission within thirty (30) days after the starting date.

6.4.4.5 Failure to make any payment required by the conditions constitutes an automatic withdrawal from the event.

6.4.4.6 Conditions that will eliminate horses nominated to an event, or add horses that have not been nominated to an event by reason of performance of such horses at an earlier meeting, are invalid. Early and late closing events shall have not more than two also eligible conditions.

6.4.4.7 The date and place where early and late closing events will be raced must be announced before nominations are taken. The date and place where stakes and futurities will be raced must be announced as soon as determined but, in any event, such announcement must be made no later than March 30th of the year in which the event is to be raced.

6.4.4.8 Deductions may not be made from nomination, sustaining and starting payments or from the advertised purse for clerical or any other expenses.

6.4.4.9 Every nomination shall constitute an agreement by the person making the nomination and the horse shall be subject to these rules. All disputes and questions arising out of such nomination shall be submitted to the Commission, whose decision shall be final.

6.4.4.10 Nominations and sustaining payments must be received by the sponsor or presenter not later than the hour of closing, except those made by mail must bear a postmark placed thereon not later than the hour of closing. In the event the hour of closing falls on a Saturday, Sunday or legal holiday, the hour of closing shall be extended to the same hour of the next business day. The hour of closing shall be midnight of the due date.

6.4.4.11 If conditions require a minimum number of nominations and the event does not fill, the Commission and each nominator shall be notified within twenty (20) days of the closing of nominations and a refund of nomination fees shall accompany such notice to nominators.

6.4.4.12 If conditions for early or late closing events allow transfer for change of gait, such transfer shall be to the lowest class the horse is eligible to at the adopted gait, eligibility to be determined at the time of closing nominations. The race to which the transfer may be made must be the one nearest the date of the event originally nominated to. Two-year-olds, three-year-olds, or four-year-olds, nominated in classes for their age, may only transfer to classes for the same age group at the adopted gait to the race nearest the date of the event they were originally nominated to, and entry fees to be adjusted.

6.4.4.13 A nominator is required to guarantee the identity and eligibility of nominations, and if this information is given incorrectly he or she may be fined, suspended, or expelled and the horse declared ineligible. If any purse money was obtained by an ineligible horse, the monies shall be forfeited and redistributed among those justly entitled to the same.

6.4.4.14 Early or late closing events must be contested if six or more betting interests are declared to start. If less horses are declared to start than required, the race may be declared off, in which case the total of nominations, sustaining and starting payments received shall be divided equally to the horses declared to start. Such distribution shall not be credited as purse winnings.

6.4.4.15 Stakes or futurities must be contested if one or more horses are declared to start. In the event only one horse, or only horses in the same interest start, it constitutes a walk-over. In the event no declarations are made, the total of nomination and sustaining payments shall be divided equally to the horses remaining eligible after payment to the last sustaining payment, but such distribution shall not be credited as purse winnings.

6.4.4.16 Associations shall provide stable space for each horse declared on the day before, the day of and the day following the race.

6.4.4.17 The maximum size of fields permitted in any added money event shall be no more than one trailer, unless otherwise approved by the Commission. ~~[as the event must be split into two divisions if there would be more than one trailer.]~~

6.4.4.18 An association may elect to go with

less than the number of trailers specified in subdivision 17 above.

6.4.4.19 In the event more horses are declared to start than allowed in one field, the race will be conducted in divisions or eliminations, as specified in the conditions.

6.4.4.20 In early closing races, late closing races and overnight races requiring entry fees, all monies paid in by the nominators in excess of 85 percent of the advertised purse shall be added to the advertised purse and the total shall then be considered to be the minimum purse. If the race is split and raced in divisions, the provisions of subdivision 21 below shall apply. Provided further that where overnight races are split and raced in eliminations rather than divisions, all starting fees payable under the provisions of this rule shall be added to the advertised purse.

6.4.4.21 Where a race other than a stake or futurity is divided, each division must race for at least 75 percent of the advertised purse.

6.4.4.22 In added money events conducted in eliminations, starters shall be divided by lot. Unless conditions provide otherwise, sixty percent of the total purse will be divided equally among the elimination heats. The final heat will be contested for 40 percent of the total purse. Unless the conditions provide otherwise, all elimination heats and the final heat must be raced on the same day. If the conditions provide otherwise, elimination heats must be contested not more than six days, excluding Sundays, prior to the date of the final heat. The winner of the final heat shall be the winner of the race.

6.4.4.23 The number of horses allowed to qualify for the final heat of an event conducted in elimination heats shall not exceed the maximum number permitted to start in accordance with the rules. In any elimination dash where there are horses unable to finish due to an accident and there are fewer horses finishing than would normally qualify for the final, the additional horses qualifying for the final shall be drawn by lot from among those unoffending horses not finishing.

6.4.4.24 The judges' decisions in arriving at the official order of finish of elimination heats on the same program shall be final and irrevocable and not subject to appeal or protest.

6.4.4.25 Unless the conditions for the added money event provide otherwise the judges shall draw by lot the post positions for the final heat in elimination events, i.e. they shall draw positions to determine which of the two elimination heat winners shall have the pole, and which the second position; which of the two horses that were second shall start in the third position, and which in the fourth, etc.

6.4.4.26 In a two-in-three race, a horse must win two heats to win a race and there shall be 10 percent set aside for the race winner. Unless conditions state otherwise, the purse shall be divided and awarded according to the finish in each of the first two or three heats, as the case may be. If the number of advertised premiums exceeds the number of finishers, the excess premiums shall go to the winner of the heat. The fourth heat, when required, shall be raced for 10 percent of the purse set aside for the race winner. In the event there are three separate heat or dash winners and they alone come back in order to determine the race winner, they will take post positions according to the order of their finish in the previous heat. In a two-year-old race, if there are two heat winners and they have made a dead heat in the third heat, the race shall be declared finished and the one standing best in the summary shall be awarded the 10 percent. If the two heat winners make a dead heat and stand the same in the summary, the 10 percent shall be divided equally among them.

6.5 Cancellation of a Race

In case of cancellation of races, see Rule 7.3 --"Postponement and Cancellation."

6.6 Delaware Owned or Bred Races

6.6.1 Persons licensed to conduct harness horse racing meets under title 3, chapter 100, may offer non-stakes races limited to horses wholly owned by Delaware residents or sired by Delaware stallions.

6.6.2 For purposes of this rule, a Delaware bred horse shall be defined as one sired by a Delaware stallion who stood in Delaware during the entire breeding season in which it sired a Delaware bred horse or a horse whose dam was a wholly-owned Delaware mare at the time of breeding as shown on the horse's United State Trotting Association registration or eligibility papers. The breeding season means that period of time beginning February 1 and ending August 1 of each year.

6.6.3 All horses to be entered in Delaware owned or bred races must first be registered and approved by the Commission or its designee. The Commission may establish a date upon which a horse must be wholly-owned by a Delaware resident(s) to be eligible to be nominated, entered, or raced as Delaware-owned. In the case of a corporation seeking to enter a horse in a Delaware-owned or bred event as a Delaware-owned entry, all owners, officers, shareholders, and directors must meet the requirements for a Delaware resident specified below. In the case of an association or other entity seeking to enter a horse in a Delaware owned or bred event as a Delaware-owned entry, all owners must meet the requirements for a Delaware resident specified below. Leased horses are ineligible as Delaware owned entries unless both the lessor and the lessee are Delaware residents as set forth in this Rule and 3 Del.C. section 10032.

6.6.4 The following actions shall be prohibited for Delaware-owned races and such horses shall be deemed ineligible to be nominated, entered, or raced as Delaware-owned horses:

6.6.4.1 Payment of the purchase price over time beyond the date of registration;

6.6.4.2 Payment of the purchase price through earnings beyond the date of registration;

6.6.4.3 Payment of the purchase price with a loan, other than from a commercial lender regulated in Delaware and balance due beyond the date of registration;

6.6.4.4 Any management fees, agent fees, consulting fees, or any other form of compensation to non-residents of Delaware, except industry standard training and driving fees; or

6.6.4.5 Leasing a horse to a non-resident of Delaware.

6.6.5 The Commission or its designee shall determine all questions about a person's eligibility to participate in Delaware-owned races. In determining whether a person is a Delaware Resident, the term "resident" shall mean the place where an individual has his or her permanent home, at which that person remains when not called elsewhere for labor or other special or temporary purposes, and to which that person returns in seasons of repose. The term "residence" shall mean a place a person voluntarily fixed as a permanent habitation with an intent to remain in such place for the indefinite future.

6.6.6 The Commission or its designee may review and subpoena any information which is deemed relevant to determine a person's residence, including but not limited to, the following:

6.6.6.1 Where the person lives and has been living;

6.6.6.2 The location of the person's sources of income;

6.6.6.3 The address used by the person for payment of taxes, including federal, state and property taxes;

6.6.6.4 The state in which the person's personal automobiles are registered;

6.6.6.5 The state issuing the person's driver's license;

6.6.6.6 The state in which the person is registered to vote;

6.6.6.7 Ownership of property in Delaware or outside of Delaware;

6.6.6.8 The residence used for U.S.T.A. membership and U.S.T.A. registration of a horse, whichever is applicable;

6.6.6.9 The residence claimed by a person on a loan application or other similar document;

6.6.6.10 Membership in civic, community, and other organizations in Delaware and elsewhere.

6.6.6.11 None of these factors when considered alone shall be dispositive, except that a person must have resided in the State of Delaware in the preceding calendar year for a minimum of one hundred and eighty three (183) days. Consideration of all of these factors together, as well as a person's expressed intention, shall be considered in arriving at a determination. The burden shall be on the applicant to prove Delaware residency and eligibility for Delaware-owned or bred races. The Commission may promulgate by regulation any other relevant requirements necessary to ensure that the licensee is a Delaware resident. In the event of disputes about a person's eligibility to enter a Delaware-owned or bred race, the Commission shall resolve all disputes and that decision shall be final.

6.6.7 Each owner and trainer, or the authorized agent of an owner or trainer, or the nominator (collectively, the "entrant"), is required to disclose the true and entire ownership of each horse with the Commission or its designee, and to disclose any changes in the owners of the registered horse to the Commission or its designee. All licensees and racing officials shall immediately report any questions concerning the ownership status of a horse to the Commission racing officials, and the Commission racing officials may place such a horse on the steward's or judge's list. A horse placed on the steward's or judge's list shall be ineligible to start in a race until questions concerning the ownership status of the horse are answered to the satisfaction of the Commission or the Commission's designee, and the horse is removed from the steward or judge's list.

6.6.8 If the Commission, or the Commission's designee, finds a lack of sufficient evidence of ownership status, residency, or other information required for eligibility, prior to a race, the Commission or the Commission's designee, may order the entrant's horse scratched from the race or ineligible to participate.

6.6.9 After a race, the Commission or the Commission's designee, may upon reasonable suspicion, withhold purse money pending an inquiry into ownership status, residency, or other information required to determine eligibility. If the purse money is ultimately forfeited because of a ruling by the Commission or the Commission's designee, the purse money shall be redistributed per order of the Commission or the Commission's designee.

6.6.10 If purse money has been paid prior to reasonable suspicion, the Commission or the Commission's designee may conduct an inquiry and make a determination as to eligibility. If the Commission or the Commission's designee determines there has been a violation of ownership status, residency, or other information required for eligibility, it shall order the purse money returned and redistributed per order of the Commission or the Commission's designee.

6.6.11 Anyone who willfully provides incorrect or untruthful information to the Commission or its designee pertaining to the ownership of a Delaware-owned or bred horse, or who attempts to enter a horse restricted to Delaware-owned entry who is determined not to be a Delaware resident, or who commits any other fraudulent act in connection with the entry or registration of a Delaware-owned or bred horse, in addition to other penalties imposed

by law, shall be subject to mandatory revocation of licensing privileges in the State of Delaware for a period to be determined by the Commission in its discretion except that absent extraordinary circumstances, the Commission shall impose a minimum revocation period of two years and a minimum fine of $5,000 from the date of the violation of these rules or the decision of the Commission, whichever occurs later.

6.6.12 Any person whose license is suspended or revoked under subsection (k) of this rule shall be required to apply for reinstatement of licensure and the burden shall be on the applicant to demonstrate that his or he licensure will not reflect adversely on the honesty and integrity of harness racing or interfere with the orderly conduct of a race meeting. Any person whose license is reinstated under this subsection shall be subject to a two year probationary period, and may no participate in any Delaware-owned or bred race during this probationary period. Any further violations of this section by the licensee during the period of probationary licensure shall, absent extraordinary circumstances, result in the Commission imposing revocation of all licensure privileges for a five year period along with any other penalty the Commission deems reasonable and just.

6.6.13 Any suspension imposed by the Commission under this rule shall not be subject to the stay provisions in 29 **Del. C.** §10144.

1 DE Reg. 503 (11/01/97)
2 DE Reg. 1240 (1/1/99)
2 DE Reg. 1764 (4/1/99)
3 DE Reg. 432 (9/1/99)
3 DE Reg 1520 (5/1/00)
4 DE Reg 336 (8/1/00)
4 DE Reg. 1123 (1/1/01)
4 DE Reg 1652 (4/1/01)

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

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

8.2 Veterinary Practices

8.2.1Veterinarians Under Authority of Commission Veterinarian

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

8.2.2 Treatment Restrictions

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

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

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

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

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

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

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those, which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances, as promulgated by the Association of Racing Commissioners International, and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the

horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

8.3.1 Uniform Classification Guidelines

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

8.3.1.1 Class 1

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

8.3.1.2 Class 2

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

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

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

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/ hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

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

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propanolol); and

8.3.1.4.9.3 Miscellaneous cardiotonic drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

8.3.1.4.11 Antidiarrheal agents; and

8.3.1.4.12 Miscellaneous drugs including:

8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;

8.3.1.4.12.2 Stomachics; and

8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

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

8.3.2 Penalty Recommendations

~~In the absence of aggravating or mitigating circumstances,~~ The following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1 – ~~One to five years suspension and at least $5,000 fine and loss of purse.~~ in the absence of extraordinary circumstances, a minimum license revocation of eighteen months and a minimum fine of $5,000, and a maximum fine up to the amount of the purse money for the race in which the infraction occurred, forfeiture of the purse money, and assessment for cost of the drug testing..

8.3.2.2 Class 2— ~~Six months to one year suspension and $1,500 to $2,500 fine and loss of purse~~. in the absence of extraordinary circumstances, a minimum license revocation of nine months and a minimum fine of $3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.3 Class 3— ~~Sixty days to six months suspension and up to $1,500 fine and loss of purse~~. in the absence of extraordinary circumstances, a minimum license revocation of ninety days, and a minimum fine of $3,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for cost of the drug testing.

8.3.2.4 Class 4— ~~Fifteen to 60 days suspension and up to $1,000 fine and loss of purse.~~ in the absence of extraordinary circumstances, a minimum license revocation of thirty days, and a minimum fine of $2,000, and a maximum fine of up to the amount of the purse money for the race in which the violation occurred, forfeiture of the purse money, and assessment for the cost of the drug testing.

~~8.3.2.4.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Fifteen to 50 days suspension and up to $1,000 fine and loss of purse.~~

~~8.3.2.4.2 If the substance is detected in a urine sample but not in a blood sample:~~

~~8.3.2.4.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a $250 fine and loss of purse.~~

~~8.3.2.4.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a $1,000 fine and loss of purse.~~

~~8.3.2.4.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a $1,000 fine and up to a 50-day suspension and loss of purse.~~

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

~~8.3.2.5.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with the testing procedures: Zero to 15 days suspension and up to a $250 fine and loss of purse.~~

~~8.3.2.5.2 If the substance is detected in a urine sample but not in a blood sample:~~

~~8.3.2.5.2.1 And if such detection is the first violation of this chapter within a 12 month period: Up to a $250 fine and loss of purse.~~

~~8.3.2.5.2.2 And if such detection is the second violation of this chapter within a 12 month period: Up to a $1,000 fine and loss of purse.~~

~~8.3.2.5.2.3 And if such detection is the third violation of this chapter within a 12 month period: Up to a $1,000 fine and up to a 15 day suspension and loss of purse.~~

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the

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

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

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

8.3.2.6.3 Violations, which endanger the life or health of the horse or endanger a driver in the race.

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

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

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

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

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

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

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

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

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

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

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

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

8.3.3.3.3 substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a submitted blood sample from a horse or 39 mmol/L if serum from a horse which has been administered furosemide in compliance with these rules, provided that a licensee has the right, pursuant to such procedures as may be established

from time to time by the Commission, to attempt to prove that a horse has a naturally high carbon dioxide level in excess of the above-mentioned levels; and provided, further, that an excess total carbon dioxide level shall be penalized in accordance with the penalty recommendation applicable to a Class 2 substance.

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

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

8.3.4Medical Labeling

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

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

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (Lasix)

8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or other disciplinary action;

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

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

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

8.3.5.6 Restrictions

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

8.3.5.7 Post-Race Quantification

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

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

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

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

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

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

8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

8.3.5.9 Bleeder List

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

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

8.3.5.9.1.1.1 during a race;

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

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

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

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

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

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

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

8.3.5.9.4.1 1st time - 10 days;

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

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

8.3.5.9.4.4 4th time - barred for life.

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

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

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

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

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

8.3.5.10 Medication Program Entries

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

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma.

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

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

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

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

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

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

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

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

8.4 Testing

8.4.1 Reporting to the Test Barn

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

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

8.4.1.1.3Horses selected for testing shall be taken to the Test Barn or Test Stall to have a blood, urine and/or other specimen sample taken at the direction of the State veterinarian.

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

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

8.4.2Sample Collection

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

Commission Veterinarian.

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

8.4.3 Procedure for Taking Specimens

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

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

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

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

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

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

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

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

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

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

8.4.3.5.2 The Commission Veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

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

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

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

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

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

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

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

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

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

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

the Commission laboratory on an anonymous basis for confirmatory testing.

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

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

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

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

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

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

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

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

8.5 Trainer Responsibility

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

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

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

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

8.5.4 The trainer is responsible for:

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

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

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

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

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

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

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

8.5.5.5 immediately reporting the alteration of the sex of a horse to the clerk of the course, the United States

Trotting Association and the racing secretary;

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

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

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

8.5.5.9 maintaining a knowledge of the medication record and status;

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

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

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

8.5.5.13 ensuring proper bandages, equipment and shoes;

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

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

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

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

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

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

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

8.6.2Postmortem Examination

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

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

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

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

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

1 DE Reg. 505 (11/01/97)
1 DE Reg. 923 (1/1/98)
3 DE Reg 1520 (5/1/00)
4 DE Reg 336 (8/1/00)
4 DE Reg. 6 (7/1/00)

THOROUGHBRED RACING COMMISSION

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

ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10103, the Delaware Thoroughbred Racing Commission ("the Commission") hereby issues this Order adopting proposed amendments to the Commission's Rules of Racing. Following notice and a public hearing held on January 4, 2002, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the proposed rule amendments in the December 1, 2001 Register of Regulations, and in the Delaware Capital Review and the Delaware State News. The proposal contained proposed amendments to Rule 13.05 and Rule 13.19. The proposed amendment to Rule 13.05 would provide that a claimed horse shall not run for twenty days after being claimed in a race in which the eligibility price is less than twenty-five percent than the claiming price, with an exception for starter handicaps, allowance, and starter allowance races. The Commission also proposed to delete Rule 13.19 which currently provides that no horse claimed in a claiming race shall race in another race for less than the original claiming price for a thirty day period.

2. The Commission received no written comments prior to the public hearing. At the public hearing, Robin Metz of the Delaware Horsemen's Association submitted comments. Ms. Metz stated that the Association's Board was split on the proposed rule changes. A survey was sent to Board members and approximately 79% of the respondents were in favor of the proposal. Commission Steward Lisa Connor spoke in favor of the rule stating that it would be better overall for the horses. Chairman Bernard Daney stated that the proposed rule would permit the Commission to be more consistent with the rule in Pennsylvania. The last two meets at Delaware Park averaged about four claims per day. The proposed rules would help the horsemen and give the horse a better chance to get fit before racing. Commissioner Duncan Patterson stated that the proposed rule theoretically should help racing..

FINDINGS OF FACT AND CONCLUSIONS

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments.

4. The Commission finds that the proposed amendments to the Commission's Rules are in the best interests of racing and will be beneficial for the horsemen and the horses. The proposed rules will allow Delaware to employ claiming procedures that are more consistent with the rules used in Pennsylvania. The Commission concludes that the proposed Rules should be adopted in their proposed form.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on March 1, 2001. A copy of the enacted Rules is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this **4th** day of January, 2002.

Bernard Daney, Chairman
Duncan Patterson, Commissioner
H. James Decker, Commissioner

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 possesses a valid/current Delaware license.

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.

See 5 DE Reg. 849 (10/1/01)

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.

See 2 DE Reg. 2043 (5/1/99)

13.05 Thirty Day Prohibition -- Racing Claimed Horse:
~~Repealed 8/95.~~

A claimed horse shall not run for twenty days after being claimed in a race in which the determining eligibility price is less than twenty-five percent more than the price for which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, and the horse shall be entitled to enter whenever necessary so that it may start on the twenty-first day calendar following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

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.

See 1 DE Reg. 714 (12/1/97)

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.~~

See 2 DE Reg. 374 (9/1/98)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

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

ORDER

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing Body Art Establishments. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122 (3) (w).

On August 1, 2001 (Volume 5, Issue 2), 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 September 4, 2001, or be presented at public hearings on August 23, 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 August 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 Body Art Establishments are adopted and shall become effective September 30, 2002, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
February 14, 2002

SUMMARY OF EVIDENCE

A public hearing was held on August 23, 2001 at 9:00 a.m. in the Department of Natural Resources and Environmental Control (DNREC) Auditorium, Richardson

and Robbins Building, 89 Kings Highway, Dover, Delaware 19903, before David P. Walton, Hearing Officer, to discuss the proposed Department of Health and Social Services (DHSS) Rules and Regulations Governing Body Art Establishments. The announcement regarding the public hearing was advertised in the Delaware State News, the News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Mr. Thom May from Health Systems Protection (HSP) Section of the 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 four letters were received commenting on the proposed regulations during the comment period. Agencies that commented include:

- Ancient Art Tattoo
- Infinite Tattoo Studio
- Windchimes Tattoo Studio, Inc.
- Creative Touch Tattoo
- American Art Tattoo
- Explosive Tattoo

All public comments and the DHSS (Agency) responses are as follows:

- **Regulation 82.302 Concern was expressed that this section of the regulation, which specifies knowledge requirements for the permit holder, is too vague.**

Agency Response: After a thorough review and further meetings with the Body Art Task Force, amendments were made to this section. Additionally, the Health Systems Protection Section of the Division of Public Health has pledged during the regulation compliance building phase, to continue to work with the Body Art Task Force to develop clear knowledge requirements in reference to universal precautions, infectious disease control, facility safety and sanitation.

- **There was a general question as to what prompted these regulations.**

Agency Response: These regulations were a result of legislation, which was passed requiring DHSS to regulate body art establishments

- **Regulation 82.101.17 There was an assertion made that soaking in alcohol is the standard way to sterilize jewelry that has not been in another person (body pierce). Additionally, chemical vapor was suggested as another method of sterilizing instruments and jewelry.**

Agency Response: Proper sterilization as referred to in this regulation is accomplished utilizing a steam autoclave (82.305.3). While it is recognized there is other equipment and methods used to sterilize instruments, they are considered less reliable than the steam autoclave process.

- **Regulation 82.101.21 A question was asked to clarify that it is the entity that holds the permit, not the individual tattoo artist.**

Agency Response: The person or owner of the business holds the permit, the law does not give DHSS the authority to license individual tattoo artists.

- **Regulation 82.301.2 & 82.301.4 Concern was expressed that an existing body art facility may not meet physical requirements specified in these sections.**

Agency Response: Specific variance procedures were included in this regulation to address these types of issues. Section 82.103, allows for a variance provided a health hazard or nuisance will not result from the modification or waiver.

- **Regulation 82.301.9 A question was asked if cabinet drawers would qualify as a covered container to store instruments and supplies.**

Agency Response: This section requires all body art instruments and supplies be stored in a clean, dry and covered container. For purposes of this section, if the cabinet drawers are clean, dry and kept closed, they are considered covered containers.

- **Regulation 82.401 This section of the regulation requires the operator give the customer verbal and written aftercare instructions for the body art procedure site upon completion of a body art procedure. The question was asked if the Division of Public Health would provide universal aftercare instructions for all body art procedures.**

Agency Response: The industry representatives on the Body Art Task Force have expressed a willingness to develop aftercare instructions based on requirements set forth in this section of the regulation. The Division will work with the Task Force to insure aftercare instructions are appropriate.

- **Regulation 82.401.1 This section of the regulation also requires a body art shop operator to post in public view the name, address and telephone number of the Division and the procedures for filing a complaint. There was concern that this**

requirement violates the operator's Fifth Amendment rights.

Agency Response: Legal counsel has advised the Department that this requirement does not violate the Body Art shop operator's rights.

- **Regulation 82.402 In reference to this section and the Privacy Act of 1974, the question was asked if a body art shop owner chose not to serve a customer could they be sued?**

Agency Response: Legal counsel has advised the Department by requiring customers to sign a release form confirming medical information was obtained or attempted to be obtained per this section, the Privacy Act of 1974 would not be violated. Additionally, as per subsection 82.402.4, "nothing in this section shall be construed to require the operator of a body art establishment to perform a body art procedure upon a client."

- **Regulation 82.403.1 In reference to this section the question was asked, will a photo ID be required and will providing one be law?**

Agency Response: A photo ID is not required by this regulation nor is it required by law.

- **A general question was asked, will a minimum age for minors with consent be established in the regulation?**

Agency Response: The regulation does not establish a minimum age with consent, the Department does not have the statutory authority to establish a minimum age with consent.

- **A general question was asked, with passage of the state law and adoption of this regulation, will towns have to accept the standards and allow body artists to practice their trade?**

Agency Response: Towns will be required to abide by the state law and these regulations, however they can legally adopt stricter standards for the practice of body art within town limits.

- **Regulation 82.303.10 In reference to biohazardous contaminated waste generated by a body art establishment, the question was asked, does the waste have to be hauled by a biohazadous waste hauler approved of by DNREC?**

Agency Response: When developing these regulations, the Division of Public Health determined that contaminated waste from a body art establishment that does not release liquid or dried blood or body fluids when compressed, can be handled through normal, approved disposal methods. In accordance with the Occupational Safety and Health Administration Standard (29 CFR) and this regulation, contaminated waste that releases liquid or dried blood or body fluids when compressed, requires special packaging, handling and disposal methods, which includes being disposed of by a waste hauler approved of by DNREC.

- **A Body Artist made a comment that the regulation should require the use of Baby Wipes during the body art procedure due to their experience with Baby Wipes promoting a quicker healing process.**

Agency Response: While DHSS recognizes that there are multiple ways to enhance the healing process associated with a body art procedure, to regulate a set process would not allow body artists the leeway to utilize an equally effective process that enhances the healing process.

Minor amendments were made to Section 82.302 to the draft regulations based on public comment, these amendments are not substantive in nature.

The public comment period was open from August 1, 2001 to September 4, 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.

STATE OF DELAWARE
REGULATIONS GOVERNING
BODY ART ESTABLISHMENTS

ADOPTED BY THE SECRETARY, DELAWARE HEALTH AND SOCIAL SERVICES UNDER AUTHORITY OF 16 DEL. C. CHAPTER 1, §122(3)(w)
EFFECTIVE DATE: [~~January 2, 2002~~ September 30, 2002]

Preamble

The Secretary of Delaware Health and Social Services adopts these Regulations pursuant to the authority vested in the Secretary by 16 **Del.C.** 122. These Regulations establish standards for the sanitary operation of body art establishments. For the purpose of these Regulations, the term "body art establishment" includes "tattoo parlor" and "body piercing establishment," as defined in 16 **Del.C.** 122(3)(w). These Regulations provide a system of permitting and inspection of body art establishments and procedures for enforcement.

These Regulations are adopted on (date) and have an effective date of (date).

Purpose

These Regulations shall be liberally construed and applied to promote their underlying purpose of protecting the public health. They establish minimum standards in the practice of body art and those facilities that choose to require more stringent standards are encouraged to to so.

Severability

In the event any particular clause or section of these Regulations should be declared invalid or unconstitutional by any court of competent jurisdiction, the remaining portions shall remain in full force and effect.

SECTION 82.1 GENERAL PROVISIONS

82.101 Definitions

For the purposes of these Regulations:

82.101.1 AFTERCARE means written instructions given to the client, specific to the body art procedure(s) rendered, on caring for the body art and surrounding area. These Instructions will include information when to seek medical treatment, if necessary.

82.101.2 ANTISEPTIC means an agent that destroys disease causing microorganisms on human skin or mucosa.

82.101.3 BODY ART includes the practice of "body piercing" as defined in 82.101.5, "branding" as defined in 82.101.6, and "tattooing" as defined in 82.101.29. This definition **does not include** practices that are considered medical procedures by a state medical board, such as implants under the skin, and shall not be performed in a body art establishment. Nor does this definition include, for the purposes of these Regulations, piercing of the outer perimeter or lobe of the ear using pre-sterilized single use stud and clasp ear piercing systems.

82.101.4 BODY ART ESTABLISHMENT includes "tattoo parlor" and "body piercing establishment" and means any place or premise, whether public or private, temporary or permanent in nature or location, where the practices of body art, whether or not for profit, are performed.

82.101.5 BODY PIERCING means the perforation of human tissue excluding the ear for a non-medical purpose.

82.101.6 BRANDING means a permanent mark made on human tissue by burning with a hot iron or other instrument.

82.101.7 CONTAMINATED WASTE means any liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or other potentially infectious materials and are capable of releasing these materials during handling; sharps and any wastes containing blood and other potentially infectious materials, as defined in 29 Code of Federal Regulations Part 1910.1030 (latest edition), known as "Occupational Exposure to Bloodborne Pathogens."

82.101.8 COSMETIC TATTOOING see TATTOOING.

82.101.9 DISINFECTION means the destruction of disease-causing microorganisms on inanimate objects or surfaces, thereby rendering these objects safe for use or handling.

82.101.10 DIVISION means the Delaware Division of Public Health as the agency, and its authorized representatives, having jurisdiction to promulgate, monitor, administer and enforce these Regulations.

82.101.11 EAR PIERCING means the puncturing of the outer perimeter or lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system following manufacturers instructions. Under no circumstances shall ear piercing studs and clasps be used anywhere on the body other than the outer perimeter and lobe of the ear.

82.101.12 EQUIPMENT means all machinery, including fixtures, containers, vessels, tools, devices, implements, furniture, display and storage areas, sinks and all other apparatus and appurtenances used in connection with the operation of a body art establishment.

82.101.13 HANDSINK means a lavatory equipped with tempered hot and cold running water under pressure, used solely for washing hands, arms or other portions of the body.

82.101.14 HOT WATER means water at a temperature greater than or equal to 110°F (43°C).

82.101.15 INSTRUMENTS USED FOR BODY ART means hand pieces, needles, needle bars and other instruments that may come in contact with a client's body or possible exposure to bodily fluids during body art procedures.

82.101.16 INVASIVE means entry into the body either by incision or insertion of an instrument into or through the skin or mucosa, or by any other means intended to puncture, break or compromise the skin or mucosa.

82.101.17 JEWELRY means any personal ornament inserted into a newly pierced area, which must be made of surgical implant grade stainless steel, solid 14k or 18k white or yellow gold, niobium, titanium or platinum, a dense, low-porosity plastic and or which is free of nicks, scratches or irregular surfaces and which has been properly sterilized prior to use.

82.101.18 LIQUID CHEMICAL GERMICIDE means a disinfectant or sanitizer registered with the Environmental Protection Agency or an approximate 1:100 dilution of household chlorine bleach made fresh daily and dispensed from a spray bottle (500 ppm, ¼ cup per gal. or 2 tablespoons per qt. of tap water).

82.101.19 OPERATOR/TECHNICIAN means any

person who controls, operates, manages, conducts or practices body art activities at a body art establishment and who is responsible for compliance with these regulations, whether actually performing body art activities or not. The term includes technicians who work under the operator and perform body art activities.

82.101.20 PERMIT means written approval by the Division to operate body art establishment. Approval is given in accordance with these Regulations and is separate from any other licensing requirement that may exist within communities or political subdivisions comprising the jurisdiction.

82.101.21 PERSON means an individual, any form of business or social organization or any other non-governmental legal entity including but not limited to a corporation, partnership, limited liability company, association, trust or unincorporated organization.

82.101.22 PHYSICIAN means a person licensed by the State of Delaware to practice medicine in all its branches and may include other areas such as dentistry, osteopathy or acupuncture, depending on the rules and regulations of the State of Delaware.

82.101.23 PROCEDURE SURFACE means any surface of an inanimate object that contacts the client's unclothed body during a body art procedure, skin preparation of the area adjacent to and including the body art procedure or any associated work area which may require sanitizing.

82.101.24 SANITIZE/SANITIZATION

PROCEDURE means a process of reducing the numbers of microorganisms on cleaned surfaces and equipment to a safe level as judged by public health standards and which has been approved by the Division.

82.101.25 SHARPS means any object (sterile or contaminated) that may purposefully or accidentally cut or penetrate the skin or mucosa including, but not limited to, pre-sterilized, single use needles, scalpel blades and razor blades.

82.101.26 SHARPS CONTAINER means a puncture-resistant, leak-proof container that can be closed for handling, storage, transportation and disposal and is labeled with the International Biohazard Symbol.

82.101.27 SINGLE USE means products or items that are intended for one-time, one-person use and are disposed of after use on each client including, but not limited to, cotton swabs or balls, tissues or paper products, paper or plastic cups, gauze and sanitary coverings, razors, piercing needles, scalpel blades, stencils, ink cups and protective gloves.

82.101.28 STERILIZATION means a very powerful process resulting in the destruction of all forms of microbial life, including highly resistant bacterial spores.

82.101.29 TATTOOING means one or more of the following:

(a) An indelible mark made upon the body of another person by the insertion of a pigment under the skin.

(b) An indelible design made upon the body of another person by production of scars other than by branding.

This includes all forms of cosmetic tattooing.

82.101.30 TEMPORARY BODY ART ESTABLISHMENT means any place or premise operating at a fixed location where an operator performs body art procedures for no more than 14 days consecutively in conjunction with a single event or celebration.

82.101.31 UNIVERSAL PRECAUTIONS means a set of guidelines and controls, published by the Centers for Disease Control and Prevention (CDC) as 'guidelines for prevention of transmission of human immunodeficiency virus and hepatitis B virus to health-care and public-safety workers' in Morbidity and Mortality Weekly Report (MMWR), June 23, 1989, Vol. 38, No. S-6, and as 'recommendations for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures', in MMWR, July 12, 1991, Vol. 40, No. RR-8. This method of infection control requires the employer and the employee to assume that all human blood and specified human body fluids are infectious for HIV, HBV and other blood pathogens. Precautions include hand washing, gloving, personal protective equipment, injury prevention, and proper handling and disposal of needles, other sharp instruments, and blood and body fluid contaminated products.

82.101.32 VARIANCE means a written document issued by the Division that authorizes a modification or waiver of one or more of the requirements of these Regulations if, in the opinion of the Division, a health hazard or nuisance will not result from the modification or waiver.

82.102 Pre-operational Requirements

82.102.1 General

(a) No person shall operate a body art establishment who does not have a valid permit issued to him by the Division of Public Health (the “Division”). Only a person who complies with the requirments of these Regulations shall be entitled to receive or retain such a permit.

(b) Permits shall not be transferable from person to person or from location to location. The valid permit shall be posted in a location easily observed by the customer.

(c) When a body art establishment changes owenership, management firm, or lessee, both the facility and its operation shall be brought into full compliance with these Regulations prior to the issuance of a permit. A variance may be issued, as provided by these Regulations.

(d) These Regulations outline requirements for body art establishments with permanent, restricted, mobile, provisional, and temporary permits, and provides

enforcement procedures applicable to such establishments.

(e) Establishments operating at the time of the enactment of these Regulations shall be given 180 calendar days to make application to the Division and comply with these Regulations. Establishments in compliance with these regulations shall be issued a permit in accordance with 82.102.2(a), (b), or (c). Establishments not in full compliance but which, in the judgment of the Division, do not pose an immediate health risk, shall be issued a provisional permit in accordance with 82.102.2(d). Establishment that continue to operate without proper permits from the Division or operate in violation of these Regulations will be subject to legal remedial actions and sanctions as provided by the law.

82.102.2 Classification of Body Art Establishment Permits

(a) A **permanent permit** is valid for one year from date of issue and is intended for businesses that operate at a fixed location.

(b) A **restricted permit** shall be issued to an establishment that is not approved to provide full services because of certain limitations.

(c) A **mobile permit** may be issued to an enclosed vehicle which meets all the requirements of these Regulations and which does not operate at a fixed location.

(d) A **provisional permit** with conditions of operations may be granted for a specified period of time to an establishment at the effective date of these Regulations, when no immediate public health risk exists, to allow such establishment adequate time to come into full complicance with these Regulations.

(e) A **temporary permit** may be issued for educational, trade show or product demonstration purposes only. A temporary permit may not exceed fourteen (14) calendar days.

82.102.3 Issuance of Permits

(a) Any person desiring to operate a body art establishment shall make written application for a permit. Such application shall be made on forms provided by the Division, and shall include the name and address of each applicant, the location and type of the proposed establishment and the signature of each applicant. Payment of $100 fee shall accompany the application and be remitted with the annual renewal application.

(b) The Division shall issue a permit to the applicant if its inspection reveals that the proposed body art establishment complies with these Regulations.

(c) A permanent, restricted, or mobile permit remains valid for one (1) year from the date of issuance. Unless the facility is closed for a period of sixty (60) days or more; a new owner, firm, or lessee takes possession; or the permit is revoked by the Division for violations of these Regulations, the permit will remain valid.

82.102.4 Submission of Plans

Whenever a body art establishment is constructed, undergoes physical alteration, or an existing structure is converted for this purpose, properly prepared plans and specifications shall be submitted to the Division. After review, a Certificate of Approval with conditions will be issued, and the establishment shall comply with the requirements.

82.102.5 Post-Construction and Pre-operational Inspection

Prior to issuance of a permit, the Division shall inspect the proposed body art establishment to determine compliance with the requirements of these Regulations.

82.103 Variance

82.103.1 The Division may grant a variance by modifying or waiving the requirements of these Regulations if in the opinion of the Division a health hazard or nuisance will not result from the variance. A variance, if granted, is rendered void upon the following: when the physical facility is demolished, or when a remodeling project in the facility includes the area(s) addressed in the variance, or when the permit holder granted the variance ceases to operate the Body Art establishment for a period exceeding thirty (30) consecutive days. A variance shall not be transferable from person to person, nor from location to location. If a variance is granted, the Division shall retain the information specified below in its records for the Body Art establishment.

(a) A statement of the proposed variance of the requirement of these Regulations, citing the relevant section of these Regulations;

(b) An analysis of the rationale for how the potential public health hazards or nuisances will be alternatively addressed by the proposal; and

(c) Any other information requested by the Division that may be deemed necessary to render judgement.

82.104 Division Personnel Competency Requirement

82.104.1 Division personnel performing environmental health/sanitary evaluations or complaint investigations of body art establishments shall meet the same requirements as specified for a permit holder in 82.302 of these Regulations prior to assuming responsibilities for this program.

SECTION 82.2 COMPLIANCE PROCEDURES

82.201 General

82.201.1 The valid permit shall be conspicuously displayed on the premises of the establishment for public view. Failure to display a valid permit shall be considered as a violation of these Regulations.

82.201.2 When an inspection reveals that the body art establishment is not in compliance with these Regulations, the permit holder shall take corrective action within the time specified by the Division. The permit holder may

additionally be required to provide to the Division a written plan to correct violations of these Regulations, including the method of correction and the anticipated date of completion.

82.202 Inspections and Right of Assess

82.202.1 After a representative of the Division presents proper identification and provides notice of the intent to conduct an inspection, the person in charge of the body art establishment shall allow the representative to determine if the establishment is in compliance with these Regulations by allowing access to the establishment, allowing inspection, and providing information and records specified in these Regulations and to which the Division is entitled.

82.203 Administrative Action

82.203.1 Operating without a permit

(a) If a body art establishment is found operating without a valid permit, the Division shall order immediate closure. The closure shall be effective upon receipt of a written notice by the person in charge of the establishment. The establishment shall be remain closed until proper application, submission and review of plans, or inspection reveal compliance with these Regulations and approval for permit is made.

(b) A conspicuous, colored placard shall be prominently displayed at all entrances of a body art establishment which has failed to obtain a valid permit.

82.203.2 Imminent Health Hazard

(a) Suspension of Permit

If conditions exist in a body art establishment that represent an imminent health hazard, the Division may suspend the operating permit without a hearing upon written notice for a period not to exceed ten (10) days. The suspension shall be effective upon receipt of written notice by the person in charge of the establishment. A suspension statement recorded on the inspection report constitutes a written notice. The person in charge shall yield the permit to the Division.

(b) Hearing

If the immediate health hazard is not eliminated, the Division shall schedule an administrative hearing within the ten (10) day period of suspension. The purpose of the hearing is to determine if the suspension should be extended, permit revoked or other action taken as necessary.

(c) Reinstatement of Permit

The permit holder of the body art establishment may request, in writing, to the Division at any time during the suspension, an inspection for the purpose of showing that the imminent health hazard no longer exists. When the imminent health hazard no longer exists, the suspension shall be terminated and the permit returned. If the Division determines that the imminent health hazard has not been corrected and that the hazard still exists, the suspension remains in force pending a hearing and the Division may recommend that the permit be revoked.

(d) A conspicuous, colored placard shall be prominently displayed at all entrances of a body art establishment whose permit stands suspended or revoked.

82.203.3 Serious Violations, Repeat Violations and General Unsanitary Conditions

(a) If serious violations, repeat violations, or general unsanitary conditions exist, the Division may issue and properly serve due notice, by certified mail or by hand delivery, of the intention of the Division to suspend the permit of a body art establishment. The Division shall not suspend a permit of a body art establishment for serious or repeated violations which do not present an imminent health hazard, without having first issued and properly served such notice of intent to suspend. Within thirty (30) days of the date of such notice of intent to suspend, the permit holder may submit to the Division a written request for an administrative hearing. The suspension shall commence upon expiration of the notice of intent, unless within thirty (30) days of the date of such notice, the Division receives from the permit holder a written request for an administrative hearing. If the permit holder makes a timely request for an administrative hearing, the suspension shall be stayed pending the results of the hearing.

(b) A conspicuous, colored placard shall be prominently displayed at all entrances of a body art establishment whose permit stands suspended or revoked.

82.203.4 Body Art Establishment Permit Holder Right to Administrative Hearing

Upon due notice that the Division intends to suspend the permit of a body art establishment, as indicated in 82.203.3, or for other reasons to protect the public health, the permit holder may submit to the Division, within thirty (30) days of the date of such notice of intent, a written request for an administrative hearing. When an administrative hearing is scheduled, the permit holder of the establishment shall be informed at least (5) days prior to the hearing of the place, time, and date of the hearing and the specific charges against the establishment. Notification of the hearing shall be by certified mail or by hand delivery. Failure of the permit holder to be present for an administrative hearing shall result in automatic suspension of permit and recommendation for revocation.

82.204 Records of Administrative Proceedings

82.204.1 A written report of the hearing decision shall be furnished by the Division to the permit holder of the body art establishment.

82.205 Penalty

82.205.1 Any person who neglects or fails to comply with the requirements of these Regulations shall be subject to the provisions of 16 **Del.C.** § 107, and shall be fined not

less than $100 and not more than $1000, together with costs, unless otherwise provided by law.

82.205.2 The Division may seek to enjoin violations of these Regulations.

SECTION 82.3 OPERATIONAL REQUIREMENTS

82.301 Requirements for the Premises

82.301.1 Body art establishments applying after adoption of these Regulations shall submit a scale drawing and floor plan of the proposed establishment for a plan review by the Division, as part of the Permit Application process. The Division may charge a reasonable fee for this review.

82.301.2 All walls, floors, and all procedure surfaces in rooms or areas where body art procedures are performed shall be smooth, washable, and in good repair. Walls, floors and ceilings shall be maintained in a clean condition. All procedure surfaces, including client chairs/benches shall be of such construction as to be easily cleaned and sanitized after each client. All body art establishments shall be completely separated by solid partitions or by walls extending from floor to ceiling, from any room used for human habitation, a food establishment or room where food is prepared, a hair salon, or other such activity which may cause contamination of work surfaces.

82.301.3 Effective measures shall be taken by the body art operator to protect the entrance into the establishment and the breeding or presence on the premises of insects, vermin and rodents. Insects, vermin and rodents shall not be present in any part of the establishment, its appurtenances or adjoining premises.

82.301.4 There shall be a minimum of forty-five (45) square feet of procedure area floor space for each operator in the establishment. Each establishment shall have an area which may be screened from public view for clients requesting privacy. Multiple body art stations shall be separated by dividers, curtains or partitions, at a minimum.

82.301.5 The establishment shall be well-ventilated and provided with an artificial light source equivalent to at least twenty (20) foot candles three (3) feet off the floor, except that at least on hundred (100) foot candles shall be provided at the level where the body art procedure is being performed, and where instruments and sharps are assembled.

82.301.6 No animals of any kind shall be allowed in a body art establishment except service animals used by persons with disabilities. Fish aquariums shall be allowed in non-procedural areas.

82.301.7 A separate, readily accessible, handsink with hot and cold running water, under pressure, preferably equipped with wrist or foot operated controls and supplied with liquid soap, and disposable paper towels shall be readily accessible within the body art establishment. One handsink shall serve no more than three operators. In addition, there shall be a minimum of one lavatory, excluding any service sinks, and one toilet in a body art establishment.

82.301.8 At least one waste receptacle shall be provided in each operator area and each toilet room. Receptacles in the operator area shall be emptied daily and solid waste shall be removed from the premises at least weekly. All refuse containers shall be cleanable and kept clean.

82.301.9 All instruments and supplies shall be stored in clean, dry and covered containers.

82.301.10 Reusable cloth items shall be mechanically washed with detergent and dried after each use. The cloth items shall be stored in a dry, clean environment until used.

82.302 Requirements for the Permit Holder

82.302.1 The permit holder of the body art establishment shall have the ability to demonstrate knowledge of the following subjects:

(a) Anatomy; and skin diseases, disorders, and conditions (including diabetes);

(b) Universal Precautions, as published by the Centers for Disease Control and Prevention;

(c) Infectious disease control, including waste disposal, hand washing techniques, sterilization equipment operation and methods, and sanitization, disinfection, sterilization methods and techniques; and

(d) Facility safety and sanitation.

82.302.2 The permit holder shall only hire operators who have complied with the requirements of these Regulations and who have the ability to demonstrate skills and knowledge in body art procedures.

82.303 Requirements for Professional Standards

82.303.1 The following information shall be kept on file on the premises of a body art establishment and available for inspection by the Division.

(a) Full names and exact duties;

(b) Date of birth;

(c) Gender;

(d) Home address;

(e) Home/work phone numbers;

(f) Identification photos of all body art operator/ technicians.

(g) Establishment name;

(h) Hours of operation;

(i) Owner's name and address.

(j) Complete description of all body art procedures performed.

(k) Inventory of all instruments and body jewelry, all sharps, and all inks used for any and all body art procedures, including names of manufacturers and serial or lot numbers, if applicable. Invoices or orders shall satisfy this requirement.

(l) A copy of these regulations.

82.303.2 It shall be unlawful for any person to perform body art procedures unless such procedures are performed in a body art establishment with a current permit.

82.303.3 The body art operator/technician must be a minimum of eighteen years of age.

82.303.4 Smoking, eating, or drinking should be restricted by anyone is prohibited in the area where body art is performed.

82.303.5 (a)No person shall tattoo, brand, or perform body piercing on another person if the other person is under the influence of alcoholic beverages, including beer, wine or spirits, or a controlled substance.

(b) No person shall tattoo, brand, or perform body piercing on another person if the person authorizing the body art procedure to be performed on the other person is under the influence of alcoholic beverages, including beer, wine or spirits, or a controlled substance.

82.303.6 The permit holder and all employees shall comply with Universal Precautions, as defined in these Regulations, and shall assume that all human blood and specified human body fluids are infectious for HIV, HBV, and other blood pathogens.

82.303.7 The operator/technician shall maintain a high degree of personal cleanliness, conform to hygienic practices and wear clean clothes when performing body art procedures. Before performing body art procedures, the operator/technician must thoroughly wash their hands in hot running water with liquid soap, then rinse hands and dry with disposable paper towels. This shall be done as often as necessary to remove contaminants.

82.303.8 In performing body art procedures, the operator shall wear disposable medical gloves. Gloves must be changed if they become contaminated by contact with any non-clean surfaces or objects or contact with a third person. The gloves shall be discarded at a minimum, after the completion of each procedure on an individual client and hands washed prior to donning the next set of gloves. Under no circumstances shall a single pair of gloves be used on more than one person. The use of disposable medical gloves does not preclude or substitute for hand washing procedures as part of a good personnel hygiene program.

82.303.9 If, while performing a body art procedure the operator's/technician's glove is pierced, torn or otherwise contaminated, the procedure in 82.303.7 and 82.303.8 shall be repeated. The contaminated gloves shall be immediately discarded and the hands washed thoroughly, per 82.303.6, before a fresh pair of gloves are applied. Any item or instrument used for body art which is contaminated during the procedure shall be discarded and replaced immediately with a new disposable item or a new sterilized instrument or item before the procedure resumes.

82.303.10 Contaminated waste, as defined in these Regulations, which ~~[may]~~ releases liquid blood or body fluids when compressed or ~~[may]~~ releases dried blood or body fluids when handled must be placed in an approved "red" bag which is marked with the International Biohazard Symbol. It must then be disposed of by a waste hauler approved by the Delaware Department of Natural Resources and Environmental Control. Sharps ready for disposal shall be disposed of in approved sharps containers. Contaminated waste which does not release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on-site shall not exceed the period specified by the Division or more than a maximum of 30 days, as specified in 29 CFR Part 1910.1030 whichever is less.

82.303.11 Any skin or mucosal surface to receive a body art procedure shall be free of rash or any visible infection.

82.303.12 The skin of the operator/technician shall be free of rash or infection. No person or operator affected with boils, infected wounds, open sores, abrasions, keloids, weeping dermatological lesions or acute respiratory infection shall work in any area of a body art establishment in any capacity in which there is a likelihood that they could contaminate body art equipment, supplies or working surfaces with body substances or pathogenic organisms.

82.303.13 Proof shall be provided upon request of the Division that all operators/technicians have either completed or were offered and declined, in writing, the hepatitis B vaccination series. This offering should be included as a pre-employment requirement.

82.304 Requirements for Preparation and Care of the Body Art Area

82.304.1 Before performing a body art procedure, the immediate and surrounding area of the skin where the body art procedure is to be placed shall be washed with soap and water or an approved surgical skin preparation, depending on the type of body art to be performed. If shaving is necessary, single use disposable razors or safety razors with single service blades shall be used and discarded after each use and the reusable holder shall be autoclaved after use. Following shaving, the skin and surrounding area will be washed with soap and water. The washing pad shall be discarded after a single use.

82.304.2 In the event of blood flow, all products used to check the flow of blood or to absorb blood shall be single use and disposed of immediately after use in appropriate containers, unless the disposal products meet the definition of contaminated waste (see 82.101.7).

82.305 Requirements for Sanitation and Sterilization Procedures

82.305.1 All non-single use, non-disposable instruments

used for body art shall be cleaned thoroughly after each use by scrubbing with an appropriate soap or disinfectant solution and hot water or follow the manufacturer's instructions to remove blood and tissue residue, and placed in an ultrasonic unit which will also be operated in accordance with manufacturer's instructions.

82.305.2 After cleaning, all non-disposable instruments used for body art shall be packed individually in peel-packs and subsequently sterilized (see 82.305.3). All peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Peel-packs must be dated with an expiration date not to exceed six (6) months.

82.305.3 All cleaned, non-disposable instruments used for body art shall be sterilized in a steam autoclave. The sterilizer shall be used, cleaned, and maintained according to manufacturer's instruction. A copy of the manufacturer's recommended procedures for the operation of their sterilization unit must be available for inspection by the Division. Sterile equipment may not be used if the package has been breached or after the expiration date without first repackaging and resterilizing. Sterilizers shall be located away from work stations or areas frequented by the public. If the body art establishment uses all single use, disposable instruments and products, and utilizes sterile supplies, an autoclave shall not be required.

82.305.4 Each holder of a permit to operate a body art establishment shall demonstrate that the sterilizer used is capable of attaining sterilization by monthly spore destruction tests. These tests shall be verified through an independent laboratory, or in-house testing equipment may be used with the appropriate documentation. The permit shall not be issued or renewed until documentation of the sterilizer's ability to destroy spores is received by the Division. These test records shall be retained by the operator for a period of three (3) years and made available to the Division upon request.

82.305.5 All reusable needles use in tattooing and body piercing shall be cleaned and sterilized prior to use and stored in peel-packs. After sterilization, the instruments used for tattooing and body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

82.305.6 All instruments used for tattooing and body piercing shall remain stored in sterile packages until just prior to performing a body art procedure. When assembling instruments used for performing body art procedures, the operator shall wear disposable medical gloves and use medically recognized techniques to ensure that the instruments and gloves are not contaminated.

82.305.7 All inks, dyes, pigments, needles and equipment shall be specifically manufactured for performing body art procedures and shall be used according to manufacturer's instructions. The mixing of approved inks, dyes or pigments or their dilution with potable water is acceptable. Immediately before applying a tattoo, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single use paper cups or plastic cups. Upon completion of the tattoo, these single use paper cups or plastic caps and their contents shall be discarded.

82.306 Requirements for Single Use Items

82.306.1 Single use items shall not be used on more than one client for any reason. After use, all single use needles, razors, razor blades, and other sharps shall be immediately disposed of in approved sharps containers.

82.306.2 All products applied to the skin, including body art stencils shall be single use and disposable. Acetate stencils shall be allowed for re-use if sanitization procedures (see 82.101.24) are performed between uses if approved by the Division. Petroleum jellies, soaps and other products used in the application of stencils shall be dispensed and applied on the area to be tattooed with sterile gauze or in a manner to prevent contamination of the original container and its contents. The gauze shall be used only once and then discarded.

82.307 Exemptions

82.307.1 Licensed health care practitioners allowed by law to provide medical treatment who perform, either independent of or in connection with, body art procedures as part of patient treatment are exempt from these regulations.

82.307.2 Individuals who pierce only the outer perimeter and lobe of the ear using a pre-sterilized single use stud and clasp ear piercing system are exempt from these Regulations. Individuals who use ear piercing systems must conform to the manufacturer's directions on use and applicable U.S. Food and Drug Administration requirements. The Division retains authority to investigate consumer complaints relating to alleged misuse or improper disinfection of ear piercing systems.

SECTION 82.4 NOTIFICATION AND RECORDS REQUIREMENTS

82.401 Public Notification Requirements

82.401.1 Verbal and written public educational information, approved by the Division, shall be required to be given to all clients wanting to receive body art procedure(s). Verbal and written instructions, approved by the Division, for the aftercare of the body art procedure site shall be provided to each client by the operator upon completion of the procedure. The written instructions shall advise the client to consult the operator at the first sign of infection or swelling and contain: the name, address and phone number of the establishment. These documents shall be signed and dated by the applicant and the establishment retaining the original with all other required records. In addition, all establishments shall prominently display a

Disclosure Statement, provided by the Division, which advises the public of the risks and possible consequences of body art services. The facility permit holder shall also post in public view the name, address and phone number of the Division, and the procedure for filing a complaint.

82.402 Client Records

82.402.1 In order for the ~~[operator/technician]~~ establishment/owner to properly evaluate the client's medical condition for receiving a body art procedure and not violate the client's rights or confidential medical information, the operator/technician shall obtain the following information from the client: "In order for proper healing of your body art procedure, we ask that you disclose if you have or have had any of the following conditions:

(a) Diabetes;

(b) History of hemophilia (bleeding);

(c) History of skin diseases, skin lesions or skin sensitivities to soaps, disinfectants;

(d) History of allergies or adverse reactions to pigments, dyes or other skin sensitivities;

(e) History of epilepsy, seizures, fainting or narcolepsy;

(f) Taking medications such as anticoagulants which thin the blood and/or interferes with blood clotting."

82.402.2 The operator/technician shall require the client to sign a Release Form confirming that the above information was obtained or attempted to be obtained. The client should be asked to disclose any other information that would aid the operator/technician in the client's body art healing process evaluation.

82.402.3 Each body art establishment ~~[operator]~~ shall keep records of all body art procedures administered; including date, ~~[time,]~~ identification and location of the body art procedure(s) performed, and operator's name. All client records shall be confidential and be retained for a minimum of three (3) years and made available to the Division upon notification.

82.402.4 Nothing in this section shall be construed to require the operator of a body art establishment to perform a body art procedure upon a client.

82.403 Records Retention

82.403.1 The body art establishment shall keep a record of all persons who have had body art procedures performed. The record shall include the name, date of birth, and address of the client, the date of the procedure, name of operator who performed the procedure(s), type and location of procedure performed, signature of client and if the client is a minor, proof of parental or guardian presence and consent, i.e. signature. Such records shall be retained for a minimum of three (3) years and available to the Division upon request. The Division and the body art establishment shall keep such records confidential.

DIVISION OF PUBLIC HEALTH

Health Systems Protection Section
Statutory Authority 16 Delaware Code, Section 4711(1) (16 Del.C. 4711(1))

ORDER

NATURE OF THE PROCEEDINGS

The Department of Health and Social Services ("DHSS") initiated proceedings proposing to amend 16 **Delaware Code**, Chapter 47, Uniform Controlled Substances Act by rescheduling the drug Dronabinol from a schedule II to a schedule III controlled substance. The DHSS proceedings were initiated pursuant to 29 **Delaware Code,** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 47, Section 4711.

On October 1, 2001 (Volume 5, Issue 4), DHSS published in the Delaware Register of Regulations its notice proposing the Dronabinol rescheduling, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed rescheduling be delivered to DHSS by November 1, 2001, or be presented at a public hearing on October 31, 2001, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

One written comment was received during the official public comment period in support of rescheduling Dronabinol from a schedule II to a schedule III controlled substance. The law office of Hyman, Phelps and McNamara of Washington D.C. represented and submitted a letter with attachments on behalf of Unimed Pharmaceuticals, Inc. Attachments to the letter included copies of: the Federal Register confirming the Federal rescheduling of Dronabinol in July 1999; a Unimed Pharmaceutical science based report affirming Dronabinol's medical use and low potential for abuse, dated December 1996; and an independent Scientific Review completed by the Haight Ashbury Free Clinics, Inc., affirming the low abuse potential of Dronabinol, dated November 1996.

FINDINGS OF FACT

In accordance with 16 **Delaware Code,** Section 4711(1), the Department finds that the Attorney General of the United States pursuant to 21 USC §811, rescheduled the drug Dronabinol within the Federal Controlled Substances Act effective July 2, 1999. Additionally, in accordance with 16 **Delaware Code**, Section 4711(2) and Section 4717, the Department finds, based in part on scientific and medical evaluation information provided: (1) Dronabinol has a potential for abuse less than the substances listed in

Schedules I and II; (2) Dronabinol has currently accepted medical use in treatment in the United States; and (3) Abuse of Dronabinol may lead to moderate or low physical dependence or high psychological dependence. Supporting documentation is attached to the hearing officer's record.

Based on the above findings, the proposed rescheduling of the drug Dronabinol from a schedule II to a schedule III controlled substance within the Delaware Uniform Controlled Substances Act, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the State of Delaware Uniform Controlled Substances Act be amended rescheduling the drug Dronabinol from schedule II to a schedule III controlled substance and shall become effective March 11, 2002, after publication of the final amendment in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
February 14, 2002

HEARING OFFICER REPORT

TO: Ulder J. Tillman, MD, Director
FROM: David P. Walton, Hearing Officer
DATE: February 8, 2002

SUBJECT: Dronabinol Rescheduling in Delaware's Uniform Controlled Substances Act

A public hearing was held on October 31, 2001, at 10:00 AM in the 3rd Floor Conference Room of the Jesse Cooper Building, located on Federal and Water Streets, Dover, Delaware, to obtain public comment on the proposed rescheduling of the drug Dronabinol from a schedule II to a schedule III controlled substance within Delaware's Uniform Controlled Substances Act. One person attended the public hearing. Mr. David W. Dryden, Drug Control Administrator, Office of Narcotics and Dangerous Drugs (ONDD), Health Systems Protection (HSP) Section, represented the Division of Public Health (DPH) and provided an overview of the proposed amendments. Announcements regarding the public hearing were published in the Delaware State News, The News Journal and the Delaware Register of Regulations in accordance with Delaware Law. Verifying documents are attached. The proposed amendments to the statute were approved by the Delaware Attorney General's Office.

AGENCY EXHIBITS

The exhibits listed below were entered into the record during the public hearing:

1. An Affidavit of Publication, dated October 3, 2001, from the News Journal indicating publishing of the hearing announcement in the October 3, 2001, issue of said newspaper.

2. A copy of the hearing announcement (page 27), from the Delaware State News, dated October 3, 2001, indicating publishing of the hearing announcement in said issue of the newspaper.

3. A copy of the Delaware Register of Regulations pages 747-750, dated October 1, 2001, Volume 5, Issue 4, announcing the public hearing and proposed amendments to the Uniform Controlled Substances Act.

AGENCY PRESENTATION

After opening the public hearing and providing introductory remarks, I introduced Mr. David W. Dryden, ONDD, Health Systems Protection Section, who provided a brief summary of the proposed amendments to the Uniform Controlled Substances Act. Mr. Dryden emphasized that the proposed rescheduling of Dronabinol within the Delaware statute mimics the federal rescheduling of Dronabinol from a schedule II to a schedule III controlled substance in July 1999. He also added that this proposed amendment would remove Dronabinol from 16 **Del.C.** §4716(g) and place Dronabinol in 16 **Del.C.** §4718(l).

PUBLIC COMMENTS

One written comment was received during the public hearing in support of the rescheduling of Dronabinol. Ms. Mary Kate Whalen, from the law offices of Hyman, Phelps and McNamara of Washington D.C., represented and presented a letter on behalf of Unimed Pharmaceuticals, Inc. Unimed Pharmaceuticals, Inc. markets Marinol (synthetic dronabinol). The letter and supporting documentation is attached to this hearing officer report.

SUMMARY

Before Dronabinol can be rescheduled in Delaware's Uniformed Controlled Substances Act, the Secretary of DHSS must ensure the provisions set forth in 16 **Delaware Code**, Sections 4711 and 4717 are met. In accordance with 16 **Delaware Code**, Section 4711(1), the Attorney General of the United States pursuant to 21 USC §811, rescheduled the drug Dronabinol within the Federal Controlled Substances Act effective July 2, 1999. Additionally, pursuant to 16 **Delaware Code**, Section 4711(2) and Section 4717, based on scientific and medical evaluation information now available: (1) Dronabinol has a potential for abuse less than the substances listed in Schedules I and II; (2) Dronabinol has a currently accepted medical use in treatment in the United States; and (3) Abuse of Dronabinol may lead to moderate or low physical dependence or high

psychological dependence. In this hearing officer's opinion, all findings required by statute to reschedule the drug Dronabinol in Delaware's Uniform Controlled Substances Act have been met.

To that end, I recommend the Department of Health and Social Services reschedule the drug Dronabinol from a schedule II to a schedule III controlled substance in Delaware's Uniform Controlled Substances Act.

David P. Walton, Hearing Officer

§4716. Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotics drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

1) Opium and opiate, and any salt compound derivative or preparation of opium or opiate.

2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.

3) Opium poppy and poppy straw.

4) Coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

1) Alphaprodine;

2) Anileridine;

3) Bezitramide;

4) Dihydrocodeine;

5) Diphenoxylate;

6) Fentanyl;

7) Isomethadone;

8) Levo-alphacetylmethodol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, "LAAM")

9) Levomethorphan;

10) Levorphanol;

11) Metazocine;

12) Methadone;

13) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;

14) Moramide-Intermediate 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;

15) Pethidine;

16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;

17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;

18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

19) Phenazocine;

20) Piminodine;

21) Racemethorphan;

22) Racemorphan;

23) Sufentanil; and

24) Alfentanil.

(d) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

1) Amphetamine, its salts, optical isomers and salt of its optical isomers;

2) Phenmetrazine and its salts;

3) Any substance which contains any quantity of methamphetamine including its salts, isomers and salts of isomers; and

4) Methylphenidate.

(e) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

1) Methaqualone and its salts;

2) Amobarbital;

3) Secobarbital;

4) Pentobarbital;

5) Phencyclidine;

6) Phencyclidine Immediate Precursors:

a) 1-Phenylcyclohexylamine; and

b) 1-Piperidinocylohexane Carbonitrile (PCC); and

7) Glutethimide.

(f) 1) Immediate Precursor to Amphetamine and Methamphetamine.

2) Phenylacetone (P-2-P).

~~(g) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.~~ (16 Del.C. 1953, § 4716; 58 Del. Laws, c. 424, § 1; 59 Del. Laws, c. 59, § 1; 66 Del. Laws, c. 66 § 1; 67 Del. Laws, c. 201 § 2.)

§4718. Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing limited quantities of any stimulant drugs or any

salts, isomers or salts of isomers thereof and 1 or more active medicinal ingredients not having a stimulant effect on the central nervous system and in such combinations, quantity, proportion or concentration that reduce the potential abuse of the substances which have a stimulant effect on the central nervous system:

(c) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system.

1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

2) Chlorhexadol;

3) Lysergic acid;

4) Lysergic acid amide;

5) Methyprylon;

6) [Rescheduled];

7) Sulfondiethylmethane;

8) Sulfonethylmethane; and

9) Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof;

1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

3) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

8) Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and combinations:

1) Boldenone;

2) Chlorotestosterone (4-dihydrotestosterone);

3) Clostebol;

4) Dehydrochlormethyltestosterone;

5) Dihydrotestosterone (4-dihydrotestosterone);

6) Drostanolone;

7) Ethylestrenol;

8) Fluoxymesterone;

9) Formebulone (formebulone);

10) Mesterolone;

11) Methandienone;

12) Methandranone;

13) Methandriol;

14) Methandrostenolone;

15) Methenolone;

16) Methyltestosterone;

17) Mibolerone;

18) Nandrolone;

19) Norethandrolone;

20) Oxandrolone;

21) Oxymesterone;

22) Oxymetholone;

23) Stanolone;

24) Stanozolol;

25) Testolactone;

26) Testosterone;

27) Trenbolone; and

28) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

(g) Clortermine.

(h) Benzphetamine.

(i) Chlorphentermine.

(j) Phendametrazine.

(k) Ketamine

(l) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.

~~(l)~~ (m)The Secretary may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or

concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

~~(m)~~ (n)Any anabolic steroid, as listed in subsection (f), which is a combination of estrogen and anabolic steroid and which is expressly intended for administration to hormone-deficient women, shall be exempt from the provisions of this chapter. If any person prescribes, dispenses or distributes an anabolic steroid which is a combination of estrogen and anabolic steroid for use by persons who are not hormone-deficient women, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this chapter. (16 Del. C. 1953, § 4718; 58 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 201 § 1; 70 Del. Laws, c. 81 § 2; 71 Del. Laws, c. 50, § 1.)

DIVISION OF PUBLIC HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES

Statutory Authority: 16 Delaware Code, Chapters 97, 98 (16 **Del.C.** Ch. 97, 98)

ORDER

NATURE OF THE PROCEEDINGS

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt Rules and Regulations Governing the State of Delaware Air Medical Ambulance Services. The DHSS proceedings to adopt regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 97 and Chapter 98.

On December 1, 2001 (Volume 5, Issue 6), 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 January 3, 2002, or be presented at a public hearing on January 3, 2002, after which time DHSS would review information, factual evidence and public comment to the said proposed regulations.

Verbal comments were given and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

FINDINGS OF FACT

The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware. The proposed regulations include modifications from those published in the December 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 State of Delaware Air Medical Ambulance Services are adopted and shall become effective March 10, 2002, after publication of the final regulation in the Delaware Register of Regulations.

Vincent P. Meconi, Secretary
February 14, 2002

SUMMARY OF EVIDENCE

A public hearing was held on January 3, 2002, at 2:00 PM, in the conference room of the Delaware Office of Emergency Medical Services (OEMS), Blue Hen Corporate Center, Suite 4-H, 655 Bay Road, Dover, Delaware, before David P. Walton, Hearing Officer, to discuss the proposed Delaware Health and Social Services (DHSS) Rules and Regulations Governing Air Medical Ambulance Services. 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 Sue Jones from the Office of Emergency Medical Services, Division of Public Health, made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. Agencies represented at the public hearing are included:

- Delaware State Police
- A.I. DuPont Hospital for Children
- Christiana Care LifeNet
- Rocky Mountain Helicopters
- MedStar Helicopter

All public comments and the DHSS (Agency) responses are as follows:

- **A clarification question was asked about the definition used in the regulation for critical care mission and ALS mission.**

Agency Response: After a careful review of both definitions, because they are synonymous it was decided to delete the definition of critical care mission and use Advanced Life Support (ALS) mission in its place throughout the regulation.

- **A comment was made asking if the regulation could address mutual aid agreements for out of state providers that assist when in state providers are not available.**

Agency Response: The definition of Mutual Aid agreements per Title 16, Chapter 97, of the Delaware Code was added to the regulation and mutual aid agreement was added under the general provisions portion of the regulation.

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 December 1, 2001 to January 3, 2002.

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 Air Medical Ambulance Services

Definitions

ABEM American Board of Emergency Medicine

ABOEM American Board of Osteopathic Emergency Medicine

ACLS (Advanced Cardiac Life Support) A syllabus and certification of the American Heart Association (AHA).

AIRCRAFT TYPE Particular make and model of helicopter or airplane.

AIR MEDICAL SERVICE A company or entity of a hospital or public service which provides air transportation to patients requiring medical care. This term may be used interchangeably with the term "air medical program" throughout the document.

AIR MEDICAL PERSONNEL Refers only to the patient care personnel involved in an air medical transport.

AIR MEDICAL TEAM Refers to the pilot(s) and patient care personnel who are involved in an air medical transport.

ALS MISSION The transport of a patient who receives care during an interfacility or scene response commensurate with the scope of practice of an EMT-Paramedic, **[RN, or physician.]**

ALS PROVIDER A certified provider of skills required for advanced life support.

ATLS (Advanced Trauma Life Support) A syllabus and certification offered to physicians by the American College of Surgeons.

BASE OF OPERATIONS A location from which an aircraft responds to answer a call and to which it returns while awaiting assignment on another call.

BLS MISSION The transport of a patient who receives care during an interfacility or scene response that is commensurate with the scope of practice of an EMT-B. In the state of Delaware, all interfacility air transports must be staffed at a minimum with an EMT-P.

BLS PROVIDER A certified provider of skills required for basic life support.

BTLS (Basic Trauma Life Support) A syllabus offered by the American College of Emergency Physicians to provide a standard of care for the prehospital trauma victim.

CERTIFICATE Signifies a pilot level of competency, i.e., student, private, commercial. It can also refer to the type of service a company is qualified to provide under Federal Aviation Regulations.

CONSORTIUM PROGRAM An air medical service sponsored by more than one health care facility or entity.

CONTINUOUS QUALITY IMPROVEMENT (CQI) CQI is a management strategy that integrates dedication to a quality product into every aspect of the service; it brings together a variety of personnel and management tools to examine the sources of problems within the system. CQI seeks to establish and remedy the root cause of problems by identifying and correcting the system's errors, rather than ascribing fault to individuals.

CONTROLLED AIR SPACE Air space designated as continental control area, terminal control area, or transition area within which some or all aircraft may be subject to air traffic control.

~~**[CRITICAL CARE MISSION The transport of a patient from an emergency department or critical care unit (or scene, RW) who receives care commensurate with the scope of practice of a physician or registered nurse.]**~~

CROSS COUNTRY (CC) Generally when the destination is greater than 25 nautical miles from the departure point or as designated by a geographic boundary. The DSP cross country is 25 nautical miles outside of the state of Delaware.

DSP Delaware State Police

EDIN See 'EMS Data Information Network'

ELECTIVE TRANSPORTS Air medical transports that may not be medically necessary but are done for patient or physician preference; these often are fixed wing, prepaid scheduled transports.

ELT (Emergency locator transmitter) A radio transmitter attached to the aircraft structure which is designed to locate a downed aircraft without human action after an accident.

EMS DATA INFORMATION NETWORK The Internet-based data collection program of the State EMS System.

FAA Federal Aviation Administration

FAR Federal Aviation Regulation.

HEAD-STRIKE ENVELOPE The volume of air space which a person's head would potentially move through during any abrupt aircraft motion.

HELIPAD A small, designated area usually with a prepared surface, on an airport, landing/take-off area, or apron/ramp used for take-off, landing or parking helicopters.

HOT LOAD/UNLOAD The loading or unloading of patient(s) or equipment with rotors turning.

IABP (Intra aortic balloon pump) A cardiac assist machine which can be retrofitted into some types of aircraft.

IFR Instrument Flight Rules

INSTALLED EQUIPMENT Includes all items or systems on the aircraft at the time of certification and any items or systems subsequently added to the aircraft with FAA approval through a Supplemental Type Certificate (STC), FAA Form 8110 or Form 337 action.

IMC Instrument meteorological conditions.

INDEPENDENT PROGRAM Referring to an air medical service not sponsored by a hospital and operating under its own FAA certificate.

INFECTION CONTROL An approach to reducing the risk of disease transmission to care takers, patients and others

LOCAL Day-local: Less than 25 nautical miles from departure point to destination point with generally the same terrain elevation.

Night-Local: The urban area of the helicopter base with enough illumination to maintain ground reference.

The DSP local is within the State of Delaware and less than 25 nautical miles outside the State of Delaware.

MODALITIES Treatment plans and equipment used in the delivery of patient care.

[MUTUAL AID AGREEMENTS The establishment of appropriate arrangements with EMS systems of other states for the provision of emergency medical services on a reciprocal basis.]

OUT-OF-STATE PROGRAM A flight program that does not have a base of operations within the borders of the State of Delaware.

PARAMEDIC A Nationally Registered or state-certified EMT-P

PERSONNEL, SCHEDULED Staff employed by the air medical service with scheduled working hours during which air medical transport is their primary responsibility. This includes those who take call for the primary purpose of being available for air medical transport.

PERSONNEL, NON-SCHEDULED Staff employed in patient care roles by another department or facility who have received the helicopter orientation and may be utilized as a second crew member, particularly during a specialty transport

PHTLS Prehospital Trauma Life Support: A course offered by the American College of Surgeons to provide a standard of care for the prehospital victim.

PIC Pilot in command.

POINT TO POINT TRANSPORT Transports that have both an origination and destination point within the State of Delaware.

PREHOSPITAL 911 SERVICE A service which acts as a supplemental resource to the Delaware State Police in carrying out prehospital scene missions.

QUALITY ASSURANCE (QA) QA is a process of reviewing the quality of care delivered through the examination of known or potential problems. It measures the degree of compliance of the service's personnel with established standards.

SPECIALTY CARE MISSION The transport of a patient who requires **[specialized]** care by professionals who can be added to the regularly scheduled personnel.

SPECIALTY CARE PROVIDER A provider of specialty care, such as neonatal, pediatric, etc.

STATE CERTIFICATION, FULL Approval granted, following satisfactory completion of the application process, to an air medical service wishing to provide point to point transport or prehospital 911 service within the state of Delaware. The certification period is three years.

STATE CERTIFICATION, LIMITED Approval granted, following satisfactory completion of the air medical program certification process, to an air medical service wishing to provide only one way transport to or from Delaware. The certification period is three years.

VFR Visual Flight Rules.

See 4 DE Reg. 1827 (5/1/01)

I. Purpose

The purpose of these regulations is to provide minimum standards for the operation of Air Medical Ambulance Services in the State of Delaware. It is the further intent of these regulations to ensure that patients are quickly and safely served with a high standard of care and in a cost-effective manner.

II. General Provisions

A. No person or agency (governmental or private) may operate, conduct, maintain, advertise, engage in or profess to engage in air ambulance services in Delaware unless the agency or person holds a current valid certificate issued by the Division of Public Health (the Division).

B. Air ambulance services will provide access to its services without discrimination due to race, creed, sex, color, age, religion, national origin, ancestry, or disability. Requests for service for those patients with a potentially life threatening illness or injury, who require rapid transportation, will be honored without prior inquiry as to the patient's ability to pay.

C. Out of state ~~Air~~ air ambulance services that provide 'point to point' transport services within the state of Delaware~~, or interstate transport services that originate in Delaware,~~ shall be subject to all parts of these regulations.(full certification) ~~unless covered by mutual aid agreements entered into with the Division of Public Health, in conjunction with other applicable state laws.~~ **[unless covered by mutual aid agreements entered into with an agency of the State of Delaware, in conjunction with**

other applicable state laws.]

D. All air ambulance services ~~operated by hospitals licensed by the Department of Health and Social Services (the Department)~~ with a base of operations located within the State of Delaware, or that engage in providing 'prehospital 911 service' regardless of the location of their base of operations, will be subject to all parts of these regulations. (full certification) ~~A permit will be issued to approve air ambulance services operated by hospitals.~~

E. Pre-hospital scene ~~works~~ work shall be conducted only by air ambulance services owned and operated by the State of Delaware, or private air ambulance services which have entered into appropriate agreements with the Division of Public Health and Delaware State Police to provide such ~~pre-hospital scene work~~ services. ~~with the Division of Public Health.~~

F. All out-of-state flight programs that only provide services consisting of 'one-way' transports either into or out of the State of Delaware, are subject to all requirements of these regulations for certification of the Flight Program. Personnel may maintain appropriate licensure or certification in their home state, in lieu of seeking Delaware licensure/certification. (limited certification)

See 4 DE Reg. 1827 (5/1/01)

III. Application Process

A. An application for a certificate to operate an air ambulance service may be obtained from the Division of Public Health (the Division), Office of Emergency Medical Services (the Office). An application for an original or renewal certificate shall be submitted to the Office and shall include the following:

1. Name and address of the vendor of the ambulance service or proposed air ambulance service and the name and address under which the service will operate.

2. Name, address and FAA (Federal Aviation Administration) certification number of the aircraft operator.

3. Submission of the air medical service's mission statement and scope of service to be provided.

4. Experience and qualifications of the applicant to operate an air ambulance service.

5. Description of each aircraft to be used as an air ambulance, including the make, model, year of manufacture, registration number, name, monogram or other distinguishing designation and FAA air worthiness certification.

6. The geographical service area and the location and description of the places from which the air ambulance services is to operate.

7. Name, training, and qualifications of the air ambulance medical director who is responsible for medical care provided by the service.

8. Roster of medical personnel which includes level of certification or licensure.

9. Roster of pilots including training and qualifications.

10 Statement in which the applicant agrees to provide patient specific data to the Division for EMS system quality management program purposes.

11. Other information the Division deems necessary and prescribes as part of the application.

B. Change of ownership of the air ambulance service requires re-application for certification. An air ambulance certificate holder shall file with the Division an application for renewal of the air ambulance service certificate within 10 business days of acquisition of the service by the new owner.

See 4 DE Reg. 1827 (5/1/01)

IV. Flight Program Certification Process

Within 30 days of receipt of an appropriately completed application from the proposed air ambulance service, the Office will notify the applicant in writing of the approval or disapproval of the application.

A. Certification Approval

1. The Division will issue a certificate to operate an air ambulance service. ~~after~~ The OEMS may conduct an on-site inspection ~~review conducted by the Office indicates~~ to confirm that the applicant~~'s~~ service is in compliance with these regulations and other applicable laws.

2. No certificate to operate an air ambulance service shall be issued unless the applicant satisfies the Division that the certification requirements for the air ambulance, medical supplies and equipment, as well as the qualifications of medical and operating personnel, as discussed herein, have been satisfied.

3. Certification will be granted only to services that meet all Federal Aviation Regulations (FAR's) specific to the operations of the air medical service.

4. A certificate will be issued for three years from the date of issue and will remain valid for that time period unless revoked or suspended by the Division.

5. The current certificate shall be posted in a conspicuous place in the air ambulance operations center and on, or in, the aircraft where it is clearly visible.

B. Denial of Certification

1. If the Division determines that deficiencies exist which warrant denial of the application, the air medical service shall be provided a list of these deficiencies in writing.

2. The applicant shall have 30 days from receipt of the denial ~~disapproval~~ notice in which to:

a) Respond to the Division with plans to correct the deficiencies.

(1) After review of an acceptable plan, the Division will conduct a re-inspection consistent with an agreed upon time frame.

(2) If the Division is satisfied with the results of the re-inspection, The Division will promptly issue

a certificate of approval. If the Division determines that deficiencies still exist, the Division will give the applicant written notice of disapproval, which shall identify deficiencies. The applicant shall have 30 days from receipt of the second refusal notice in which to request a review of their application and accompanying documents by the Director of the Division of Public Health or their designee.

(a) If the result is a denial of application, the applicant may not reapply for a period of six (6) months.

C. Renewal

1. The service shall submit to the Division the renewal application postmarked at least 60 days prior to the expiration date of the certificate.

2. The criteria for certification renewal ~~is~~ are the same as the current requirements for original certification.

D. Inspections

1. The Division reserves the right to enter and make inspections~~. at least quarterly and shall conduct, at a minimum, an annual inspection to ensure compliance with these regulations. Additional inspections may be conducted upon receipt of a complaint to the Division of Public Health or if there is a reasonable belief that violations may exist.~~ All services applying to provide prehospital 911 service will, at a minimum, have an initial inspection prior to execution of the required Memorandum of Agreement allowing them to commence prehospital operations.

2. Upon request of an agent of the Division during regular business hours, or at other times when a reasonable belief that violations of these regulations may exist, a certificate holder shall produce for inspection, the air ambulance, equipment, personnel and other such items as is determined by the Division's agent.

3. All records pertaining to the operation of the air medical service must be retained for a minimum of two (2) years.

E. Investigatory Procedures

1. Upon receipt of a written complaint describing specific violations of these regulations the Division will:

a) Initiate an investigation of the specific ~~changes~~ charges.

b) Notify the air ambulance service of the charges and investigation procedures.

c) Conduct and develop a written report of the investigation.

d) Notify the air ambulance service in writing of the results of the investigation with a request for a written response.

e) The Division will conduct an appropriate follow-up investigation.

F. Grounds for Suspension, Revocation or Refusal of an Air Ambulance Certification

1. The Division may, in compliance with proper administrative procedure as provided by law, suspend, revoke or refuse to issue certificates for the following reasons:

a) A serious violation of these regulations. A serious violation is one that poses a significant threat to the health and safety of the public.

b) Failure of the certified party or applicant to submit a plan to the Division to correct deficiencies and violations cited by the Division by the deadline specified ~~requested~~ by the Division.

(1) The plan must correct the deficiencies within the timeframe specified by the Division.

c) The existence of a pattern of deficiencies or violations over a period of three (3) or more years.

d) Fraud or deceit in obtaining or attempting to obtain certification.

e) Lending a certificate or borrowing or using the certificate of another, or knowingly aiding or abetting the improper granting of a certificate.

f) Incompetence, negligence or misconduct in operating the air ambulance service or in providing emergency medical services (EMS) to patients.

g) Failure to employ or contract for a medical director responsible for the care provided by the air ambulance service.

h) Failure to have appropriate medical equipment and supplies required for certification.

i) Failure of the air ambulance service to have an aircraft equipped in compliance with these regulations.

j) Failure of the aircraft operator to maintain required FAA certifications.

k) Failure to employ a sufficient number of certified or licensed personnel to provide services during the time frames identified in the application and approved certification.

l) Failure of the air ambulance service to be available during time periods specified upon in the approved certification. Exceptions to this requirement include unsafe weather conditions, commitment to another flight, grounding due to maintenance or other reasons that would prevent commitment to another flight, grounding due to maintenance or other reasons that would prevent response. The air medical service shall maintain a record of each failure to respond to a request for service, and make the record available upon request to the Division. Financial inability to pay does not constitute sufficient grounds to deny response for emergency air service.

m) Failure of an air ambulance service to notify the Division of the change of ownership or aircraft operation.

n) Abuse or abandonment of a patient.

o) Unauthorized disclosure of medical or other confidential information.

p) Willful preparation or filing of false medical reports or records, or the inducement of another to

do so.

q) Destruction of medical records.

r) Refusal to render ~~EMS~~ emergency medical services because of a patient's race, sex, creed, national origin, sexual preference, age, ~~handicap~~ disability, medical problem or financial inability to pay.

s) Misuse or misappropriation of drugs/ medications.

t) Failure to produce requested records for inspection or to permit examination of equipment and facilities shall be grounds for suspension, revocation or denial of certification provided, however, that not certificate shall be suspended, revoked or denied for a period not to exceed sixty days in the event that a dispute regarding the production of such records exists and remains unresolved, except that such suspension or revocation may occur within the sixty day period if the Division determines that such action is necessary to prevent a clear and immediate danger to public health.

u) Other reasons as determined by the Division which pose a significant threat to the health and safety of the public.

2. If the Division determines that these regulations have been violated, the Division may:

a) Place the service on probation until the deficiency is remedied and accepted by the Division.

(1) This will include a timeframe and method by which the service must demonstrate the deficiency or violation rectified.

(2) If an air medical service is unable to demonstrate that the deficiency or violation has been rectified within the specified timeframe it must submit a written progress report to the Director of Public Health requesting a deadline extension.

(a) Failure to comply will result in the 'Probation' status being changed to 'Suspension'.

(b) Failure to correct the deficiencies or violations within the extension period will result in suspension of the certificate.

b) Suspend certification for a period of up to 30 days.

(1) In circumstances where an alleged violation poses an immediate threat to public health is being investigated, the certification may be suspended during the investigation.

(2) The Division must investigate the violation and issue a written report containing the findings of the investigation

(a) The report must describe the deficiencies or violations that must be corrected in order to reinstate certification.

(b) A hearing must be scheduled within thirty (30) days of the date of suspension.

(3) Upon suspension or revocation of an air ambulance certificate, the service shall cease operations and no person may permit or cause the service to continue.

(4) The air medical service must correct any deficiencies identified to be an immediate danger to public health within the suspension period.

(a) All other deficiencies or violations may be addressed in a correction plan submitted to the Division.

(b) The status of the air medical service certificate will be changed to 'Provisional' for implementation of the corrective plan.

c) Revoke certification.

(1) Violations or deficiencies that resulted in a 'Suspension' status and have not been rectified pursuant to the requirements of those sections will result in the revocation of the air medical service's certificate.

(2) A hearing will be scheduled within thirty (30) days of the date of revocation.

d) Continue current certificate status.

e) The Division will provide public notification of their decisions involving probation, suspension-including the length of suspension period, or revocation of an air ambulance service certificate.

G. Reinstatement Process

1. When an air medical service has corrected a problem that has resulted in suspension or revocation of their certificate, it shall notify the Division of Public Health in writing, requesting reinstatement.

2. Based on the recommendations of the Division, a review will be arranged to verify resolution of the problem.

3. Outcomes of the review will be:

a) Reinstatement of certification

b) Continuation of suspension or revocation.

H. Right of Appeal

1. Any air medical ambulance service that has had their ~~application or~~ reapplication for certification denied or their certification revoked or suspended may appeal the decision.

2. Written notification of the intent to appeal must be received by the Director of Public Health within thirty (30) days of receipt of notice of such denial, suspension or revocation.

3. The Director or their designee will conduct a hearing on the Division's action.

4. Information pertinent to the case will be presented by a member of the Division's investigation committee (or the Office of EMS) and a representative of the air medical service.

5. The hearing panel will make a recommendation to the Director that the decision stand, be reversed, or modified.

a) Specific recommendation for modification shall be outlined.

6. The Director of Public Health will make a

decision based on the hearing panel's recommendations and will provide written notification of the action to the air medical service.

7. The Division's action shall not be automatically stayed during the pendency of the appeal.

I. Voluntary Discontinuation of Service

1. Certified Air Ambulance Services may not voluntarily discontinue service until ninety (90) days after the certificate holder notifies the Division in writing that the service is to be discontinued.

2. The Air Ambulance Service shall notify the Division in advance of anticipated temporary discontinuation of service expected to last at least seven (7) consecutive days.

See 4 DE Reg. 1827 (5/1/01)

V. Staffing

A. Air Medical Personnel Classifications

The aircraft, by virtue of medical staffing and retrofitting of medical equipment, becomes a patient care unit specific to the needs of the patient. Staffing shall be commensurate with the mission statement and scope of care of the air medical service.

1. Administrative Air Medical Staff

a) Medical Director

The Medical Director of the program is a physician who is responsible for supervising and evaluating the quality of medical care provided by the air medical personnel.

(1) Credentials/Experience

(a) The Medical Director shall be licensed and authorized to practice medicine in the state in which the air medical service is based unless the flight program is providing primary 911 or 'point to point' transfer services in the State of Delaware. If either of these services is provided, the physician must be licensed in Delaware. The medical director must have educational and clinical experiences in Emergency Medicine as well as other areas of medicine that are commensurate with the mission statement of the air medical service (e.g., adult trauma, pediatrics, neonatal transport, etc.). When specific missions fall outside the scope of expertise of the medical director, specialty care physicians must serve as consultants.

(b) The medical director shall be experienced in both air and ground emergency medical services (as appropriate to the mission statement) and be familiar with the general concepts of appropriate utilization of air medical services.

(c) Additionally, the medical director shall have certification by the American Board of Emergency Medicine (ABEM) and /or American Board of Osteopathic Emergency Medicine (ABOEM), or currency in Advanced Cardiac Life Support (ACLS) according to current standards of the American Heart Association and currency standards of the American Heart Association and currency in Advanced Trauma Life Support (ATLS) according to current standards of the American College of Surgeons.

(d) The Medical Director shall also have education in the following areas:

(i) Specialty education consistent with the mission statement of the air medical service (e.g., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc. or equivalent education in these areas). Alternately, the medical directors must have immediate access to specialty physicians as consultants.

(ii) In-flight patient care capabilities and limitations (e.g., assessment and invasive procedures).

(iii) Infection control as it relates to prehospital, aircraft and hospital environment.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

(2) General Areas of Responsibility

(a) The medical director must be actively involved in the quality assurance/continuous quality improvement (QA/CQI) program for the service.

(b) The medical director must be involved in administrative decisions affecting medical care for the service.

(c) The medical director must be involved in training and continuing education of all air medical personnel for the service.

(d) The medical director ~~is~~ must be actively involved in the care of critically ill and/or injured patients.

(e) The medical director must be actively involved in orienting physicians providing on line (in-flight) medical direction to the policies, procedures and patient care protocols of the air medical service.

(f) When applicable, the medical director or his designee sets cabin air pressure altitude limits, for specific disease processes of the patient(s) (through policies and procedures) and maximum altitudes, for specific disease processes of the patient(s) for rotor wing transports.

b) Clinical Care Supervisor

The responsibility for supervision of patient care provided by the various clinical care providers (e.g., EMT-B, EMT-P, RN, etc.) will be the responsibility of the medical director, unless the responsibilities are assigned to another professional (flight nurse, flight physician, or flight paramedic) who possesses the knowledge, experience and is legally qualified to provide clinical supervision.

(1) Credentials/Experience

The clinical care supervisor must possess the following qualifications:

(a) If the clinical care supervisor is a Physician:

(i) ABEM, or ABOEM certified or currency in CPR, ACLS, and Advanced Trauma Life Support (ATLS).

(b) If the clinical care supervisor is a Registered Nurse:

(i) Currency in CPR, ACLS and the Flight Nurse Advanced Trauma Course (FNATC).

(a) ATLS may be audited in lieu of FNATC.

(c) If the clinical care supervisor is a Paramedic:

(i) Currency in CPR, ACLS, and PHTLS or BTLS (Advanced).

(d) General Requirements regardless of provider level:

(i) Current specialty education consistent with the mission statement of the air medical service (i.e., Neonatal Resuscitation Certification Program, Pediatric Advanced Life Support, etc.). Alternatively, the clinical care supervisor must have immediate access to specialty personnel as consultants.

(ii) In-flight patient care limitations, e.g., assessment and invasive procedures.

(iii) Infection control.

(iv) Stress recognition and management.

(v) Altitude physiology/stressors of flight.

(vi) Appropriate utilization of air medical services.

(vii) Delaware Emergency Medical Services system.

(viii) Hazardous materials scene recognition and response (helicopter services).

(2) General Areas of Responsibility

(a) Active involvement in the flight program's QA/ CQI ~~program~~ process.

(b) Active involvement in all administrative decisions affecting patient care for the service.

(c) Active involvement in hiring, training, and continuing education of all non-physician air medical personnel for the service.

(d) Active involvement in the care of the critically ill and/or injured patients.

(e) Ensuring adequate mechanisms are in place for evaluating the clinical practice of the patient care providers.

2. Direct Care Providers

a) General

(1) The type of medical care providers staffing each mission shall be directly related to the mission type: advanced life support, specialty care or basic life support.

(2) All medical care providers must have current appropriate state licensure or certification which legally allows them to function in their respective professions.

(a) Delaware based programs and out of state programs providing prehospital 911 service must be staffed with Delaware licensed RN's and Delaware-certified paramedics.

(b) Out of state programs providing 'point to point' services must be staffed with Delaware licensed RN's. Paramedics must be certified in their state of origin.

(c) Out of state programs providing 'one way' or mutual aid services must be staffed with providers licensed or certified to practice by their state of origin.

(3) Initial and continuing education requirements for all levels of medical care providers are specified in Appendix A.

(4) Interhospital/Interfacility Transports

(a) A minimum of two (2) air medical team members are required to staff interhospital/ interfacility ALS missions. One of the air medical ALS providers must be a member of the regular ALS staff of the air medical ambulance service.

(b) All air medical team members must be licensed, certified, or permitted according to the appropriate state regulations with current re-licensing, recertification, or re-permitting status.

(c) A qualified flight physician or flight **[RN ~~nurse~~]** must be designated as the primary care provider during interfacility or interhospital transports.

(d) A flight paramedic or an approved flight specialty care provider may serve as the second ALS air medical team during an interfacility or interhospital ALS mission.

(i) The specialty care provider must have expertise relative to the needs of the patient.

~~(ii) The paramedic, on such missions, must:~~

~~(a) Be a State of Delaware certified paramedic, functioning in accordance with the Board of Medical Practice Regulations.~~

~~(b) Function according to the statewide standard treatment protocol or under the direction of an authorized medical control physician for that service.~~

(ii) Point to point interfacility transfers within Delaware must utilize the Delaware receiving facility for Online Medical Control.

(iii) In lieu of compliance with paragraph (ii) of this section, this, all physicians providing

centralized Medical Control must be Delaware licensed and a status update must be provided to the receiving facility prior to arrival of the patient.

(iv) The paramedic on such missions must be certified and function according to their standard treatment protocols.

(e) One ALS air medical care provider may be considered sufficient staff for ALS missions, where the patient has been categorized and documented as being stable, by the sending physician, and requires 'limited ALS care'.

(i) 'Limited ALS care' shall mean patient assess ment, monitoring and interventions common to, and within the scope of practice of the paramedic. Patients may require cardiac monitoring and/or intravenous therapy (without medication additives).

(ii) A flight paramedic or RN may serve as the single care provider for the transport of stable ALS patients who meet the criteria as established by the operation or agency medical director.

(5) Prehospital Scene Responses

(a) Except as provided below, the Delaware State Police (DSP) paramedic service is the ~~only~~ primary air medical service authorized to engage in prehospital scene responses and transports in the State of Delaware.

(b) A flight paramedic must be a crew member on all prehospital missions.

(i) The Aeromedical crew assumes patient care responsibility at the time the patient is secured on the aircraft.

(c) Non-scheduled personnel may be added as the second medical team member according to the protocols of the air medical services as long as an orientation has been conducted which includes in-flight treatment protocols, general aircraft safety, emergency procedures, operational policies, and infection control.

(d) Air medical ambulance services, other than DSP, may engage in prehospital scene responses and transports under certain unusual conditions that will be difined in a service agreement with the Division and DSP. To perform prehospital scene responses and transports, an air medical ambulance service must have previously entered into a service agreement with the Division and the Delaware State Police.

(e) All requests for air medical services, other than the DSP, must be initiated by the emergency communications center responsible for managing or coordinating Emergency Medical Services resources in the county where the need for assistance exists.

~~(f) The request and use of an air medical ambulance service other than the DSP for prehospital services, requires the submission of a written or electronic report by the ground EMS service that utilized the air ambulance to the Office of Emergency Medical Services, within seven (7) days of the request and/or response. The report must identify the conditions and circumstances precipitating the request.~~

~~(i) The "Air Medical Ambulance Service Use Report" (See Appendix D) shall be used to communicate this information.~~

~~(g)~~ (f) All patient care services provided by the air medical ambulance crew during a prehospital scene response shall be documented using the Delaware Emergency Data Information Network (EDIN). Data provided will be used for descriptive and quality management purposes, including air service utilization review.

(i) This shall be provided in addition to any documentation that the service generates internally.

(ii) The EDIN system is a secure Internet based data management system.

(a) Access to an Internet connection is necessary to provide the documentation required by these regulations.

b) Advanced Life Support (ALS) Mission Providers

An Advanced Life Support (ALS) mission is defined as the transport of a patient who receives care during a prehospital or interfacility/ interhospital transport that is commensurate with the scope of practice of a flight physician, flight nurse or flight paramedic.]

c) Specialty Care Mission Providers

(1) A specialty care mission is defined as the transport of a patient requiring special patient care by one or more professionals who must be added to the regularly scheduled air medical team. Dedicated teams providing specialty-oriented care (e.g., neonatal transport teams, IABP transport teams) must follow the specific mission standards.

(2) The air medical team must~~, at a minimum~~ minimally consist of a specially trained physician or registered nurse as the primary caregiver whose expertise must be consistent with the needs of the patient.

(3) Specialty care missions require at least two air medical team members while a patient(s) is on board. Personnel shall be available for each transport within a reasonable time determined by the service.

(4) All specialty team members must have received a basic minimum orientation to the air medical service which includes in-flight treatment protocols, general aircraft safety and emergency procedures, operational policies and infection control.

(5) Specialty care mission personnel must be accompanied by at least one regularly scheduled air medical staff member, of the air medical service, except when independent, dedicated flight specialty teams are used.

(6) Specialty care personnel must be

educated in in-flight treatment modalities, altitude physiology, general aircraft safety, and emergency procedures.

d) Basic Life Support Mission Providers

A Basic Life Support (BLS) mission is generally defined as the transport of a patient who receives care during an interfacility/interhospital transport that is commensurate with the scope of practice of an Emergency Medical Technician-Basic (EMT-B). In the State of Delaware, when such care is provided in the air medical environment, it must be assumed, at a minimum, by a flight Emergency Medical Technician-Paramedic (EMT-P).

B. Pilot Personnel

1. There shall be a sufficient number of pilots permanently assigned to the air medical service to provide services approved by the Division of Public Health, and which assures adequate crew rest as per FAA regulations.

2. All pilots must possess a commercial rotorcraft-helicopter airman's certificate.

3. Pilot in Command (PIC) must possess 2000 rotorcraft flight hours as PIC prior to assignment with an air medical service or be currently employed by the Delaware State Police (DSP) and have completed a DSP pilot training program.

4. A planned structure program must be provided for relief pilots, which at a minimum includes specific roles and responsibilities, and familiarization with the region served.

5. A lead pilot and designated safety officer must be appointed by the FAR 135 certificate holder to insure adherence to operational safety regulations for the program. Adequate training and experience in air medical missions management and evaluation skills must be possessed to carry out these duties.

6. The pilot has the right to decline or abort any portion of a mission if there is doubt as to the safety of the mission.

7. The pilot shall meet education and experience requirements as listed in Appendix A.

a) Pilots employed by DSP must comply with the requirements set by that agency.

C. General Staff Policies - Operational policies must be present to address the following areas:

1. Medical Flight Personnel

a) Minimize duty-related fatigue

b) Hearing protection

c) Crash survivability

(1) Flame retardant clothing

(2) Seat belts/shoulder harnesses

(3) Head-strike protection

(4) Securement of on-board and carry-on medical equipment

d) Protective clothing and dress codes relative to:

(1) Mission type

(2) Infection control

e) Universal infection control

f) Flight status during pregnancy

g) Flight status during acute illnesses (especially respiratory ailments)

h) Flight status while taking medications that may cause dizziness

i) Weight/height and/or lifting abilities if appropriate

2. Pilot Personnel

a) Minimize duty-related fatigue

b) A policy of the certificate holder that specifies higher weather minimums for new pilots for a time frame based on the pilot's experience, flight time, local environment and personal adaptation. An evaluation tool applied individually to each new pilot by the flight program shall define the time frame.

See 4 DE Reg. 1827 (5/1/01)

VI. AIRCRAFT REQUIREMENTS

A. Medical Considerations

1. The aircraft shall have an interior medical configuration that is installed according to FAA criteria. Minimum specifications are listed in APPENDIX B.

2. The aircraft must be configured in such a way that the air medical personnel have access to the patient for the initiation and/or maintenance of basic advanced life support treatments.

3. The aircraft must be equipped with medical equipment and supplies consistent with the mission statement and scope of care. Minimum equipment and supplies required are identified in APPENDIX B.

4. The aircraft design and configuration must not compromise patient stability in during loading, unloading or in-flight operations.

a) The aircraft must have an entry that allows loading and unloading without excessive movement of the patient or compromise to monitoring systems, without interfering with the pilot's vision. The cockpit should be capable of being shielded from light in the patient care area during night operations.

b) The cockpit must be sufficiently isolated, by protective barrier, to minimize distractions from the patient care compartment.

c) The interior of the aircraft must be climate controlled to prevent adverse effects upon the patient from temperature extremes.

d) The avionics shall not interfere with the functioning of medical equipment, nor shall the intravenous lines, manual or mechanical ventilation.

e) Adequate interior lighting shall be available to allow for patient care monitoring. Medical equipment shall not interfere with the avionics.

B. Aircraft Equipment

1. The aircraft must be equipped with a 180 degree controllable searchlight of at least 400,000 candle power for rotor-wing aircraft.

2. Radio capabilities

a) Radios (as range permits) shall be capable of transmitting and receiving communications from:

(1) Medical control

(2) Flight operations center

(3) Air traffic control

(4) EMS and law enforcement agencies

b) The pilot must be able to control and override radio transmissions from the cockpit in the event of an emergency situation.

c) The flight crew must be able to communicate internally.

3. The aircraft must be equipped with a functioning emergency locator transmitter (ELT) in compliance with the applicable Federal Aviation Regulations (FARs).

4. A fire extinguisher must be accessible to air medical personnel and pilot(s) in compliance with applicable FARs.

C. Maintenance

Maintenance may be provided by an outside vendor who is FAA and manufacturer certified. If an in-house maintenance department is utilized, the following criteria must be met:

1. Credentials/Experience

a) Lead mechanic must possess 2 years of rotorcraft experience as a certified airframe and power plant mechanic prior to assignment with an air medical service.

b) The mechanic must be factory schooled or equivalent in an approved program, and FAR 135 qualified to maintain the aircraft designated by the air medical service.

2. Training related to the interior modification of the aircraft:

a) Shall prepare the mechanic for inspection of the installation as well as the removal and reinstallation of special medical equipment.

b) Supplemental training on service and maintenance of medical oxygen systems and a policy as to who maintains responsibility for refilling the medical oxygen system.

3. Staffing of Mechanics

a) A single mechanic on duty or on call 24 hours a day shall be relieved from duty for a period of at least 24 hours during any seven (7) consecutive days, or the equivalent thereof, within any 1 calendar month.

b) Back-up personnel shall be provided to the mechanic during periods of extensive scheduled or unscheduled maintenance or inspection. Complexity of the aircraft and an increased number of flight hours may be considerations for increased mechanic staffing.

c) A policy of the certificate holder shall be in place that documents the disciplinary process for a mechanic.

4. Maintenance Facilities

a) There must be a mechanism/procedure for alerting flight and air medical personnel when the aircraft is not air worthy.

b) A hangar or similar-type facility shall be available for the mechanic to perform heavy maintenance.

See 4 DE Reg. 1827 (5/1/01)

VII. VISUAL FLIGHT RULES (VFR) WEATHER ISSUES

A. VFR weather minimums shall be specified for day and night local, and day and night cross country (CC).

B. The "local flying area" shall be determined by the operator based upon the operating environment.

C. There is a system of obtaining pertinent weather information.

1. The pilot in command (PIC) is responsible for obtaining weather information according to policy which shall address at a minimum:

a) Routine weather checks

b) Weather checks during marginal conditions

c) Weather trending

2. Communication between pilots, medical personnel, and communication specialists at shift change regarding the most current and forecasted weather is part of a formal briefing.

D. VFR "response" weather minimums: Recommended minimums to begin a transport shall be no less than:

CONDITIONS	CEILING	VISIBILITY
DAY/LOCAL	500 ft.	1 mile
DAY/CC	1000 ft.	1 mile
NIGHT/ LOCAL	800 ft.	2 miles
NIGHT/CC	1000 ft.	3 miles

E. Policies include provisions for patient care and transport alternatives in the event that the aircraft must use alternate landing facilities due to deteriorating weather.

F. Instrument flight rules, (IFR) Weather Issues – When transitioning to an off-airport site after an instrument approach, the following shall apply:

1. Local VFR weather minimums shall be followed if within a defined local area and if the route and off-airport site are familiar.

2. Cross-country VFR weather minimums shall be followed if not in defined local area or if not familiar with

route and off-airport site.

See 4 DE Reg. 1827 (5/1/01)

VIII. HELIPAD

A. Primary, receiving hospital(s) helipad(s) must be marked (with a painted H or similar landing designation), lighted for night operations, and be equipped with a device to identify wind direction. In addition, there shall be:

1. Unobstructed approach according to the FAA Advisory circular entitled Heliport Design Advisory Circular, AC 150/5390-2.

2. Evidence of compliance with local, state, or federal regulations including appropriate and adequate fire retardant chemicals.

3. Documented on-going safety programs for those responsible for loading and unloading patients or working around the helicopter on the helipad.

4. Evidence of adequate security-A minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off, or perimeter security such as fencing, rooftop etc. A means must exist to monitor the primary helipad if accessible to the public (e.g., through direct visual monitoring or closed circuit TV).

5. There is limited distance from the helipad, (a limited distance is defined as not requiring intermediary transport of any type from the helipad to the receiving facility*), to the hospital in order to minimize the ~~affects~~ effects to the patient.

a) Patient monitoring shall continue without interruption between the helipad and the hospital.

b) Emergent patient interventions can be performed as needed between helipad and hearing protection is provided for all personnel who assist with patient hot loading and unloading.

6. Hearing protection is ~~provided for~~ worn by all personnel who assist with patient hot loading and unloading.

B. Occasional or episodic use of helipad

Helipads used occasionally (at referring or receiving hospitals) shall be reviewed annually by the air medical service for:

1. Identification and removal of obstructions

2. Appropriate lighting (permanent or temporary for night operations)

3. Helicopter ingress/egress limitations

4. Adequate security - a minimum of one person to prevent bystanders from approaching the helicopter as it lands or lifts off.

5. Evidence of safety programs (through review of training program records) offered to personnel responsible for operations at the landing site and availability of appropriate fire retardant chemicals.

C. Temporary scene landings shall be secured

1. Perimeter lighting with handheld floodlights, emergency vehicles or other lighting source to clearly illuminate the designated landing area at night.

2. Free of overhead obstruction and ground debris.

3. Appropriate in size to the type of the aircraft.

4. Safety programs must be provided to public safety/law enforcement agencies to include:

a) Identifying and designating an appropriate landing zone (LZ).

b) Helicopter safety.

5. Two-way communications between helicopter and ground personnel.

See 4 DE Reg. 1827 (5/1/01)

IX. COMMUNICATIONS

A. The flight crew or a communication specialist must assume the responsibility of receiving and coordinating all requests for the air medical service.

1. Should a communication specialist be employed, training shall be commensurate with the scope of responsibility of the communications center personnel and include:

a) EMT-B certification or equivalent knowledge and experience.

b) Knowledge of Federal Aviation Regulations and Federal Communications Commission regulations pertinent to the air medical service.

c) General safety rules and emergency procedures pertinent to air medical transportation and flight following procedures.

d) Navigation techniques/terminology and understanding weather interpretation.

e) Types of radio frequency bands used in air medical EMS.

f) Assistance with the materials response and recognition procedure using appropriate reference materials.

B. Communication policies of the air medical service must reflect:

1. Aircraft must communicate, when possible, with ground units securing unprepared landing sites prior to landing.

2. A readily accessible post incident/accident plan must be part of the flight following protocol so that appropriate search and rescue efforts may be initiated in the event the aircraft is overdue, radio communication can not be established nor location verified

a) Written post incident/accident plans are easily identified and readily available.

b) Current phone numbers are easily accessed.

c) An annual drill is conducted to exercise the post incident/accident plan.

C. Continuous flight following must be monitored and documented and shall consist of the following:

1. Initial coordination to include communication and documentation of:

a) Time call received

b) Name and phone number of requesting agency

c) Time aircraft departed

d) Pertinent LZ information

e) Number of persons on board

f) Amount of fuel on board

g) Estimated time of arrival (ETA)

h) Diagnosis or mechanism of injury

i) Referring and receiving physician and facilities (for inter facility transports) as per policy of the air medical service

j) Verification of acceptance of patient

2. Communications during mission shall also be documented accordingly:

a) Direct or relayed communications to communications center (while in flight) specifying locations and ETAs, and deviations, if necessary.

b) Direct or relayed communications to communications center specifying all take-off and landing information.

c) Time between each communication:

(1) Time between each communication shall not exceed 15 minutes while in flight (If an IFR or VFR flight plan has been filed, may only be able to communicate with air traffic control, (ATC).

(2) Time between communications shall not exceed 45 minutes while on the ground.

(3) Alternate agencies are used to relay communications when direct contact is not possible.

D. The Communications Center must contain the following:

1. At least one dedicated phone line for the air medical service.

2. A system for recording all incoming and outgoing telephone and radio transmissions with time recording and playback capabilities. Recordings are to be kept for 30 days.

3. Capability to immediately notify air medical team and on-line medical direction (through radio, pager, telephone, etc.).

4. Back-up emergency power source for communications equipment, or a policy delineating methods for maintaining communications during power outages and in disaster situations.

5. Communications policy and procedures manual.

See 4 DE Reg. 1827 (5/1/01)

E. All services that will be landing at a healthcare facility helipad within the State must contactAVCOM (302-739-5964) to advise them of their destination and the estimated length of time that they will occupy the helipad. AVCOM must be advised again when the aircraft departs the helipad.

X. EMS SYSTEM INTEGRATION

A. The air medical service shall be integrated with and communicate with other public safety agencies, including ground emergency service providers. This must include participation in regional quality assurance reviews, regional disaster planning and mass casualty incident drills.

B. The air medical service must interface (through telephone calls and outreach programs) with existing communications centers, public safety and law enforcement agencies, as well as with local off-line medical directors, as appropriate for prehospital ALS missions.

C. The air medical service must ensure continuity of care and expeditious treatment of patients by utilizing state EMS medical protocols and procedures, whenever applicable.

D. All 911 missions must utilize the Delaware paramedic standing orders and (in-state) Delaware Certified Medical Control physicians for on-line Medical Control.

E. ~~D.~~ The air medical service shall facilitate integration of all emergency services and transport modalities by supporting joint continuing education programs and operational procedures for:

1. Disaster response/triage.

2. Interface of the air medical team with other regional resources.

3. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotary wing services.

4. Patients considered appropriate for transport by the air medical service.

F. ~~E.~~ The service shall promote a timely feedback to referring agency, facility or physician about patient outcome and treatment rendered before, during, and after transport where appropriate.

G. ~~F.~~ The flight service shall provide a planned, structured safety program to public safety/ law enforcement agencies and hospital personnel who interface with the air medical service which includes:

1. Landing zone designation and preparation.

2. Personal safety in and around the helicopter for all ground personnel.

3. Procedures for day/night operations, conducted by the air medical team, specific to the aircraft:

a) High and low reconnaissance.

b) Communication and coordination with ground personnel.

c) Approach and departure path selection.

d) Procedures for the pilot to ensure safety during ground operations in the landing zone with or without engines running.

e) Procedure for the pilot to have ground control during engine start and departure from a landing site.

H. ~~G.~~ The service shall maintain records of initial and recurrent training provided by the air medical service to

prehospital, referring and receiving ground support personnel.

See 4 DE Reg. 1827 (5/1/01)

XI. POST INCIDENT/ACCIDENT PLAN

A Post Incident/Accident Plan shall be written and understood by all program personnel and shall include at a minimum:

A. List of personnel to notify in order of priority (for communication specialist to activate) in the event of a program incident/accident. Two major goals in activating a notification list include:

1. Provide rapid rescue response.
2. Insure accurate information dissemination.

B. Preplanned time frame to activate the post incident/ accident plan for overdue aircraft.

C. Procedure to secure all documents and tape recordings related to the particular incident/accident.

D. Procedure to deal with releasing information to the press.

XII. PROFESSIONAL AND COMMUNITY EDUCATION

A professional and community education program and/ or printed information with the target audience to be defined by the air medical service shall include but not be limited to:

A. Hours of operation, phone number, and procedure to access.

B. Capabilities of air medical personnel.

C. Type of aircraft and operational protocols specific to type.

D. Service area for the aircraft.

E. Preparation and stabilization of the patient.

F. Safety program consisting of patient preparation and personal safety around the aircraft to include landing zone (LZ) designation for rotor wing services.

G. Patients considered appropriate for transport by the air medical service, (Generally, an appropriate transport is one which enhances patient outcome, safety or cost effectiveness over other modes of transport).

XIII. INFECTION CONTROL

A. Policies and procedures addressing patient transport issues involving communicable diseases, infectious processes and health precautions for emergency personnel as well as for patients must be current with the local standard of practice, standards of OSHA and as published by the center for Disease Control (CDC).

B. Policies and procedures must be written and readily available to all personnel of the air medical service.

C. Additional medical and agency resources pertinent to infection control must be identified and made available in the policy manual to all air medical personnel.

D. Education programs will include the institution's/ service's infection control resources, programs, policies and CDC recommendations. Policies and procedures will be reviewed on an annual basis.

E. Air medical personnel transporting patients must practice preventative measures lessening the likelihood of transmission of pathogens. Policies and procedures address:

1. Personnel health concerns including record of:

a) Physical exams.

b) Immunization history – air medical personnel are encouraged to have tetanus and hepatitis B immunization.

c) Verification of post-vaccination antibody status, if immunized against hepatitis B.

d) Annual tuberculosis testing (purified protein derivative).

e) Measles, mumps, rubella (MMR) immunization.

2. Management of communicable diseases and infection control in the transport environment is outlined in policies:

a) Use of gloves, eye and mouth protection.

b) Sharps disposal container for contaminated needles and collection container for soiled disposable items on the aircraft.

c) Cleaning and disinfecting with appropriate disinfectant of the patient cabin area, equipment, and personnel's soiled uniforms.

d) Mechanism for identifying those at risk for exposure to an infectious disease.

e) A plan for communication between the air medical service personnel, EMS providers, and hospital when exposure is suspected/confirmed to include what follow-up is necessary.

(1) Written notification shall go out in an expedient manner.

(2) Follow-up is documented.

f) A policy for special provisions for transporting infected or possibly infected victims.

g) Proper cleaning or sterilization of all appropriate instruments or equipment.

h) Hand washing before and after each patient.

XIV. QUALITY ASSURANCE/CONTINUOUS QUALITY IMPROVEMENT

A. There is an established Quality Assurance/ Continuous Quality Improvement Program which provides on-going monitoring and evaluation of the quality and effectiveness of the air medical ambulance service.

B. The QA/CQI program shall be comprehensively integrated, including activities related to patient care, communications, aviation, operations and equipment maintenance. The required elements and considerations of the written QA/CQI plan are listed in APPENDIX C.

C. The Medical Director has the primary responsibility

for ensuring timely review of patient care activities and issues, utilizing the medical record and pre-established criteria. A committee consisting of the medical director along with representatives of management, medical and non-medical personnel should be considered as a mechanism for ensuring initiation and continuation of QA/CQI program.

D. The air medical service has a policy and procedure manual available to all personnel which is reviewed, at least, annually for accuracy, completeness and currency.

E. The air medical service has established patient care guidelines/standing orders which must be reviewed annually (for content accuracy) by management, QA/CQI committee members and the Medical Director.

F. The QA/CQI program must be closely linked with risk management, so that concerns related through the risk management program can be followed up through the continuous quality improvement program.

XV. GENERAL POLICIES

A. There are well-defined lines of authority with a clear reporting mechanism to upper level management.

B. Air medical personnel understand the organizational structure and the chain of command.

C. A policy shall be in place that clearly explains the air medical service's disciplinary process for all levels of staff.

D. Management policies encourage ongoing communications between all levels and types of air medical service personnel.

E. There are formal, periodic staff meetings for which minutes are kept on file. There are defined methods for disseminating information between meetings.

F. For public or private institutions and agencies that contract with an aviation firm to provide air medical services, there shall be a policy that specifies the lines of authority between the medical management team and the aviation management team.

G. Management sets guidelines for press related issues and marketing activities.

1. Policies Relating to Patient Management

a) Management ensures, through policy, that all transfers of patient care occur from a lower level of care to an equal or higher level of care except for elective transfers for patient convenience or returning a patient to a referring facility.

b) A patient record shall be maintained on all patients utilizing the services of an air medical ambulance. The record shall be used to document care given during transport, as well as all other relevant patient related factors, such as status prior to, during at the end of transport.

c) A copy of the patient record will be left at the receiving hospital to facilitate continuity of care. A copy will be kept on file by the air medical ambulance service for a period of time to include that of the statue of limitations.

d) The air medical ambulance services has written policies and procedures which indicate what therapies can be performed without on-line medical direction.

e) Inter facility transports require physician referral/acceptance to ensure continuity of care and establish patient care parameters during the transport. Patient transfer protocols must comply with existing Federal requirements.

f) Management ensures an appropriate utilization review process based on:

(1) Medical benefits to the patient:

(a) Timeliness of the transport as it relates to the patient's clinical status.

(b) Transport to an appropriate receiving facility; an appropriate receiving facility may include:

(i) A hospital or facility where the patient has previously undergone specialized treatment and where the patient's previous medical records are located.

(ii) A facility at too great a distance for ground transport.

(iii) A facility with a specialized level of care not available in the referring hospital.

(c) Specialized air medical personnel expertise available during transport that would otherwise not be available.

(d) Safety of the transport environment.

2. Cost of the transport:

a) A structured, periodic review of flights (to determine transport appropriateness or that the mode of transport enhances medical outcome, safety or cost effectiveness over other modes of transport) performed at least semi-annually and resulting in a written report.

b) Hospital or non-hospital based program director/administrator is oriented to FARs that are pertinent to the air medical service.

3. Policies Pertaining to Safety

a) A Safety Committee shall meet at least quarterly with written reports sent to management and kept on file as dictated by policy. The responsibilities of the safety committee may be assumed by the QA/CQI committee.

b) Written variances relating to "safety" issues will be addressed in Safety Committee meetings. The committee will promote communications between air medical personnel and pilots addressing safety practice, concerns, issues and questions.

c) Recommendations for operational and safety issues will be reviewed by management.

See 4 DE Reg. 1827 (5/1/01)

APPENDIX A - EDUCATIONAL REQUIREMENTS

Initial education preparation and requirements will be guided by each air medical ambulance service's mission

statement, scope of care provided, levels of care providers, state requirements and medical direction.

I. ALS, RN, MD and SPECIALTY CARE PROVIDERS: Scheduled Crew

Prior to functioning as a provider in an air medical service, all ALS and Specialty care personnel must present documentation of having successfully completed an education program that validates minimum knowledge levels and skill competencies in the following identified areas:

A. Didactic Component that includes:

1. Advanced airway management
2. Altitude physiology; gas laws; stressors of flight
3. Anatomy, physiology and assessment of the adult, pediatric and neonatal patients
4. Oxygen therapy in the air medical environment
5. Mechanical ventilation and respiratory physiology for adults, pediatric and neonatal patients as appropriate to the mission statement and scope of care provided by the air medical service.
6. Respiratory emergencies
7. Recognition and management of cardiac emergencies including lethal dysrhythmias
8. Hemodynamic monitoring, pacemaker and automatic implantable cardiac defibrillator (AICD) management
9. Intra-aortic balloon pump, central lines, Swan Ganz and arterial catheters, left and right ventricular devices and extra corporeal membrane oxygenation (ECMO) when applicable
10. Environmental emergencies
11. High risk obstetric emergencies (bleeding, trauma, medical)
12. Neonatal emergencies (respiratory distress, cardiac, surgical)
13. Pediatric emergencies (medical, trauma)
14. Infection control practices and procedures
15. Metabolic/endocrine emergencies
16. Adult trauma and burns
17. Stress recognition and management
18. Toxicology
19. Pharmacology
20. Disaster and triage management**2
21. Survival training, if applicable
22. Hazardous materials scene recognition and response**2
23. Scene management/rescue/extrication**2

B. Clinical Component that includes experiences in providing:

1. Critical intensive care
2. Emergency care
3. Neonatal Intensive care
4. Obstetrics
5. Pediatric critical care
6. Prehospital care**2
7. Invasive procedures (or mannequin equivalent) for refreshing specific skills, i.e.~~:~~ endotracheal intubation

1*Refers to Inter hospital/inter facility providers only

2** Refers to Prehospital providers only**.**

NOTE: Specialty Care Providers must have included in their educational programs, additional content material and skills specific for their specialty area.

C. Continuing Education

1. Documentation of each scheduled crew ALS, RN, MD or Specialty care provider completion of a minimum of 48 hours of air medical refresher/continuing education every two years must be kept on file by the air medical ambulance service and submitted to the Office biennially.
2. Continuing education/staff development programs, specific and appropriate to the mission statement and scope of care of the air medical ambulance service, must be provided.
3. Continuing education/staff development programs must include reviews and/or updates of the following areas:

a) Aviation-safety issues
b) Altitude physiology
c) Management of emergency/critical care adults, pediatric and neonatal patients (medical and trauma)
d) Obstetrical emergencies
e) Invasive procedures labs
f) Stress Management
g) Infection control
h) Hazardous materials scene recognition and response
i) Survival training, if applicable
j) Current certification must be maintained in the following areas:

(1) CPR (Cardio-pulmonary Resuscitation per guidelines of the American Heart Association)
(2) ACLS*3
(3) ATLS*3/Flight Nurse Advanced Trauma Course**4/PHTLS***5 (specific certification depends on level of care provider)
(4) PALS
(5) Neonatal Resuscitation Course (neonatal specialty care providers, only)

3* Physicians must be either ABEM /ABOEM or ACLS & ATLS certified

4** Nurses may elect to audit ATLS

5*** Paramedics may elect to be certified in Basic Trauma Life Support (BTLS)

See 4 DE Reg. 1827 (5/1/01)

II. Educational Requirements specific to the air medical in-flight environment for all air medical providers.

A. Air medical patient transport considerations (assessment, treatment, preparation, handling, equipment)

1. Day and night flying protocols
2. EMS communications
3. EMS systems
4. General aircraft safety annually to include:

a) aircraft evacuation procedures

b) communications during an emergency situation and knowledge of emergency communication frequencies

c) in-flight and ground fire suppression procedures

d) in-flight emergency and emergency landing procedures (e.g., position, oxygen, securing equipment)

e) safety in and around aircraft including FAA rules and regulations pertinent to safety for air medical team members, patients, and lay individuals

f) specific capabilities, limitations and safety measures for each aircraft used

g) use of emergency locator transmitter (ELT)

5. Ground operations

III. Pilot Training Requirements

A. Initial training shall, at a minimum, consist of:

1. Training in specific type of aircraft as follows:

a) Less than 100 hours in aircraft type

(1) Factory school or equivalent (ground and flight)

(2) Twenty-five (25) hours as pilot in command in aircraft type prior to EMS missions

(3) Five (5) hours as pilot in command or at the controls prior to EMS missions

(4) Ten (10) hours as pilot in command or at the controls prior to EMS missions if transitioning from a single to a twin engine aircraft

b) Over 100 hours in aircraft type

(1) Part 135 check ride (for Part 135 certificate holders)

(2) Five (5) hours local area orientation

2. Minimum requirements for area orientation

a) Five (5) hours area orientation of which two hours must be at night as pilot in command or at the controls prior to EMS missions

b) Training hours in aircraft type and area orientation may be combined depending on the experience and background of the pilot

3. Terrain and weather considerations specific to the program's geographic area

4. Instrument Meteorological conditions (IMC) recovery procedures by reference to instruments

5. A structured orientation must be conducted for relief pilots which at a minimum must include: roles, responsibilities, and familiarization with the region served

6. Orientation to the hospital or health care system associated with the air medical service

7. Orientation to infection control, medical systems installed on the aircraft and patient loading and unloading procedures

8. Orientation to the EMS and public service agencies unique to the specific coverage area

B. Quality assurance and competency must be ensured through methodologies including monthly operational reviews, ensuring pilot proficiency in both standard and emergency procedures. Remediation must be implemented as deficiencies are identified.

C. Annual recurrent training will minimally include:

1. Factory or equivalent refresher course
2. FAR Part 135 training requirements
3. IMC recovery procedures
4. Flight by reference to instruments

See 4 DE Reg. 1827 (5/1/01)

APPENDIX B - Aircraft and equipment

The certificate holder must meet all Federal Aviation Regulations specific to the operations of the air medical ambulance service.

A. AIRCRAFT MEDICAL CONFIGURATION STANDARDS

1. Air medical personnel assure that all medical equipment is in working order through checklists.

2. All equipment (including specialized equipment) and supplies must be secured according to FAR's.

3. Personnel must be in seatbelts (and shoulder harnesses if installed) for all take-offs and landings according to FAA regulations.

4. Patients are restrained with straps that must comply with FAA regulations.

5. A policy must be in place to address refusal to transport patients who may be considered a threat to the safety of the flight and/or air medical personnel.

6. Patients under 60 pounds (27 kg), excluding transport isolette patients, shall be provided with an appropriately sized restraining device (for patient's height and weight) which is further secured by a locking device.

7. The pilot(s), flight controls, throttles (RW) and radios are physically protected from an intended or accidental interference by the patient, air medical personnel or equipment and supplies.

8. A minimum of one stretcher shall be provided that can be carried to the patient:

a) The stretcher and the means of securing it for flight must be consistent with FARs.

b) The stretcher shall be large enough to carry the 95th percentile adult American patient, full length in the supine position (the 95th percentile adult American male is 6 ft. and 212 lbs.).

c) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If

a backboard or equivalent device is required to achieve this, such device will be readily available.

d) The head of the stretcher is capable of being elevated at least 30 degrees for patient care and comfort.

9. Medical oxygen system - oxygen is installed according to FAA regulation and is capable of being shut off from inside the aircraft. Medical personnel can determine oxygen status using in-line pressure gauges mounted in the patient care area.

10. Each gas outlet is clearly marked for identification.

11. Supplemental lighting system will be installed in the aircraft for use in situations in which standard lighting is insufficient for patient care.

a) A self-contained lighting system powered by a battery pack or a portable light with a battery source must be available.

b) A means of protecting the cockpit from light in the patient care area shall be provided for night operations or use of red lighting (if not able to isolate the patient care area) to restrict light intensity.

12. Electric power outlet (with a minimum of 750 voltage amperage capacity) is provided, 28 volt DC and/or 115 volt AC, with sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment.

13. No smoking signs are prominently displayed inside the cabin.

14. The air medical personnel "head-strike envelope" is clear of all obstructions.

B. ADDITIONAL OPERATIONAL POLICIES

There shall be specific policies and procedures regarding aircraft operations and evidence of training in the following areas:

1. Written patient loading and unloading procedures.

2. Specific policies concerning circumstances for hot loading or unloading if practiced.

3. Refueling policies for normal and emergency situations: Refueling with the engine running, rotor turning, and/or passengers on board is not recommended. However, emergency situations of this type can arise. Specific and rigid procedures should be developed by the operator to handles these occurrences. Refueling policies will address:

a) Refueling with engine(s) running or shut down.

b) Refueling with air medical personnel or patient(s) on board.

4. Specific policy to address the combative patient. Additional physical and/or chemical restraints should be available and used for combative patients who potentially endanger himself, the staff or the aircraft.

C. MEDICAL MANAGEMENT and EQUIPMENT REQUIREMENTS

1. Airway Maintenance and Oxygen Delivery

a) Objectives:

(1) The ability to initiate and maintain an airway with adequate ventilatory support for both adult and pediatric patients must be present.

(2) Adequate amounts of oxygen must be available for every mission.

(3) Oxygen flow can be stopped at or near the oxygen source from within the aircraft.

(4) A variety of oxygen delivery devices which are consistent with the scope of care must be present.

(5) The following indicators ~~are~~ must be available to personnel while in flight:

(a) quantity of oxygen remaining in the onboard oxygen supply system.

(b) measurement of oxygen liter flow

(6) There must be a back-up source of oxygen (of sufficient quantity to get safely to the ground for replacement) in the event the main system fails.

(7) Oxygen flow meters and outlets must be padded, flush mounted, or so located to prevent injury to personnel.

b) Required Equipment:

(1) Oral and nasopharyngeal airway adjuncts

(2) Oxygen supplies, including PEEP valves, appropriate for age and potential needs of patients

(3) Bag-Valve-Masks with oxygen reservoirs (assorted sizes appropriate to age of patients)

(4) Suction equipment (installed and portable) with appropriate suction tubes (sizes and types)

(5) Laryngoscope and tracheal intubation equipment

(6) Chest decompression and cricothyroidotomy equipment

(7) Pulse Oximeter

(8) Capnography (wave form)

(9) And all other equipment required to comply with the Delaware Standard Treatment Protocols.

2. Intravenous Fluids

a) Objectives:

(1) Fluids and supplies must be readily available.

(2) Hangers/hooks are available that secure the IV solutions in place.

(3) All hooks are padded and/or flush mounted to prevent injury to personnel.

(4) Glass IV containers are prohibited unless explicitly required by medication administration specifications.

b) Equipment:

A variety of IV solutions, tubing and catheters which potentially may be needed must be carried.

3. Medications

a) Objectives:

(1) Medications must be easily accessible.

(2) Controlled substances are to be secured in a manner consistent with state laws.

(3) Medications are stored in such a manner as to protect them from temperature extremes.

b) Equipment and Supplies:

(1) All services whose scope of service include ALS and specialty care missions will carry the drugs required to comply with current Delaware Standard Treatment Protocols.

(2) Medications required by a specific specialty care mission must be carried on board during the mission.

(3) Appropriate medication administration equipment must be present.

4. Cardiac Monitoring, Defibrillation and External Pacing

a) Objectives:

(1) External cardiac pacing must be available.

(2) Equipment must be secured and positioned so that displays are clearly visible and usable to the attending personnel.

(3) The aircraft must allow for in-flight, 'effective' CPR.

(a) 'Effective' is defined as CPR that produces a compression pulse.

b) Equipment Required:

(1) Cardiac monitor/Defibrillator and External Cardiac Pacemaker:

(2) Pediatrics paddles must be present if appropriate to the scope of service.

(3) Extra power sources are available for cardiac monitor, defibrillator and external ~~pacer~~ cardiac pacemaker.

(4) Automatic blood pressure device

See 4 DE Reg. 1827 (5/1/01)

APPENDIX C – Quality Management

1. The service or organization shall have a written QA/CQI plan which includes the following components:

a) Responsibility/assignment of accountability

b) Scope of care

c) Important aspects of care

d) Indicators

e) Thresholds for evaluation which are appropriate to the individual service

f) Methodology

2. The service or organization shall regularly hold QA/CQI meetings.

3. The service or organization's monitoring and evaluation process shall have the following characteristics:

a) Driven by important aspects of care identified by the air medical service's QA/CQI plan

b) Indicators and control thresholds are used to objectively monitor the important aspects of care

c) Evidence of QA/CQI studies and evaluation in compliance with written QA/CQI plan

d) Evidence of reporting QA/CQI activities through established QA/CQI organizational structure

e) Evidence of on-going re-evaluation of action plans until problem resolution occurs

4. Quarterly review shall monitor, at a minimum, the following:

a) Reason for transport

b) Mechanism of injury or illness

c) Medical interventions performed or maintained

(1) Time of intervention consistently documented

(2) Patient's response to intervention documented

(3) Appropriateness of interventions performed or omission of needed interventions

d) Patient's outcome (morbidity and mortality) at the time of arrival at destination (including any change in condition during flight)

e) Timeliness of the transport

f) Safety practices

(1) Safety issues may be handled through the Safety Committee when a problem is identified.

(2) QA/CQI personnel may collect data and refer to the Safety Committee for action and resolution.

g) Operational criteria to include at a minimum the following indicators:

(1) Number of aborted and canceled flights due to weather

(2) Number of aborted and canceled flights due to maintenance

(3) Number of aborted and canceled flights resulting in the use of alternative modes of transport due to patient condition.

5. Utilization appropriateness - the following indicators may trigger a review of the EDIN record by the Office of Emergency Medical Services, or their designate, to determine the medical appropriateness of the transport, based upon patients who are:

a) Discharged home directly from the Emergency Department, or discharged within 24 hours of admission

b) Transported without an IV line or oxygen

c) In cardiopulmonary arrest where CPR is in progress at the referring location

d) Not transferred from a critical care unit, emergency department, or other specialty care unit.

e) "Scheduled transports"

f) Air transported more than once for the same illness or injury within 24 hours

g) Transported from the scene of an injury and fails to meet the criteria outlined in the "Prehospital Trauma Triage Scheme" in Section VI of the State Trauma System Regulations.

h) Transported interfacility, and the receiving facility is not a higher level of care than the referring facility

6. For both QA/CQI and utilization review programs, there shall be evidence of actions taken in problem areas and the evaluation of the effectiveness of that action.

See 4 DE Reg. 1827 (5/1/01)

~~APPENDIX D Air Medical Ambulance Service Use Report~~

~~Agency: _____ County (circle): NewCastle Kent Sussex~~
~~Incident #:_____ Incident Date: _____~~
~~Incident Location: _____~~
~~Incident Type: Medical Trauma Medical/Trauma Peds OB~~
~~Patient Priority: 1 2 3~~
~~Air Medical Service: _____~~
~~Radio Designation: _____~~
~~Responded From: _____~~
~~DSP Available? Y N Reason not utilized or not available:~~
~~_____~~
~~_____~~
~~_____~~

~~ALS 10-8: _____ ALS 10-2: _____~~
~~Helo Request: _____ Helo 10-8: _____ Helo 10-2: _____~~

~~Circumstances~~
~~(Briefly describe the factors or circumstances that contributed to the use of this Air Medical Service)~~

~~Submitted by (print): _____~~
~~Signature: _____~~
~~Date: _____~~

See 4 DE Reg. 1827 (5/1/01)

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code, Sections 331, 2118, 2118B (18 **Del. C.** §§ 312, 2118, 2118B))

ORDER

A public hearing was held on January 22, 2002, to receive comments on proposed amendments to Regulation 10 relating to the arbitration of automobile and homeowners' policy claims. By my order of December 4, 2001, Michael F. Kirchenbauer was appointed hearing officer to receive comments and testimony on the proposed amendments to the regulation. Public notice of the hearing and publication of the proposed amendments to Regulation 10 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND THE INFORMATION SUBMITTED

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.

Kathy S. Gravell, legal officer for the Department, presented testimony in support of the proposed changes to Regulation 10. The written comments received by the hearing officer were supportive of the proposed amendments to the regulation. Ms Gravell's recommendation that certain health related provisions not deleted in the originally published version of the proposed amendments be deleted from the final version does not represent a material change requiring a re-notice or re-hearing of the proposed regulation.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

1. I find that the hearing officer's recommendation to modify the proposed amendments to the regulation by deleting all references to the arbitration of health related claims does not substantively change the regulation or enlarge the class of entities subject to the provisions thereof.

2. I adopt the findings of fact and recommendations of Michael F. Kirchenbaer, the hearing officer and incorporate them by reference.

DECISION AND EFFECTIVE DATE

I hereby adopt the amendments to Regulation 10 as modified by the changes herein to be effective on March 11, 2002.

TEXT AND CITATION

The text of the proposed amendments to Regulation 10 appears in the Register of Regulations Vol. 5, Issue 6, pages 1238-1242, December 1, 2001 subject to the modifications approved hereby.

DATED: February 15, 2002
Donna Lee H. Williams
Insurance Commissioner

REGULATION 10
ARBITRATION OF AUTOMOBILE~~, HEALTH~~ AND HOMEOWNERS'
INSURANCE CLAIMS

Sections

1.0 Purpose and Statutory Authority

The purpose of this Regulation is to implement 18 Del. C. §331, ~~332,~~ Chapter 23, and 21 Del. C. §2118 and 2118B by establishing the procedures for the arbitration of certain claims for benefits available under automobile, ~~health~~, or homeowners' policies or agreements, and/or those statutes. This Regulation is promulgated pursuant to 18 Del. C. §311, 2312, and 29 Del. C., Ch. 101. This Regulation should not be construed to create any cause of action not otherwise existing at law.

2.0 Insurer's Duty to Arbitrate

Every insurer providing coverage or benefits in this State for automobile~~,~~ or homeowners' insurance policies **~~[or health]~~** shall submit to arbitration of covered claims (as defined by 18 Del. C. §331, ~~332~~, and 21 Del. C. §2118 and 2118B) by their insureds **[or persons designated under Section 5.1 of this regulation]** unless it is exempt**~~[ed]~~** from arbitration by the Insurance Commissioner. ~~For the purposes of this Regulation the term "insurer," in addition to its ordinary meaning, includes health plans, health service corporations and health maintenance organizations. In a similar manner, the term "insured" shall, in addition to its ordinary meaning, include the participants, subscribers or members of such health plans, health service corporations or health maintenance organizations.~~

3.0 Exemption from Arbitration

3.1 Insurers requesting exemption from the duty to arbitrate under a homeowners' ~~or a health~~ insurance policy shall submit to the Insurance Commissioner the following:

3.1.1 A request for exemption from arbitration;

3.1.2 Copies or description of policies or plans for which exemption is requested;

3.1.3 A detailed description of its internal review or appraisal procedures;

3.1.4 Copies of documents to be provided to the insured describing its internal procedures including a statement that the insurer will be bound by a decision favorable to the insured;

3.1.5 A certification by an officer of the insurer with binding authority that the procedures described will be followed in all cases, that the insurer will be bound by a decision favorable to the insured and that all documents submitted are true and accurate; and

3.1.6 Payment of a non-refundable fee of $~~2~~75.00.

3.2 The Commissioner shall exempt a homeowner insurer from arbitration under this Regulation and continue such exemption as long as the internal appraisal or review procedures submitted under subsection (a) contain the following minimum requirements:

3.2.1 The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor may participate on the panel nor anyone under that supervisor's control;

3.2.2 The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;

3.2.3 The insured is permitted to be represented by counsel;

3.2.4 The insured is informed as to the right to appeal, if any, an adverse decision;

3.2.5 The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision; and

3.2.6 The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department.

~~[3.3 The Commissioner shall exempt a health insurer from arbitration under this Regulation and continue such exemption as long as the internal review procedures submitted under subsection (a) satisfy the requirements for approval set forth below as either "standard" or "optional".~~

~~3.3.1 Standard Approval:~~

~~3.3.1.1 The internal appraisal or arbitration procedure is performed by an individual(s) who is qualified and impartial. However, neither the individual who originally denied the claim nor his or her supervisor, nor anyone under that supervisor's control may~~

~~participate in the review. If the claim involves the denial or refusal to certify either medical treatment or procedure, the reviewing individual(s) shall be a qualified health care professional in the appropriate health care discipline;~~

~~3.3.1.2 The insured may be represented by counsel;~~

~~3.3.1.3 The insured is informed in writing that the review is not binding and they may have additional legal rights that could be enforced in a court;~~

~~3.3.1.4 The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be provided to the parties, in writing, signed by the reviewer(s) with a brief explanation of the reasons for the decision;~~

~~3.3.1.5 The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department; and~~

~~3.3.1.6 Review procedures approved as standard shall enjoy no presumption that the proceedings conducted thereunder are in compliance with Chapter 23 of Title 18 of the Delaware Code.~~

~~3.3.2 Optional Approval:~~

~~3.3.2.1 The internal appraisal or arbitration procedure is performed by a panel of at least three individuals with both insured and insurer to select an equal number. Those selected by the parties shall select another member who shall preside over the panel. However, neither the insurer's assigned adjuster nor his or her supervisor, nor anyone under that supervisor's control may participate on the panel. Moreover, if the claim involves the denial or refusal to certify either medical treatment or procedure, the presiding member or one other member of the panel shall be a qualified health care professional in the appropriate health care discipline;~~

~~3.3.2.2 The insured is permitted to be represented by counsel;~~

~~3.3.2.3 The insured or his attorney is permitted to submit evidence and examine the adverse evidence and to appear before the panel prior to the time the matter is to be decided;~~

~~3.3.2.4 The insured is informed as to the right to appeal, if any, an adverse decision or is informed of the binding nature of the review procedures, if so provided in the policy or plan;~~

~~3.3.2.5 The insured will be provided with at least 10 business days notice of all steps in the procedure. The decision will be made by a majority of the panel and must be provided to the parties, in writing, signed by the majority with a brief explanation of the reasons for the decision;~~

~~3.3.2.6 The insurer will maintain complete records of the above for a period of three years for inspection at any time during business hours by the Commissioner or the Insurance Department; and~~

~~3.3.2.7 Proceedings conducted in accordance with optionally approved review procedures shall be presumed to be in compliance with Chapter 23 of Title 18 of the Delaware Code.]~~

[3.3 ~~(4)~~] The Commissioner may suspend, revoke or refuse to continue any exemption after notice and a hearing establishing violation of the above. The exemption provided above is not effective until the application has been filed, reviewed and approved by the Commissioner. The Commissioner may request reports from insurers from time to time on the above reviews.

4.0 Exclusion from Arbitration

4.1 The following claims shall not be subject to arbitration under this Regulation:

4.1.1 Claims for which there is no jurisdiction under 18 Del. C. §331, ~~332~~, and 21 Del. C. §2118 and 2118B;

4.1.2 Claims for which there is no policy coverage in force;

4.1.3 Claims that are already pending before any court; or

4.1.4 Claims that arise under an insurance policy from a jurisdiction other than Delaware.; ~~or~~

4.1.5 Claims which arise under a homeowners' **[~~or health insurance~~]** policy or plan which has been exempted by the Commissioner under §3.

4.2 The Arbitration Secretary or Panel **[~~are~~ is]** authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under subsection (a) and after notice and an opportunity to respond is provided the petitioner.

5.0 General

5.1 These Arbitration Rules shall be considered applicable to accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party property and PIP claims and to first party claims in other states or territories of the United States or to foreign countries as set forth in the insurance policy.

5.2 In arbitration proceedings and practice, the claimant who initiates the proceeding by filing a request for arbitration of a controverted claim or issue with the Insurance Commissioner shall be known as the "claimant," and the company or companies against which claim or claims is asserted shall be known as "respondent(s)."

~~[5.3 Requests for arbitration with respect to health insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date of receipt of the written adverse determination or denial.]~~

[~~5.4~~ 5.3] Requests for arbitration with respect to

homeowners' insurance coverage shall be in writing and mailed to the Insurance Commissioner within 90 days from the date an offer of settlement or denial of coverage or liability has been made by an insurer.

6.0 Notice and Manner of Service

6.1 Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.

6.2 Service of an original Petition shall be by Certified U.S. Postage and return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.

6.3 The parties must provide a brief statement verifying the service of all filed papers with the manner, date and address of service.

7.0 When Arbitration May Be Commenced

7.1 Arbitration may be commenced after the parties have attempted to resolve the matter informally and the Petitioner has provided the opposing party with all reasonably requested information in Petitioner's possession or provided the opposing party with an opportunity to obtain such information.

7.2 The Panel may dismiss without prejudice the matter if it finds that the Petitioner has not attempted to resolve the matter informally or has failed to provide the opposing party with reasonably requested information.

8.0 Commencement of Arbitration

8.1 An arbitration will commence upon the filing of a Petition and three copies, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the proper fee. The petitioner shall at the same time send a copy of the same Petition and supporting documents to the insurer or insurer's representative and a statement verifying service under §5. The Arbitration Secretary may return any non-conforming Petition.

8.2 Within 20 business days of receipt of the Petition, the responding insurer ("Respondent") shall file a Response with three copies, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached and payment of the proper fee. The Respondent shall at the same time send a copy of the same Response and supporting documents to the Petitioner or Petitioner's representative and a statement verifying service under §5. The Arbitration Secretary may return any non-conforming Response.

8.3 If the Respondent fails to file a Response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitration Panel for summary disposition. The Panel may determine the matter in the nature of a default judgment after establishing that the Petition is properly supported and was properly served on Respondent. The Arbitration Secretary or Panel may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.

8.4 Upon the filing of a proper Response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitration Panel.

8.5 The Insurance Department will provide the approved form of Petition or Response as they may be amended from time to time. The Parties are free to produce and use their own copies of those forms.

9.0 Arbitration Panels

9.1 The Commissioner shall establish ~~three~~ two types of Arbitration Panels. There shall be Panels established for automobile insurance claims~~,~~ and homeowners' insurance claims~~, and health insurance claims.~~

9.2 Each Panel shall consist of three members of suitable backgrounds or experience or as may be specified by statute, to be selected by the Commissioner. No member may serve on a Panel in which his employer or client is a party. Each Panel shall have a presiding member who shall be appointed by the Commissioner.

9.2.1 In the case of automobile claims, each Panel shall consist of at least one Delaware attorney as a member and the balance of the members shall be Delaware licensed insurance adjusters **[and/or appraiser as defined in 18 Del.C. 1702(c).]**

9.2.2 In the case of homeowners' claim, the Panel shall consist of individuals of suitable expertise in evaluating such claims and may include Delaware licensed property appraisers or adjusters.

9.2.3 In the case of health insurance claims involving the certification of treatment or procedure, one member of the panel must be a licensed health care professional in the relevant area of dispute.

[9.2.4 ~~(3)~~] A decision by the Panel requires concurrence by at least two of the Panel members. ~~who shall sign the written decision~~. **[The written decision shall be signed by the panel chair and shall reflect the votes of the members.]**

10.0 Arbitration Hearings

10.1 The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.

10.2 The purpose of Arbitration is an attempt to effect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter informally. Arbitration hearings shall be conducted in keeping with that

goal. The arbitration hearing is not a substitute for a civil trial. In accord, the Delaware Rules of Evidence do not apply and hearings are to be limited, to the maximum extent possible, to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Panel. If the Panel allows any brief testimony, the Panel shall allow brief cross examination or other response by the opposing party.

10.3 The Arbitration Panel may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside the parties' presence for information to resolve the matter.

10.4 The Panel is to consider the matter based on the submissions of the parties and information otherwise obtained by the Panel. The Panel shall not consider any matter not contained in the original or supplemental submissions of the parties which has not been provided the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.

10.5 Claims for attorney fees under 21 Del. C., §2118B, shall only be granted upon the petitioner proving that the insurer acted in "bad faith." Bad faith is an intentional, reckless or malicious indifference to the duties owed an insured, not negligence, carelessness or inadvertence of any degree.

11.0 Subrogation Arbitration

Subrogation arbitration between or among insurers pursuant to 21 Del. C., §2118 is not subject to this Regulation and shall continue to be conducted through Arbitration Forums, Inc., or its successor.

12.0 Arbitration Fees

12.1 Each party to an arbitration shall tender and pay the following filing fees for arbitration.

12.1.1 $30.00 for Automobile Insurance Claims; and

~~(2) $30.00 for Health Insurance Claims;~~

12.1.2 $30.00 for Homeowners' Insurance Claims.

12.2 The filing fees are non-refundable and shall only be returned when a claim is determined to be excluded from arbitration. The prevailing party at arbitration is normally entitled to recover their paid filing fees as costs. However, the Panel may, for cause, award the filing fee as costs as may be equitable.

13.0 Appeals

13.1 Appeals from an adverse decision of the Arbitration panel shall be taken to the Superior Court of the State of Delaware by filing a Notice of Appeal with the Arbitration Secretary.

13.2 The Notice of Appeal must be filed within 90 days in the case of claims for homeowners' insurance or health insurance claims and within 30 days in the case of automobile insurance claims.

13.3 All further filings and proceedings shall be in accordance with the Superior Court Rules of Civil Procedure.

14.0 Effective Date

~~This amended Regulation shall be effective 30 days after promulgation.~~ This regulation, as amended, shall replace existing Regulations 10 and 10A in their entirety. This regulation shall become effective **~~[thirty days after the effective date of Regulation 11 relating to the arbitration of health claims~~ on March 11, 2002]**. Any health claims commenced under this regulation prior to the effective date of Regulation 11 shall be resolved in accordance with the provisions of 73 Del. Laws Chapter 96.

Adopted And Signed By The Commissioner, _____, 2002

DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code Sections 332, 3348, 3559E
(18 **Del. C.** §§ 332, 3348, 3559E))

ORDER

A public hearing was held on January 22, 2002, to receive comments on proposed Regulation 11 relating to the arbitration of health insurance claims under the Delaware Patient's Bill of Rights, 73 *Del. Laws* Chapter 96, passed by the General Assembly in 2001. By my order of December 4, 2001, Michael F. Kirchenbauer was appointed hearing officer to receive comments and testimony on the proposed regulation. Public notice of the hearing and publication of proposed Regulation 11 in the Register of Regulations and two newspapers of general circulation was in conformity with Delaware law.

SUMMARY OF THE EVIDENCE AND THE INFORMATION SUBMITTED

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. Kathy S. Gravell, legal officer for the Department, presented testimony in support of the proposed changes to Regulation 10. From the time notice of the hearing was published and during the extended comment period allowed subsequent to the hearing, comment letters from MAMSI, Golden Rule Insurance Company, the Delaware State Council for Persons with

Disabilities, Campbell Consulting, Inc., Amerihealth, Christiana Care, BCBSD, Inc., Reed Smith LLP representing the Health Insurance Association of America, Doctors for Emergency Service ("DFES") were admitted into evidence. In addition to the Department's testimony, the following persons presented testimony at the hearing: Dr. Leo W. Raisis of the Medical Society of Delaware, Joseph Letnaunchyn of the Delaware Healthcare Association, Dr. Brian Burgess representing the American College of Emergency Physicians, Dr. Thomas Shreeve of Beebe Hospital, Dr. Leonard Nitowski of DFES, and Peter J. Shanley, Esquire.

FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION

1. I find that the hearing officer's recommendation to approve the regulation with certain proposed changes does not materially or substantively change the regulation or enlarge the class of entities subject to the provisions thereof. The proposed changes recommended by the hearing officer, as referred to in paragraph 2 below, make appropriate technical corrections to the proposed regulation and clarify the intent of the proposed regulation. The proposed changes are designed to improve compliance on behalf of the providers and insurers without any adverse impact on the patients who are served by the providers and insurers.

2. With respect to the specific changes proposed by the hearing officer I find as follows:

(a) The changes of the statutory references in the regulation to correct typographical errors and the renumbering of the paragraphs and sub-paragraphs to conform to the style approved by the Registrar of Regulations are appropriate to correct style and reference matters consistent with 29 *Del. C.* § 1134 without further review under Delaware Law.

(b) The changes to Section 2.3 relating to the definition of emergency care do not materially change the regulation as set forth in the original notice since the changes merely avoid duplicating the terminology of the statute. The reference to air and sea ambulance service and the reference to emergency care services in an approved emergency care facility are technical clarifying changes that do not materially or substantively change the provisions of the section as contained in the originally published proposed regulation.

(c) The additional provision in Section 4 exempting review of Medicaid or other programs covered by other state and federal laws is a technical clarifying change that does not materially or substantively change the provisions of the section as contained in the originally published proposed regulation.

(d) The change in the notice to be provided to patients by an insurer in Section 7 from two separate notices to a single form of notice simplifies the intent of the section as originally proposed and does not materially or substantively change the provisions of the section as contained in the originally published proposed regulation.

(e) The adoption of language in Section 8 to clearly establish that the method of payments for emergency service are guidelines for the parties and a framework for the arbitrator to receive evidence under Section 9 is consistent with the original intent of the proposed regulation. The additional language does not materially change the provisions of the section as contained in the originally published proposed regulation.

(f) Changes to Sections 9 and 12 relating to the confidentiality of the evidence and limitation of public access to personal health information and/or confidential trade secret or proprietary information clarifies the intent of the proposed regulation as originally published. It also assures that the arbitration process is subject to existing privacy laws including the Delaware Freedom of Information Act, the Gramm-Leach-Bliley Act and the Health Insurance Portability Accountability Act of 1996. Such changes do not materially or substantively change the provisions of the section as contained in the originally published proposed regulation.

3. I adopt the findings of fact and recommendations of Michael F. Kirchenbaer, the hearing officer and incorporate them by reference.

DECISION AND EFFECTIVE DATE

I hereby adopt Regulation 11 as modified by the changes herein to be effective on March 11, 2002.

TEXT AND CITATION

The text of the proposed amendments to Regulation 10 appears in the Register of Regulations Vol. 5, Issue 6, pages 1242-1249, December 1, 2001 subject to the modifications approved hereby.

DATED: February _____, 2002
Donna Lee H. Williams, Insurance Commissioner

Regulation 11
Arbitration of Health Insurance Claims and Internal Review Processes of Medical Insurance Carriers

Sections

Process (IRP)
7. Mediation Services
8. Payments for Emergencies Based on Date of Service
9. General Procedures Applicable to Arbitrations
10. Commencement of Arbitration
11. Arbitration
12. Arbitration Hearings
13. Appeals
14. Confidentiality of Health Information
15. Effective Date

Appendix Forms

Section 1. Purpose and Statutory Authority

The purpose of this Regulation is to implement 16 **Del. C.** §9119, 18 **Del. C.** §§332, 3348, **[~~3359~~ 3559]**E, and 18 **Del. C.** Chapter 23 by establishing the procedures for the arbitration of certain claims for benefits available under health insurance policies or agreements, and/or the explicit provisions of the statutes under which this regulation is promulgated. This Regulation is promulgated pursuant to 18 Del. C.§§311, 2312, and 29 **Del. C.**, Ch. 101 and 73 Del. Laws Chapter 96. This Regulation should not be construed to create any cause of action not otherwise existing at law.

Section 2. Definitions

Except as otherwise noted, the following definitions shall apply:

2.1 "Commissioner" shall mean the Insurance Commissioner of Delaware.

2.2 "Department" shall mean the Delaware Insurance Department.

2.3 "Emergency care service" shall **[have the same meaning as contained in 18 Del.C. 3348(c) and 3559E and include: ~~mean:~~]**

[~~(1) any medical screening examination or other evaluation medically required to determine whether an emergency medical condition exists;~~

~~(2) any necessary medical service to treat and stabilize an emergency medical condition;~~

~~(3) any medical service that originates in a hospital emergency facility or comparable facility following treatment or stabilization of an emergency medical condition;~~]

[2.3.1 ~~(4)~~] any covered service providing for the transportation of a patient to a hospital emergency facility for an emergency medical condition; **[including air and sea ambulances so long as medical necessity criteria are met;]** and

[2.3.2 ~~(5)~~ ~~any covered service providing for paramedic services for an emergency medical condition.~~ facility and professional providers of emergency medical services in an approved emergency care facility.]

2.4 "Emergency medical condition" shall have the meaning assigned to it by 18 **Del.C.** §§3348(d) and 3559E(d).

2.5 "Health insurance policy" shall have the meaning assigned to it by 18 **Del. C.** §332(a)8.

2.6 "Insured" shall, in addition to its ordinary meaning, include the participants, subscribers or members of such health plans, health service corporations, medical care organizations or health maintenance organizations.

2.7 "Insurer" or "carrier," in addition to its ordinary meaning under 18 **Del. C.** §3343(a)(1), includes health plans, health service corporations, medical care organizations and health maintenance organizations subject to state insurance regulation.

2.8 "IRP" shall mean an internal review process established by an insurer under 18 **Del. C.** §332.

[2.9 "Network insurer" is an insurer who has a written participation agreement with the provider to pay for emergency care services in Delaware on and after January 1, 2002.]

2.10 "Network provider" is a provider who has a written participation agreement with the insurer to provide emergency care services in Delaware **[~~on and after January 1, 2002~~ as of the date those services were provided.]** All other providers of emergency care services shall be considered non-network providers.

2.11 "Provider" means an individual or entity, including without limitation, a licensed physician, a licensed nurse, a licensed physician assistant and a licensed nurse practitioner, a licensed diagnostic facility, a licensed clinical facility, and a licensed hospital, who or which provides an emergency care service in this State after January 1, 2002.

Section 3. Insurer's Duty to Arbitrate

Except for claims exempt from arbitration by law or regulation, every insurer, carrier, provider, network provider and non-network provider giving or providing health and/or emergency medical services, and/or health insurance coverage or benefits in this State shall be subject to arbitration as follows:

3.1 For covered claims arising from the provision of emergency services under 18 **Del. C.** §§3348 and 3559E; and

3.2 For appeals from decisions of an IRP under 18 **Del. C.** §332 by the insured.**[~~'s participants~~]**

Section 4. Exemption from Arbitration

4.1 Health claims or appeals which involve issues of medical necessity and/or the appropriateness of services, as defined in 16 **Del.C.** §9119, shall be exempt from arbitration by the Department. Any claims or appeals arising under 16 **Del.C.** §9119 and filed with the Department shall be deemed properly filed if actually received by the Department within in the allotted statutory time and such appeals shall, within **[~~five (5) business~~ 7]** days from the date the

Department determines that such appeals are exempt or excluded from arbitration, be forwarded by the Department through normal state channels to the Department of Health and Social Services, or its appropriate successor agency, for **[~~arbitration~~ external]** under 16 **Del.C.** §9119 and such other laws and regulations as are applicable to said claims or appeals.

4.2 18 **Del.C.** §§3348 and 3559E shall not apply to health insurance policies exempt from state regulation under federal law or regulation. On or before **[~~April~~ July]** 1, 2002, and quarterly thereafter, each insurer shall provide a list of non-exempt plan numbers, as defined in 18 **Del.C.** §§3348 and 3559E to the Department. The Department shall maintain a public register of such non-exempt plan numbers. The placement of a non-exempt plan number on the register shall constitute a rebuttable presumption that such non-exempt plan number is subject to the provisions of this regulation. **An insurer that clearly identifies whether a plan is either exempt or non-exempt on the face of an identification or membership card shall not be required to comply with the provisions of this sub-section but only with respect to the plans for which such indentification or membership cards display the group status.**

4.3 The provisions of this regulation shall not apply to Medicaid or any other health insurance coverage program where the review of coverage determinations are otherwise regulated by the provisions of other state or federal laws or regulations.]

Section 5. Exclusion from Arbitration

5.1 The following claims shall not be subject to arbitration under this regulation:

5.1.1 Claims for which there is no jurisdiction under 18 Del. C. §332.

5.1.2 Claims that are already pending before any court or other administrative agency; or

5.1.3 Claims that have been exempted by the Commissioner under Section 4 of this regulation.

5.2 The Arbitration Secretary or Arbitrator is authorized to dismiss a matter upon receipt of information sufficient to establish that the claim is excluded under subsection 5.1 and after notice and an opportunity to respond is provided the claimant.

Section 6. Minimum Requirements for an Internal Review Process (IRP)

In addition to the requirements set forth in 18 Del. C. §332, the following provisions shall govern the internal review process of all insurers subject to state jurisdiction offering health coverage in Delaware:

6.1 All written procedures and forms utilized by a insurer shall be readable and understandable by a person of average intelligence and education. All such documents shall meet the following criteria:

6.1.1 The type size shall not be smaller than 11 point;

6.1.2 The type style selection shall be at the discretion of the insurer but shall be of a type that is clear and legible;

6.1.3 Captions or headings shall be designed to stand out clearly;

6.1.4 White space separating subjects or sections should be distinct;

6.1.5 There must be included a table of contents sufficient to guide and assist the insured;

6.1.6 Where appropriate definitions shall be included and shall be sufficient to clearly apply to the usage intended.

6.1.7 The **[~~policy~~ forms]** shall be written in everyday, conversational language to the extent possible to preserve the legal meaning.

6.1.8 Short familiar words shall be used and sentences shall be kept as short and simple as possible.

6.2 All forms relating to grievances, appeals, or other procedures relating to the IRP shall be provided as examples along with the written IRP provided to the insured by the insurer.

6.3 The first notice of an IRP shall be given to all participants of an insurer within thirty (30) days of approval by the Commissioner. The annual notice thereafter shall either be upon the policy renewal date, open enrollment date, or a set date for all insureds or participants of the insurer, at the insurer's discretion. For every new policy issued after the approval of the IRP by the Commissioner, the insurer shall provide a copy of the IRP at the **[~~same time identification cards and similar materials are provided to newly insured participants.~~ time, or prior to the time, the insurer sends indentification cards, members handbooks or similar member materials to newly insured participants. When the insured's dependents reside in the same household as the insured, a single notice to the principal insured shall be sufficient under this section.]**

6.4 Under circumstances where an oral or written grievance may not contain sufficient information and the insurer requests additional information, such request shall not be burdensome or require such information as the insurer might reasonably be expected to obtain through its normal claims process.

Section 7. Mediation Services

At the time the insurer provides a written notice of **[an unfavorable]** disposition of a claim or grievance to an insured, the insurer shall provide the insured with a written notice of mediation services offered by the Delaware Insurance Department. Such notice may be separate from or a part of the written notice of disposition of a claim or grievance. **[~~Such form will be satisfactory if it contains the following information:~~ Any notice provided to an insured shall, at a minimum, contain the following information:**

~~Claims Denied For Medical Reasons: As explained in this notice, your claim has been denied in whole or in part. You have the right to appeal that decision to the Department of Health and Social Services as explained in this notice. If you do not file your appeal within sixty (60) days from the date you receive this notice, you will be bound by the decision contained in this notice. The Delaware Insurance Department provides mediation services which are in addition to, but do not replace, your right to appeal the decision of your claim to the Department of Health and Social Services if the decision was based on whether the care you received was either necessary or appropriate. The purpose of mediation is to informally determine if your claim can be resolved between you and the insurance company even though your claim may be on formal appeal. These mediation services are provided without charge to you. If you wish to use the mediation services provided by the Delaware Department of Insurance, please contact the Consumer Services Division by calling 800 282 8611 or 302 739 4251. You may go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. if you wish to personally discuss the mediation process. Delaware law governs your rights of appeal. If you fail to file a written appeal of this disposition within sixty (60) days of the date you received this document, the disposition will stand even if you seek mediation services from the Delaware Insurance Department.~~

~~Claims Denied For Non medical Reasons: As explained in this notice, your claim has been denied in whole or in part. You have the right to appeal that decision to the Department of Insurance as explained in this notice. If you do not file your appeal within sixty (60) days from the date you receive this notice, you will be bound by the decision contained in this notice. The Delaware Insurance Department will provide the necessary forms you need to start an appeal and will also provide mediation services which are in addition to, but do not replace, your right to appeal the decision. You can contact the Delaware Insurance Department for information about an appeal or mediation by calling the Consumer Services Division at 800 282 8611 or 302 739 4251. You may go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. Delaware law governs your rights of appeal. If you fail to file a written appeal of this disposition within sixty (60) days of the date you received this document, the disposition of your claim will stand.~~

You have the right to appeal a claim denial for medical reasons to the Delaware Department of Health and Social Services or to appeal a claim denial for non-medical reasons to the Delaware Insurance Department. The Delaware Insurance Department also provides free informal mediation services which are in addition to, but do not replace, your right to appeal this decision. You can contact the Delaware Insurance Department for information about an appeal or mediation by calling the Consumer Services Division at 800-282-8611 or 302-739-4251. You may go to the Delaware Insurance Department at The Rodney Building, 841 Silver Lake Blvd., Dover, DE 19904 between the hours of 8:30 a.m. and 4:00 p.m. to personally discuss the appeal or mediation process. All appeals must be filed within 60 days from the date you receive this notice otherwise this decision will be final.]

Section 8. Payments for Emergencies Based on Date of Service

[Under 18 Del.C. 3348 and 3559E the Commissioner shall be responsible for setting rates and charges in the event of a dispute between an insurer and a provided. In an arbitration pursuant to said statutes, the Arbitrator shall consider the following quidelines as a basis for determining the rate or charge for a disputed service unless the evidence adduced under section 9.5 at arbitration requires a determination on a different basis.

~~a. Effective on the date this regulation becomes effective, under circumstances where the contract between the provider and insurer was terminated after July 3, 2001, insurers will pay such provider the highest negotiated rate for the services provided during the term of the contract for services identified in 18 Del. C. §§3348 or 3359E, adjusted annually to reflect changes in payments by that insurer to its network providers and subject to such rate adjustments as may be published in bulletins by the Commissioner from time to time. Effective on the date this regulation becomes effective, insurers will pay non network providers who were not network providers on or after July 3, 2001 the higher of either (1) the highest payment rate paid by the non network insurer to the provider for performance of the same or similar service in a comparable medical~~

~~facility; or (2) the highest undisputed amount regularly paid by any network insurer to the provider for performance of the same or similar service in a comparable medical facility. All payments pursuant to this section are subject to reduction based the insured's obligations for co-payments or deductibles.~~

~~b. After the the date this regulation becomes effective, each insurer shall pay non-network providers for each emergency medical care service that has been assigned a new CPT Code after the date this regulation becomes effective, an amount equal to the lesser of the non-network provider billed fee for such new service or the highest negotiated rate between the insurer and any network provider for the service based on the appropriate CPT code until such time as the provider becomes a network provider pursuant to a written participation agreement. Thereafter payments will be based on the new negotiated rates.~~

~~c. Differences between the provider and the insurer which cannot be resolved by the parties pursuant to the foregoing subsections shall be subject to arbitration at the request of either party and the rate for said service shall be established by the Arbitrator pursuant to this regulation.~~

8.1 ***Payments for existing emergency care services as of July 1, 2002.*** **Effective on July 1, 2002, under circumstances where the contract between the provider and insurer was terminated after January 1, 2002, insurers will pay such provider the highest contract rate for the services provided during the term of the contract for services identified in 18 *Del. C.* §§ 3348 or 3559E, adjusted annually to reflect changes in payments by that insurer to its network providers and subject to such rate adjustments as may be published in bulletins by the Commissioner from time to time. Effective on July 1, 2002, insurers will pay non-network providers who were not network providers on or after January 1, 2002 the higher of either (1) the highest payment rate paid by the insurer to the non-network provider for performance of the same service; or (2) the highest undisputed amount regularly paid by any network insurer to the non-network provider for performance of the same service. All payments pursuant to this section are subject to reduction based on the insured's obligations for co-payments or deductibles.**

8.2 ***Payments for new emergency care services after July 1, 2002.*** **Each insurer shall pay non-network providers for each emergency medical care service after July 1, 2002, an amount equal to the lesser of the non-network provider billed fee for such new service or the highest negotiated rate between the insurer and any network provider for the service based on the appropriate CPT code until such time as the provider becomes a network provider pursuant to a written participation agreement. Thereafter payments will be based on the new negotiated rates.**

8.3 ***Payments for new emergency care services that receive CPT codes on or after July 1, 2002.*** **Effective on or after July 1, 2002, for services that do not have a CPT code or other identifiable code number, each insurer shall pay non-network providers the lesser of: the provider billed fee, or the highest negotiated network rate received by the provider from any insurer for the performance of the same service. When and if the provider becomes a network provider with insurer, payments will be based on the negotiated rate.**

8.4 Subsequent to January 1, 2002, changes in the membership of a provider group will not affect the remaining group member(s) insofar as the application of this section to payments for emergency services. In the absence of a contract provision to the contrary, a physician's existing network status and payment rights shall not be transferable to that physician's new group or practice.]

Section 9. General Procedures Applicable to Arbitrations

9.1 In arbitration proceedings and practice, the person(s), firm(s) or entity(ies) who initiates the proceeding by filing a petition for arbitration of a disputed claim or issue with the Commissioner shall be known as the "claimant(s)," and the person(s), firm(s) or entity(ies) against whom such claim or claims is asserted shall be known as "respondent(s)."

9.2 A petition for arbitration shall be in writing and filed in the office of the Commissioner on or before the sixtieth day following the claimant's receipt of the written adverse determination or denial.

9.3 The parties must provide a brief statement certifying the service of all filed papers with the manner, date and address of service. A certification of service using Form C in the appendix to this Regulation shall be satisfactory if mailed to the opposing party as required by this Regulation.

9.4 Notice and Manner of Service.

9.4.1 Notice and manner of service, except service of the original petition, is sufficient and complete if properly addressed, upon mailing the same with prepaid first class U.S. Postage.

9.4.2 Service of an original petition shall be by Certified U.S. Postage and Return receipt requested or hand delivery to the respondent and is complete upon receipt by addressee or an employee in respondent's place of business.

9.5 In any arbitration pursuant to 18 **Del.C.** §§3348 or **~~[3359~~ 3559]**E, the Arbitrator shall, at a minimum, receive evidence relating to the following items:

9.5.1 The highest amount of money paid by the insurer to a provider for the particular service in a

comparable medical facility where the service was provided during the preceding twelve months;

9.5.2 The lowest amount of money paid by the insurer to a provider for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

9.5.3 The highest amount of money received by a provider from the insurer for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

9.5.4 The lowest amount of money received by a provider from the insurer for the particular service in a comparable medical facility where the service was provided during the preceding twelve months;

9.5.5 The number of times during the preceding twelve months that the insurer experienced a dispute or disagreement with respect to the payment for the particular service in a comparable medical facility where the service was provided and the outcome of such disputes or disagreements.

9.5.6 Such information as may be provided to the Arbitrator pursuant to an arbitration shall presumptively be considered trade secret or confidential financial information **~~[and shall be protected accordingly.~~ under the Delaware Freedom of Information Act and shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration. Likewise, any personal health information introduced into evidence as part of the arbitration shall not be disclosed to or available at any time to any person, firm or entity not involved in the arbitration.]**

9.6 In arbitrations commenced under 18 **Del. C.** §332, the insurer shall pay the costs and fees of arbitration which exceed the non-refundable filing fee of $75.00 required to commence arbitration.

9.7 In arbitrations commenced under 18 **Del. C.** §§3348 or **~~[~~3359 3559]**E, the non-prevailing party(ies) shall pay the costs and fees of arbitration which exceed the non-refundable filing fee of $75.00 required to commence arbitration.

Section 10. Commencement of Arbitration

10.1 An arbitration will commence upon the filing of an original and three copies of a petition, in acceptable form with the Commissioner's Arbitration Secretary with the supporting documents or other evidence attached thereto and payment of the non-refundable filing fee of $75.00. The claimant shall, at the same time, send a copy of the petition and supporting documents to the respondent as required in Section 9. The Arbitration Secretary may refuse to accept any petition which fails to meet the jurisdictional requirements for arbitration. The failure to file a petition which meets the jurisdictional requirements for arbitration shall not toll the time allowed to file for arbitration.

10.2 Within 20 **~~[~~business~~]~~** days of receipt of the petition, the respondent shall file an original and three copies of a response, in acceptable form, with the Arbitration Secretary with supporting documents or other evidence attached. The respondent shall, at the same time, send a copy of the response and supporting documents to the claimant as required in Section 9. The Arbitration Secretary may return any non-conforming response. If the Arbitration Secretary or Arbitrator determines at any time that the petition fails to meet the jurisdictional requirements of the statute or this regulation or is meritless on its face, the petition may be summarily dismissed by the Arbitration Secretary or Arbitrator and notice of such dismissal shall be provided to the parties. The non-prevailing party may seek to have the petition re-opened under the provisions of subsection 10.3 of this section.

10.3 If the respondent fails to file a response in a timely fashion, the Arbitration Secretary after verifying proper service and notice to the parties may assign the matter to the next scheduled Arbitrator for summary disposition. The Arbitrator may determine the matter in the nature of a default judgment after establishing that the petition is properly supported and was properly served on respondent. The Arbitration Secretary or Arbitrator may allow the re-opening of the matter to prevent a manifest injustice. A request for re-opening must be made no later than 5 business days after notice of the default judgment.

10.4 Upon the filing of a proper response, the Arbitration Secretary shall assign and schedule the matter for a hearing before an Arbitrator.

Section 11. Arbitration

The Commissioner shall appoint a single arbitrator of suitable background **~~[~~or~~]~~ and]** experience to hear any case presented for arbitration under this regulation. No arbitrator may be selected where the arbitrator's employer or client is a party. The Arbitrator shall act as the Commissioner's designee and shall issue a written opinion as required by 29 **Del. C.** §10126.

Section 12. Arbitration Hearings

12.1 The arbitration hearing shall be scheduled and notice of the hearing shall be given the parties at least 10 business days prior to the hearing. Neither party is required to appear and may rely on the filed papers.

12.2 The purpose of Arbitration is an attempt to effect a prompt and inexpensive resolution of claims after reasonable attempts by the parties to resolve the matter. In keeping with that goal arbitration hearings shall be conducted in accordance with the provisions of the 29 **Del.C.** Chapter 101. The arbitration hearing is not a substitute for a civil trial. Accordingly, The Delaware Rules of Evidence will be used for general guidance but will not be strictly applied. Hearings are to be limited, to the maximum extent possible,

to each party being given the opportunity to explain their view of the previously submitted evidence in support of the pleading and to answer questions by the Arbitrator. If the Arbitrator allows any brief testimony, the Arbitrator shall allow brief cross examination or other response by the opposing party. **[Because the testimony may involve evidence relating to personal health information that is confidential and protected by other state or federal laws from public disclosure, the arbitration hearings shall be closed unless otherwise agreed by the parties.]**

12.3 The Arbitrator may contact, with the parties' consent, individuals or entities identified in the papers by telephone in or outside of the parties' presence for information to resolve the matter.

12.4 The Arbitrator is to consider the matter based on the submissions of the parties and information otherwise obtained by the Arbitrator in accordance with this regulation. The Arbitrator shall not consider any matter not contained in the original or supplemental submissions of the parties that has not been provided to the opposing party with at least 5 business days notice, except claims of a continuing nature which are set out in the filed papers.

12.5 The Arbitrator shall render his/her decision and mail a copy of the decision to the parties within 45 days of the filing of the petition. Upon mailing said decision, the time limits imposed by 29 **Del.C.** §10126 shall apply for the parties' review and execution of the order by the Commissioner.

Section 13. Appeals

13.1 Appeals from the decision of the Commissioner shall be taken to the Superior Court of the State of Delaware by filing a copy of the Notice of Appeal, as filed in the Superior Court, with the Arbitration Secretary.

13.2 The Rules of Civil Procedure of the Superior Court shall govern all appeal procedures.

13.3 Any appeal which, as a matter of law, has to be filed in a court other than the Superior Court, shall be subject to the rules of such court and the appellant shall file a copy of the Notice of Appeal to such court with the Arbitration Secretary.

Section 14. Confidentiality of Health Information

Nothing in this Regulation shall supercede any federal or state law or regulation governing the privacy of health information.

Section 15. Effective Date

This regulation shall become effective on the **[11]** day of **[March]** , 2002.

Adopted And Signed By The Commissioner, **[February 15,]** , 2002

Appendix
Regulation 11-form A
[~~Request~~ PETITION] For Heatlh Insurance Arbitration

Your Name

_____

Your Address

_____

Your Telephone Number

_____

Were You: Patient Spouse Parent or Guardian Power of Attorney Other

Name Of The Insurance Co. Against Which You Are Making A Claim

_____

Case Number

_____

Address

_____

Telephone Number

_____

Name Of The Policyholder If Other Than You

_____

Address, If Different From Above

_____

Date Of Determination Of Independent Review Process

_____

Amount Of Your Claim

_____

Dates Of Service (From)

(To)

Briefly Describe The Basis For Your Claim

_____

Prior To The Hearing, It Is Necessary That You Submit The Appropriate Documents To Support Your Petition To The Delaware Insurance Department And To The Opposing Party.

Parties May Present Witnesses In Their Behalf At The Hearing Provided That Due Notice Is Given. Please List The Name, Address And Telephone Number Of All Witnesses You Expect To Appear On Your Behalf On A Separate Sheet And Attach It To This Form.

If Asettlement Has Been Offered To You, How Much Was It:

_____

Who Will Represent You At The Hearing, If Applicable

Name

_____

Address

_____

Telephone

Under Delaware Law. Any Person Who Knowingly, And With Intent To Injure, Defraud, Or Deceive Any Insurer Who Files A Statement Or Claim Containing Any False, Incomplete, Or Misleading Information Is Gu Ilty Of A Felony

Your Signature

date

Return The Original And Three Copies To: Delaware Insurance Department, 841 Silver Lake Boulevard, Dover, Delaware 19904

Regulation 11-form B
Response To Petition For Heatlh Insurance Arbitration

Case Number

Claimant's Name

Policyholder'sName (If Different From Claimant)

Address (If Different From Claimant)

Respondent's Name

Address

Telephone

If The Petition Relates To The Services Of An Individual Physician, Include The Following Information:

Physician's Name And Practice Group

Address

Telephone

Policy Number

Claim Number Assigned By Respondent

Date Of Determination Of Independent Review Process

Amount Of Claim Admitted By Respondent

Dates Of Service
(From) (To) Briefly Describe The Basis For Your Response/objection To The Petition

Prior To The Hearing, It Is Necessary That You Submit The Appropriate Documents To Support Your Petition To The Delaware Insurance Department And To The Opposing Party.

Parties May Present Witnesses In Their Behalf At The Hearing Provided That Due Notice Is Given. Please List The Name, Address And Telephone Number Of All Witnesses You Expect To Appear On Your Behalf On A Separate Sheet And Attach It To This Form.

If A Settlement Has Been Offered To You, How Much Was It:

Who Will Represent You At The Hearing
Name
Address

Telephone

Under Delaware Law. Any Person Who Knowingly, And With Intent To Injure, Defraud, Or Deceive Any Insurer Who Files A Statement Or Claim Containing Any False, Incomplete, Or Misleading Information Is Gu Ilty Of A Felony

Your
Signature date

Return The Original And Three Copies To: Delaware Insurance Department, 841 Silver Lake Boulevard, Dover, Delaware 19904

Regulation 11-form C
Proof Of Service Of Papers Required For Arbitrtation

I Certify That On The day Of . 20 , In Addition To The Filing Provided To The Insurance Commissioner, I Sent A Copy Of The Complaint For Arbitration With Required Attachments Response To The Complaint For Arbitration With Required Attachments
Other
(Please Describe)

To The Following Person(S) By Certified Mail, Return Receipt Requested:

Name

Address

Name

Address

The Following Is Required By The Person Making This Certification
Name Of Party
Signature Of Party
Address Of Party

Note: Save All Proofs Of Mailing And Return Receipt(S) For Verification By The Arbitrator.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR & WASTE MANAGEMENT

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

Secretary's Order No.: 2002-A-0009

Architectural and Industrial Maintenance (AIM) Coatings of Regulation No. 41, "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products"

I. Background

On Wednesday, August 22, 2001, the Department of Natural Resources and Environmental Control, Air Quality Management Section, held a public hearing at the Richardson and Robins Auditorium, 89 Kings Highway, in Dover, Delaware, in order to receive comment on the Department's development of Section 1, "Architectural and Industrial Maintenance (AIM) Coatings" of Regulation No. 41, "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products" under Start Action Notice (SAN) 2001-03.

Since Philadelphia-Wilmington-Trenton (the Philadelphia area) is classified as a severe non-attainment area by the EPA regarding the 1-hour ozone National Ambient Air Quality Standards (NAAQS), and since Delaware's Kent and New Castle counties are part of the Philadelphia area, Delaware must, among other things, revise its attainment demonstration by including reductions from regional measures developed by the Ozone Transport Commission (OTC) specifically for the Ozone Transport Region (OTR). Besides Delaware, the OTR consists of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, the District of Columbia and Virginia. Six regional measures ("model rules") were developed by the OTC for use by member states in developing appropriate volatile organic compound (VOC) and nitrogen oxide (NOx) emission reduction control measures. One of these model rules was a rule regulating the VOC content of architectural and industrial maintenance coatings. The types of coatings affected by this rulemaking include a broad range of products from paints to lacquers, varnishes, roof coatings, waterproofing sealers and various other specialty formulations noted in Table 1 of the rule, along with a corresponding VOC limit. Using this model rule as a template, the Department developed Section 1, "Architectural and Industrial Maintenance (AIM) Coatings" of Regulation No. 41, "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products" under Start Action Notice (SAN) 2001-03. This regulation will provide a needed VOC reduction of 2 tons per day in Delaware.

II. Findings

1. Proper notice of the hearing was provided as required by law.

2. The Department has carefully considered all relevant public input regarding its proposed regulation and has provided a reasoned analysis and a sound conclusion regarding each comment as reflected in the January 14, 2002 Response Document which is attached and incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

3. This rulemaking, together with the revisions made as a result of the extensive comment process, will provide a significant air quality benefit for the State of Delaware without unduly burdening the regulated community.

III. Order

In view of the above findings, it is hereby ordered that Regulation No. 41, Section 1 (Architectural and Industrial Maintenance Coatings), as revised through the public

comment process and attached to the Response Document, be promulgated in final form in the customary manner required by law.

IV. Reasons

This rulemaking represents careful, deliberate and reasoned action by this agency to address the serious ozone problem which affects Delaware and other OTR states. In developing this rule, the Department has balanced the need for VOC emissions reductions with the important interests of the manufacturers and users of these products, in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

Nicholas A. DiPasquale
Secretary

ARCHITECTURAL & INDUSTRIAL MAINTENANCE COATINGS
(06/26/01)
REGULATION NO. 41
LIMITING EMISSIONS OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER AND COMMERCIAL PRODUCTS

Section 1 - Architectural and Industrial Maintenance Coatings
~~**[11/11/01 (this is the likely adoption date)]**~~

a. Applicability

1. Except as provided in (a)(2) and (a)(3), this Section applies to any person who supplies, sells, offers for sale, blends, repackages for sale, or manufactures any architectural coating for use in the State of Delaware, as well as any person who applies or solicits the application of any architectural coating in the State of Delaware on or after January 1, 2005.

2. A coating manufactured prior to January 1, 2005, may be sold, supplied, or offered for sale on or after January 1, 2005. In addition, a coating manufactured before January 1, 2005 may be applied at anytime, both before and after January 1, 2005, so long as the coating complied with the standards in effect at the time the coating was manufactured. This does not apply to any coating that does not display the date code required by (d)(1).

3. This Section does not apply to,

(i) any architectural coating that is sold or manufactured for use outside the State of Delaware or for shipment to other manufacturers for reformulation or repackaging.

(ii) any aerosol coating product, or

(iii) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

b. Definitions

Terms used but not defined in this Section shall have the meaning given them in Regulation 1 or the CAA, in that order of priority.

1. "Adhesive" means any chemical substance that is applied for the purposes of bonding two surfaces together other than by mechanical means.

2. "Aerosol coating product" means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic marking applications.

3. "Antenna coating" means a coating labeled and formulated exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

4. "Anti-fouling coating" means a coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an anti-foulingcoating, the coating must be registered with the U.S. EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.) and with the Department of Agriculture of the State of Delaware under Title 3 Chapter 12 of the Delaware Code.

5. "Appurtenance" means any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment; air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways; fixed ladders; catwalks and fire escapes; and window screens.

6. "Architectural coating" means a coating to be applied to stationary structures or their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs. Coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles, and adhesives are not considered architectural coatings for the purpose of this Section.

7. "ASTM" means the American Society for Testing and Materials.

8. "BAAQMD" means the Bay Area Air Quality Management District, a part of the California Air Resources Board (CARB) which regulates air quality in the State of California.

9. "Bitumens" means black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or

as residues from the distillation of crude petroleum or coal.

10. "Bituminous roof coating" means a coating which incorporates bitumens that is labeled and formulated exclusively for roofing.

11. "Bituminous roof primer" means a primer which incorporates bitumens that is labeled and formulated exclusively for roofing.

12. "Bond breaker" means a coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it was poured.

[13. "Calcimine recoater" means a flat solventborne coating formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-painted substrates.]

[~~13~~14.] "CAA" means the Clean Air Act, as amended in 1990.

[~~14~~15.] "Clear brushing lacquers" means clear wood coatings, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid protective film, which are intended exclusively for application by brush and which are labeled as specified in (d)(5).

[~~15~~16.] "Clear wood coatings" means clear and semi-transparent coatings, including clear brushing lacquers, clear lacquer sanding sealers, sanding sealers other than clear lacquer sanding sealers and varnishes, applied to wood substrates to provide a transparent or translucent film.

[~~16~~17.] "Coating" means a material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

[~~17~~18.] "Colorant" means a concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sales units to produce the desired color.

[~~18~~19.] "Concrete curing compound" means a coating labeled and formulated for application to freshly poured concrete to retard the evaporation of water.

[20. "Concrete surface retarder" means a mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

[~~19~~21.] "Conversion varnish" means a clear acid-curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. Film formation is the result of an acid-catalyzed condensation reaction, affecting a transetherification at the reactive ethers of the amino resins.

[~~20~~22.] "Dry fog coating" means a coating labeled and formulated only for spray application such that over spray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

[~~21~~23.] "Exempt compound" means a compound identified as exempt under the definition ofVolatile Organic Compound (VOC) in Regulation 1. Exempt compound content of a coating shall be determined by U. S. EPA Method 24 or South Coast Air Quality Management District (SCAQMD) Method 303-91 (Revised February 1993), incorporated by reference in (f)(5)(x).

[~~22~~24.] "Faux finishing coating" means a coating labeled and formulated as a stain or glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.

[~~23~~25.] "Fire-resistive coating" means an opaque coating labeled and formulated to protect structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials, that has been fire tested and rated by a testing agency and approved by State of Delaware building code officials for the County or local jurisdiction for use in bringing assemblies of structural materials into compliance with federal, state and local building code requirements. The fire-resistive coating and the testing agency must be approved by State of Delaware building code officials for the County or local jurisdiction. The fire-resistive coating shall be tested in accordance with ASTM Designation E 119-98, incorporated by reference in (f)(5)(ii).

[~~24~~26.] "Fire-retardant coating" means a coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency approved by State of Delaware building code officials for the County or local jurisdiction for use in bringing building and construction materials into compliance with federal, state and local building code requirements. The fire-retardant coating and the testing agency must be approved by State of Delaware building code officials for the County or local jurisdiction. The fire-retardant coating shall be tested in accordance with ASTM Designation E 84-99, incorporated by reference in (f)(5)(i).

[~~25~~27.] "Flat coating" means a coating that is undefined under any other definition in (b) and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in (f)(5)(iii).

[~~26~~28.] "Floor coating" means an opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces, which may be subjected to foot traffic.

[~~27~~29.] "Flow coating" means a coating labeled and formulated exclusively for use by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

[~~28~~30.] "Form-release compound" means a coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal, or some material other than concrete.

[~~29~~31.] "Graphic arts coating or sign paint" means a coating labeled and formulated for hand application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

[~~30~~32.] "High-temperature coating" means a high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

[33. "Impacted immersion coating" means a high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage caused by floating ice or debris.]

[~~31~~34.] "Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates exposed to one or more of the extreme environmental conditions listed in (b)(**[~~31~~34]**)(i) through (b)(**[~~31~~34]**)(**[~~vvi~~i**]) and labeled as specified in (d)(4):

(i) immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposure of interior surfaces to moisture condensation;

(ii) acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes or chemical mixtures or solutions;

(iii) repeated exposure to temperatures above 121°C (250°F);

(iv) repeated (frequent) heavy abrasion, including mechanical wear and repeated

(v) (frequent) scrubbing with industrial solvents, cleansers, or scouring agents;

or

(vi) exterior exposure of metal structures and structural components.

[~~32~~35.] "Lacquer" means a clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film.

[~~33~~36.] "Low-solids coating" means a coating containing 0.12 kilogram or less of solids per liter (1 pound or less of solids per gallon) of coating material.

[~~34~~37.] "Magnesite cement coating" means a coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

[~~35~~38.] "Mastic texture coating" means a coating labeled and formulated to cover holes and minor cracks and to conceal surface irregularities, that is recommended to be applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

[~~36~~39.] "Metallic pigmented coating" means a coating containing at least 48 grams of elemental metallic pigment per liter of coating as applied (0.4 pounds per gallon), when tested in accordance with SCAQMD Method 318-95, incorporated by reference in (f)(5)(iv).

[~~37~~40.] "Multi-color coating" means a coating that is packaged in a single container and that exhibits more than one color when applied in a single coat.

[~~38~~41.] "Non-flat coating" means a coating that is undefined under any other definition in (b) and that registers a gloss of 15 or greater on an 85-degree meter and 5 or greater on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in (f)(5)(iii).

[~~39~~42.] "Non-flat - high gloss coating" means a non-flat coating that registers a gloss of 70 or above on a 60-degree meter according to ASTM Designation D 523-89 (1999), incorporated by reference in (f)(5)(iii).

[~~40~~43.] "Non-industrial use " means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; and utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.

[44. "Nuclear coating" means a protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusions by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure [ASTM Method D 4082-89, incorporated by reference in (f)(5)(xiv)],relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed [ASTM Method D 3912-80, incorporated by reference in (f)(5)(xv)].]

[~~41~~45.] "Post-consumer coating" means a finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.

[~~42~~46.] "Pre-treatment wash primer" means a primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM Designation D 1613-96, incorporated by reference into (f)(5)(v), that is labeled and formulated for application directly to bare metal surfaces

to provide corrosion resistance and to promote adhesion of subsequent topcoats.

[~~43~~47] "Primer" means a coating labeled and formulated for application to a substrate to provide a firm bond between the substrate and subsequent coats.

[~~44~~48.] "Quick-dry enamel" means a non-flat coating that is labeled as specified in (d)(8) and that is formulated to have the following characteristics:

(i) can be applied directly from the container under normal conditions with ambient temperatures between 16^0 and 27^0C (60^0 and 80^0F);

(ii) when tested in accordance with ASTM Designation D 1640-95, incorporated by reference in (f)(5)(vi), sets to the touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

(iii) has a dried film gloss of 70 or above on a 60-degree meter.

[~~45~~49.] "Quick-dry primer, sealer and undercoater" means a primer, sealer, or undercoater that is dry to the touch in 30 minutes and can be re-coated in two hours when tested in accordance with ASTM Designation D 1640-95, incorporated by reference in (f)(5)(vi).

[~~46~~50.] "Recycled coating" means an architectural coating formulated such that not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.

[~~47~~51.] "Roof coating" means a non-bituminous coating labeled and formulated exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat or ultraviolet radiation. Metallic pigmented roof coatings, which qualify as metallic pigmented coatings, shall be considered to be in the metallic pigmented coatings category.

[~~48~~52.] "Rust preventive coating" means a coating formulated exclusively for non-industrial use to prevent the corrosion of metal surfaces and labeled as specified in (d)(6).

[~~49~~53.] "Sanding sealer" means a clear wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer is not included in this category, but is included in the lacquer category.

[~~50~~54.] "SCAQMD" means the South Coast Air Quality Management District, a part of the California Air Resources Board (CARB), which is responsible for regulation of air quality in the State of California.

[~~51~~55.] "Sealer" means a coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

[~~52~~56.] "Secondary coating (rework)" means a fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process.

[~~53~~57.] "Shellac" means a clear or opaque coating formulated solely with the resinous secretions of the lac beetle (laciffer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

[~~54~~58.] "Shop application" means application of a coating to a product or a component of a product in or on the premises of a factory or shop as part of a manufacturing, production, or repairing process (e.g., original equipment manufacturing coatings).

[~~55~~59.] "Solicit" means to require for use or to specify, by written or oral contract.

[~~56~~60.] "Specialty primer, sealer, and undercoater" means a coating labeled as specified in (d)(7) and that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM Designation D 4214-98, incorporated by reference in (f)(5)(vii).

[~~57~~61.] "Stain" means a clear, semi-transparent, or opaque coating labeled and formulated to change the color of a surface, but not to conceal the grain pattern or texture.

[~~58~~62.] "Swimming pool coating" means a coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

[~~59~~63.] "Swimming pool repair and maintenance coating" means a rubber-based coating labeled and formulated to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

[~~60~~64.] "Temperature-indicator safety coating" means a coating labeled and formulated as a color changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204^oC (400^oF).

[~~61~~65.] "Thermoplastic rubber coating and mastic" means a coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments and modifying resins.

[~~62~~66.] "Tint base" means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

[~~63~~67.] "Traffic marking coating" means a coating

labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

[~~64~~68.] "Undercoater" means a coating labeled and formulated to provide a smooth surface for subsequent coatings.

[~~65~~69.] "Varnish" means a clear wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

[~~66~~70.] "VOC content" means the weight of VOC per volume of coating, calculated according to the procedures specified in (f)(1).

[~~67~~71.] "Waterproofing **[~~wood~~]** sealer" means a coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

[~~68~~72.] "Waterproofing concrete/masonry sealer" means a clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light and staining.

[~~69~~73.] "Wood preservative" means a coating labeled and formulated to protect exposed wood from decay or insect attack, that is registered with the U.S. EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, et. seq.) and with the Department of Agriculture of the State of Delaware under Title 3 Chapter 12 of the Delaware Code.

c. Standards

1. Except as provided in (c)(2), and (c)(7), no person subject to the requirements of this Section shall manufacture, blend, repackage for sale, supply, sell or offer for sale, solicit for application or apply in the State of Delaware, any architectural coating with a VOC content in excess of the corresponding limit specified in Table 1.

2. If anywhere on the container of any architectural coating, or any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by the manufacturer or anyone acting on their behalf, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in Table 1, then the most restrictive VOC content limit shall apply. This provision does not apply to the coating categories specified in (c)(2)(i) through (c)(2)**[~~(xvi)~~][(xix)]**.

(i) Antenna coatings.

(ii) Anti-fouling coatings.

(iii) Bituminous roof primers.

[(iv) Calcimine recoaters]

[(~~iv~~v)] Fire-retardant coatings

[(~~v~~vi)] Flow coatings

[(~~vi~~vii)] High-temperature coatings

[viii) Impacted immersion coatings]

[~~viii~~x)] Industrial maintenance coatings

[(~~viii~~x)]Lacquer coatings (including clear lacquer sanding sealers)

[(~~ix~~xi)] Low-solids coating

[(~~x~~xii)] Metallic pigmented coatings

[(xiii) Nuclear coatings]

[(~~xi~~xiv)]Pre-treatment wash primers

[(~~xii~~xv)]Shellacs

[(~~xiii~~xvi)]Specialty primers, sealers, and undercoaters

[(~~xiv~~xvii)]Temperature-indicator safety coatings

[(~~xv~~xviii)]Thermoplastic rubber coatings and mastic

[(~~xvi~~xix)]Wood preservatives

3. All architectural coating containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These architectural coating containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOC-containing materials used for thinning or cleanup shall also be closed when not in use.

4. No person shall apply or solicit the application of any architectural coating that is thinned to exceed the applicable VOC limit specified in Table 1.

5. No person shall apply or solicit the application of any rust preventive coating for industrial use unless such rust preventive coating complies with the industrial maintenance coating VOC limit specified in Table 1.

6. For any coating that does not meet any of the definitions for the specialty coatings categories listed in Table 1, the VOC content limit shall be determined by classifying the coating as a flat coating or a non-flat coating, based on its gloss, as defined in (b)**[~~(25)~~ (27)]**, (b)**[~~(38)~~ (41)]**, (b)**[~~(39)~~ (42)]** and the corresponding flat or non-flat coating limit shall apply.

7. Notwithstanding the provisions of (c)(1), a person or facility may add up to 10 percent by volume of VOC to a lacquer to avoid blushing of the finish during days with relative humidity greater than 70 percent and the temperature below 65^{o}F, at the time of application, provided that the coating contains acetone and no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

d. Container Labeling Requirements

Each manufacturer of any architectural coatings subject to this rule shall display the information listed in (d)(1) through (d)(9) on the coating container (or label) in

which the coating is sold or distributed, on or after January 1, 2005.

1. The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the Department.

2. A statement of the manufacturer's recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

3. Each container of any coating subject to this rule shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using product formulation data, or shall be determined using the test methods in (f)(2). The equations in (f)(1) shall be used to calculate VOC content.

4. All industrial maintenance coatings shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions noted below:

(i) For industrial use only
(ii) For professional use only
(iii) Not for residential use
(iv) Not intended for residential use

5. The labels of all clear brushing lacquers shall prominently display the statements "For brush application only", and "This product must not be thinned or sprayed".

6. The labels of all rust preventive coatings shall prominently display the statement "For metal substrates only".

7. The labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed below;

(i) For blocking stains
(ii) For fire-damaged substrates
(iii) For smoke-damaged substrates
(iv) For water-damaged substrates
(v) For excessively chalky substrates

8. The labels of all quick dry enamels shall prominently display the words "Quick Dry" and the dry hard time.

9. The labels of all non-flat-high gloss coatings shall prominently display the words "High Gloss".

e. Reporting Requirements

1. Each manufacturer ~~**[of clear brushing lacquers, shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of clear brushing lacquers sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.**~~ **of a product subject to a VOC content limit in Table 1 shall keep records demonstrating compliance with the VOC content limits. Such records shall clearly list each covered product by name (and identifying number if applicable) as shown on the product label, and in applicable sales and technical literature, the VOC content determined as in (f)(1) and (f)(2), the name(s) of the regulated VOC constituents in the product, the dates of VOC determinations, and the coating category and VOC content limit under which the product is regulated in this Section.]**

2. **[**~~**Each manufacturer of rust preventive coatings shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of rust preventive coatings sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.**~~ **Although routine reporting by manufacturers of coating products is not required, from time-to-time the Department may request certain specific data concerning sales and distribution of coating products in Delaware. A manufacturer shall, within 90 days, accede to such requests for information. Requested information shall include, but not be limited to:**

(i) The name and full mailing address of the manufacturer

(ii) The name, address and telephone number of a contact person

(iii) The regulated product name as described on the label and the coating category in Table 1 under which the product is regulated

(iv) If the product is marketed for interior or exterior use

(v) Number of gallons sold in Delaware during the requested time period in containers greater than 1 liter

(vi) Number of gallons sold in Delaware during the requested time period in containers of 1 liter or less

(vii) The actual and regulatory VOC content in grams per liter (if product in containers less than or equal to 1 liter has a different VOC content than product in containers larger than 1 liter, list them separately)

(viii) The actual and regulatory VOC content in grams per liter after recommended thinning (if product in containers less than or equal to 1 liter has a different VOC content than product in containers larger than 1 liter, list them separately)

(ix) The name(s) of the VOC constituents of the

product

(x) The name(s) of any exempt compounds in the product

~~**3. Each manufacturer of specialty primers, sealers, and undercoaters shall, on or before April 1 of each calendar year beginning in the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of specialty primers, sealers, and undercoaters sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.**~~

~~**4. Manufacturers of recycled coatings must submit a letter to the Department certifying their status as a Recycled Paint Manufacturer. The manufacturer shall, on or before April 1 of each calendar year beginning with the year 2006, submit a report to the Department. The report shall include, for all recycled coatings, the total number of gallons distributed in the State of Delaware during the preceding year, and shall describe the method used by the manufacturer to calculate state distribution.**~~

~~**5. Each manufacturer of bituminous roof coatings or bituminous roof primers shall, on or before April 1 of each calendar year beginning with the year 2006, submit an annual report to the Department. The report shall specify the number of gallons of bituminous roof coatings or bituminous roof primers sold in the State of Delaware during the preceding calendar year, and shall describe the method used by the manufacturer to calculate state sales.**~~**]**

f. Compliance Provisions and Test Methods

1. For the purpose of determining compliance with the VOC content limits in Table 1, the VOC content of a coating shall be determined by using the procedures described in (f)(1)(i) or (f)(1)(ii), as appropriate. The VOC content of a tint base shall be determined without colorant that is added after the tint base is manufactured.

(i) With the exception of low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOC content using equation 1 as follows:

$$(1)\ \text{VOC Content} = \frac{(Ws - Ww - Wec)}{(Vm - Vw - Vec)}$$

Where:

VOC Content = grams of VOC per liter of coating

Ws = weight of volatiles, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in grams

Vm = volume of coating, in liters

Vw = volume of water, in liters

Vec = volume of exempt compounds, in liters

(ii) For low-solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using equation 2 as follows:

$$(2)\ \text{VOC Content (ls)} = \frac{(Ws - Ww - Wec)}{(Vm)}$$

Where:

VOC Content (ls) = the VOC content of a low-solids coating in grams per liter of coating

Ws = weight of volatile, in grams

Ww = weight of water, in grams

Wec = weight of exempt compounds, in graqms

Vm = volume of coating, in liters

2. To determine the physical properties of a coating in order to perform the calculations in (f)(1), the reference method for VOC content is U.S. EPA Method 24 (40CFR60 Appendix A), incorporated by reference in (f)(5)(xi), except as provided in (f)(3) and (f)(4). An alternative method to determine the VOC content of coatings is SCAQMD Method 304-91 (Revised February 1996), incorporated by reference in (f)(5)(xii).

To determine the VOC content of a coating, the manufacturer may use U.S. EPA Method 24, or an alternative method, as provided in (f)(3), formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g. quality assurance checks, recordkeeping). However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOC content, the Method 24 results will govern, except when an alternative method is approved as specified in (f)(3). The Secretary may require the manufacturer to conduct a Method 24 analysis.

Exempt compound content shall be determined by SCAQMD Method 303-91 (revised August 1996), incorporated by reference in (f)(5)(x). The exempt compound parachlorobenzotrifluoride (PCBTF) shall be determined by BAAQMD Method 41, incorporated by reference in (f)(5)(ix). Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be determined by BAAQMD Method 43, incorporated by reference in (f)(5)(viii)

3. Other test methods demonstrated to provide results that are acceptable for the purposes of determining compliance with (f)(2), after review and approval in writing by the Department and by the EPA, also may be used.

4. Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of U.S. EPA Method 24 (40CFR59, subpart D, Appendix A), incorporated by

reference in (f)(5)(xiii). This method has not been approved for methacrylate multi-component coatings used for purposes other than as traffic marking coatings or for other classes of multi-component coatings.

5. The following test methods are incorporated by reference herein, and shall be used to test coatings subject to the provisions of this rule:

(i) The flame spread index of a fire-retardant coating shall be determined by the ASTM Designation E 84-99, "Standard Test Method for Surface Burning Characteristics of Building Materials," [see(b)**[~~(24)~~ (26)]**, Fire-retardant coating].

(ii) The fire-resistance rating of a fire-resistive coating shall be determined by ASTM Designation E 119-98, "Standard Test Methods for Fire Tests on Building Construction Materials," [see (b)**[~~(23)~~ (25)]**, Fire-resistive coating].

(iii) The gloss of a coating shall be determined by ASTM Designation D 523-89 (1999), "Standard Test Method for Specular Gloss" [see (b)**[~~(25)~~ (27)]** ,Flat coating; (b)**[~~(38)~~ (41)]**, Non-flat coating; (b)**[~~(39)~~ (42)]**, Non-flat-high gloss coating; (b)**[~~(44)~~ (48)]**,Quick-dry enamel].

(iv) The metallic content of a coating shall be determined by SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see (b)**[~~(36)~~ (39)]**, Metallic pigmented coating].

(v) The acid content of a coating shall be determined by ASTM Designation D 1613-96, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products," [see(b)**[~~(42)~~ (46)]**, Pre-treatment wash primer].

(vi) The set-to-touch and dry-to-recoat times of a coating shall be determined by ASTM Designation D 1640-95, "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," [see (b)**[~~(44)~~ (48)]**, Quick-dry enamel and (b)**[~~(45)~~ (49)]**, Quick-dry primer, sealer, and undercoater]. The tack free time of a quick-dry enamel coating shall be determined by the Mechanical Test Method of ASTM Designation D 1640-95.

(vii) The chalkiness of a surface shall be determined using ASTM Designation D 4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films," [see (b)**[~~(56)~~ (60)]**, Specialty primer, sealer, and undercoater].

(viii) Exempt compounds that are cyclic, branched, or linear, completely methylated siloxanes, shall be analyzed as exempt compounds for compliance with (f) by BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996 [see (f)(2)].

(ix) The exempt compound parachlorobenzotrifluoride (PCBTF), shall be analyzed as an exempt compound for compliance with (f) by BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, [see (f)(2)].

(x) Exempt compound content shall be analyzed by SCAQMD Method 303-91 (Revised 1993), "Determination of Exempt Compounds," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," [see (f)(2)].

(xi) The VOC content of a coating shall be determined by U.S. EPA Method 24 as it exists in Appendix A of 40 Code of Federal Regulations (CFR) Part 60, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," [see (f)(2)].

(xii) The VOC content of coatings may be analyzed by either U.S. EPA Method 24 or SCAQMD Method 304-91 (Revised 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials," SCAQMD " Laboratory Methods of Analysis for Enforcement Samples," [see (f)(2)].

(xiii) The VOC content of methacrylate multi-component coatings used as traffic marking coatings shall be analyzed by the procedures in 40 CFR part 59, subpart D, Appendix A, "Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings," (September 11, 1998), [see (f)(4)].

[(xiv) The radiation resistance of a nuclear coating shall be determined by ASTM Method D 4082-89 "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants," see[(b)(44)].

(xv) The chemical resistance of nuclear coatings shall be determined by ASTM Method D 3912-80 (reapproved 1989) "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants," [see (b)(44)].]

g. Test Method Availability

1. ASTM methods described in (f) can be purchased from American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555.

2. SCAQMD methods described in (f) can be purchased from South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934. Telephone (909) 396-2162.

3. BAAQMD methods described in (f) can be purchased from Bay Area Air Quality Management District (BAAQMD), 939 Ellis Street, San Francisco, California

94109. Telephone (415) 749-4900.

TABLE 1
VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Note: Limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation (as indicated on the label or lid of the coating container), excluding the volume of any water, exempt compounds, or colorant added to tint bases.

COATING CATEGORY	VOC CONTENT LIMIT
Flat Coatings	100
Non-Flat Coatings	150
Non-Flat – High Gloss Coatings	250
SPECIALTY COATINGS	
Antenna Coatings	530 *
Anti-fouling Coatings	400
Bituminous Roof Coatings	300
Bituminous Roof Primers	350
Bond Breakers	350
[Calcumine Recoaters	**475*]**
Clear Wood Coatings	
Clear Brushing Lacquers	680
Lacquers (including clear lacquer sanding sealers)	550
Sanding Sealers (other than clear lacquer sanding sealers)	350
Varnishes	350
Conversion Varnish	725 *
Concrete Curing Compounds	350 *
[Concrete Surface Retarders	**780*]**
Dry Fog Coatings	400 *
Faux Finishing Coatings	350
Fire-resistive Coatings	350
Fire-retardant Coatings	
Clear	650
Opaque	350
Floor Coatings	250
Flow Coatings	420
Form-Release Compounds	250
Graphic Arts Coatings (Sign Paints)	500 *
High-Temperature Coatings	420
[Impacted Immersion Coatings	**780*]**
Industrial Maintenance Coatings	340
Low-Solids Coatings	120 *
Magnesite Cement Coatings	450
Mastic Texture Coatings	300 *
Metallic Pigmented Coatings	500
Multi-Color Coatings	250
[Nuclear Coatings	**450*]**
Pre-Treatment Wash Primers	420
Primers, Sealers, and Undercoaters	200
Quick-Dry Enamels	250
Quick-Dry Primers, Sealers and Undercoaters	200
Recycled Coatings	250
Roof Coatings	250
Rust Preventive Coatings	400 *
Shellacs	
Clear	730
Opaque	550
Specialty Primers, Sealers, and Undercoaters	350
Stains	250
Swimming Pool Coatings	340
Swimming Pool Repair and Maintenance Coatings	340
Temperature-Indicator Safety Coatings	550
Thermoplastic Rubber Coatings and Mastic	550 *
Traffic Marking Coatings	150 *
Waterproofing Sealers	250
Waterproofing Concrete/Masonry Sealers	400
Wood Preservatives	350

* Indicates limits and definition unchanged from the Federal rule (40CFR59 Subpart D) "National Volatile Organic Compound Emission Standards for Architectural Coatings" which is still in effect.

[(1) Units are grams of VOC per liter of coating, including water and exempt compounds.]

DIVISION OF WATER RESOURCES

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

Secretary's Order No.: 2002-A-0012

I. Background

On October 29, 2001 a public hearing was held in the DNREC Auditorium of the Richardson and Robbins Building in Dover to receive comment on the Department's proposed revisions to the **Delaware Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems.** These regulations were initially adopted in 1985, when the Department changed its approach from a "perk test" (hydraulic approach) to a soils-based approach for siting on-site wastewater systems. The Department chose this approach in order to protect the State of Delaware's groundwater, which is used for the State's supply of drinking

water. Over the past year, the Department scheduled and conducted four public workshops, beginning with the first one on November 16, 2000, to explain the proposed changes to these regulations. In addition to these public workshops, the Department also conducted several meetings with different associations (both building and real estate), as well as meetings with private and professional individuals that participate in the Department's licensing program. As a result of the comments received at the public workshop, the Ground Water Discharges Section of the Division of Water Resources proposed modifications to the previously noticed changes. The revised proposed regulatory revisions were published in the Delaware Register of Regulations, Volume 5, Issue 4, dated October 1, 2001.

A substantial portion of the State's population resides where centralized water supplies or wastewater treatment services are limited. It is the stated intent of the Department to aid and assist the public in the installation of on-site wastewater treatment and disposal systems, where possible, by utilizing the best information, techniques, and soil evaluations for the most suitable system that site and soil conditions permit.

Statewide regulations governing the installation and operation of septic tank wastewater treatment and disposal systems have existed since 1968. Inappropriate installations and poor operation and maintenance practices resulted in disposal system malfunctions. Inadequately renovated wastewater contaminated the State's ground water, and presented a threat to the public health, safety, and welfare. Corrective measures required the replacement of water supply and wastewater systems at a very high cost, which was sometimes borne by the general public. After years of working under the Regulations which were first implemented back in the late 1960's, numerous deficiencies were found to be present within the same. Given this, the Department concluded that significant revisions to its regulations governing the site evaluation, siting density, design, installation and operation of on-site wastewater treatment and disposal systems were required. In considering these findings, the Department determined that the adoption of effective on-site wastewater treatment and disposal regulations was the proper course of action. Through a process that included considerable staff research, consultant studies, the development of over 650 pages of background "working papers", interaction with a 21 member public/private sector On-Site Wastewater Advisory Committee, public meetings, presentations, and four public workshops, four draft versions of these Regulations were prepared, reviewed and revised. The final version of these proposed Regulations, which was the subject of the public hearing held on October 29, 2001, is the result of those various activities, and incorporates, as best as possible, all valid concerns into its provisions.

The purpose of these Regulations is to prevent the problems with on-site wastewater systems noted above. These Regulations, as proposed by the Department, are based on the best information available, and include the establishment of a process for updating Regulations as information changes. The proposed Regulations include what are considered to be the best-engineered design standards for on-site systems, as determined by research and practical experience. Further, they seek to require the use of on-site systems that will function according to their performance criteria without causing the State's ground water resources to violate U.S. E.P.A. Drinking Water Standards on an average basis. Wastewater management actions necessary to achieve those standards were recommended to the Department in Delaware's 1983 Comprehensive Committee's Final Report, which has since been adopted as state policy.

Many members of the public attended this public hearing. Written comments were received by the Department regarding this matter, both at the time of and subsequent to this hearing (since the Hearing Officer permitted the record to remain open for ten [10] calendar days after the hearing to allow for receipt of written comments). The Department formally responded to these written comments immediately thereafter. Furthermore, subsequent to the Departmental responses sent to each individual commenter, a formal Response Memorandum from the Department's Division of Water Resources dated January 10, 2002 was forwarded to the Hearing Officer concerning the Department's revised plan of action to be taken with respect to these proposed regulations.

II. Findings

1. Proper notice of the hearing was provided as required by law.

2. The Department has carefully considered all relevant public input regarding its proposed regulation and has provided a reasoned analysis and a sound conclusion regarding each comment as reflected in the February 7, 2002 Hearing Officer's Report, which is attached and incorporated into this Order. The reasoning and conclusions with respect to each issue are hereby incorporated into this Order as formal findings.

3. Due to the voluminous amount of comments and concerns voiced by both the public and the real estate market with respect to these proposed Regulations, the Department has, upon reevaluation and reexamination, determined that the following actions will be taken with respect to the same:

- Due to the enormous amount of public outcry and the overwhelming response from the public (which expressed the belief that there had not been enough public participation) with respect to the issue of certification of cesspools and/or seepage pits for real estate transfers, the Department has decided to

withdraw this proposal from these Regulations at this time. Specifically, although the definition of "cesspool" and "seepage pit" as contained on pages six and thirteen, respectively, of these Regulations will remain, the attached "Note" concerning the certification of these items for real estate transfer will be deleted from the final version of the same.

- For the same reasons as noted above, the entire section of Exhibit "A" as contained within the proposed draft of these Regulations will be deleted, and will not be contained within the final version of the same.
- Additionally, Section 9.03000 is being deleted from the proposed draft of these Regulations, and will not be contained within the final version of the same. This is due to the fact that this Section references pollution control strategies that have not yet been promulgated. The Department cannot enforce these pollution control strategies until such time as they are legally promulgated and become effective. The Department may revisit these Regulations at a later date, at that time that these strategies are promulgated and adopted.
- For the same reasons as stated above in No. 3, all references to the TMDLS/enhanced nutrient removal are being withdrawn from the final version of these Regulations. Again, the Department may revisit these Regulations at a later date, once these pollution control strategies are promulgated and adopted.
- Lastly, the Department is deleting all references to a Class "H" – Septic Inspector licensing from these Regulations. This is due to the fact that legislation drafted to amend Title 7, Chapter 60, Sub-Section's 6023 & 6032 has not yet been acted on, and is necessary prior to creating this license. Again, the Department will revisit this issue at a later date, once such legislation has been adopted by the State of Delaware.

III. Order

In view of the above findings, it is hereby ordered that the **Delaware Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Disposal Systems**, as revised through the public comment process and Departmental review, be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons

This rulemaking, together with the revisions made as a result of the extensive comment process, will provide a significant ground water quality benefit for the current citizens of the State of Delaware, as well as for future generations to come. Additionally, this rulemaking represents careful, deliberate and reasoned action by this agency to address the serious problem which affects Delaware's on-site wastewater disposal systems. In developing these revised regulations, the Department has balanced the absolute environmental need for the State of Delaware to revise its present regulations concerning this matter with the important interests and wide array of public concerns surrounding the design, installation, and operation of these on-site wastewater disposal systems, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale
Secretary

FORWARD

The Department of Natural Resources and Environmental Control (the Department) finds that a substantial portion of the State's population lives where centralized water supplies or wastewater treatment services are limited. It is the intent of the Department to aid and assist the public in the installation of on-site wastewater treatment and disposal systems, where possible, by utilizing the best information, techniques and soil evaluations for the most suitable system that site and soil conditions permit.

Statewide regulations governing the installation and operation of septic tank wastewater treatment and disposal systems have existed since 1968. Inappropriate installations and poor operation and maintenance practices resulted in disposal system malfunctions. Inadequately renovated wastewater contaminated the State's ground water and presented a threat to the public health, safety, and welfare. Corrective measures required the replacement of water supply and wastewater systems at a very high cost which was sometimes borne by the general public. **~~[Several well known studies examined these conditions.~~ After years of working under the Regulations which were first implemented in the 1960's, numerous deficiencies were found to be present within the same. Given this, ~~They found that]~~** the Department **[concluded that significant revisions to its]** regulations governing the site evaluation, siting density, **[design,]** installation and operation of on-site wastewater treatment and disposal systems have been identified as required revisions.

In considering these findings, the Department determined that the adoption of effective on-site wastewater treatment and disposal regulations was the proper course of action. Through a process that included considerable staff research, **~~[consultant studies, the development of over 650 pages of background "working papers", interaction with a 21 member public/private sector On-Site Wastewater Advisory Committee,]~~** public meetings and presentations,

public workshops, a public hearing and a hearing officer's report along with ~~five~~ four draft versions of these Regulations were prepared, reviewed and revised. This final version is the result of those various activities, and incorporates, as best as possible, all valid concerns into its provisions.

The purpose of these Regulations, is to prevent the problems listed above. They are based on the best information available and include the establishment of a process for updating Regulations as information changes. They include what are considered to be the best engineered design standards for on-site systems, as determined by research and practical experience. These Regulations seek to require the use of on-site systems that will function according to their performance criteria without causing the State's ground water resources to violate U.S. Environmental Protection Agency Drinking Water Standards on an average annual basis. Wastewater management actions necessary to achieve those standards were recommended to the Department in Delaware's 1983 Comprehensive Committee's Final Report which has since been adopted as state policy.

The proper siting of systems is addressed by the establishment of various soil criteria which lead to the selection of the most suitable on-site wastewater treatment and disposal system for local conditions. System selection and sizing are determined using the results of the site specific soil evaluations and percolation tests. Density is addressed by the adoption of minimum lot sizes tied to appropriate treatment and disposal techniques, and in some cases, the use of scientific ground water and geological analyses that both assure renovation of degradable pollutants and dilution of wastes which are inadequately treated in the soil. Site evaluation and system selection, design, installation and pump-outs are required to be performed by individuals licensed under these regulations. Alternative **~~[and experimental]~~** system design criteria **[~~are~~ was]** established to enable proper waste treatment and disposal to occur in locations where conventional systems would be inappropriate. Finally, a specific variance procedure is established to provide an opportunity to reconsider any provision of these Regulations, provided that proper public disclosure and adequate consideration of the consequences are provided.

In developing these Regulations, the Department operated under the philosophy that where soil and site conditions permit, the least complex, easy to maintain and most economical system should be used. Although it has not been possible to include directly every method of on-site treatment and disposal, the Department's policy is to encourage development of systems, processes and techniques which may benefit significant numbers of people within Delaware. It is expected that these Regulations will be reviewed and revised periodically and that standards for other alternative systems will be prepared as more experience and research data become available. The Regulations contain provisions that enable that process to occur.

SECTION 1.00000 - AUTHORITY AND SCOPE

1.01000 These Regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control under and pursuant to the authority set forth in 7 **Del. C.**, Chapter 60.

1.02000 These Regulations shall apply to all aspects of:

1.02010 The planning, design, construction, operation, maintenance, rehabilitation, replacement, and modification of individual and community on-site wastewater treatment and disposal systems within the boundaries of the State of Delaware; and

1.02020 The planning, design, construction and operation and maintenance of on-site wastewater holding tanks within the boundaries of the State of Delaware; and

1.02030 The licensing of percolation testers, on-site wastewater treatment and disposal system designers, site evaluators, on-site wastewater treatment and disposal system contractors, **~~[system inspectors]~~** and liquid waste haulers within the boundaries of the State of Delaware.

1.03000 These Regulations shall supersede and replace Water Pollution Control Regulations #2 Governing The Installation and Operation of Septic Tank Sewage Disposal Systems, the Guidelines for Septic Tank Systems, and Part II of Section 9 of the Regulations Governing the Control of Water Pollution. With respect to the other provisions of the Regulations Governing the Control of Water Pollution these Regulations shall supersede such Regulations only to the extent of any inconsistency. These Regulations shall apply throughout the State of Delaware.

1.04000 The Department has the authority to establish and collect fees for the defraying of expenses incurred by the Department for facilities and services needed to provide for the administration of its programs. The authority is contained within Amendment 4701(a), 7 Del.C., Chapter 60, which also contains the schedule of fees.

SECTION 2.00000 - DEFINITIONS

2.01000 Words and Phrases

The following words and phrases, when used in these Regulations ~~still~~ have the meaning ascribed to them as follows, unless the text clearly indicates otherwise:

2.01010 Absorption Facility: System of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

2.01015 Aggregate-free Chambers: A buried structure used to create an enclosed unobstructed soil bottom absorption area and side-wall absorption area for infiltration and treatment of wastewater which can be use to replace the filter aggregate and distribution pipe in an absorption facility.

2.01020 Alteration: ~~An expansion and/or change~~ Any physical change in the design capacity ~~location~~ of an existing system, or any part thereof.

2.01030 Alternating System: Two or more disposal fields, equal in size with dosing provided alternatively to each field. ~~by means of diversion valves or a diversion box~~.

2.01040 Alternative Treatment ~~or~~ and Disposal System: A wastewater treatment or disposal system not specified in these regulations which has been proven to provide at least an equivalent level of treatment ~~or disposal~~ as the conventional systems included in these regulations.

2.01050 Applicant: The owner or legally authorized agent of the owner as evidenced by sufficient written documentation.

2.01060 Authorization ~~Notice~~ to use existing system **[Permit]**: A written document issued by the Department which **[~~establishes~~ states]** that an on-site wastewater treatment and disposal system appears adequate to serve the purpose for which a particular application is made. ~~Applications for Authorization Notices shall be made on forms provided by the Department and shall be received only when the forms are complete.~~

2.01065 Aquifer: A part of a formation, a formation, or a group of formations that contains sufficient saturated permeable material to yield economically useful quantities of water to wells or springs.

2.01070 Backfill: Soil which is clean and free of foreign debris, placed over the disposal area and fill extensions.

2.01075 Blackwater: Waste carried off by toilets, urinals, and kitchen drains.

2.01080 Building Sewer: Piping ~~carrying~~ which carries ~~liquid wastes~~ wastewater from a building to the ~~treatment tank or holding tank~~ first component of the treatment and disposal system.

2.01090 Cesspool: A covered pit with a porous lining into which wastewater is discharged and allowed to seep or leach into the surrounding soils with or without an absorption facility. **~~[Note: Cesspools can not be certified for real estate transfers.]~~**

2.01100 Commercial Facility: Any structure or building, or any portion therefore, other than a residential dwelling.

2.01110 Community System: An on-site wastewater treatment and disposal system which will serve more than ~~one (1)~~ three (3) lots or parcels or more than ~~one (1)~~ three (3) condominium units or more than ~~one (1)~~ three (3) units of a planned unit development.

2.01120 Completed Application: One in which the application form is properly completed in full, is signed by the ~~owner~~ applicant, is accompanied by all required exhibits, detailed plans and specifications, and required fee ~~and is correct~~.

2.01123 Confined Aquifer: An aquifer bounded above and below by impermeable beds or by beds of distinctly lower percolation than that of the aquifer itself and containing ground water. An aquifer containing ground water which is everywhere at a pressure greater than atmospheric pressure and from which water in a well will rise to a level above the top of the aquifer.

2.01126 Confining Layer: A body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

2.01130 Construction Permit: A permit issued by the Department for the construction, ~~modification~~ alteration, repair or replacement of an on-site wastewater treatment and~~/or~~ disposal system.

2.01132 Construction Report: A report prepared by the contractor and submitted to the Department within 10 calendars days after the absorption facility has been completely installed.

2.01136 Conventional On-Site Wastewater **[Treatment and Disposal]** Systems: gravity, pressure-dosed, **[sand-lined]** low pressure pipe and elevated sand mound.

~~2.01140 Conventional Sand Filter: A filter with two (2) feet of medium sand designed to filter and biologically treat septic tank or other treatment unit effluent.from a pressurize distribution system at an application rate not to exceed one and twenty-three hundredths (1.23) gallons per square sand surface area per day applied at a dose not to exceed twenty (20) percent of the projected daily sewage flow per cycle.~~

2.01150 Department: The Department of Natural Resources and Environmental Control of the State of Delaware (DNREC).

2.01160 Developer: A person, persons, partnership, firm, corporation, or cooperative enterprise undertaking or participating in the development of a subdivision, **[~~mobile home park~~ manufactured home community]**, or multi-unit housing project.

2.01170 Director: The Director of the Division of Water Resources for the State of Delaware or his/her authorized representative.

2.01180 Disposal Area: The entire area used for ~~underground dispersion of the liquid portion of sewage~~ the absorption facility.

2.01190 Distribution Box: A box for distributing wastewater equally to separate distribution laterals of ~~a disposal area~~ the absorption facility.

2.01200 Distribution System: Piping or other

devices used in the distribution of wastewater within the ~~disposal area~~ absorption facility. Also referred to as distribution laterals.

~~2.01210 Diversion Box: A device which provides for the alternating use of portion of a disposal area~~

2.01220 Dosing: The pumped or regulated flow of wastewater to ~~a disposal area~~ the absorption facility.

2.01230 Dosing Chamber: A receptacle for retaining wastewater until pumped or ~~siphoned~~ regulated to the ~~disposal area~~ absorption facility.

2.01235 Down gradient: An area **~~[at which the~~ that has a lower]** potentiometric surface **~~[is lower]~~** (hydraulic head **~~[lower]~~**) than **~~[it is at some given point of comparison.~~ a comparative reference point.]**

2.01240 Dwelling: Any structure or building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including but not limited to, houses, houseboats, boathouses, mobile homes, manufactured homes, travel trailers, hotels, motels, apartments, and condominiums.

2.01245 Easement: An interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

2.01247 Effluent filter: A device placed in the outlet compartment of a septic tank which conforms to ANSI/NSF Standard 46 for the purpose of removing particulate matter before the effluent enters the absorption facility.

2.01250 Effluent Line: The pipe beginning at the treatment unit or septic tank and terminating at the ~~disposal area~~ absorption facility.

2.01255 Elevated Sand Mound: An on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone which is pressurized into suitable fill material constructed above existing grade.

2.01260 Emergency Repair: Repair of a ~~failing~~ broken system component where immediate action is necessary to ~~repair a broken pressure sewer pipe~~ protect public health.

2.01270 Escarpment: Any naturally occurring slope greater than thirty (30) percent which extends vertically six (6) feet or more as measured from toe to top, and which is characterized by a long cliff or steep slope which separates two (2) or more comparatively level or gently sloping surfaces, and may intercept one (1) or more layers than limit soil depth.

2.01280 Existing On-Site ~~Sewage Disposal~~ Wastewater Treatment and Disposal System: ~~(existing system)~~ Any installed on-site ~~sewage~~ wastewater treatment and disposal system constructed in conformance with the rules, laws and local ordinances in effect at the time of construction, or which would have conformed ~~substantially~~ satisfactorily with system design provided for in Department regulations. ~~Also referred to as an existing system.~~

~~2.01290 Experimental Treatment or Disposal System: Wastewater treatment or disposal systems not specified in these Regulations which require demonstration in rural or low density areas to prove it will provide an equivalent level of treatment or disposal as systems included in these Regulations.~~

2.01290 Feasibility Study: A site/soil investigative report identifying the suitability of a parcel of land for on-site wastewater treatment and disposal systems. The report includes information pertinent to the Department and other local government agencies in the determination of certain land use decisions.

2.01300 Fill: Soil material which has been transported to and placed over the original soil or bedrock and is characterized by a lack of distinct horizons or color patterns as found in naturally developed, undisturbed soils.

2.01310 Filter Aggregate: Washed gravel or crushed stone ranging in size from 3/4" to 2 l/2" in any dimension and clean and free of ~~dust or other~~ fine materials (dust) or meeting grading specifications in Section 6.01042.

2.01315 Filter Fabric: Any material approved by the Department which is permeable but does not allow soil particles to pass through for the purpose of protecting the filter aggregate or aggregate free chambers within the absorption facility.

2.01317 Full Depth Gravity: A gravity fed on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed 24 inches into the natural soil.

2.01320 Governmental Unit: ~~Means~~ The state or any county, municipality, ~~or political subdivision~~, or any part ~~therefore~~ thereof.

2.01330 GPD: Gallons per day.

2.01340 Grade: The inclination or slope of a conduit or ground or plane surface.

2.01344 Gravity Capping Fill: A gravity fed on-site wastewater treatment and disposal system which maintains 36 inches separation distance above the limiting zone where the trench or bed is installed between 12 and 23 inches into the natural soil below a soil cap of a specified depth and texture.

2.01347 Greywater: The untreated wastewater which has not come into contact with toilet waste. Greywater includes wastewater from bathtubs, showers, bathroom wash basins, clothes washing machines, laundry tubs and other waste water which does not present a threat from contamination by unhealthy processing, manufacturing or operating wastes. It does not include wastewater from kitchen sinks or dishwashers.

2.01350 Grease Trap: A watertight tank for the collection and retention of grease which is accessible for periodic removal. ~~of the contents~~.

2.01360 ~~Groundwater: Subsurface water occupying the saturation zone seasonally or year-round~~. Groundwater: Any water naturally found under the surface of the earth.

2.01370 Holding Tank: A watertight receptacle used to ~~contain~~ store wastewater prior to being removed ~~from the premises~~. by a licensed ~~permitted~~ waste hauler.

[2.01375 Hydraulic Conductivity: A specific mathematical coefficient (quantitative) that relates the rate of water movement to the hydraulic gradient. A term of Darcy's law Q = KAi where K represents hydraulic conductivity and is the current standard for measuring a soils ability to transmit water.]

2.01380 Impervious Strata and Formation: An underground or surface layer of soil or rock which will not allow water to pass through it at a rate permissible for sub-surface disposal and having a percolation rate ~~greater~~ slower than one hundred and twenty (120) minutes per inch.

2.01390 Invert: The floor, bottom or lowest portion of the internal cross section of a closed conduit or structure.

2.01400 Isolation Distance: The horizontal distance between a system component and selected site features or structures.

2.01410 Large System: Any on-site wastewater treatment and disposal system with a projected ~~daily sewage~~ wastewater design flow rate greater than two thousand five hundred (2,500) gallons per day.

2.01415 Lift Pump Station: A receptacle for pumping wastewater to a system component to overcome slope differentials for the use of gravity distribution.

2.01420 Limiting Zone: Any horizon or condition in the soil profile or underlying strata which includes:

(a) ~~A seasonal high water table, whether perched or regional, determined by direct observation well measurements which can be demonstrated to be representative of the maximum height of the water table on an annual basis during years of normal precipitation, or by the depth in the soil at which mottling first occurs; or~~. The presence of seasonal or perennial saturation as evidenced by redoximorphic features or direct measurement of observation wells; or

(b) Rock with open joints, fractures or solution channels, masses of loose rock fragments, or loose weathered rock, including gravel, with insufficient fine soil to fill the voids between the fragments; or

(c) ~~Rock formation, other stratum, or soil condition which is so slowly permeable that it effectively limits downward passage of effluent~~. Geologic stratum or soil zone in which the **~~[percolation~~ permeability]** of the stratum or zone effectively limits the movement of water.

2.01430 Lot: A portion of a subdivision or parcel of land. ~~intended to accommodate one dwelling unit or its equivalent in wastewater flow~~.

2.01433 Low Pressure Pipe Capping Fill: A pressurized on-site wastewater treatment and disposal system which is installed as trenches and maintains 18 inch separation distance above the limiting zone. The trenches are installed between 9-17 inches into natural soil below a soil cap of a specified depth and texture.

2.01435 Low Pressure Pipe Full Depth: A pressurized on-site wastewater treatment and disposal system which is installed as trenches and maintains 18 inch separation distance above the limiting zone. The trenches are installed 18 inches into natural soil.

2.01440 Malfunctioning System: A system which is not ~~functioning~~ ~~in~~adequately renovating or hydraulically eliminating the wastewater it is receiving as evidenced by, but not limited to, the following conditions:

(a) Failure of a system to accept wastewater discharge or the backup of wastewater into the structure served by the system.

(b) Direct discharge of wastewater to the surface of the ground, surface water, or groundwater without adequate renovation **~~[(This includes cesspools).]~~**

2.01450 Manifold: A pipe with numerous branches to convey ~~fluid~~s effluent between a large pipe and several smaller pipes, or to permit choice of diverting flow from one of several sources or to one of several discharge points.

~~2.01460 Medium Sand: A mixture of sand with 100 percent passing the 3/8 inch sieve, 95 percent to 100 percent passing the No. 4 sieve, 5 percent to 30 percent passing the No. 50 sieve, and one (1) percent to seven (7) percent passing the No. 100 sieve.~~

2.01460 Manufactured Home: A home built entirely in the factory under a federal building code administered by the Department of Housing and Urban Development (HUD). Manufactured homes may be single or multi-section and are transported to the site and installed.

2.01470 Mineral Soil: **~~[A soil, excluding the natural organic layers of the surface, consisting of naturally occurring mineral matter with organic materials not exceeding 20 percent by weight~~ A soil that is saturated with water less than 30 days (cumulative) per year in normal years and contains less than 30 percent (by weight) organic carbon; or is saturated for greater than 30 days or more cumulative in normal years, and has an organic carbon content (by weight) of less than 18 percent if the mineral fraction contains 60 percent or more clay; or less than 12 percent if the mineral fraction contains no clay.]**

2.01475 Monitor Well: A well installed for the sole purpose of the determination of subsurface conditions and collecting groundwater samples.

2.01480 Mottling: Soil irregularly marked with

spots of different colors that vary in number and size which may indicate ~~indicating~~ poor aeration, lack of drainage and the upper extent of the seasonal high water table.

~~2.01490 Natural Soil Drainage: The condition of frequency and duration of periods of saturation or partial saturation that existed during the development of the soil, as opposed to altered drainage, which is commonly the result of artificial drainage or irrigation but may be caused by the sudden deepening of channels or the blocking of drainage outlets. Seven different classes of natural soil drainage are:~~

~~(a) Excessively drained: Soils which are commonly very porous and rapidly permeable and have a low water-holding capacity and are free from mottling throughout their profile.~~

~~(b) Somewhat excessively drained: Soils which are also very permeable and are free from mottling throughout their profile~~.

~~(c) Well drained: Soils which are nearly free from mottling and are commonly of intermediate texture.~~

~~(d) Moderately well drained: Soils which commonly have a slowly permeable layer in or immediately beneath the solum. They have uniform color in the A and upper B horizons and have mottling in the lower B and C horizons.~~

~~(e) Somewhat poorly drained: Soils which are wet for significant periods but not all the time, and commonly have mottling below 6 to l6 inches, in the lower part of the A horizon and in the B and C horizons.~~

~~(f) Poorly drained: Soils which are wet for long periods and are light gray and generally mottled from the surface downward, although mottling may be absent or nearly so in some soils.~~

~~(g) Very poorly drained: Soils which are wet nearly all the time. They have a dark gray or black surface layer and are gray or light gray with or without mottling in the deeper parts of the profile.~~

2.01495 Observation well: A well used for the sole purpose of determining groundwater levels.

2.01500 On-Site ~~Sewage~~ Wastewater Treatment and Disposal System: ~~Any existing or proposed on-site sewage disposal system including, but not limited to a standard subsurface~~ Conventional or alternative, ~~experimental or non-water carried sewage~~ wastewater **[treatment and]** disposal systems installed or proposed to be installed on land of the owner ~~of the system~~ or on other land ~~as~~ to which the owner ~~of the system~~ has the legal right to install the system.

2.01505 On-Site System Advisory Board (OSSAB): A panel of licensee's representing the on-site industry, asked to serve by the Secretary, on all matters pertaining to the issuance and revocation of all on-site license's.

2.01510 Owner: The person **~~[in whom is~~ who has a]** vested **~~[a]~~** ~~good~~ legal or equitable title to real or personal property, including an on-site ~~sewage~~ wastewater treatment and disposal system.

~~2.01520 Pan: A hard, cement-like layer within or just beneath the surface of the soil~~.

2.01530 Percolation rate: **~~[The downward movement of water through soil~~ The rate of water movement through a soil. Percolation rate is usually measured and assigned on the basis of elapsed time per unit volumetric water level drop. The most commonly used unit for expressing percolation rate is minutes per inch (mpi).]**

~~2.01540 Percolation: The property or capacity of a porous medium (rock or soil) for transmitting a fluid. which is described in the following terms: very slow, slow, moderately slow, moderate, moderately rapid, rapid, and very rapid~~.

[2.01540 Permeability: The property of a soil horizon that enables the soil to transmit gases, liquid, or other substances.]

2.01550 Permit: The written document ~~issued and signed~~ approved by the Department which authorizes ~~the permittee to install~~ the installation of a system or any part thereof, which may also require operation and maintenance of the system.

2.01560 ~~Person~~ Permittee: Any individual, partnership, corporation, association, institution, cooperative enterprise, agency, municipality, commission, political subdivision or duly established entity to which a permit is issued.

2.01565 Piezometer: A small diameter non-pumping well with a short screen that is used to measure elevation of the water table or potentiometric surface.

2.01570 Platy Structure: Soil aggregates that are developed predominantly along the horizontal axes; laminated; flaky.

2.01580 Pollution or Water Pollution: Any alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

[2.01581 Potentiometric Surface: A surface that represents the level to which water will rise in tightly cased wells.]

2.01582 Pressure Dosed Capping Fill: A pressurized on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above

the limiting zone where the trench or bed is installed between 12 and 23 inches into the natural soil below a soil cap of a specified depth and texture.

2.01587 Pressure Dosed Full Depth: A pressurized on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed 24 inches into the natural soil.

2.01590 Pressurized Distribution: A network of piping with ~~small diameter~~ orifices designed to evenly distribute wastewater under pressure through the entire absorption facility.

[2.01595 Primary Treatment: A wastewater treatment process that takes place in a tank and allows those substances in wastewater that readily settle or float to be separated from the water being treated.]

2.01600 Professional Engineer: A person registered by the Delaware Association of Professional Engineers to practice professional engineering in the State of Delaware.

2.01610 Professional Geologist: A person registered by the Delaware State Board of Registration of Geologists to practice professional geology in the State of Delaware.

2.01620 Project Site: The total area within the property lines of an individual lot or within the division lines of a parcel or subdivision.

2.01630 Public Health Hazard: A condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic, viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

2.01635 Redoximorphic Features: Characteristic **~~[color patterns associated with wetness that result from alternating periods of reduction and oxidation of iron and manganese compounds in the soil.~~ soil patterns formed by the reduction, translocation and oxidation of iron and manganese oxides. The occurrence of these features may be indicative of poor drainage, or lack of aeration associated with the upper most extent of the seasonal high water table.]**

2.01640 Repair: ~~Means~~ Any modification to an existing on-site wastewater treatment and disposal system necessary to fix a problem or malfunction. ~~installation of all portions of an system necessary to insure eliminate a public health hazard or pollution of public waters created by a failing system.~~

~~2.01650 Replacement System; An area set aside for construction of a second disposal system to be used in the event the original disposal system malfunctions or is expanded~~

2.01650 Replacement System: An on-site wastewater treatment and disposal system to replace the existing on-site wastewater treatment and disposal system or a portion therof.

2.01660 Sand: Individual mineral particles in a soil that range in diameter from the upper limit of silt (0.05 millimeters) to 2.0 millimeters.

~~2.01670 Sand Filter System: The combination of septic tank or other treatment unit, dosing system with effluent pump(s) and controls, or dosing siphons, piping, and fittings, sand filter, and absorption facility used to treat sewage.~~

2.01680 Sand Lined System: A ~~pressure dosed~~ type of seepage trench ~~and~~ or seepage bed soil absorption ~~system~~ facility constructed in the fill material below the natural soil surface and may require pressurization. The fill material is used to replace a natural impermeable or slowly ~~IM~~ permeable soil layer or to completely remove an existing absorption facility.

2.01685 Sandy Fill: Materials that consist of medium sand, sandy loam, loamy sand/sandy loam mixtures (see sieve requirements in Section 6.01041).

~~2.01690 Sand Mound: A soil absorption system that is elevated above the natural soil surface in a suitable fill material~~.

2.01700 Scarifying: Scraping or loosening the ~~surface soil~~ bottom and sidewall soil surfaces in the preparation of percolation test holes, seepage trenches and beds, or similar excavations.

2.01710 Scum: A mass of sewage solids floating at the surface of ~~sewage~~ effluent and buoyed up by entrained gas, grease or other substances.

2.01720 Seasonal High Water Table: The highest zone of soil or rock that is seasonally or permanently saturated by a perched or shallow water table. A planar surface below which all pores in rock or soil (whether primary or secondary) that is seasonally or permanently saturated.

[2.01725 Secondary Treatment: A combination of unit processes that will consistently remove 85% or more of the organic and suspended material in domestic wastewater and produce an effluent of sufficient quality to satisfy the following requirements; monthly average effluent BOD5 and TSS concentrations of 30 mg/L; daily maximum effluent BOD5 and TSS concentrations of 45 mg/L.]

2.01730 Secretary: Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee.

~~2.01740 Seep: An area where water oozes from the earth, often forming the source of a small trickling stream~~.

2.01750 Seepage Bed: An absorption ~~system~~ facility consisting of an area from which the entire earth contents have been removed and replaced with a network of

perforated pipe, filter aggregate or aggregate-free chambers and covered with suitable backfill material.

2.01755 Seepage Pit: Synonymous with "cesspool" except it is usually preceded by a septic tank where a cesspool is not. Note: Seepage pits can not be certified for real estate transfers.

2.01760 Seepage Trench: A soil absorption ~~system~~ facility consisting of ditches with vertical sides and flat bottoms partially filled with filter aggregate and containing perforated pipe or aggregate-free chambers and covered with suitable backfill material.

2.01770 Septage: The liquid and solid contents of a septic tank.

2.01780 Septic Tank: A watertight receptacle which receives the discharge of ~~sewage~~ wastewater from a ~~house~~ structure ~~sewer~~ or part thereof and is designed and constructed so as to permit settling of ~~settleable~~ solids from the liquid, digestion of the organic matter by detention, and discharge of the liquid portion into an ~~disposal area~~ absorption facility.

~~2.01790 Serial Distribution System: A soil absorption system consisting of a series of interconnected disposal trenches arranged so that each trench is forced to pond to the full depth of the gravel fill before liquid flows into a relief line and fills the succeeding trench~~.

~~2.01800 Sewage: Water-carried human or animal waste from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such groundwater infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present~~.

2.01810 Single Family Dwelling: A residence intended for single family residential use.

2.01820 Siphon: A hydraulically operated device designed to rapidly discharge the ~~entire~~ contents of a dosing tank between predetermined hydraulic levels.

2.01830 Site Evaluation: The practice of investigating, evaluating and reporting basic soil and site conditions which apply to the on-site wastewater treatment and disposal system type and design criteria.

2.01840 Slope: Deviation of a plane surface from the horizontal. It is usually expressed as a ratio or percentage of number of units of vertical rise or fall per unit of horizontal distance.

~~2.01850 Soil Absorption System: A wastewater disposal method utilizing the natural biological, chemical and physical properties of the soil to renovate the wastewater~~.

2.01860 Soil Horizon: A layer of soil or soil material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence and pH.

2.01870 Soil Profile: **~~[The collection of all soil horizons, including the natural organic layers on the surface, ranging from 0" to 10" deep in shallow soils to in excess of 60" deep for deep soils.~~ A vertical cross-section of a soil that shows the various soil horizons. Soil drainage or moisture status are soil characteristics that can be inferred from the soil profile.]**

2.01880 Soil Structure: The combination or arrangement of primary soil particles into secondary compound particles or clusters, the principle forms of which are: platy (laminated); prismatic (prisms with rounded tops); blocky (angular or subangular); ~~and~~ granular and columnar.

2.01890 Soil Texture: The grain sizes that comprise a soil consisting of three textural classes; sand, silt and clay ~~amount of each soil separate in a soil mixture~~. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger.

(a) The major textural classifications are observed and can be determined in the field as follows:

(1) Sand: Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released, but will crumble when touched.

(2) Sandy Loam: Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(3) Loam: Consists of an even mixture of sand and of silt and a small amount of clay. It is easily crumbled when dry and has a slightly gritty yet fairly smooth feel. It is slightly plastic. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(4) Silt Loam: Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is pressed between thumb and finger, it will not press out into a smooth, unbroken ribbon, but will have a ribbon appearance.

(5) Clay **[Loam]**: Consists of an even mixture of sand, silt, and clay, which breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and finger, it will form a thin ribbon that

will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling.

(6) Silty Clay Loam: Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or one-eight (1/8) inch wire can be formed between thumb and finger that will sustain its weight and will withstand gentle movement.

(7) Silty Clay: Consists of even amounts of silt and clay and very small amounts of sand. It breaks into hard clods or lumps when dry. When moist, a thin ribbon or one-eight (1/8) inch or less sized wire formed between thumb and finger withstand considerable movement and deformation.

(8) Clay: Consists of large amounts of clay and moderate to small amounts of sand. It breaks into very hard clods or lumps when dry. When moist, a thin, long ribbon or one-sixteenth (1/l6) inch wire can be molded with ease. Fingerprints will show on the soil, and a dull to bright polish is made on the soil by a shovel.

[(9) Silt: Consists largely of silt with very small amounts of clay. The soil feels very silky or flouty. When pressed between thumb and finger, it will readily pulverize without forming a ribbon.

(10) Loamy Sand: Is predominately composed of sand, but has enough clay so that it can be formed into a weakly developed ball with careful handling.

(11) Sandy clay Loam: The predominant particle size found within this soil textural class is sand, although it contains relatively high levels of clay with lesser amounts of silt. When moist, it will form a thin ribbon that does not readily break.

(12) Sandy Clay: consists of relatively even amounts of sand and clay with very small amounts of silt. When moist, a thin ribbon can readily be formed between thumb and finger without considerable deformation or movement.]

(b) These and other soil textural characteristics are defined as shown in the United States Department of Agricultural Textural Classification Chart which is hereby adopted as part of these Regulations (See Exhibit B). This textural classification chart is based on the Standard Pipette Analysis as defined in the United States Department of Agriculture, Soil Conservation Service Soil Survey Investigations Report No. 1.

(c) Throughout these Regulations where soil textural classes and other terminology describing soils are utilized, definition and interpretation shall be in accordance with the latest edition of **[~~Soil Taxonomy, USDA SCS Agricultural Handbook No. 436 as published by the U.S. Department of Agriculture~~ Soil Survey Manual (Handbook 18), Field Book for Describing and Sampling Soils, and Field Indicators of Hydric Soils in the Mid-Atlantic States as published by either the U.S. Department of Agriculture or the U.S. Environmental Protection Agency.]**

~~2.01900 Soil Type: The lowest unit in the natural system of soil classification consisting of describing soils that are alike in all characteristics.~~

2.01910 Solum: The upper part of the soil profile (A, E and B horizons) above the parent material in which the processes of soil formation are active.

2.01915 Spare Area: An area set aside for construction of a second absorption facility to be used in the event the original absorption facility malfunctions or is expanded.

~~2.1920 Standard Disposal System: On-site systems designated as gravity or pressure dosed seepage trenches, seepage beds, elevated sand mounds and sand lined systems.~~

2.01930 Subdivision: Any tract or parcel of land which has been divided into two or more lots for which development is intended.

2.01940 System: **[~~Abbreviation for~~ Refers to an]** on-site ~~sewage~~ wastewater treatment and disposal system.

[~~2.01945 System Inspector: A person licensed by the Department to inspect, investigate, collect data and make determinations regarding the present operational condition of an on-site wastewater treatment and disposal system.~~]

2.01950 Test Pit: An excavation used to **[~~determine inspect the soil profile, assign percolation rates and assess conditions~~ examine a soil profile in order to assess soil permeability and depth to a seasonal high water table using soil texture, structure, and redoximorphic features as a basis for assessing site suitability.]**

2.01960 Topography: ~~Natural~~ Ground surface variations or contours of the earth's surface, both natural and anthropogenic.

2.01965 Unconfined Aquifer: An aquifer in which no relatively impermeable layer exists between the water table and the ground surface and an aquifer in which the water is at atmospheric pressure.

2.01970 Undisturbed Soil: Soil or soil profile, unaltered by filling, removal, or other man-made changes, with the exception of agricultural activities, ~~for a minimum of four years prior to testing~~.

2.01975 Upgradient: An area **[~~at which the potentiometric surface is higher (hydraulic head greater) than it is at some given point of comparison~~ that has a higher potentiometric surface (hydraulic head) than a comparative reference point.]**

2.01980 Wastewater: ~~The liquid and water~~

~~borne wastes derived from residential, industrial, institutional or commercial sources~~. Water-carried waste from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such groundwater infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

2.01990 Wastewater Utility: Any person who engages in the business of providing wastewater disposal and related services to the public for a fee, charge, or other remuneration in the State of Delaware.

2.02000 Watercourse: Any ocean, bay, lake, pond, stream, river or defined ditch ~~body of water drained by a stream, dry ditch, or any depression~~ that will permit drainage into any surface water body, excluding ephemeral watercourses as defined below.

a) Ephemeral – A watercourse which flows briefly, only in direct response to precipitation in the immediate vicinity, and whose invert is above the seasonal high water table.

2.02010 Water Table: ~~The upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable formation~~ The surface of an unconfined aquifer where the groundwater pore water pressure is equal to atmospheric pressure.

2.02020 Waters of the State: Public waters, including lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, within the jurisdiction of the State of Delaware.

2.02023 Well: Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition, use; for extracting water from or for the artificial recharge of subsurface fluids; and where the depth is greater than the diameter or width. For the purpose of this regulation this definition does not include geotechnical test, soil, telephone and construction piling borings, fence posts, test pits, or horizontal closed loop heat pump circulation systems constructed within twenty (20) feet of the ground surface.

2.02030 Zone of Aeration: ~~The unsaturated zone that occurs below the ground surface and above the point at which the upper limit of the water table exists~~. A subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary and containing air or gases generally under atmospheric pressure. This zone is limited above by the land surface and below by the surface of the zone of saturation, i.e., the water table.

SECTION 3.0000 - GENERAL STANDARDS, PROHIBITIONS AND PROVISIONS

3.01000 Each and every owner of real property is jointly and severally responsible for:

(a) Disposing of wastewater ~~sewage on that property~~ in conformance with ~~these~~ applicable Regulations; and

(b) Connecting all plumbing fixtures on that property, from which ~~sewage~~ wastewater is or may be discharged, to a central wastewater system or on-site ~~sewage~~ wastewater treatment and disposal system approved by the Department; and

(c) Maintaining, repairing, and/or replacing the system as necessary to assure proper operation of the system.

~~[3.01500 All wastewater treatment and disposal systems which are proposed for construction in a watershed where total maximum daily loads (TMDL's) have been established for nitrogen and phosphorus shall be designed to reduce effluent nutrient levels prior to discharging to the absorption facility. The wastewater treatment system shall be designed to reduce nutrient concentration by the percentage reduction established by the Pollution Control Strategy (PCS) for that watershed.]~~

3.02000 No person shall construct, install, modify, rehabilitate, or replace an on-site wastewater treatment and disposal system or construct or place any dwelling, building, mobile home, **[~~modular~~ manufactured]** home or other structure capable of discharging wastewater on-site unless such person has a valid permit issued by the Department pursuant to these Regulations.

3.03000 No permit may be issued by the Department under these Regulations unless the County or Municipality having land use jurisdiction has first approved the activity through zoning procedures provided by law.

3.04000 Any county may assume responsibility and authority for administering its own regulatory program for on-site wastewater treatment and disposal systems pursuant to 7 Del. C., Chapter 60, Section 6003(d), if the delegated ~~permit~~ program establishes standards no less stringent than the standards established in these Regulations. ~~under a pre-existing memorandum of agreement, shall continue in force until reauthorized under a new memorandum of agreement as its standards established in those regulations are more appropriate to the conditions of New Castle County and in some cases may be more stringent than these Regulations~~.

3.05000 Administrative and judicial review and the enforcement under these Regulations shall be in accordance with the provisions of 7 Del. C., Chapter 60.

3.06000 If any part of these Regulations, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of these Regulations, shall not be affected thereby and shall be deemed valid and

effective.

3.07000 These Regulations, being necessary for the health and welfare of the State and its inhabitants, shall be liberally construed in order to preserve the land, surface water and ground water resources of the State.

3.08000 At the sole discretion of the Department, if the proposed operation of a system ~~would~~ may cause pollution of public waters or create a public health hazard, system installation or use shall not be authorized.

3.09000 All wastewater shall be treated and disposed of in a manner approved by the Department.

3.10000 No person shall dispose of ~~sewage~~ wastewater ~~or septage~~ at any location not authorized by the Department under applicable laws and regulations for such disposal.

3.11000 Discharge of untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into surface waters of the State, unless authorized by a permit issued by the Department, constitutes a public health hazard and is prohibited.

3.12000 No cooling water, air conditioning water, groundwater, oil, water softener brine or roof drainage shall be discharged into any system without specific authorization of the Department. Water softener brine shall be discharged in a manner that does not allow surface discharge (curtain drain).

3.13000 Except where specifically allowed within these Regulations, no person shall connect a dwelling or commercial facility to a system if the total projected wastewater flow would be greater than that allowed under the original system construction permit.

3.14000 Each system shall have adequate capacity to properly treat and dispose of the maximum projected daily wastewater flow. The quantity of wastewater shall be determined from these Regulations or other information the Department determines to be valid that may show different flows.

3.15000 A permit to install a new system can be issued only if each site has received an approved site evaluation and is free of encumbrances (e.g., easements, deed restrictions, etc.), which could prevent the installation or operation of the system from being in conformance with these Regulations.

3.16000 A recorded utility easement is required whenever a system crosses a property line separating property under different ownership. The easement must accommodate that part of the system, including setbacks, which lies beyond the property line, and must allow entry to install, maintain and repair the system.

3.17000 Whenever real property is recorded as two separate lots under common ownership and an on-site ~~sewage~~ wastewater treatment and disposal system crosses the common boundary of the recorded lots, the owner shall execute and record, in the appropriate county office of Recorder of Deeds, an affidavit which notifies prospective purchasers of this fact on a form approved by the Department.

3.18000 Except as provided in these Regulations, the ~~system replacement~~ spare area shall be kept vacant, free of vehicular traffic and soil modifications.

3.19000 All systems shall be operated and maintained so as not to create a public health hazard or cause water pollution.

3.20000 Exhibits A through Z are incorporated into these Regulations by reference.

3.21000 No person shall transfer any portion of real property if the transfer would create a lot boundary which would cross an existing system or any part thereof including required setbacks and isolation distances unless, a utility easement is granted to the owner of the existing system and recorded in the appropriate county office of Recorder of Deeds.

~~(a) A utility easement is granted to the owner of the existing system; and~~

~~(b) The transferred parcel is of sufficient size to accommodate an independent on-site system which would comply with all requirements of these Regulations.~~

3.22000 The Department shall have the power to enter, at reasonable times, upon any private or public property for the purpose of inspecting and investigating conditions relative to the enforcement of these Regulations.

3.23000 No person shall transfer any portion of real property after the issuance of a permit pursuant to these regulations if the transfer would result in the use of the permitted on-site system on a lot which does not comply with these Regulations and the terms of the permit, including density, set back and isolation distance requirements.

SECTION 4.00000 - LICENSES

4.01000 The Department shall administer a program for the licensing of percolation testers, system designers, site evaluators, system contractors, ~~and~~ liquid waste haulers and system inspectors. The licensing program shall provide the issuance of licenses as follows;

(a) Class A - Percolation Tester: The Class license authorizes the performance of percolation tests and other types of infiltrometer testing.

(b) Class B - Designer: The Class B license authorizes the design of ~~standard~~ conventional on-site wastewater treatment and disposal systems which utilize gravity distribution systems for seepage beds and seepage trenches ~~and certain standardized pressure distribution and disposal systems as provided in these Regulations~~ and lift pump stations as provided for in these Regulations.

(c) Class C - Designer: The Class C license authorizes the design of ~~standard~~ conventional and alternative ~~and experimental~~ on-site ~~sewage~~ wastewater treatment and disposal systems and all pressure distribution

~~and disposal~~ systems.

(d) Class D - Site Evaluator: The Class D license authorizes the performance of site soil evaluations, percolation and/or percolation tests **[or hydraulic condictivity tests]**.

(e) Class E - System Contractor: The Class E license authorizes the construction, repair and installation of on-site wastewater treatment and disposal systems.

(f) Class F - Liquid Waste Hauler: The Class F license authorizes the removal or disposal of ~~waste petroleum products or~~ the solid and liquid contents of septic tanks, cesspools, seepage pits, holding tanks or other wastewater treatment or disposal facilities as specified and required under these Regulations.

(g) Class GB - Designer: The Class GB license authorizes the design of combined well and conventional on-site wastewater treatment and disposal systems which utilize gravity distribution systems for bed and trench designs.

(h) Class GC - Designer: The Class GC license authorizes the design of combined well and conventional and alternative on- site wastewater treatment and disposal systems and all pressure distribution systems.

~~[(i) Class H - System Inspector: The Class H license authorizes the inspection, investigation, data collection and certification/non-certification of on-site wastewater treatment and disposal systems for the express purpose of real estate transfers and/or governmental or municipalities requirements.]~~

4.02000 It shall be necessary to have the Class A, Class B, Class C, Class D, Class E, ~~and~~ Class F, Class GB, Class GC **~~[and Class H]~~** licenses in order to engage in the specified activities under Section 4.01000 of these Regulations. ~~Any person expecting to be licensed as of May l, 1985 should submit a completed application no later than March 1, 1985~~.

4.03000 Any person seeking a license under this Section shall submit a complete application to the Department on a standard form provided by the Department, references and pay the non-refundable application fee, if required. All applicants for a Class A, B, ~~or~~ E, F, GB **~~[and H]~~** license will be required to pass an examination prepared and administered by the Department to test the competency and knowledge of the applicant regarding pertinent subject matter and the application and use of these Regulations. (GB and GC licenses shall not be available until Section 3.04 of the Regulations Governing the Construction and Use of Wells is amended. **~~[Class H license's shall not become effective until one (1) year after the adoption of these Regulations.)]~~**

4.03050 In the event an applicant fails to receive a passing grade on the examination, he/she shall be so notified by the Board within 30 days. The applicant may re-apply for a subsequent examination **[only after completion of a training course approved by the On-Site System Advisory Board (OSSAB). The examination may be taken no more than twice in a twelve (12) month time period. ~~In the event an applicant fails to receive a passing grade on the subsequent examination they will be required to complete a training course approved by the On-Site System Advisory Board (OSSAB). The examination may be taken no more than twice in a twelve (12) month time period unless the applicant provides certification of completion of an approved training course.]~~**

4.04000 With respect to Class C licenses the following shall constitute the Department's requirements:

(a) Registration as a Professional Engineer with the Delaware Association of Professional Engineers; and

(b) A complete qualifications statement on approved Department forms which verifies the individual's knowledge and competency in the field of on-site ~~sewage~~ wastewater treatment and disposal system engineering and design.

4.05000 With respect to Class D licenses the following shall constitute the Department's requirements:

(a) A completed qualifications statement on appropriate Department forms which verifies the individual's knowledge and competency in the field of site evaluations for on-site ~~sewage~~ wastewater treatment and disposal systems; and

(b) Registration as a Professional Soil Scientist or Soil Classifier with the American Registry of Certified Professionals in Agronomy, Crops and Soils (ARCPACS); or

NOTE: If not ARCPACS certified, a field practicum shall be performed to assess whether competency exists for soils in Delaware. This field practicum shall be administered by the soil scientist(s) on the On-Site System Advisory/Site Interpretations Boards and/or from DNREC.

(c) Six (6) years of professional experience in soil classifications, mapping and interpretations with nine (9) semester hours in soil science and six (6) semester hours in geological sciences from an accredited college or university; or

(d) Four (4) years of professional experience in soils classifications, mapping and interpretations and an undergraduate degree from an accredited college or university with nine (9) semester hours in soil science and six (6) semester hours in geological sciences; or

(e) Two (2) years of professional experience in soils classifications, mapping and interpretations and a graduate degree from an accredited college or university, with thirty (30) semester hours or the equivalent in biological, physical and earth sciences with fifteen (15) of such semester hours in soil science.

4.06000 With respect to Class E licenses the following shall constitute the Department's requirements:

(a) A completed qualification's statement, on appropriate Department forms, which verifies the individuals knowledge and competency of the application and requirements of these Regulations.

(b) A minimum of two (2) years of experience under the guidance of an experienced supervisor in the construction of on-site wastewater treatment and disposal systems.

(c) Show proof of insurance for a minimum of $300,000.00 for general liability and $100,000.00 per occurrence.

4.06050 With respect to Class GB licenses the following shall constitute the Department's requirements:

(a) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the field of gravity on-site wastewater treatment and disposal systems; and

(b) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the placement of wells and the Regulations Governing the Construction and Use of Wells.

4.06100 With respect to Class GC licenses the following shall constitute the Department's requirements:

(a) Registration as a Professional Engineer with the Delaware Association of Professional Engineers; and

(b) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the field of engineering and the design of on-site wastewater treatment and disposal systems.

(c) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the placement of wells and the Regulations Governing the Construction and Use of Wells.

~~[4.06200 With respect to Class H licenses the following shall constitute the Department's requirements:~~

~~(a) Has had at least two (2) years experience in the on-site wastewater industry;~~

~~(b) Furnishes certification of training completed under the National Association of Waste Transporters (NAWT) guidelines, Del-Tech certification program or as approved by the Board.]~~

4.06250 Responsibilities of Licensees

4.06260 Any Class D licensed site evaluator ~~shall~~ may be required to notify the Department orally or in writing at least thirty-six (36) hours, excluding Saturdays, Sundays and state holidays, prior to conducting the site evaluation. This is at the sole discretion of the Department.

4.06270 All Class A, B, C, D, E, F, GB, GC ~~[and H]~~ licensee's are responsible for correct and complete information submitted to the Department as it pertains to current Regulations.

4.06300 All Class E licensed system contractors shall:

(a) Initiate work only on systems for which a construction permit has been granted; and

(b) Comply with all applicable regulations and requirements; and

(c) Be responsible for ~~Supervise~~ the work carried out by their employees; and

(d) Submit to the Department within ten (10) days of completion of a system, a ~~Completion~~ Construction Report on forms provided by the Department, signed by the licensed contractor; ~~installer system contractor, for systems for which the Department has waived pursuant to Section 5.0402 of these Regulations~~ and

(e) Notify the Department 24 hours prior to construction start up to receive an authorization number; and

(f) Be the sole contact person to the Department regarding inspection call-ins, consequential changes or problems. An individual employed by the licensee may be the contact person for inspection call-ins provided that person is a Class E licensee or has been designated as a contact person in writing to the Department by the licensee prior to calling; and

(g) Submit proof of insurance annually.

4.06400 All Class F licensed liquid waste haulers shall:

(a) Display the name, address and permit number of the licensee in standard block letters no less than three (3) inches high on both sides of each vehicle used for hauling purposes; and

(b) Equip every vehicle used for hauling purposes with a watertight tank or body and be maintained in a clean and sanitary condition. Liquid wastes shall not be transported in an open body vehicle unless contained within suitable receptacles. All pumps and hose lines shall be free of leaks; and

(c) Assure all receptacles used for transporting liquid or solid wastes are watertight, equipped with tight fitting lids and are cleaned daily; and

(d) Obtain prior approval in writing from the Department for every site at which a hauler plans to discharge a specified amount of waste material collected. No waste material shall be discharged on a site without such prior approval. Written approval will be based upon the applicant having satisfied the requirements of all applicable regulations adopted by the Department. Waste material collected by the hauler shall not be discharged into ditches, watercourses, lakes, ponds, tidewater or at any point where it can pollute any watercourse, water supply source, bathing area, or shellfish growing area. It shall not be deposited within 300 feet of any highway, except as provided in subpart (e) thereunder; and

(e) Discharge liquid wastes into approved

wastewater treatment facilities unless otherwise authorized by the Department, provided such facilities have sufficient capacity and capability to handle such liquid wastes; and

(f) Fit all truck pumping and discharge hoses with automatic shutoff valves; and

~~(g) Separately identify vehicles used to haul waste petroleum products as specified by the Department~~.

Remove all wastewater from the appropriate tanks in accordance with **~~[National Standards as set forth by the National Association of Waste Transporters (NAWT)~~ the guidelines as set forth by the Department and]**.

(h) May repair, add or replace risers and baffles on or within septic tanks.

~~[4.06430 All Class H System Inspectors shall:~~

~~(a) All certification/non-certification of on-site wastewater treatment and disposal systems shall be submitted to the Department on forms approved by the Department (See Exhibit A). These forms shall be submitted within seventy-two (72) hours of inspection completion.]~~

4.06450 Any person who engages in the practice of professional engineering or professional geology in the specified activities under this Section shall be duly registered in conformance with the requirements of the laws of the State of Delaware.

4.06460 The Department may issue temporary Class A, B, or E licenses to property owners who wish to conduct their own percolation testing, system design, or system installation on their own property and for their own use. Certification of the intended use will be required. The applicant shall submit an application on Department forms along with any required fee and shall demonstrate his competency in those fields by successfully completing a test conducted by the Department. The term of the temporary Class A, B, or Elicense shall expire upon completion of work conducted by the applicant for which the permit was issued.

4.07000 In exercising exclusive licensing authority under this section, the Department shall seek the views of an On-Site Systems Advisory Board regarding licensing matters. The Board shall consist of six (6) members designated by the Secretary. The board shall, if possible, have one (1) member who is a representative of the Department, one (l) member who is a Professional Engineer, one (1) member who is a Professional Geologist, one (1) member who is a representative of the USDA, one (1) member who is a Class D Site ~~Soil~~ Evaluator, and one (1) member who is a Class E ~~System~~ Contractor. The members of the Board shall serve at the discretion of the Secretary. The Board shall advise the Department on matters relating to issuance of Class A, Class B, Class C, Class D, Class E, Class F, Class GB, Class GC **~~[and Class H]~~** licenses.

4.07100 Upon adoption of these Regulations, the applicant for a license renewal shall submit with the renewal application proof that he/she has attended and/or satisfactorily completed a minimum of ten (10) hours of continuing education training relating to the wastewater industry. This is to include siting, design, construction, operation and/or maintenance of on-site wastewater treatment and disposal systems. Class D licensee's not ARCPAC certified must attend at least three (3) hours of soil related curriculum. Any training must be sponsored by recognized governmental, educational or industrial groups which include equipment manufacturers and be approved by the OSSAB. The number of hours of continuing education for first year licensee's will be decided by the OSSAB and be based upon license issuance date.

4.07500 The Secretary may suspend or revoke the license of a ~~percolation tester, designer, system contractor, or liquid waste hauler,~~ Class A, B, C, D, E, F, GB, GC **~~[or H]~~** licensee after considering the recommendations of the On-Site Systems Advisory Board and demonstration that the licensee has practiced fraud or deception; that reasonable care, judgment, or the application or their knowledge or ability was not used in performance of their duties; or that the licensee is incompetent or unable to perform their duties property and;.

(a) Violated any provision of these Regulations;

(b) Violated any lawful order or rule rendered or adopted by the Department;

(c) Obtained his/her license or any order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts;

(d) Failure to obtain the necessary hours of continuing education training required by these Regulations;

(e) Been found guilty of misconduct in the pursuit of his/her profession.

4.08000 Any person whose application for a license has been denied or person whose license has been suspended or revoked shall be notified in writing and provided reasons for the decision. Within ~~thirty (30)~~ twenty (20) days of notification, the person shall notify the Secretary, in writing, if ~~a public hearing~~ an appeal pursuant to 7 Del. C., Chapter 60, Section ~~§6006~~ 6008 is to be ~~required~~ requested. If no ~~hearing~~ appeal request is received within the designated period the decision shall become final.

4.09000 Licenses issued pursuant to this Section are not transferable and shall expire on ~~June 30~~ December 31 of each year. A license may be renewed for one year without examination for an ensuing year provided the licensee makes application for renewal ~~at least sixty (60) days prior to the expiration date~~, by November 30th of each year, shows proof of the number of hours of continuing education training and pays any applicable renewal fees adopted by the Department. If the licensee fails to renew the license he/she may reapply, without examination, within the first year. If

more than a year passes the licensee must reapply for the license and take all necessary examinations. A reminder will be sent to the licensee to renewal his/her license by the Department. The reminder will be sent to the address on file for the licensee. It is the licensee's responsibility to renew the license yearly and notify the Department of any changes.

SECTION 5.00000 - SITE EVALUATIONS AND PERMITS

5.01000 Site Evaluation Procedures

5.01010 A site evaluation is the first step in the process of obtaining a construction permit for an on-site wastewater **[treatment and]** disposal system. Any person applying for a permit to install a new or replacement on-site ~~sewage~~ wastewater treatment and disposal system shall first obtain a site evaluation report prepared by a Class D **[~~Licensee~~]** ~~licensed~~ **[site evaluator]**. The Department shall conduct site evaluations only for ~~h~~Home ~~r~~Rehabilitation ~~l~~Loan ~~p~~Programs (HRLP), block grant households, State Revolving Fund (SRF) sites and other qualifying low income individual programs with similar criteria. ~~All other site evaluations shall be conducted by a private site evaluator.~~

~~5.01020 Applications for site evaluations to be conducted by the Department shall be made on forms approved by the Department. Each report shall be completed in full, signed by the owner or his legal authorized agent, and shall be accompanied by all required exhibits, site plats (sketches), and the appropriate fee.~~

5.01020Site evaluations performed for the purpose of siting large/community systems refer to the necessary criteria in Section 5.12000.

5.01025 ~~All other site evaluations shall be conducted by a private site evaluator.~~ Each report shall be completed in full and be accompanied **[, at a minimum,]** by ~~all required exhibits, site plats~~ approval page(s) (excluding sites not suitable for conventional on-site wastewater treatment and disposal systems (OWTDS), report page(s), site **[~~plat~~ drawing]** , soil profile notes, zoning verification form and the appropriate fee. The site evaluation report shall contain specific site conditions or limitations including, but not limited to, isolation and separation distances, slopes, existing wells, cuts and fills, and unstable landforms. ~~The report shall contain the appropriate zoning verification. The Department shall prepare and provide to site evaluators a standardized form to be used for design specifications including percolation rates and siting requirements such as isolation distances.~~

5.01028 The ~~site evaluator~~ Class D **[~~Licensee~~ site evaluator]** shall specify on the approval page the type of on-site wastewater treatment and disposal system that may be constructed in the acceptable on-site disposal area as indicated on the site **[~~plat~~ drawing]**. Any other on-site wastewater treatment and disposal options available in the evaluated area shall be specified by the ~~site evaluator~~ Class D **[~~Licensee~~ site evaluator]**. The **[evaluator ~~licensee~~]** shall either assign a percolation rate or have the appropriate hydraulic conductivity or percolation test conducted in the proposed disposal area prior to submittal.

5.01030A site **[~~plat (sketch)~~ drawing drawn]** to scale showing the information referenced in Section 5.01080. ~~accurate dimensions and configuration of the property, proposed and/or existing structures, driveways, encumbrances, easements, underground and overhead utilities on the property, adjacent sewage disposal systems, bodies of water, drainageways, agricultural drain tile, wells, cisterns, and springs for a minimum of 150 feet from the evaluated area shall be submitted~~. All site plats are required to show a reference point such as a numbered utility pole, telephone or electrical box, building(s), property corners or fixed survey marker. A minimum of two reference points **[~~are required for navigation and mapping without supplied bearings. If the site plat is based on a survey by a professional surveyor, only property corner markers as shown by the survey shall be required. Plats shall be at appropriate magnitude scales not to exceed 1" = 100'. Any site plat which exceeds 8.5" X 11" must be submitted in duplicate for the purpose of providing the client with this documentation~~. shall be noted on the site drawing when no land survey boundary stakes or markers are readily identifiable in the field, or if the site drawing is not based on a survey conducted by a licensed land surveyor. However, if the site drawing is based on a survey conducted by a licensed land surveyor, the property corner stakes or markers will suffice for identification of the parcel. Site drawing(s) shall be based on an even number scale, not to exceed 1 inch equals 100 feet. Any site drawing exceeding the dimensions of 8.5 inches X 11 inches must be submitted in duplicate.]**

5.01035Showing the location of all on-site and adjacent wells within 150 feet of the approved soils area is the responsibility of the Class D **[~~licensee~~ site evaluator]**. The following procedure shall be used in all cases when on-site or adjacent well(s) cannot be located. For instances where the on-site or adjacent well(s) are below ground and the homeowner or adjacent property owner states that the well is located in a certain area, this information shall suffice for verification of well location. Any well(s) that can not be verified must be researched through the Water Supply Section of the Department. The search attempts to locate any well(s) that are near the affected parcel. If, after this search is completed, the well location(s) cannot be identified the Class D **[~~licensee~~ site evaluator]** can state "records were researched under this property owner's name and no information was found". The Department then sends a letter to the adjacent well owners notifying them of the need to locate their well(s) due to the future installation of an on-site wastewater treatment and disposal system. If no response is

rendered within fifteen (15) days of receipt then the new system is to be designed to maximize the isolation distance from the property line.

5.01040A site evaluation prescription ~~for a subsurface soil absorption system~~ shall follow an approach that includes consideration of topography, available area, slope gradient and uniformity, soil profile (thickness and depth of each horizon, color, percolation, absorption rate, redoximorphic features, texture (see Exhibit B), and zones of saturation), drinking water supplies, bodies of water, and shellfish growing areas. All suitable soils **[within the evaluated area]** shall be delineated regardless of isolation distances, encumbrances and easement requirements as well as any of the above conditions which may exist.

5.01045All ~~test~~ soil borings, holes and/or pits shall be flagged, identified and adequately shown on the site **[drawing ~~plat along with the distance to the nearest fixed point of reference~~]**.

5.01060 ~~The Department or site evaluator shall evaluate the site of the proposed system, shall consider system options, and shall provide a report of such evaluation that determines if the site is suitable for an on-site disposal system~~. In describing the soils and soil profile, the **[site evaluator ~~Class D licensee~~]** shall adhere to the procedures and techniques provided in the latest edition of the Soil Survey Manual, USDA Agricultural Handbook No. 18, as published by the U.S. Department of Agriculture.

5.01080The report shall contain, at a minimum, a site **[drawing ~~plat~~]** and observations of the following site characteristics, if present:

(a) Parcel size, location map of project site, configuration and approximate dimensions

(b) Slope - ~~in absorption area and replacement areas~~ percent and direction

(c) Surface streams, springs or other bodies of water and their definition (i.e. shellfish, intermittent, ephemeral, etc.)

(d) Existing ~~and proposed~~ wells within 150 feet of approved soils area

(e) Escarpments

(f) Cuts and fills

(g) Unstable landforms

(h) ~~Soil profiles~~ A representative number of soil profile descriptions in the evaluated area(s) and shall identify the soil series or classification to the subgroup level (i.e. Sassafras or Typic Hapludult).

(i) Zones of saturation (as indicated by redoximorphic features)

(j) ~~Useable area of initial and replacement disposal fields~~ Approved soils area(s)

(k) Encumbrances

(l) Central wastewater or water systems availability

(m) Any other applicable information such as hydric soils (if any **[~~delineated and~~]** recorded state or federal wetlands), ~~beach preservation line, and topographic contour lines of at least two (2) feet intervals for slopes greater than 5%~~. **[or refer to Statewide Wetland Mapping Project (SWMP)]**

(n) Any overhead ~~or underground~~ utilities

(o) Existing dwellings

5.01100 ~~A copy of the report from the evaluator shall be sent directly to the property owner and/or hisdesignated agent. Another copy shall be sent with appropriate fee to DNREC prior to the submittal for the application/construction permit. The copy sent to DNREC shall have the correct address and phone number of the property owner and/or his designated agent~~. The application/construction permit report may be submitted with the site evaluation, in an emergency situation, when there is a public health risk associated with a malfunctioning system. The permit shall not be approved until the site evaluation is reviewed and complies with the Regulations. Site evaluations needed to replace the malfunctioning system shall be given a priority review.

5.01105 Once received, the report shall be reviewed for compliance with current Regulations by a DNREC ~~soil~~ Environmental Scientist with a soil science background. If the report is in non-compliance~~, a notice shall be sent to the owner or his~~/her ~~authorized agent and~~ the Class D **[site evaluator ~~licensee~~]** shall be notified. ~~site evaluator~~. The Class D licensee ~~site evaluator~~ shall contact the Department to rectify the discrepancy. The Department shall not modify any site evaluation report unless requested by the Class D **[~~individual~~]**. The corrections shall be submitted to the Department from the evaluator and a corrected copy to the owner, etc. The review process, which may include a field check, shall take place within ten (10) ~~calendar~~ working days of receipt ~~from the post mark date if mailed or the Departmental date stamp if submitted in person.~~ (NOTE: If approval cannot be issued within ten (10) working days, the property owner or authorized agent shall be notified of the delay and a tentative date of approval or denial shall be given). Once ~~If~~ approved, the report shall be ~~stamped as so and~~ mailed to the property owner or his/her authorized agent. A percentage of randomly chosen site evaluations submitted shall be field verified by DNREC staff. Site evaluations requiring test pits ~~(particularly in northern New Castle County)~~ should be reported to the Department prior to conducting the site evaluation.

5.01125 ~~An approved site evaluation report allows a permit to be issued for construction of a system on that property provided procedures and conditions for permit issuance found in these Regulations are met~~. Approval of a site evaluation indicates only that the site evaluation was conducted in compliance with these Regulations. It is not an indication of the correctness or quality of the site evaluation nor an indication that a permit can be issued.

~~5.01130 In order to obtain an approved site evaluation report, the conditions outlined in these regulations shall be met.~~

5.01140 The approved site evaluation report shall indicate the type of the initial and type of replacement system for which the site is approved.

~~**[5.01160 Approval of a site evaluation shall be denied where the conditions for approval are not met.]**~~

5.01170 Technical regulation changes shall not invalidate an approved site evaluation but may require the use of a different type of system.

5.01172 The approved site evaluation shall be valid for five (5) years from the date of the Department's approval or the adoption of this regulation revision unless a **[subdivision]** base plan restricting well and on-site wastewater treatment and disposal system locations has been approved by the Department and recorded in the local Recorder of Deeds Office. After the five (5) year period, an ~~**[updated]**~~ site evaluation as outlined in Section 5.01080, shall be submitted to the Department for approval. This ~~**[updated]**~~ site evaluation will be reviewed as outlined in Sections 5.01100 and 5.01105.

~~5.01175 Any request for modification of a site evaluation found to be in compliance shall be submitted in writing to the Department either by the property owner or the legally authorized agent. Any modification to a site evaluation resulting in system type change requires a new report be submitted to the Department with the appropriate fee. The report shall once again be reviewed by procedures outlined in Sections 5.011000 and 5.01105.~~

5.01176 Supplemental soil information submitted after the original site evaluation ~~report~~ has been ~~submitted~~ approved shall include a revised approval page, report page, soil profile notes, and revised ~~**[plat**~~ **site]** drawing locating supplemental borings/test pits. In all cases, the new report shall be approved provided all criteria for approval are met. ~~Supplemental borings/test pits conducted on parcels of one acre or less for the sole purpose of moving a system shall not require a fee. However,~~ I ~~if~~ the purpose of supplemental work is to change the type of system previously prescribed, another review fee shall be required. Likewise, any borings/test pits conducted greater than 100 ft. from the previously ~~evaluated~~ approved area, with or without a system change, shall require a review fee. On larger parcels, the area evaluated shall be delineated on the site ~~**[plat**~~ **drawing]**.

5.01180 The Department shall issue a notice of its intention to deny a site evaluation when appropriate. Alternative technologies for on-site wastewater treatment and disposal systems, ~~system,~~ if appropriate, ~~**[shall**~~ **may]** be included in the letter. ~~of denial. The tentative site evaluation denial may be reviewed by the Director at the request of the applicant. The application for review shall be submitted to the Director in writing, within thirty (30) days of the date of the notice to deny the site evaluation, and shall be accompanied by the denial review fee. The review shall be conducted and a report prepared by the Director.~~ The applicant still maintains his/her right to appeal the decision of the Secretary, within 20 days of receipt, in accordance with 7 Del. C., Chapter 60, Section ~~§~~6008.

5.01190 A property owner or agent has the option to use observation wells **[and/or piezometers]** to demonstrate that ~~soil mottling or other color patterns~~ redoximorphic features at a particular site are not an indication of zones of saturation. The following procedures for the use of observation wells to determine the depth and duration of zones of saturation shall be implemented.

5.0~~A~~1200 Observation Wells **[/Piezometers]**

5.0~~A~~1210 ~~Observing~~ Determining the zones of saturation using observation wells **[and/or piezometers]** ~~shall~~ follow these procedures:

(a) The property owner or authorized agent shall notify the Department, in writing, of the intent to ~~observe~~ use observation wells **[and/or piezometers]** to determine the zones of saturation.

(b) At least three (3) observation wells **[and/or piezometers]** shall be installed and monitored at a site. ~~for the proposed initial and replacement on-site wastewater disposal systems.~~ If, in the judgment of the Department, more than three (3) ~~**[observation wells]**~~ are needed, the property owner or agent shall be ~~so advised~~ notified in writing within ten (10) days of receipt of the letter of intent.

(c) The design illustrated in Exhibit Y shall be used when constructing observation wells **[and/or piezometers]**. At least two (2) wells **[/piezometers]**shall extend to a depth of at least six (6) feet **[, at a minimum,]** below ground surface. ~~and shall be a minimum of three (3) feet below the proposed gravel depth~~. However, with layered mottled soil over permeable unmottled soil, at least one (1) well **[/piezometer]** shall terminate within the mottled layer. Site conditions may, in some cases, require monitoring at greater depths. It shall be the responsibility of the ~~site evaluator~~ Class D ~~**[licensee**~~ **site evaluator]** to determine the depth of the observation wells **[and/or piezometers]** for each site and, if in doubt, they shall request the guidance of the Department.

(d) All observation wells are required to be permitted ~~**[by the Department Water Supply Branch**~~ **in accordance with the current Regulations Governing the Construction and use of Wells]**.

(e) Observation wells shall be installed by or under the direct on-site supervision of a well driller licensed by the State of Delaware.

(f) Monitoring of water levels shall be done by an ~~Class , B, C, D~~ individual ~~or by a well driller, all of~~ whom ~~are~~ is licensed by the ~~State of Delaware~~ Division of Water Resources. The property owner/agent or any relative shall not, at anytime, be allowed to monitor the water levels

of these wells.

(g) The preferred monitoring is from ~~October 15th~~ December 1st through May 15th of the following year to verify the depth and duration of the zones of saturation during years of near normal precipitation for fall, winter and spring seasons. However, the Class D **~~[Licensee~~ site evaluator]** may, at his/her discretion, allow clients to install wells at any time he/she deems appropriate. Depending on when peaks are observed, the State may or may not accept the monitoring for that season. A near normal ~~fall, winter and spring~~ monitoring period is **~~[when precipitation received at a local weather station is at or near the thirty year average as reported by the weather station. The licensed individual shall be responsible for relating precipitation levels received during the monitoring period to precipitation received in the previous three years.]~~** ~~(Dover, Georgetown, or Wilmington) is equal to or exceeds, for both periods October 1st to March 1st and March 1st to May 1st, 13.55 inches and 11.23 inches, respectively. A precipitation gauge may be installed at the site. Otherwise precipitation data shall be compiled from the nearest local weather station. (The modal precipitation values were determined from 30 years of precipitation data from the U. S. National Weather Service for Dover, Georgetown and Wilmington for the years 1958 to 1987 with the ten (10) driest years being thrown out and using the 11th year as modal.)~~ **[defined as a period that has plus or minus one standard deviation of the long term mean annual precipitation. (Long term refers to 30 or more years). Also, the mean monthly precipitation during a normal period must be plus or minus one standard deviation of the long term monthly precipitation for 8 of the 12 months. For the most part, normal years can be calculated from the mean annual precipitation.]**

(i) The Department shall field check the monitoring periodically during the time of expected saturated soil conditions at their discretion.

(ii) ~~The first observation shall be made on or before October 15th. Observations shall be thereafter made every seven (7) days or less until May 1st or until the site is determined to be unacceptable, whichever comes first. If water is observed above the critical depth twenty (20) inches from the soil surface or present grade) at any time, an observation shall be made one (1) week later. If water is present above the critical depth at both observations, monitoring may cease because the site is then considered unacceptable. If water is not present above the critical depth, monitoring shall continue until May 1st. If any two (2) observations seven (7) days apart show the presence of water above the critical depth, the site is unacceptable and the Department shall be notified in writing.~~

~~[(iii)The occurrence of rainfall(s) of 1/2 inch or more in a 24 hour period during monitoring may necessitate observations at more frequent intervals.]~~

(iv) The Department may, at any time during the observation period, verify the observed water depth by conducting a soil boring next to, and of equal depth with, any of the observation wells. If the water level in the fresh boring, after 24 hours, presents a discrepancy with the water level observed in the well, then at the discretion of the Department, the data may be declared invalid. If the data is declared invalid, then ~~an~~ the Department will notify the owner in writing of the invalid data within ten (10) days of determination. ~~an unsuccessful site procedure shall be initiated.~~

~~5.0A102 When monitoring shows saturated conditions above the critical depth, data giving test locations, ground elevations at the wells, soil profile descriptions, dates observed, depths to observed water and local precipitation data (monthly from October 15th to May 1st and daily during monitoring) shall be submitted to the Department, in writing, accompanied by two (2) copies of the same.~~

5.0~~A~~12203 ~~When water well monitoring discloses that the site is acceptable, documentation including location and depth of wells, ground elevations at wells, soil profile descriptions, dates observed, result of observations, local precipitation data and information on artificial drainage shall be submitted in writing to the Department in a site evaluation report with appropriate review fee.~~ When monitoring determines that the site is suitable, the Department will request that a new site evaluation be submitted. The monitoring information must be incorporated into the new site evaluation. ~~shall approve the site evaluation and, if necessary, rescind the denial.~~ An approved site evaluation report shall be issued indicating the appropriate system type(s).

~~5.0A104 The monitoring of soil borings for periods of time less than the above stated time frame may be permitted to help determine if observation well procedures, as outlined above, are warranted to determine if the site evaluation needs to be revised.~~

5.0~~A~~12305 Observation wells **[and/or piezometers]** are required to be abandoned in accordance with the current Regulations Governing the Construction and Use of ~~Water~~ Wells.

~~5.0A106 Areas which are to be monitored shall be carefully checked for drainage tile and open ditches which may have altered natural high ground water levels. Where such factors are involved, information on the location, design, ownership and maintenance responsibilities for such drainage shall be provided. Documentation shall be provided to show that the drainage network has an adequate outlet, and can and shall be maintained. Sites affected by agricultural drain tile shall not be acceptable for system installation.~~

5.0~~B~~13000 Site Interpretation Advisory Council

5.0~~B~~13100 The purpose of the Site Interpretation

Advisory Council (Council) is to act as an objective peer group in the review of discrepancies between the Department **[of Natural Resources and Environmental Control (DNREC)]** and Class D **[licensee's site evaluators]** soil scientists regarding questions of interpretation of soil and site information for siting on-site wastewater treatment and disposal systems.

5.0B13202 The Council shall restrict its charge to those items normally and commonly addressed when conducting a site evaluation as discussed below. The Council specifically excludes instances regarding the engineering design and/or installation of septic on-site wastewater treatment and disposal systems except when it is directly applied to the soil science practice.

(a) The description and interpretation of soil morphology in regard to the proper functioning of on-site wastewater treatment and disposal systems utilizing the soil as part of the treatment process.

(b) The characterization of lithologic and hydrologic limiting layers and geomorphology pertinent to the proper siting and functioning of on-site septic wastewater treatment and disposal systems.

(c) The recognition and documentation of site limitations for the placement of on-site septic wastewater treatment and disposal systems (i.e. existing wells and septic on-site wastewater treatment and disposal systems) in accordance with standard practice in Delaware.

5.0B13303 The Site Interpretation Advisory Council shall be appointed by the Secretary and consist of the following members:

(a) Four (4) non-governmental Class D **[licensee's site evaluators]** site evaluators actively practicing in the State of Delaware for two (2) or more years with one (1) acting as an alternate.

(b) One (1) employee of the Department with soils and on-site wastewater industry expertise.

(c) One (1) soil scientist designated by the State Conservationist through the State Soil Scientist, SCS NRCS, USDA.

(d) The A manager of the Soil Assessment Branch (SAB) Ground Water Discharges Section (GWDS), DNREC, shall serve as a liaison to the Council without voting privileges.

(e) All members shall serve three (3) year terms. Procedures shall be established by the Council to stagger terms so as to provide continuity.

5.0B13404 Documentation and testimony regarding a review shall be submitted to the Council. After the initial review by the Council, a determination shall be made as to whether sufficient information has been submitted to render an informed decision. The Council may request additional information from the applicant before proceeding with the review. There shall be no cost to the Council for any information submitted.

5.0B13505 Within thirty (30) days from receipt of the documentation, the Council shall render a decision, based on a simple majority vote, regarding which system(s), if any, are suitable under the Delaware Regulations law.

5.0B13606 A site visit shall be conducted by at least four (4) members of the Council. The applicant is responsible for all costs that may be incurred. Council members shall not be reimbursed for any expenses.

5.0B13707 Council decisions may be used by the Director of Water Resources in Director's Reviews. However, a Any decision rendered by the Council may shall be considered by the Secretary but shall not and may be the a deciding factor in his/her decision. The applicant still maintains his/her right to appeal the decision of the Secretary in accordance with 7 Del. C., Chapter 60, Section §6008.

5.0B13808 The Council shall designate one of its members representing the private sector to serve as chairperson man for a period of one year. The chairperson man, or his/her designee, serving as the principal contact person between the Council and the a manager of the Soils Assessment Branch Ground Water Discharges Section (GWDS), shall perform the following duties:

(a) Call and preside at all Council meetings. (The SAB A GWDS manager may also call a meeting, but is not entitled to preside at a Council meeting.)

(b) Upon receipt of a request, poll the Council members and communicate the results to the SAB GWDS manager calling a Council meeting when appropriate. (This function may also be performed by the SAB GWDS manager when necessary.)

(c) Prepare a letter communicating the Council's decision in each case. (The letter shall be sent within fifteen (15) working days after the Council's decision to the SAB GWDS manager for signature and returned for mailing within three (3) working days.)

5.0B13909 The following services shall be furnished by the DNREC to facilitate the operation of this Council:

(a) The A manager of the Soil Assessment Branch Ground Water Discharges Section shall represent the Section's position at all Council meetings.

(b) All submittals for consideration shall be circulated to the Council under the direction of the SAB GWDS manager within ten (10) working days.

(c) The SAB A GWDS manager, at the request of the Council chairperson man, shall reserve space in the DNREC facilities for Council meetings.

(d) The DNREC shall provide clerical services for record keeping. Records of the Council meetings shall be furnished to all Council members within fifteen (15) working days following the meetings.

(e) The clerical person shall prepare and mail the decisions of the Council upon receipt from the chairperson man.

5.0~~B~~1401~~0~~0 The Council shall restrict reviews to those submittals directly affected by the expertise of the soil scientist's decision, using one of the following two (2) methods:

(a) A submittal from the Secretary, DNREC; or

(b) A submittal from a ~~DNREC~~ Class D **~~[licensee's~~ site evaluator]**.

5.0~~B~~1410~~1~~ All submittals shall be circulated to the Council membership. A majority vote of the Council is required for any submittal to be accepted for Council review.

5.02000 Permit Application Procedures - General Requirements

5.02010 No person shall cause or allow construction, alteration, or repair of a system, or any part thereof, without a permit. An exception may be allowed for certain emergency repairs as set forth in these Regulations.

5.02020 Applications for permits shall be made by the owner of the property or the owner's legally authorized agent on forms ~~provided and~~ approved by the Department.

5.02030 An application is complete only when the form is completed in full, is signed by the owner or the owner's legally authorized agent, is accompanied by all required exhibits (~~including~~ provided an approved site evaluation report is on file) and fee. **~~[and includes~~ Also a form]** from the appropriate government unit having jurisdiction, a statement that the local governmental unit has approved the activity by zoning. Incomplete applications will not be processed and may be returned.

~~5.02040 The application form shall be received by the Department only when the form is complete, as detailed in these Regulations.~~

5.02050 ~~Upon receipt of an application~~ The Department shall deny the permit if:

(a) The application contains false information;

(b) The proposed system would not comply with these Regulations;

(c) The proposed system, if constructed, would violate a Department moratorium;

(d) A central wastewater system which can serve the proposed ~~sewage~~ wastewater flow is both legally and physically available as described in Sections 5.02060 and 5.02070 of these Regulations;

(e) Construction of an on-site wastewater treatment and disposal system is prohibited by codes, ordinances or county or municipal regulations having jurisdiction.

5.02055 The completed application shall include at a minimum the following site information;

(a) Parcel and/or lot dimensions and size with a location map of project site;

(b) Slope - in absorption facility and replacement areas (percent and direction);

(c) Existing wells within 150 feet of the proposed system.

(d) Any and all watercourses or bodies of water;

(e) Distances of the on-site well(s) and on-site wastewater treatment and disposal systems from the nearest two fixed points of reference. Points of reference as defined in Section 5.01030;

(f) Soil boring and test pit locations along with limits of approved area as indicated on the approved site evaluation;

(g) Any other information required to satisfy these Regulations.

5.02060 A central wastewater system shall be deemed physically available if its nearest connection point from the property to be served is:

(a) For a single family dwelling, or other establishment with a maximum projected daily ~~sewage~~ wastewater flow of not more than five hundred (500) gallons, within ~~three~~ two hundred ~~(300)~~ (200) feet;

(b) For a proposed subdivision or group of two (2) to five (5) single family dwellings, or equivalent projected daily ~~sewage~~ wastewater flow, not further than two hundred (200) feet multiplied by the number of dwellings or dwelling equivalents.

(c) For proposed subdivision or other developments with more than five (5) single family dwellings, or equivalents, the determination of central wastewater availability shall be in the sole discretion of the Department.

However, a central wastewater system shall not be considered available by the Department if topographic or manmade features make connection physically impractical.

5.02070 A central wastewater system shall be deemed legally available if the system is not under a Department connection permit moratorium and the wastewater system owner is willing or obligated to provide sewer service.

5.02080 A permit shall be issued only to the owner or easement holder of the land on which the system is to be installed.

5.02090 The Department shall either issue or deny the permit within twenty (20) working days after receipt of the completed application. However, if conditions prevent the Department from acting to either issue or deny the permit within twenty (20) working days, the applicant shall be notified ~~in writing~~. The Department shall either issue or return ~~deny~~ the permit within thirty (30) working days after the mailing date of such notification.

5.02100 All permits issued for on-site wastewater treatment and disposal systems pursuant to these Regulations shall be effective for ~~one (1)~~ two (2) years from the date of issuance. If the system has been started the

Department may issue a limited time period extension. ~~and is not transferable~~. A one year ~~limited~~ extension ~~may~~ will, if requested, be granted by the Department upon demonstration by the applicant that no changes have occurred in system design, siting, or regulations applicable to the permit since the permit was issued and written certification to such factual findings is provided and all appropriate fees are paid.

5.02105 If any portion of the approved disposal area is disturbed during site construction activities, through grubbing, tree removal or other activities utilizing heavy equipment, additional soil borings or test pits shall be performed within the disturbed area(s) to substantiate the initial site evaluation.

5.03000 Permit Denial Review

~~5.03010 The Department shall issue a notice of its intention to deny a permit. The tentative permit denial shall be reviewed by the Director at the request of the applicant. The application for review shall be submitted to the Director in writing, within thirty (30) days of the date of the tentative permit denial notice from the Department and be accompanied by the denial review fee. The denial review shall be conducted and a report prepared by the Director.~~ The Department shall make a decision on the application which it determines will best implement the purposes of 7 Del. C., Chapter 60 and these Regulations. The providing of the requisite information in the application procedure by the applicant shall not be construed as a mandatory prerequisite for the issuance of the permit by the Department.

5.03020 Permit denials for systems and denial reviews may be appealed to the Environmental Appeals Board in accordance with 7 Del. C., Chapter 60, Section 6008.

5.03030 If the Department intends to deny a permit for a parcel of ten (10) acres or larger in size, the Department shall:

(a) Provide the applicant with a Notice of Intent to Deny;

(b) Specify reasons for the intended denial; and

(c) Offer an ~~public hearing~~ appeals process in accordance with 7 Del. C., Chapter 60, Section 600~~6~~ 8.

5.04000 ~~Pre-Cover~~ Inspections

5.04005 The Class E contractor shall contact the Department 24 hours prior to system construction to obtain a startup number to authorize the construction.

5.04006 Changes to a permit which result in only a relocation of the system can be done by submitting a pre-inspection as-built, which requires a minimal check against the site evaluation to ensure the system is still located within approved soils and that all required isolation distances are met. These "as-builts" are to be submitted to the Department by the Class E contractor prior to installation. The Class E contractor must obtain permission from the designer prior top submittal.

5.04010 When construction, alteration or repair of a system is complete, except for backfill (cover), or as required by permit, the ~~owner~~ **[system]** Class E contractor ~~installer~~ shall notify the Department. The ~~Department~~ inspector shall inspect the installation to determine if it complies with these Regulations and the terms and conditions of the permit, unless the inspection is waived by the Department in accordance with Section 5.04020.

5.04013 It is the responsibility of the Class E contractor to confirm the results of the pre-cover inspection prior to backfilling the system.

5.04017 An inspector shall be either:

(a) An employee of the Ground Water Discharges Section;

(b) A Class "C" designer or his/her designee.The Class C designer must submit a list of authorized personnel, on company letterhead, to the Department for review and approval.

(c) Any person officially authorized by the Department to perform inspections of on-site wastewater treatment and disposal systems.

5.04020 The Department may waive the pre-cover inspection, provided:

(a) The installation is a ~~standard subsurface system~~ gravity fed on-site wastewater treatment and disposal system installed by a licensed person pursuant to these Regulations; and

(b) After system completion the installer provides a ~~completion~~ construction report which certifies in writing that the system complies with the Department's Regulations. If any changes were made to the system the contractor must provide a detailed "as-built" plan (drawn to scale).

5.04021 Failure to comply with Departmental Regulations and the conditions of the permit will result in verbal notification to the Class E contractor. Failure to correct deficiencies within calendar 10 days (weather permitting) will result in written notification of such to both the Class E contractor and permittee. Additional inspections may be required by the Department.

5.04023 Once a system has received a satisfactory pre-cover inspection or authorization to cover without a Departmental inspection, the system may be covered as specified in the approved permit. Backfilling must be completed within ten (10) calendar days of a satisfactory pre-cover inspection, weather permitting.

5.04027 Systems requiring earthen caps and all mound systems shall require a final cover inspection pursuant to Section 5.04010 or 5.04020. Capping of systems must be completed within ten (10) calendar days of a satisfactory pre-cover inspection or authorization to cover without Departmental inspection, weather permitting.

~~5.04030 Precover inspection details shall be recorded by the installer on a form approved by the~~

~~Department.~~

5.04033 Inspections performed by Class C designers shall conform to guidelines established by the Department.

5.04037 In situations where the Designer is not comfortable approving a system, he/she is to contact the Department immediately.

5.05000 Certificate of Satisfactory Completion

5.05010 The Department shall issue a Certificate of Satisfactory Completion, if, upon inspection of the installation, the system complies with the Department's Regulations, ~~and~~ the conditions of the permit, and a construction report is submitted to the Department.

~~5.05020 If the inspection is not made within forty-eight (48) hours excluding Saturdays, Sundays, and holidays after notification of completion, or the inspection is waived, a Certificate of Satisfactory Completion shall be deemed issued by operation of law. In such cases, a modified Certificate shall be issued to the owner upon compliance with the requirements of Section 5.04020.~~

5.05030 A system shall be backfilled (covered) when:

(a) The ~~permittee~~ Class E contractor is notified by the Department that inspection has been waived; or

(b) The inspection has been done and authorization has been granted to cover the system**~~[; or]~~**

~~(c) An authorization to cover has been issued by operation of law where the inspection had not been conducted within forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, of notification of completed installation.~~

5.05040 Corrections necessary to meet requirements for satisfactory completion shall be made within ~~thirty (30)~~ seven (7) calendar days after written notification by the Department, ~~and posting of a Notice of Violation,~~ unless otherwise required.

~~5.05050 Unless otherwise required by the Department the contractor shall backfill (cover) a system within ten (10) days after being authorized to do so for that system~~.

5.05060 A Certificate of Satisfactory Completion shall be valid for a period of ~~one (1)~~ two (2) years from the date of issuance. After the ~~one (1)~~ two (2) year period, the Regulations for Authorization ~~Notices~~ to Use an Existing System Permit or Alteration Permits apply.

5.05070 Denial of a Certificate of Satisfactory Completion may be appealed in accordance with 7 Del. C., Chapter 60, Section 6008.

5.05080 If the system has been placed into operation without the required Certificate of Satisfactory Completion, a Notice of Non-Compliance shall be issued to the owner and must be corrected within ten (10) calendar days or system must be abandoned in accordance with Section 5.06020.

5.06000 Abandonment of Systems

5.06005 General Requirements

(a) All systems shall be abandoned by a Class E **[contractor ~~licensee~~]** or other governmental appointee.

(b) Within **[ten]** (10) calendar days of abandonment, the Class E **[contractor ~~licensee~~]** shall submit a System Abandonment Report on a form provided by the Department (see Exhibit Z). The report shall be filled out completely and signed by the licensee.

5.06010 The system shall be properly abandoned when:

(a) A central wastewater system becomes available and the building sewer has been connected thereto; or

(b) The source of wastewater has been permanently eliminated; or

(c) The system has been operated in violation of these Regulations, until a repair permit and Certificate of Satisfactory Completion are subsequently issued ~~therefore~~; or

(d) The system has been constructed, installed, altered, or repaired without a required permit authorizing same, unless and until a permit is subsequently issued ~~therefore~~; or

~~(e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice authorizing same, until a Certificate of Satisfactory Completion or Authorization Notice is subsequently issued therefore.~~

5.06020 Procedures for Abandonment:

(a) The septic tank, cesspool or other treatment unit shall be pumped by a Class F **~~[licensed]~~** ~~hauler~~ liquid waste hauler to remove all of the contents;

(b) The septic tank, cesspool or other treatment unit shall be removed or filled with ~~reject~~ sand, ba~~r~~nk run gravel, or other material approved by the Department;

(c) The system building sewer shall be permanently capped.

5.07000 Authorization to Use an Existing System Permit

5.07010 Application for an Authorization to Use an Existing System ~~Notices~~ Permit shall be made on forms provided by the Department and shall be ~~received~~ accepted only when the forms are complete.

5.07020 No person shall place into service, change the use of, or increase the projected daily ~~sewage~~ wastewater flow above design standards into an existing system without first obtaining an Authorization ~~Notice~~ to Use an Existing System Permit or Alteration, Repair or Replacement Permit as appropriate.

5.07030 An Authorization ~~Notice~~ to Use an Existing System Permit is not required:

(a) Where there is a replacement of a ~~mobile~~ manufactured home ~~or recreational vehicle~~ with similar units in ~~mobile~~ manufactured home communities ~~parks or recreational vehicle facilities~~ with on-site ~~sewage~~ wastewater treatment and disposal systems ~~approved by the Department~~ when an annual inspection has taken place by the Department or an authorized designee certifying that the existing system(s) is/are not malfunctioning ~~**[land/or a cesspool]**~~.

(b) For use of a previously unused system for which a Certificate of Satisfactory Completion has been issued within one (l) year of the date that such system is placed into service, provided the projected daily ~~sewage~~ wastewater flow does not exceed the design flow.

5.07040 For changes in the use of an existing system where no increase in ~~sewage~~ wastewater flow above design standards is projected, or where the design flow is not exceeded an Authorization ~~Notice~~ to Use an Existing System Permit shall be issued if:

(a) The existing system is not malfunctioning ~~**[land/or a cesspool]**~~; and

(b) All isolation distances from the existing system can be maintained; and

(c) ~~At the sole discretion of the Department~~, T~~t~~he proposed use would not create a public health hazard; and

(d) If the Department has no record of an existing on-site wastewater treatment and disposal system, no connection to that system shall be permitted until an inspection has been performed provided the following are uncovered and left uncovered prior to the inspection:

(i) Septic tank

(ii) Distribution box

(iii) Corners of each trench or the bed (additional area may be required upon inspection)

5.07050 If the conditions of Section 5.07040 cannot be met, an Authorization ~~Notice~~ to Use an Existing System Permit shall be withheld until such time as alterations and/or repairs to the system are made. ~~in accordance with these Regulations.~~

5.07060 For changes in the use of a system where projected daily ~~sewage~~ wastewater flows would be increased above design criteria an Alteration, Repair or Replacement permit must be obtained.

5.07070 The Department may allow a ~~**[mobile manufactured]**~~ home to use an existing system serving another dwelling, in order to provide temporary housing for a family member suffering hardship, by issuing an Authorization ~~Notice~~ to Use an Existing System Permit, if:

(a) The Department receives satisfactory evidence which indicates the family member is suffering physical or mental impairment, infirmity, or is otherwise disabled and is in need of temporary housing; and

(b) The system is not malfunctioning ~~**[land/or is not a cesspool]**~~; and

(c) The application is for a mobile home; and

(d) Evidence is provided that a hardship ~~**[mobile manufactured]**~~ home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building; and

(e) A full system replacement area is available according to an approved site evaluation.

5.07080 An Authorization ~~Notice~~ to Use an Existing System Permit issued for personal hardship shall remain in effect for a specified period, not to exceed cessation of the hardship. ~~The Authorization Notice is renewable on an annual basis~~. The Department shall impose conditions in the Authorization ~~Notice~~ to Use an Existing System Permit ~~**[which that]**~~ are necessary to ~~assure~~ ensure protection of public health. If the system fails and additional replacement area is no longer available, the ~~**[mobile manufactured]**~~ home ~~shall~~ must be removed from the property.

5.08000 Alteration of Existing Systems:

5.08010 No person shall alter or increase the design capacity of an existing system without first obtaining an Alteration Permit.

5.08020 No person shall increase the projected daily ~~sewage~~ wastewater flow into an existing system beyond the design capacity of the system until an Alteration Permit is obtained.

5.08030 The Department may issue an Alteration Permit if:

(a) The existing system is not malfunctioning ~~**[land/or is not a cesspool]**~~; and

(b) An approved site evaluation report has been obtained; and

(c) The proposed installation will be in ~~full~~ compliance with these Regulations.

5.08040 Upon completion of installation of that part of a system for which an Alteration Permit has been issued, the permittee shall obtain a Certificate of Satisfactory Completion from the Department. ~~An increase in the projected daily sewage flow into the system shall be prohibited until the Certificate is issued~~.

5.09000 Repair and Replacement of Existing Systems

5.09010 Steps to repair a malfunctioning system shall be initiated immediately and ~~**[followed continued]**~~ until ~~**[repaired system repair is complete]**~~. However, if at the sole discretion of the Department, it is determined that adverse soil conditions exist due to climatic conditions that would likely preclude a successful repair, the Department may allow a delay in commencing repairs until the soil conditions improve. If this allowance is made, a compliance date and interim system maintenance requirements shall be specified in ~~a Notice of Violation~~ system construction deficiencies to the system owner.

5.09020 No person shall repair a malfunctioning system without first obtaining a Repair Permit. Emergency repairs of broken ~~pressure or sewer pipes~~ system components, as specifically defined in these Regulations (see Section 2.01260), may be made without first obtaining a permit provided that a permit is applied for within three (3) working days after the emergency repairs are begun. Such a delayed application submittal does not relieve any person from complying with subsequent requirements or conditions of approval as may be imposed by the Department.

5.09030 Upon completion of installation of that part of a system for which a repair permit has been issued, the permittee shall obtain a Certificate of Satisfactory Completion from the Department.

5.09040 The following criteria for a Repair or Replacement Permit shall apply:

(a) If the site characteristics and standards described in these Regulations can be met, then the repair installation shall conform to them.

(b) If the site characteristics or standards described in these Regulations cannot be met, the Department may allow a reasonable repair or replacement installation in order to eliminate a public health hazard. Reasonable repairs or replacements may require the installation of an alternative system in order to eliminate a public health hazard. In such cases the Department shall use its best professional judgment in approving repairs or replacements that will reasonably enable the system to function properly.

5.09050 Malfunctioning systems which cannot be repaired shall be abandoned in accordance with these Regulations.

5.10000 ~~Experimental~~ Alternative Wastewater Treatment and Disposal Systems

5.10010 ~~Policy.~~ Alternative technology ~~to standard~~ on-site ~~sewage~~ wastewater treatment and disposal systems may be ~~are~~ appropriate for areas ~~planned for rural or low-density development~~ where site constraints limit the suitability for conventional system types. The Department shall consider applications for alternative wastewater treatment and disposal systems on a case-by-case basis. It is the policy of the Department to pursue a program of experimentation for the purpose of obtaining sufficient data for the development of alternative ~~sewage~~ wastewater treatment and disposal systems, which may benefit ~~significant numbers of~~ the people ~~within~~ of Delaware. For the purposes of this section, applications for community systems that employ advanced treatment units which are in conformance with standard engineering practice as determined by the Department shall not be considered alternative.

5.10015 Applications for alternative wastewater treatment and disposal systems shall provide documentation of the capabilities of the proposed system. Such documentation shall be in the form of proven data of long term usage of facilities similar to those specified in these Regulations, or short term documentation from controlled projects from reliable sources such as Universities or the National Sanitation Foundation. The Department shall approve only treatment and disposal system applications that provide thorough documentation of proven technology. Alternative wastewater treatment and disposal systems shall provide, at a minimum, an equivalent level of treatment and disposal as a conventional wastewater system. Alternative wastewater products will require the same documentation as above, however, these will not require a Class C **~~[licensee~~ deisgner]** to incorporate into a design.

5.10020 No person shall construct an ~~experimental~~ alternative on-site ~~sewage~~ wastewater treatment and disposal system without ~~first~~ obtaining a permit from the Department.

5.10030 Applications for ~~experimental~~ alternative systems shall be made ~~on~~ to the Department ~~forms~~. The application shall be complete, signed by the owner and accompanied by the required fee. The application shall include detailed system design specifications~~, and~~ plans and any additional information requested by the Department.

5.10035 Applications for alternative wastewater treatment and disposal systems shall include, but not be limited to, the following:

(a) Volume and rate of wastewater flow

(b) Characteristics of the wastewater

(c) The degree and extent of treatment expected.

(d) Design criteria, specifications, and drawings including a description of the system, its capabilities, operation and maintenance requirements, unique technical features and system advantages for treatment systems.

(e) Construction materials

(f) Operational and maintenance details along with their requirements.

(g) The seal of a Professional Engineer having a Class C license may be required.

(h) Any other information required by the Department.

5.10040 Sites may be considered for ~~experimental~~ alternative system permits where:

(a) Soils, climate, ground water, or topographical conditions are ~~common enough to benefit large numbers of people~~ **[indicating]** the seasonal high water table or a limiting condition is encountered deeper than ten (10) inches below the soil surface or observation well data determines the seasonal high water table is deeper than ten (10) inches; and

(b) A specific acceptable backup alternative is available in the event of system failure; and

~~(c) For absorption systems, soils in both original and system replacement areas are similar; and~~

(c) Installation of a particular system is necessary to provide a sufficient sampling data base; and

(d) Zoning, planning, and building requirements allow system installation; and

~~(f) A single family dwelling will be served; and~~

(e) The system will be used on a continuous basis during the life of the test project; and

~~(f) Resources for monitoring, sample collection, and laboratory testing are available; and~~

~~(g) The property owner records with the deed, a Department approved affidavit, which notifies prospective property owner purchasers of the existence of an experimental system; and~~

~~(j) The parcel size is at least one-half (1/2) acre.~~

5.10050 The ~~system installation~~ permit shall:

(a) Specify method and manner of system installation, operation, and maintenance;

(b) Specify method, manner, and duration of system testing and monitoring, at the Department's discretion;

(c) Identify when and where the system is to be inspected;

~~(d) Not be transferable~~;

(~~e~~d) Require system construction and use within ~~one~~ two (~~1~~ 2) years of permit issuance.

5.10060 Inspections of an installed system shall be performed by a Class C designer and the Department. Upon complet~~ing~~ ion of ~~construction for~~ each phase requiring inspection by the permit, the ~~permit holder~~ Class E contractor shall notify the Department and the Class C designer.

5.10070 The Department may inspect construction at any time to determine whether it complies with permit conditions and requirements.

5.10080 After system installation is complete and the Department has determined that it complies with permit conditions, a Certificate of Satisfactory Completion shall be issued.

5.10090 If the Department finds the operation of the system is unsatisfactory, the owner, upon written notification by the Department shall promptly repair or modify the system, replace it with another acceptable system, or abandon the system.

5.10100 The system ~~may~~ will be monitored by the Department **[and/or the Department's designee]** in accordance with a schedule contained in the permit.

5.10110 Should any additional guidelines be developed by the Department, the permitee would be responsible for meeting these guidelines.

5.11000 Community Systems

5.11010 Without first applying for and obtaining a construction ~~installation~~ permit, no person shall install a community on-site wastewater treatment and disposal system.

5.11015 A community on-site wastewater treatment and disposal system shall be required ~~**[for a subdivision]**~~ when any of the following conditions exist:

(a) Lot size is less than ~~**[one (1)**~~ **two (2)]** acre**[s]** and more than 55% of the subdivision or planned unit development contains soil ~~**[mapping**~~ **interpretative]** units identified as being suitable for on-site wastewater treatment and disposal systems that require pressurization; or

(b) Where overall density of the subdivision or planned unit development is more than one dwelling unit per ½ acre.

~~**[(c) Where the number of dwelling units exceeds one hundred (100) and advanced treatment will be necessary.]**~~

5.11020 ~~Permit applications for all community systems shall include operation and maintenance details including details for financing the system operation and maintenance, utilization of qualified system operators, and financial capability to satisfy the cost requirements of the system for its design life. Permit applications for community systems to serve condominiums, townhouses, subdivisions, or multi-family dwellings where treatment and/or disposal may be under common or joint control shall be made by submitting to the Department a properly executed agreement (tri-party) among the Department, developers including their successors or assigns, and Council on behalf of the unit property owners or owners' association in subdivisions which addresses ownership, transfer of ownership, maintenance, repairs, operation, performance, and necessary funds. The permit application shall also include the following documents for legal review by the Department~~.

~~(a) Identification of a long term trustee to assume operation and management of the wastewater treatment plant, pump stations, manholes, sewer lines, effluent disposal system, and all appurtenances (herein after called the wastewater utility system). The following information regarding the trustee shall be submitted to the Department:~~

~~i) The full name and business address of the trustee; and~~

~~ii) A description of the trustee's experience, training, and education in the wastewater treatment and disposal industry, together with any supporting data showing the trustee's qualifications to engage in such a business; and~~

~~iii) Proof of trustee's financial solvency, including a statement of financial encumbrances; and~~

~~iv) A list of licensed wastewater treatment facility operators employed by the trustee.~~

~~(b) Terms and conditions under which the~~

~~Trustee shall assume possession, ownership and responsibility of the wastewater utility system.~~

~~(c) A detailed description of the wastewater utility system.~~

~~(d) A disclosure of any existing encumbrances, liens, or other indebtedness to the title of the wastewater utility system.~~

~~(e) Provisions for the proper abandonment of the wastewater utility system in the event that a governmental sewer district is established in the area served by the wastewater utility system and requires the community to connect to the sewer district.~~

~~(f) Provisions for long-term management of the wastewater transmission and conveyance system in the event that the community, business or industry is required to connect to a regional sewer district that will not accept responsibility for the wastewater transmission and conveyance system.~~

~~(g) An operating budget to provide sufficient funds for the proper operation and maintenance of the wastewater utility system, including the accumulation of funds necessary to provide for replacement of mechanical components of the wastewater utility system, based on manufacturer recommendations.~~

Applications for permits to construct community on-site wastewater treatment and disposal systems shall provide documentation which addresses ownership, transfer of ownership, maintenance, repairs, operation, performance and funding of the on-site wastewater treatment and disposal system through the design life of the system. This documentation shall be in the form of a **[~~"Trust Indenture"~~Binding Agreement]** between the applicant for the construction permit, the "permittee", and an operator or owner **[/operator ~~, the "Trustee", and a non-profit organization that represents the residential property owners, the "Homeowners Association". The final Trust Indenture~~ The Binding Agreement]** must:

a) Identify an **[~~Trustee~~ Operator or Operator and Owner (Operator)]** that will assume the operation, management, maintenance and repairs of the community on-site wastewater and disposal system, "the wastewater system", upon satisfactory completion of the construction, by providing:

1) Full name and business address of the **[~~Trustee~~ Operator]**;

2) A description of **[~~Trustee~~ the Operator]** experience, training and education in the wastewater treatment and disposal industry, together with any supporting data regarding **[~~Trustee~~ the Operator's]** qualifications in the industry;

3) Proof of **[~~Trustee's~~ the Operator's]** financial solvency by providing a business financial statement (including balance sheet) that is not more than six (6) months old, and a statement of financial encumbrances;

4) A list of licensed wastewater treatment facility operators employed by the **[~~Trustee~~ Operator]**.

b) Identify the terms and conditions under which the **[~~Trustee~~ Operator]** shall assume operational responsibility or ownership of the wastewater system.

c) Provide a detailed description of the wastewater system.

d) Disclose any existing encumbrances, liens, or other indebtedness to the title of the wastewater system.

[~~(e) Provide for the proper abandonment of the wastewater system in the event that a governmental sewer district is established in the area served by the wastewater system and requires the community to connect to the sewer district.~~

[~~f) Provide for the long-term management of the wastewater transmission and conveyance system, including sewer lines, manholes, pump stations, etc., in the event the community is required to connect to a regional sewer district that will not accept responsibility for the wastewater transmission and conveyance system.~~

[~~g) Be approved by the Department and fully executed before residential units may connect to the wastewater system.~~]

[~~h)~~ (e)] Provide an operating budget with sufficient funds for the proper operation and maintenance of the wastewater system, including the accumulation of funds necessary to provide for repair or replacement of mechanical components of the wastewater system based on manufacturer recommendation. The operating budget shall include the establishment of an escrow account to be used exclusively for repair and replacement of failed or failing components of the wastewater system. The escrow account may not be used for phasing construction or the expansion of the wastewater system to accommodate additional residential units.

1) The value of the escrow account shall be equivalent to 25% of the cost of all mechanical equipment (e.g., pumps, flow meters, aerators, blowers, gear boxes, etc.) plus 50% of the cost of construction of the wastewater treatment and disposal system (e.g., infiltration beds, trenches, etc.).

2) Funds shall be deposited into the escrow account as residential units are connected to the wastewater system. The amount of funds deposited shall be equivalent to the percentage of units connected to the wastewater system (i.e., at 50% of build-out, the balance of the escrow account shall equal 50% of the amount established in 1, above).

3) The escrow account shall be transferred to either the **[~~Trustee~~ owner/operator]** or **[~~the~~ an established]** Homeowners Association upon satisfactory completion of construction of the wastewater system.

4) The owner of the wastewater system

shall notify the Department, in writing, of intent to access funds from the escrow account. The escrow funds may not be used without prior approval of the Department. When escrow funds are used for the repair and/or replacement of mechanical equipment, the owner must submit a plan for the reestablishment of the escrow fund balance through the use of user fees or other sources.

5) The escrow account established for a community or a development can only be used for the community or development for which it was established. Accounts for non-contiguous communities or developments may not be co-mingled.

6) If the community wastewater system for which the escrow account was established is abandoned, and the community development connects to a regional or municipal wastewater treatment facility, the escrow account may be reduced to cover 25% of the replacement cost of all mechanical equipment associated with the transmission and conveyance sewer lines. If the transmission and conveyance sewer lines are all gravity lines, with no lift stations, pumps, or other mechanical equipment, the escrow account may be terminated and the funds returned to the wastewater system owner.

[f) Be approved by the Department and fully executed before a construction permit is issued by the Department.]

~~(i)~~ g)]The Department shall have the right to inspect and review the financial records of the owner of the wastewater system, to include the operating budget, escrow account, and financial statements.

5.11021 An application for a permit to construct a community system shall provide the Department with a performance bond, irrevocable letter of credit, or other security, as approved by the Department, for every wastewater system they are constructing. The performance bond shall be made payable to the Department of Natural Resources and Environmental Control (DNREC) and the obligation of the performance bond shall be conditioned upon the fulfillment of all requirements related to the construction permit. Terms of the performance bond shall be:

a) The amount shall be equivalent to 50% of the construction cost of the wastewater system (excluding the conveyance system and its appurtenances), but in no case shall it be less than $25,000, nor more than $100,000 for any single community system. **~~[Developers constructing multiple community systems shall file a performance bond for each system they are constructing, not to exceed a maximum total performance bond of $500,000.]~~**

b) A performance bond is not required for any local, municipal, county, state, federal government agency, non-profit association representing property owners, **[political]** subdivision, or utility that is regulated by the Public Service Commission.

c) Liability under the performance bond shall run to the State for a continuous period. The Department shall release the bond only after the wastewater system has been **[constructed in accordance with approved plans and has been]** turned over to an established homeowners association, their designee, or exempted trustee identified in Section 5.11021(b) above, provided the requirements of Section 5.11021(g) are met.

d) The performance bond shall be executed by the permittee through a corporate surety licensed to do business in the State of Delaware. In lieu of a performance bond, the permittee may elect to provide an original irrevocable letter of credit equal to the required sum of the performance bond.

e) The obligation of the permittee under the performance bond shall become due and payable for the purposes of properly fulfilling the requirements of the permit when the Department has:

1) Notified the permittee that the conditions of the permit have not been fulfilled and specified the specific deficiencies in the fulfillment of the permit conditions;

2) Given the permittee a reasonable opportunity to correct the deficiencies and to fulfill all the conditions of the permit; and

3) Determined that, at the end of a reasonable length of time, some or all of the deficiencies specified under Section 5.11021(e)(1) above remain uncorrected.

f) The Department has the authority to designate a new **~~[Trustee~~ Operator]** in the event that the provisions of Section 5.11021(e) have been implemented. Upon formal transfer of ownership of a community wastewater system to an **~~[established homeowners association, their designee, or]~~** entity identified in 5.11021(b), the performance bond requirement shall cease, provided the **~~[Trustee acknowledges, in writing~~ Department has determined]**, that the wastewater system has been constructed in accordance with approved plans and is operating properly.

g) **~~[Upon formal transfer of ownership of a community wastewater utility system to an established homeowners association, their designee, or entity identified in 5.11021 (b), the Department shall, in writing, release the permittee from the requirements of the performance bond, provided the Trustee acknowledges, in writing.~~Once the Department has verified]** that the wastewater system has been constructed in accordance with approved plans **~~[and is operating properly~~ the owner may apply for a permit to operate the system]**.

5.11022 The permit application shall also include the following documents for legal review by the Department;

(a) A Purchase and Sale Agreement -- which

specifies that the purchaser or a dwelling unit has an encumbrance on the title for wastewater treatment and disposal system operation fees, easements, and other assessments related to the community system.

(b) An Acknowledgment of Buyer -- which is appended to the Purchase and Sale Agreement and signed by the buyer after being furnished copies of appropriate agreements, covenants, restrictions, Articles of Incorporation and Bylaws of the Owner's Association, and indicates understanding that the buyer is obligated to pay assessments for maintaining the community system.

(c) The Articles of Incorporation -- which establishes the owner's association as a state-chartered, nonprofit corporation and gives the owners' association specific authority to operate, maintain, and repair the community system; to collect fees and special assessments; and to enforce any covenants, restrictions, or agreements.

(d) The Bylaws of the Owners' Association -- which govern the operation of the owners' association and specifically authorizes the Board of Directors to supervise the operation and maintenance of the community system, collect fees and special assessments, and to take appropriate action when the public health is imperiled by the malfunctioning of the community system.

(e) A Declaration of Covenants, Restrictions, and Easements -- which establishes, among many other limitations, the easements for the on-site sewage collection, treatment, and disposal system, and specifies responsibilities of the developers, their successors or assigns, and any owners' association regarding the community system. It further sets the fees and assessments for operation and maintenance of the community system.

5.11023 For developments that do not contain homeowner's associations, the above list of documents may be modified, at the Department's discretion, to include only those documents that are applicable.

5.11025 All community systems that are owned solely by one owner, partnership or corporation, who own the property that the system will be installed on must execute a Declaration of Covenants and Restrictions (DCR). The DCR must be notarized and recorded at the County's Office of the Recorder of Deeds after it has been approved by the Department. The recorded copy should then be returned to the Department. Community systems meeting this requirement shall be exempt from Sections 5.11020, 5.11021 and 5.11022.

5.11030 The site criteria for approval of community systems shall be the same as required for large systems (Section 5.12000).

5.11040 Responsibility for operation and maintenance of community systems shall be vested in a governmental unit or a Council on behalf of the unit property owners pursuant to 25 Del. C., Chapter 22 ~~or a wastewater utility pursuant to 26 Del. C., Chapter 12~~, or for subdivisions with an owners' association duly incorporated within the State with specific authority to operate, maintain, and repair the community system; to collect fees and special assessments; and to enforce any covenants, restrictions or agreements (See Section 5.11021).

5.11050 Unless otherwise required by permit, community systems shall be inspected at least annually by the responsible person.

5.11060 A private wastewater utility corporation may be permitted subject to the following provisions:

(a) It must be duly incorporated within the State and remain in good standing.

(b) It must remain financially solvent on a continuous basis through a method of financing construction, maintenance, operation, and emergency work related to the community system to the exclusion of whatever other obligations the corporation may assume in other fields. A certification of compliance with this provision shall be provided to the Department annually.

(c) There must be a person as identified under Section 5.11040 to whom control and operation of the community system will pass in trusteeship in the event no persons are willing to serve as officers of the private utility corporation. Such person shall have the opportunity to review and comment on plans and specifications and perform inspections during construction. They shall also be notified of any future construction or major repairs.

(d) Funds collected for operation and maintenance of the system must be kept in an account to be used for the sole purpose of carrying out the functions of the community system.

(e) There shall be lien powers to assure the collection of delinquent debts.

5.12000 Large Systems

5.12010 Unless otherwise authorized by the Department, large systems shall comply with the following requirements:

(a) Prior to initiating the soils investigation report, a meeting with the Class D site evaluator, Class C designer, DNREC personnel and any other interested parties shall be held to discuss the project.

(b) All soils investigation reports for a large system (> 2,500 GPD) and permit application(s) shall be submitted to the Large Wastewater Systems Branch for review and approval.

(c) The proposed disposal area shall be mapped on a seventy five (75) foot grid, at a minimum using a combination of auger borings and test pits.

(d) A soils investigation report shall **[also]** contain a description of the hydrologic properties of the water table **[surficial]** aquifer, including **[estimates of]** horizontal and vertical **[hydraulic]** conductivity, ground water flow direction, and water table elevations.**[or depth to**

water table measurements. This information can be obtained from readily available published data.]

(e) **[A minimum of one percolation test (one group of three tests) shall be performed per mapping unit delineated in the proposed disposal area. Two representative tests shall be performed per acre if only one mapping unit is delineated. A representative number of permeability tests shall be conducted within the proposed disposal area based upon soil variability.]**

(f) Proposed disposal areas wooded at the time of investigation shall be inspected by the Class D **[licensee site evaluator]** after tree clearing and prior to disposal system installation. Written documentation **[shall be submitted to the Department confirming site suitability. of the conditions observed shall be submitted to the Department].**

(g) Large system absorption facilities shall be designed with pressure distribution.

(h) The disposal ~~area~~ system shall be divided into relatively equal ~~units~~ areas. For effluent distribution each area is compromised of units as follows. The length to width ratio for seepage beds and elevated sand mounds shall be 4:1 or greater. Each unit shall receive no more than ~~one half (1/2) of the projected daily sewage flow per day~~ one thousand three hundred (1,300) gallons per day if seepage beds are utilized and no more than two thousand six hundred (2,600) gallons per day if seepage trenches are utilized. The Department has sole discretion to deviate from this requirement if site constraints warrant such deviation.

(i) The replacement (repair) disposal area shall be divided into relatively equal units, ~~with a replacement disposal area unit located adjacent to an initial disposal area unit.~~ and sufficient replacement area must exist. Upgrading the initial system(s) will not suffice as replacement area.

(j) Effluent distribution shall alternate between the disposal area units. The absorption facilities shall be at least 10 feet apart.

(k) Each system shall have at least two (2) pumps or siphons.

(l) Large systems treating domestic wastes which utilize conventional septic tank treatment shall be required to install an effluent filter following the primary treatment.

(m) Large systems shall be designed with a means to measure wastewater flow. Flow data will be recorded and reported to the Department by the licensed operator in accordance with the permit requirements.

(n) Expected flows > 20,000 GPD shall incorporate secondary wastewater treatment as approved by the Department.

(o) **[Guidelines established by]** The Department may require additional information beyond the scope presented here.

(p) The applicant shall provide ~~as written assessment of the impact of the proposed system upon the quality of waters of the state and public health. Such assessment may require the use of an analysis that conforms with the requirements of Sections 7.06000 and 7.07000. The Department may require modifications to the application if the assessment shows a significant adverse environmental impact.~~ a Preliminary Ground Water Impact Assessment (PGIA). The PGIA shall assess the potential impact of the large system upon waters of the State and upon public health. The PGIA shall comply with current guidelines established by the Department.

(q) Any on-site wastewater treatment and disposal system receiving over 2,500 GPD will require a licensed wastewater operator. The class of operator will be determined based on the board of certification for licensed wastewater operators.

~~5.12020 Detailed plans and specifications for large systems shall be prepared by a professional with education and experience in the specific technical field involved and having a Class C license.~~

5.12020 Unless waived by the Department, groundwater monitoring is required at all sites utilizing large on-site wastewater treatment and disposal systems. Such monitoring shall continue as long as required by the Department. Upon completion of the PGIA review, the Department may require the submittal of a monitoring plan. If monitoring is required, **[a minimum of]** three (3) monitor wells, one up gradient and two down gradient from the proposed disposal areas must be installed and surveyed. **[from a common datum to the nearest 1/100th of a foot.]**

5.12030 If, after review of the PGIA, the Department determines that there is a potential for significant adverse impact to the environment or public health, a more detailed Groundwater Impact Assessment (GIA) may be required.

5.13000 Holding Tanks

5.13010 The use of a holding tank is an unusual circumstance wherein ~~sewage~~ all wastewater is permitted to be held in a watertight structure until it is pumped and transported by vehicle to a point of disposal. The use of a holding tank on a permanent basis is prohibited except as provided in these Regulations.

5.13015 Permanent holding tanks are not permitted on unimproved lots.

5.13020 No person shall install a holding tank without first obtaining a permit from the Department.

5.13025 All holding tank permit applications and designs must be completed by a Class C **[licensee designer].**

5.13030 Permits may be issued by the Department for the permanent use of holding tanks when all the following conditions are met:

~~(a) The site is not approvable for installation of an on-site sewage disposal system; and~~

(a) The site is improved with a dwelling ~~[**that was platted, created or deeded prior to April 8, 1984**]~~ and has been evaluated for all means of on-site wastewater treatment and disposal, including alternative technologies, and has been deemed not suitable for an on-site wastewater treatment and disposal system; and

(b) No community or area-wide central wastewater system is available or expected to be available within five (5) years; and

(c) The same isolation distances as required for septic tanks can be met; and

(d) ~~A governmental unit or wastewater utility enters into a contract with the Department setting forth that the governmental unit or wastewater utility will provide hauling services, either directly or through a licensed private hauler, to the home(s), commercial establishment(s) or occupied structure(s) for the period the occupied structure is utilized or until connection can be made to an approved wastewater facility~~. The owner(s) enter into a contract with a licensed liquid waste hauler to provide hauling services to the dwelling for the period it is utilized or until connection can be made to an approved wastewater facility. Should the owners change waste haulers, a new contract shall be submitted to the Department; and

(e) ~~Upon completion of the contract between the Department and the government unit or wastewater utility a single holding tank permit shall be issued to the governmental unit or wastewater utility. A separate construction permit shall be issued to the governmental unit or wastewater utility for each holding tank facility. The holding tank facility(s) shall be designed and constructed in accordance with the Department's Regulations. The proposed holding tank will comply with the requirements of these Regulations; and~~ The property deed shall be amended with an Affidavit of Ownership at the time of permit issuance, which states that the dwelling is served by a permanent holding tank. The Affidavit of Ownership must be recorded at the Recorder of Deeds.

(f) When the governmental unit or wastewater utility provides the hauling services directly, it shall conform to the requirements for liquid waste haulers; and

(g) Have a water meter installed to measure the in-flow of water into the building or house or a metering device measuring the flow to the tank.

5.13040 In an area under the control of a governmental unit, or a wastewater utility which has a recorded covenant with the owner that runs with the land, either of which is authorized to construct, operate, and maintain a community or area-wide central wastewater system, a holding tank may be installed for temporary use provided:

(a) The application for permit includes a copy of a legal commitment from the governmental unit or wastewater utility that within five (5) years from the date of application the governmental unit or wastewater utility will extend the property covered by the application a community or area- wide central wastewater system meeting the requirements of the Department; and

(b) The community or area-wide central wastewater system has received the necessary approvals for full operation (established sewer district) which includes the anticipated flow to the holding tank; and

(c) The proposed holding tank will comply with the requirements of these Regulations.

~~(d) The holding tank will be owned and operated by the governmental unit or wastewater utility.~~

5.13050 Temporary use of a holding tank may be approved when:

(a) Installation of an approved on-site system has been delayed by weather conditions; or

(b) The tank is to serve a temporary construction site (up to five (5) years)

~~5.13060 The following general requirements shall apply to all holding tank installations.~~

~~(a) No building may be served by more than one (1) holding tank.~~

~~(b) A holding tank may not serve more than one (1) dwelling unless the holding tank is under the control of a governmental unit or wastewater utility.~~

~~(c) All site restoration shall be conducted according to the specifications set forth in these regulations.~~

5.13070 Applications for holding tank installation shall contain plans and specifications in sufficient detail for each holding tank proposed to be installed and shall be submitted to the Department for review and approval. The application for a permit shall be made on the forms provided by the Department and contain:

(a) A copy of a contract with a licensed liquid waste hauler shall contain as a minimum the following conditions:

(1) Duration of contract;

(2) Pumping schedule;

(3) Availability of equipment;

(4) Emergency response capability;

(5) Contents will be disposed of in a manner and at a facility or location approved by the Department;

(6) Evidence that the owner or operator of the proposed disposal facility will accept the pumping for treatment and disposal.

(7) Method of measuring wastewater use (water meter, wastewater meter, etc.)

(b) A record of pumping dates and the amounts pumped shall be maintained by both the ~~treatment facility owner,~~ the property owner and the liquid waste

hauler, and be made available to the Department along with in-flow meter readings as part of the annual renewal of the permit.

(c) The appropriate ~~application~~ annual inspection fee.

5.13080 Each holding tank shall:

(a) ~~Be sized to provide a minimum holding capacity equal to 150% of the anticipated peak storage needed between pumping.~~ In no case shall the tank have a capacity less than seven days average flow from the wastewater generating facility or 1,000 gallons, whichever is larger. When holding tanks are designed to serve the needs of a community system, the size shall be in conformance with standard engineering practice as determined by the Department and in accordance with an acceptable monitoring and pumping schedule.

(b) Comply with standards for septic tanks as prescribed in these Regulations (**[see]** Section 6.0700).

(c) Be located and designed to facilitate removal of contents by pumping.

(d) Be equipped with both an audible and visual alarm installed on an AC circuit and placed in a location acceptable to the Department, to indicate when the contents of the tank are at seventy-five (75) percent of capacity.

(e) Have no ~~overflow~~ vent at an elevation lower than the overflow level of the lowest fixture served.

(f) Be designed for anti-buoyancy if test hole examination or other observations indicate that seasonally high groundwater may float the tank when empty.

(g) Be constructed of the same materials approved for septic tanks. Holding tanks shall be watertight and structurally sound to withstand internal and external loads.

(h) Be equipped with an 18 inch diameter or square access opening. The access opening shall be extended to **[a minimum of six (6) inches above]** grade level.

(i) All tanks constructed on-site (i.e. cast-in-place, concrete block, etc.) shall be tested to assure watertight conditions. Alarms shall be tested for proper operation.

5.13090 Each holding tank installed under these Regulations shall be inspected annually. A fee shall be charged for each annual inspection ~~by the Department~~ and all required documentation shall be submitted also.

5.13100 No liquid waste from a holding tank shall be applied directly or indirectly onto the ground surface or into surface waters.

5.13120 Prior to purchase of a dwelling that is currently served by a holding tank or is proposed to be served by a holding tank, the prospective buyer must sign an Affidavit of Understanding of the terms and conditions associated with use of a holding tank. This Affidavit shall be submitted to the Department to be filed with the permit.

5.14000 Moratorium Areas

5.14010 ~~Whenever~~ As soon as the Department ~~finds~~ determines that construction of on-site ~~sewage~~ wastewater treatment and disposal systems should be limited or prohibited in an area, it shall issue an order limiting or prohibiting such construction.

5.14020 The order shall be issued only after a public hearing ~~for~~ which shall insure that ~~more than~~ twenty (20) days notice is given.

5.14030 The order shall ~~be a rule which~~ contain~~s~~ a specific description of the moratorium area and shall be limited to the area immediately threatened with ground water or surface water contamination if construction in that area continues.

5.14040 In issuing an order under this section the Department shall consider the factors contained in 7 Del. C., Chapter 60, Section 6001.

5.14050 The moratorium shall be limited to a period of five **[5]** years, after which re-establishment of the moratorium may be considered.

SECTION 6.00000 -- DESIGN AND CONSTRUCTION

6.01000 General Requirements

6.01010 Location: All disposal systems shall be located according to the minimum horizontal isolation distances specified in these Regulations (see Exhibit T). All isolation distances for capped systems and elevated sand mounds shall be measured from the ~~perimeter~~ edge of ~~fill material~~ the aggregate or aggregate-free chamber. ~~Siting and construction of on-site disposal systems on areas which have been disturbed is prohibited unless there is at least 3 feet of undisturbed soil horizon above the limiting zone. Fine textured soils shall be examined to make sure they have not been compacted.~~

6.01015 All pressurized systems must be constructed in such a manner that the operating pressure can be checked at the end of the distal lateral (permanent tee, etc).

[6.01018 All pressurized systems must utilize timers or other electrical on/off delay devices to insure dosing frequencies.]

6.01020 Disposal System Sizing

6.01021 All disposal systems shall be sized based on the estimated wastewater flow and the results of ~~the~~ percolation tests or the assigned percolation rate. Percolation rates shall be based on USDA soil textures and assigned by the Class D **~~licensee~~ site evaluator]**. The table of percolation rates used by the Department (Exhibit W) does not assign rates, it gives estimates based upon textures. Percolation rates of less than 20 minutes per inch (mpi) will not be allowed for designing any on-site wastewater treatment and disposal system, unless otherwise approved by the Department.

6.01022 The minimum disposal area required

for trench systems with percolation rates ~~between 6 and~~ less than 120 mpi shall be determined from the following equation:

$A = 0.33\ Q\ (t)^{0.5}$

Where

A = the minimum disposal area required in square feet

Q = wastewater application rate in gallons per day

t = the average percolation rate in minutes per inch (minimum rate is 20 mpi for design)

6.01023 The minimum disposal area required for seepage bed systems with percolation rates ~~between 6 and~~ less than 120 mpi shall be determined from the following equation:

$A = 0.42\ Q\ (t)^{0.5}$

Where

A = the minimum disposal area required in square feet

Q = wastewater application rate in gallons per day

t = the average percolation rate in minutes per inch (minimum rate is 20 mpi for design)

6.01024 Where percolation rates are faster than 6 mpi, such as in soils with USDA textures of sands, and loamy sands, a pressurized distribution system is required; the minimum disposal area shall be determined from the following equation:

A = ~~0.82~~ 1.2 Q

Where:

A = the minimum disposal area required in square feet

Q = design flow rate in gallons per day (minimum rate is 20 mpi for design)

6.01025 The minimum disposal area required for low-pressure pipe systems with percolation rates less than 120 mpi shall be determined from the following equation:

[For permeability rates 5 - 35 mpi use:]A = UQ

[For permeability rates of 40 mpi use: A = .9UQ

For permeability rates of 45 mpi use: A = .85UQ

For permeability rates of 50 mpi use: A = .8UQ

For permeability rates of 55 mpi use: A = .75UQ

For permeability rates of > 55 mpi use: A = .7UQ]

Where:

A = the minimum disposal are required in square feet

Q = design flow rate in gallons per day

U = unit absorption area (see Exhibit X)

6.01030 Excavation

6.01031 Clearing and Grubbing: All vegetation shall be cut and removed from the grade surface at a distance of ten (10) feet beyond the perimeter of the disposal area. Trees and shrubs shall be cut and removed at grade level while roots may be left in place. All cut materials shall be removed from the disposal area.

6.010315 Special care should be taken when clearing vegetation from an approved disposal area as disturbance of the soil surface may render the site unsuitable.

6.01032 All unsuitable excavation materials shall be discarded and the excavation shall be kept dry and de-watered from surface drainage until backfilling is completed.

6.01033 Excavation machinery shall be of such type and operated in such a manner that they will not compact or smear the trench or bed sidewall soils. If smearing does occur, the smeared surfaces shall be hand raked to expose an unsmeared soil interface. Trenchers are preferred for excavation of LPP trenches.

6.01035 Excavations below the design depth shall be brought up to proper elevation with approved fill materials installed in accordance with these Regulations and the requirements for sand-lined systems. Additional ~~stone or gravel~~ aggregate may only be used when a minimum of three (3) feet of undisturbed soil can be maintained between the bottom of the ~~stone or gravel~~ aggregate and the limiting zone. In no case shall more than one (l) foot of additional ~~stone or gravel~~ aggregate be used.

6.01036 The sides of the trenches or beds shall be practically plumb and scarified.

6.01037 The bottom of the trench or bed area shall be practically level as determined by using a transit, or laser level, with a maximum grade tolerance of two inches per 100 feet.

6.01038 All trench or bed excavations shall be kept free of water and dry. Tamping of trench sides and bottoms is not permitted.

6.01040 Materials

6.01041 Sandy fill materials ~~of construction~~ shall be medium sand, sandy loam, loamy sand/sandy loam mixture. The fill material shall have the following characteristics:

Sieve Size	Maximum Percentage Passing Sieve
3/8"	100%
No. 4	95-100%
No. 50	5-30%
No. 100	1-7%

6.0104~~1~~2 ~~Filter aggregate shall consist of: washed gravel or crushed stone ranging in size from 3/4" to 2 1/2" in any dimension~~ Filter aggregate must come from a supplier approved by the Department. Storage and cleaning procedures must be approved by DNREC before supplier can be included on approved list. Random inspection of supply pits and supplier's storage facilities shall be performed by the Department.

Sieve Size	Maximum Percentage Passing Sieve
2 ½"	100% minimum
2"	100% minimum
1 ½"	100% minimum
1"	100% minimum
½"	50% maximum
#4	10% maximum
#8	0% maximum

Note: The Class E contractor shall submit upon request a Certification of Materials for fill and aggregate used in systems. This certificate shall be obtained from the supplier

6.01043 Grade boards or blocks may be used in pipe installation to assure a proper slope of less than two **[(2)]** inches per **[one hundred]**100 feet for gravity distribution lines.

6.01044 Filter fabric shall be placed over the gravel with a two (2) inch overlap turned up on each side of the trench or bed.

6.01045 Aggregate-free chambers or any other similar devices may be used in the design, installation, and operation of on-site wastewater treatment and disposal systems in Delaware, but are subject to approval of the Department. The minimum disposal area required when using aggregate-free chambers shall be calculated by utilizing the most recent guidelines and Sections 6.01022 and 6.01023.

6.01050 Distribution Networks

6.01051 All systems requiring a total of more than ~~1,250~~ 2,500 square feet of disposal area shall have a pressurized distribution system pursuant to these Regulations.

6.01052 All systems requiring more than 2,500 square feet of disposal area **[, with the exception of low pressure pipe systems,]** shall be divided into a minimum of two separate alternating systems of equal size with pressurized distribution provided alternatively to each system. The minimum separation between absorption facilities shall be ten (10) feet, which, with the exception of subsurface irrigation systems, will be determined on a case by case basis.

~~6.01053 Distribution networks for all elevated sand mounds and sand lined systems shall be pressurized and constructed of the same materials required for pressurized distribution systems.~~

6.01054 All systems installed on lots where percolation rates are faster than six (6) mpi shall have pressure distribution systems.

6.01055 A minimum distance of four (4) feet and a maximum distance of six (6) feet shall separate adjacent laterals in a bed. Laterals shall be placed no farther than three (3) feet from the sidewalls of the bed. The length to width ratio for seepage beds and elevated sand mounds shall be 4:1 or greater and maximum bed width shall not exceed twenty five (25) feet, unless approved by the Department. A minimum distance of six (6) feet shall separate laterals in a trench disposal system. ~~and a maximum of eight (8') feet shall separate laterals in a trench disposal system~~.

6.01056 ~~All~~ Gravity system distribution laterals ~~shall~~ may be connected in closed loop systems.

6.01057 The maximum allowable lateral length is 100 feet for gravity distribution systems and pressure distribution systems ~~with more than l,250 ft.^{2} of disposal area. Pressure distribution laterals shall have a maximum length of 50 feet for areas less than l,250 ft.^{2} of disposal area unless designed by Class C Designer.~~

6.01058 Each trench or bed system shall contain at least two distribution laterals. Trenches shall be utilized in all distribution systems located on slopes in excess of two (2) percent.

6.01059 All ~~pressure~~ distribution systems shall ~~be tested to insure even dozing throughout the network prior to placement of backfill~~ ensure equal distribution when designed on slopes.

6.01060 Conventional Treatment and Disposal Systems

6.01061 Gravity Trenches and Beds (See Exhibits K, L, M and N)

(a) A minimum of **[twelve]** (12) inches of filter aggregate shall be placed in the bed or trench. A minimum of six **[(6)]** inches of aggregate shall be placed under the distribution laterals. The remaining filter ~~material~~ aggregate shall be placed so that a minimum depth of no less than two **[(2)]** inches exists above the crown of the distribution pipe.

(b) For trenches or beds with a minimum sidewall depth of twenty-four (24) inches, backfill shall be placed in accordance with permit requirements. Unless otherwise required by the Department, the construction sequence shall be as follows:

(1) The backfill material shall be at least **[twelve]** (12) inches in depth above the ~~barrier material~~ filter fabric ~~or~~ and ~~sloped~~ returned to the original grade.

(2) Backfill material shall be carefully

deposited ~~in the trench~~ by methods which will not damage or disturb the distribution pipe or result in undue compaction of the backfill.

(3) Backfill over trenches or beds shall not be tamped.

(4) Material containing an excess of moisture shall be permitted to dry until the moisture content is within workable limits. The moisture content of the material being placed shall be within plus or minus 3% of optimum as determined by AASHTO Designation T-99.

(5) Backfill material which is too dry for proper placement shall be wetted. All materials shall be free of stones larger than two (2) inches in diameter, debris, trash, wood or other similar materials.

(c) For trenches or beds with a minimum sidewall depth of twelve (12) inches but less than twenty-four (24) inches, a capping fill shall be placed over the disposal system. The cap shall be constructed pursuant to permit requirements (See Exhibit M and ~~P~~ N). Unless otherwise required by the Department, the construction sequence shall be as follows:

(1) ~~The capping soil shall be examined and approved by the Department prior to placement~~. The texture of the soil used for the cap shall be of the same textural class, or of one textural class finer, as the natural topsoil. All materials shall be free of stones larger than two (2) inches in diameter, debris, trash, wood or other similar materials. The minimum gradient of 3 **[~~to~~ :]** 1 with 5 **[~~to~~ :]** 1 recommended by the Department.

(2) Construction of capping fills shall not occur when the natural soil is at a moisture content which causes loss of soil structure and porosity when worked.

(3) The disposal area ~~and the borrow site~~ shall be scarified to destroy the vegetative mat.

(4) The system shall be installed as specified in the construction permit. There shall be a minimum of ten (10) feet of separation between the edge of the fill and the absorption facility.

(5) Suitable backfill shall be applied to the fill site and worked in so that the two (2)contact layers (native soil and fill) are mixed. Fill material shall be evenly graded to a final depth of sixteen (16) inches over the ~~gravel~~ aggregate.

(6) The site shall be landscaped according to permit conditions and be protected from livestock, automotive traffic or other activity that could damage the system.

~~(d) The following minimum inspections shall be performed for each capping fill installed:~~

~~(1) Both the disposal area and borrow material must be inspected for scarification, soil texture, and moisture content, prior to cap construction.~~

~~(2) Pre-cover inspection of the installed absorption facility.~~

~~(3) After cap is placed, to determine that there is good contact between fill material and native soil (no obvious contact zone visible), adequate depth of material, and uniform distribution of fill material.~~

~~(4) Final inspection, after completion of all site work and restoration. A certificate of Satisfactory Completion may be issued at this point.~~

6.01062 Sand Mounds (See Exhibit ~~O~~ P)

(a) Sand mound absorption areas shall be plowed 6 to 8 inches deep parallel to the contour after removing the vegetative mat. Plowing shall not be done on wet soils. No plowing instruments which compact the soil shall be used. ~~Two bottom plows~~, Moldboard ~~plows,~~ or chisel plows are recommended.

(b) Immediately after plowing, sandy fill shall be placed on the up-slope edges of the plowed mound absorption area and spread to a ~~minimum~~ depth ~~of 24" throughout the absorption area~~ as specified in the permit. Only lightweight equipment such as small track type tractors shall be allowed.

(c) A **[twelve]** 12 inch bed of ~~coarse~~ filter aggregate shall be placed over the sand fill. Six inches of aggregate shall be placed under the distribution lateral. The remaining filter aggregate shall be placed to an additional six **[(6)]** inches in depth with at least two **[(2)]** inches over the crown of the distribution pipe.

(d) A minimum allowable distance of four (4) feet and a maximum distance of six (6) feet shall separate adjacent laterals in an elevated sand mound bed.

(e) The slope of the sand fill not directly beneath the filter aggregate shall be 1 **[~~to~~ :]** ~~2~~ 3, with 1 **[~~to~~ :]** 5 recommended by the Department.

(f) Mound covering or berm soil shall be loamy sand or sandy loam.

(g) The mound berm shall extend at least 12 inches ~~and one- half (1-1/2) feet~~ above the 12 inch filter aggregate layer ~~with~~ plus at least six **[(6)]** inches of topsoil cover.

(h) The outside slopes of the mound cover or berm shall be approximately 1 **[~~to~~ :]** ~~2~~ 3 with 1 **[~~to~~ :]** 5 recommended by the Department.

(i) ~~Grass shall be planted over the entire mound. Shrubs may be planted at the base of the mound~~. Erosion control shall be provided over the complete mound in one of the following manners:

1) Grass shall be planted over the entire mound and stabilized with mulch, or

2) Sod entire mound, or

3) Other pre-authorized methods of erosion control.

6.01063 Low Pressure Pipe Systems (See Exhibit O & X)

(a) A trench width of twelve (12) inches shall be used.

(b) Trenches shall not be less than five (5) feet on center.

(c) There shall be six (6) inches of aggregate below the pipe and two (2) inches of aggregate above the pipe. There shall be a minimum of six (6) inches and a maximum of nine (9) inches of soil cover.

(d) Filter fabric shall be placed on top of the aggregate in the trench with a two (2) inch overlap turned up on each side of the trench.

(e) Check valves are required to eliminate the back siphoning of effluent from the laterals.

(f) Turn ups or cleanouts shall be finished below grade and protected by a four (4) inch diameter or greater Sch. 40 PVC sleeve with a cap and ferrule finished at grade.

(g) Timers or other electrical on/off delay devices shall be installed to insure dosing frequencies.

6.01070 Site Restoration:

6.01071 The finished grade of the backfill over the seepage bed, trench and sand-lined ~~disposal areas~~ absorption facilities shall be ~~crowned from the center of the disposal area at a 3% slope and extend three feet beyond the edge of the disposal area. At that point, the fill shall be sloped at a uniform grade of no greater than 10% to the original ground **[kept sloped]**~~ to provide positive drainage.

6.01072 The land adjacent to all ~~disposal areas~~ absorption facilities shall be graded to prevent both the accumulation of surface water on the ~~disposal area~~ absorption facility and the flow of surface water across the ~~disposal area~~ absorption facility. The finished ~~disposal area~~ absorption facility and fill extensions shall be seeded and mulched to prevent erosion.

6.01073 Trees ~~and shrubs~~ shall not be planted within 10 feet of the perimeter of ~~disposal area but may be planted on fill extensions~~ absorption facility. All trees and shrubs shall be located to prevent root intrusion into the ~~disposal area~~ absorption facility and other components of the system. Shallow rooted shrubs are permitted (ie, rhododendrons, azalea's, etc.).

6.01074 All areas of disturbance due to the installation of the absorption facility ~~disturbed sites~~ shall be either ~~limed, fertilized~~ sodded or seeded and mulched to establish a permanent grass cover.

~~6.01080 Filled Areas~~

~~6.01081 On-site disposal systems to be constructed on fill materials may be considered only when guidelines and specifications for fill placement have been approved by the Department.~~

~~6.01082 The texture of the fill material shall be moderately coarse, medium, or moderately fine. These general groups contain the soil textural classes as follows:~~

~~(a) Moderately coarse-textured soils~~

~~(1) Sandy loam~~

~~(2) Fine sandy loam~~

~~(b) Medium-textured soils~~

~~(1) Very fine sandy loam~~

~~(2) Loam~~

~~(3) Silt loam~~

~~(4) Silt~~

~~(c) Moderately fine textured soils~~

~~(1) Clay loam~~

~~(2) Sandy clay loam~~

~~(3) Silty clay loam~~

~~6.01083 Moderately coarse textured fills shall be handled to minimize segregation during loading, unloading and spreading. Moderately coarse fines shall only be moved when moist to minimize segregation.~~

~~6.01084 Moderately coarse fill materials shall be placed in one foot depths and lightly compacted with a front end loader. Packing of fill material shall achieve a bulk density in the range of 82 to 94 pounds per cubic foot.~~

~~6.01085 Moderately coarse fill material shall be allowed to settle through at least one wet-dry cycle before system installation. The fill shall be saturated above field capacity and allowed to dry until the moisture content is below field capacity. Artificial saturation may be used by applying water over the entire area in a manner that does not cause erosion of the fill.~~

~~6.01086 Moderately fine or medium textured fill material shall not be moved when wet (above field capacity) and shall not be compacted when moved.~~

~~6.01087 Moderately fine or medium textured fill materials shall be allowed to settle one year for each foot of fill material.~~

~~6.01088 All fills shall contain less than twenty percent (20%) by volume of coarse fragments and organic matter content shall be less than five percent (5%) by weight.~~

~~6.01089 On-site disposal systems constructed in filled areas shall be sized so that when the effluent is distributed throughout the disposal area, the underlying fill shall remain unsaturated. The wastewater application rate shall not exceed 0.75 gallons per square foot of disposal area. Only pressurized distribution systems shall be allowed with on-site systems constructed in filled areas.~~

6.01090 ~~Replacement System~~ Spare Area

6.01091 Each site utilizing an on-site ~~system or community sewage~~ wastewater treatment and disposal system shall have sufficient area to accommodate a complete replacement system or an acceptable alternative approved by the Department which satisfies the requirements of these Regulations. This area shall be maintained so that it is free from encroachments by accessory buildings and additions to the main building. Encroachment shall include the ten (10) foot isolation distance to buildings as required by these Regulations. This requirement may be waived if the application for a permit includes a copy of a legal commitment from the governmental unit that states that within five years from the date of the application the

governmental unit will extend to the property a community or area-wide central wastewater system meeting the requirements of the Department or an acceptable alternative is approved by the Department. The ~~and that the~~ community or area-wide central wastewater system has received the necessary approvals for full operation which includes the anticipated flow to the on-site wastewater treatment and disposal system.

~~6.01095 A replacement area is not required in areas under control of a governmental unit such as a city, county, or sanitary district, provided the governmental unit gives a written commitment that central wastewater service shall be provided within five (5) years.~~

6.01100 Artificially Drained Systems

6.01101 Disposal systems shall not be constructed on sites where curtain drains, vertical drains, underdrains, or similar drainage methods are utilized to artificially lower the level of the water table to meet the requirements of these Regulations. Observation wells may be used to demonstrate the change in the hydrology of a particular property for the purpose of siting an on-site wastewater treatment and disposal system.

~~6.02000 Test Pits~~

~~6.02010Test pits shall be used to evaluate soils for the selection and design of on-site systems when deemed necessary by the Department in its sole discretion. When the Department conducts the site evaluation and a test pit is deemed necessary, the property owner shall be responsible for pit excavation in accordance with these Regulations~~.

~~6.02020 The number and location of test pits for non-residential or community systems or pre-testing for entire subdivisions shall be as directed by the Department. The Department may require additional test pits in areas of varying soil structure or when warranted at the sole discretion of the Department. because of size of the required disposal area. Test pits shall be located adjacent to proposed disposal areas.~~

~~6.02030 The procedure used to install and evaluate the test pits shall be as follows:~~

~~(a) The pit configuration shall be at least (2) feet wide, (6) feet long and (5) feet deep (or to rock or water table if encountered at a depth of less than (5) feet). Soil borings shall be taken in the bottom of the pit to a minimum depth of 2 feet (or to rock or water table if encountered at a depth of less than 2 feet). The removed soils shall be examined as removed for the presence of mottling, structure, rock or other indicators of unsuitability. The excavation shall be aligned to make the best use of available sunlight.~~

~~(b) The sidewalls of the pit shall be checked to determine which wall will be described. The soil face which best represents the soil conditions present shall be used. Through use of a pick type tool, such as a knife or screwdriver, the sidewall shall be probed from the top to bottom to reveal a fresh surface at least 10 inches wide. A general description of the pit shall be provided including such factors as; slope of the area, depth of the probe, depth to a pan, depth to water table, depth to seeps, and depth of the root zone. Changes in soil density may be identified based on relative penetration resulting from repeated jabbing of the sidewall of the pit.~~

~~(c) Through the use of the prepared section of the test pit, horizons shall be identified; the depth to the beginning and end of the horizons shall be measured; and lower boundaries shall be marked with nails or other identifying objects.~~

~~(d) Work shall be conducted from lowest horizons toward the top of the test pit to avoid disrupting the undescribed horizons as the lower soil is examined.~~

~~(e) The characteristics of each horizon shall be described using color, texture, consistency, structure, presence of roots or animal life, coarse fragments, rock and mottling. The coarse fragments and rock shall be examined and identified if possible.~~

~~(f) The findings of the soil evaluation shall be recorded on a standard form provided by the Department. As a part of the soil description the evaluator shall designate the type of limiting zone present and its depth from the mineral soil surface as observed.~~

6.03000 Soil Percolation Rate Determination

6.03003 Percolation rates are assigned by State environmental scientists and Class D site evaluators based upon observed soil structure and textures during the site evaluation. The Department has established percolation rates based upon USDA soil textures (see Exhibit W).

6.03005 Soil Percolation Test

6.03010 The soil percolation test shall provide a measure of the rate at which water moves from an uncased bore hole into the surrounding soil under nearly constant head in both vertical and horizontal directions.

6.03015 One soil percolation test shall consist of three (3) test holes.

6.03020 The percolation test shall be performed only after a site evaluation has indicated that the soil may be suitable for an on-site wastewater **[treatment and]** disposal system. The percolation test shall ~~evaluate the soil suitability by~~ be used to determin~~ing~~ e the rate at which ~~sewage~~ wastewater effluent can be expected to seep into the soil. This rate shall be used in conjunction with a projected daily flow rate to determine the area required ~~to~~ for proper~~ly~~ dispose al. ~~of the projected daily sewage flow.~~

6.03030 The depth of the percolation test holes shall not be determined until a ~~soil~~ site evaluation is completed and a limiting zone, if any, is identified. The depth of the percolation test holes shall be as follows:

(a) ~~If the limiting zone is located 60 inches or more from the mineral soil surface, the bottom of the percolation holes shall be at the depth of the proposed infiltration surface bottom.~~ If the limiting zone occurs at

least 20 inches from the soil surface, the percolation test holes shall be within the soil horizon that is controlling the water movement vertically and/or horizontally to a depth of 60 inches.

~~(b) If the limiting zone occurs at least 20 inches from the soil surface but less than 60 inches from the soil surface, the percolation holes shall be at the soil zone which is controlling the water movement vertically and/or horizontally.~~

(~~c~~ b)If the limiting zone occurs at less than 20 inches from the surface, the site is unsuitable for a conventional on-site wastewater treatment and disposal system. However, if replacing a failing or malfunctioning system, item (a) should be used without regard for the 20 inch limiting condition. In situations where sand-lining through an impermeable or less permeable horizon within the top 48 inches, a percolation test should be performed within the soil zone which is controlling the water movement vertically and/or horizontally beneath the restrictive material to a depth of 60 inches.

6.03040 The following procedures shall be used for percolation tests:

(a) A minimum of three (3) test holes shall be dug within the proposed installation area of the ~~soil~~ absorption ~~system~~ facility. ~~Test holes shall be located on the same site in which the final soil absorption system is to be installed~~. Additional tests may be required in areas ~~of~~ with varying soil ~~structure~~ characteristics or when warranted at the sole discretion of the Department due to the size of the required disposal area.

(b) Test holes with a horizontal diameter of six (6) inches shall be dug or bored. A post hole digger, auger or mechanical digger may be used to dig the holes.

(c) The bottom and sides of ~~the~~ each test hole shall be scarified to remove any smeared soil surfaces that result from digging. Loose soil shall be removed from the hole. Two (2) inches of coarse sand or fine ~~gravel~~ aggregate shall be placed in the bottom of the hole to prevent sealing of the hole bottom when water is added.

(d) The hole shall be filled with water to a minimum depth of twelve (12) inches above the ~~gravel~~ aggregate or sand. This level shall be maintained for a period of at least four (4) hours.

(e) The water level shall then be adjusted to six (6) inches over the gravel or sand. The hole shall be allowed to stand undisturbed for thirty (30) minutes. The water level shall again be adjusted to six (6) inches over the **~~[~~gravel aggregate]** and the hole allowed to stand undisturbed for another thirty (30) minutes.

(f) Where the drop in the water level is two (2) inches or more in thirty (30) minutes, the interval for readings during the percolation test shall be ten (10) minutes. Where the drop in the water level is less than two **[(2)]** inches in **[thirty]** (30) minutes, the interval for readings during the percolation test shall be thirty (30) minutes. The drop in water level shall be recorded after each reading and the water level shall be adjusted to six (6) inches above the gravel. Readings shall continue for a minimum of four (4) hours where the interval between readings is thirty (30) minutes. Where the interval is ten (10) minutes due to fast percolation, the readings may be discontinued after one (l) hour. Where the drop between readings has not stabilized at the end of the minimum period, the reading shall continue until a steady rate is established. A steady rate is established when two (2) successive water level drops do not vary by more than one-sixteenth **[(1/16)]** of an inch. If any of the holes has a rate that is significantly different from the other holes, it shall be examined to see if this hole is in a soil that is different from the soil described in the site evaluation. If the hole is determined, by the licensed percolation tester, to be uncharacteristic of the site it shall be excluded from analysis but listed on the application.

(g) The percolation rate for the site shall be determined by taking the arithmetic average of all percolation tests conducted. Percolation rates slower than one hundred **~~[~~and]** twenty (120) minutes per inch (mpi) are unacceptable and shall not be used to determine the arithmetic average percolation rate but shall be reported. On-site wastewater treatment and disposal systems shall not be placed on those portions of any sites **~~[~~which~~]~~ that]** have percolation rates slower than one hundred **~~[~~and]~~]** twenty (120) ~~minutes per inch~~ mpi.

6.03045 **~~[~~Hydraulic Conductivity Test~~]~~ Additional Methodologies]**

6.03050 At the discretion of the Department **[or Class D site evaluator, additional methodologies may be preferred ~~, a hydraulic conductivity test may be required~~]** as a substitute for the soil percolation test. Approved test methods are given in the current addition of Methods of Soil Analysis, ASA. **[and the ASTM Standards]** ~~Part , Physical and Mineralogical Methods Agronomy Monograph No. 9 (2nd Edition), ASA 1986.~~

6.04000 Wastewater ~~Sewage~~ Design Flow Rates

6.04010 The projected peak daily ~~sewage~~ wastewater flow shall be used to determine the appropriate size and design of on-site and community wastewater treatment and disposal systems.

6.04020 Where actual calibrated metered flow data indicating peak daily flows over the most recent three year period are available for a similar facility, such peak flow data may be substituted for the ~~sewage~~ wastewater flows listed in this Section subject to the approval of the Department. When ranked in descending order the adjusted design daily flow shall be determined by taking the numerical average of the daily readings that fall within the upper ten (10) percent of the daily readings.

6.04030 The ~~minimum~~ design ~~sewage~~ wastewater flow from residential dwellings, including single

family, multiple family, **[~~mobile~~ manufactured]** homes, and apartments served by individual on-site or community ~~sewage~~ wastewater treatment and disposal systems shall be 120 gallons per day per bedroom. The minimum design flow for any residential dwelling shall be 240 gallons per day. Credit for water conservation devices will be accounted for according to current Department guidelines.

6.04040 The ~~minimum~~ design ~~sewage~~ wastewater flow from other residential, commercial/ institutional facilities served by individual on-site or community systems shall be as prescribed in Exhibit D.

6.04050 Disposal systems shall be designed to receive all ~~sewage~~ wastewater, except for water softener brine, from the building or structure served unless otherwise approved by the Department.

6.04060 All restaurants or other establishments involved in food preparation activities shall install external grease traps ~~when~~ as required by the Department.

6.04070 Laundromat and car wash wastewater shall be pretreated as specified by the Department prior to discharge to any ~~disposal system~~ absorption facility under these Regulations.

6.04080 Industrial wastewater shall not be discharged into a septic tank system unless prior approval is obtained from the Department.

6.05000 Isolation Distances

6.05010 The minimum isolation distances set forth in Exhibit C shall be maintained when designing, cating, constructing, repairing, replacing, and installing individual on-site and community wastewater treatment and disposal systems.

6.05020 The Department may require greater isolation distances for systems when conditions warrant for purposes of protecting environmental resources and the public health.

6.05030 Isolation distances may be decreased by the Department based on a site specific geological and hydrogeological analysis performed pursuant to the requirements of these Regulations, provided that the Department is satisfied that such decrease will allow for protection of environmental resources and the public health.

6.05040 Existing on-site wastewater treatment and disposal systems which are repaired or replaced shall be subject to the requirements of this Section, provided however, that if it is impossible to comply with such requirements due to lot size limitations, the repaired or replaced system shall conform to the maximum extent practicable with the requirements of this Section as determined by the Department in its sole discretion.

6.06000 ~~Standard~~ Conventional On-Site Wastewater Treatment and Disposal Systems Criteria

6.06010 All ~~standard~~ full depth gravity and capping fill gravity trench and bed treatment and disposal systems shall be designed in accordance with the following criteria. (See Exhibits K, L, M or N).

6.06011 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and which are not prone to flooding.

6.06012 Slope: 0-15%. Bed systems can not be sited on slopes > 2% **[unless otherwise approved by the Department.]** All systems must be constructed with level bottoms and shall incorporate construction procedures prohibiting equipment from entering the excavation. Trench systems on slopes in excess of 15% shall be permitted only if the design is prepared by a licensed Class C ~~professional engineer~~ designer. ~~having a Class C license~~. Any such design shall incorporate construction procedures. ~~Systems placed on slopes between 10% and 15% shall provide for serial distribution.~~

~~6.06013 Soil depth: Deep to very deep.~~

~~6.06014 Soil Drainage: Well to excessively drained. > 48 inches to evidence of a limiting zone.~~

~~6.06015 Soil Texture: Coarse to medium textured.~~

~~6.06016 Soil Structure: Granular, blocky, subangular blocky, and prismatic structure.~~

6.06017 Depth to Limiting Zone: The limiting zone shall be a minimum of three (3) feet below the bottom of the trench ~~(i.e., a minimum of five feet below existing grade for standard two (2) foot deep trench systems).~~ ≥ 48 inches beneath the soil surface.

6.06018 Percolation Rates:

(a) 6-~~6~~ 120 ~~min/in~~ mpi: Gravity distribution systems may be allowed unless otherwise required by these Regulations. Construction of seepage trenches and beds in soils with percolation rates slower than ~~6~~ 120 ~~min/in~~ mpi shall not be permitted.

(b) **[~~Less~~ Faster]** than 6 ~~min/in~~ mpi: A pressurized distribution system is required for seepage trenches or beds. The trench or bed may be placed between 12 and 24 inches in order to maintain 36 inch separation distance between rapidly permeable material and the limiting zone.

~~6.06020 All standard gravity and capping fill gravity bed disposal systems shall be designed in accordance with the following criteria. (See Exhibit M or P)~~

~~6.06021 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding.~~

~~6.06022 Slope: 0-5%. Bottom of bed shall be constructed level. Design shall incorporate construction procedures prohibiting construction equipment from entering the excavation.~~

~~6.06023 Soil Depth: Deep to very deep.~~

~~6.06024 Soil Drainage: Well to excessively drained. > 48 inches to evidence of a limiting zone.~~

~~6.06025 Soil Texture: Coarse to medium textured.~~

~~6.06026 Soil Structure: Granular, blocky, subangular blocky, and prismatic structure.~~

~~6.06027 Depth to Limiting Zone: The limiting zone shall be a minimum of three feet below the bottom of the bed (i.e., a minimum of five feet below existing grade for standard two foot deep bed systems).~~

~~6.06028 Percolation Rates:~~

~~(a) 6-60 min/in~~ mpi~~: Gravity distribution systems may be allowed unless otherwise required by these Regulations. Construction of seepage beds in soils with percolation rates slower than 60 min/in shall not be permitted.~~

~~(b) Less than 6 min/in~~ mpi~~: A pressurized distribution system is required for seepage beds.~~

6.06030 All Low Pressure Pipe Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit O & X)

6.06031 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding. Low pressure pipe treatment and disposal systems shall not be prescribed in coastal beach sands.

6.06034 The depth to the bottom excavation shall be nine (9) inches to eighteen (18) inches. Trench width shall be no larger than twelve (12) inches **~~[for LPP systems]~~** unless otherwise approved by the Department.

6.06035 Depth to limiting zone: The limiting zone shall be a minimum of 18 inches below the bottom of the trench (i.e. a minimum of 27 inches below existing grade for a 9 inch deep LPP trench system). Shallow disposal trenches (placed not less than nine (9) inches into the original soil profile) may be used with a capping fill to achieve the minimum separation distance specified above. The capping fill, if required, shall be placed in accordance with these Regulations (See Exhibit O). A capping fill cover is required for all LPP disposal systems with trench depths less than 18 inches.

6.06037 Additional criteria:

(a) Lateral lines of the LPP disposal system which are placed on lower landscape positions (i.e. concave slope) shall have an interceptor drain installed upslope of the uppermost lateral to intercept and divert subsurface waters away from the absorption facility as determined by a Class D **~~[licensee.~~ site evaluator.]**

(b) There shall be no soil disturbance to the proposed disposal area except the minimum required for installation. The soils may be rendered unsuitable should unnecessary soil disturbance occur. Particular care should be taken when clearing wooded lots so as not to remove the surface soil material.

(c) LPP disposal systems shall be installed only with equipment approved by DNREC.

(d) LPP disposal systems shall not be allowed where sand-lining is required or where soils have been filled or disturbed.

6.06040 All Elevated Sand Mound Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit P ~~O~~).

6.06041 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding.

6.06042 Slope:

(a) 0-6% for soils with percolation rates slower than 60 ~~min/in~~ mpi.

(b) 0-12% for soils with percolation rates faster than 60 ~~min/in~~ mpi.

~~6.06033 Filled Areas: Elevated sand mound systems may be permitted in filled areas at the sole discretion of the Department provided it can be demonstrated that the filled area is of sufficient size and uniformity and will remain stable during system operation. Filled areas must comply with the requirements of Section 6.01080 of these Regulations. System design shall conform with the requirements of Section 6.01089.~~

~~6.06043 Soil Depth: Shallow~~

~~6.06044 Soil Drainage: Moderate to excessively drained.~~ Depth to Limiting Zone: > 20 inches to evidence of a limiting zone.

~~6.06036 Soil Texture: Coarse to medium textured.~~

~~6.06037 Soil Structure: Granular, blocky, subangular blocky, and prismatic structure.~~

6.06045 Percolation Rate: 0-120 ~~min/in~~ mpi. Construction on soils with slower percolation rates is not permitted. A pressurized distribution system is required in all cases.

6.06050 All Pressure-Dosed Full Depth and Capping Fill Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit Q & R).

6.06051 Landscape Position: Areas with good surface drainage which allows surface water to run off easily without ponding and are not prone to flooding.

6.06052 Slope: 0-15%. Bed systems can not be sited on slopes > 2% **[unless otherwise approved by the Department]**. All designs must be constructed with level bottoms and shall incorporate construction procedures prohibiting equipment from entering the excavation. Slopes in excess of 15% shall be permitted only if the design is prepared by a licensed Class C **~~[professional engineer~~ designer.]** Any such design shall incorporate construction procedures.

~~6.06053 Soil Depth: Deep to very deep.~~

6.06054 Depth to Limiting Zone: > 48 inches to evidence of a limiting zone.

6.06055 Depth to Limiting Zone: 48 inches or greater from original grade and three (3) feet below bottom of filter aggregate. (i.e. a minimum of five (5) feet below

existing grade for two (2) foot deep trench and bed systems).

6.06056 Percolation Rate: 0 - 120 mpi. Construction on soils with slower percolation rates is not permitted. A pressurized distribution system is required in all cases.

6.06060 All Sand-lined Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit S)

6.06061 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding.

6.06062 Slope: 0-15%. Slopes in excess of 15% shall only be allowed if the design is prepared by a Class C ~~Professional Engineer~~ designer. ~~with a Class C license~~. Any such design shall incorporate construction procedures.

~~(b) Systems on slopes between 10% and 15% shall use serial distribution.~~

~~6.06063 Soil Depth: Deep to very deep.~~

~~**[6.06064Soil Drainage Depth to Limiting Zone: Well drained Unsaturated for at least 12 inches below the depth of sand lining.]**~~

~~6.06045 Soil Texture: Coarse to medium textured.~~

~~6.06046 Soil Structure: Granular, blocky, subangular blocky, prismatic structure.~~

6.06065 Depth to Limiting Zone: 48 inches or greater from original grade and three (3) feet below bottom of filter aggregate. ~~A minimum of two (2) feet of fill replacement below the filter aggregate shall be provided.~~ Sand lined systems shall not be used where there is less than one (1) foot of unsaturated soil between the limiting zone and the impermeable or slowly permeable soil zone. Sand-lining will not be permitted into the water table, except in instances where it is necessary for replacement systems to function hydraulically. ~~If a perched water table occurs above an impermeable zone, but the soils below the impermeable zone remain unsaturated, the depth to the perched water table can be as shallow as 36 inches. A minimum of two (2) feet of suitable soil shall be placed below the filter aggregate.~~

6.06066 Percolation Rate: 0-~~60 min/in~~ 120 mpi. A pressurized distribution system ~~is~~ may be required. The percolation test shall be taken in the permeable soil below the impermeable or ~~poorly~~ less permeable soil zone. The bottom of the percolation test hole shall extend a minimum of six (6) inches below the ~~poor~~ slowly permeable soil zone but in no case shall it be less than six (6) inches above the underlying limiting zone. If the percolation tests are to be conducted at a depth too deep to obtain accurate percolation rates, a percolation rate based on USDA soil textures shall be assigned (**[see]** Exhibit W). Otherwise, hydraulic conductivity tests may be substituted.

6.06067 Additional Criteria:

(a) Sand lined systems may be used where the site evaluation has shown that there is an impermeable or ~~very poorly~~ slowly permeable soil zone located over an acceptable soil. Use of ~~the~~ this system requires removal of that zone within the disposal area and its replacement with a sandy fill as prescribed under Section 6.01041. The system shall be constructed in accordance with specifications for sand-lined seepage trenches and beds (See Exhibit S). Installation **[~~shall~~ may]** require a Class D site evaluator on site to monitor depth to sand-lining.

(b) ~~Sand lined systems shall not be used where there is less than one (1) foot of unsaturated soil between the limiting zone and the very poorly impermeable or slowly impermeable soil zone. Sand-lining will not be permitted into the water table.~~

(c) ~~When clay or other slowly permeable soil textures are encountered on a site, the following applies:~~

~~(1) For excavation from 0-24 inches a gravity disposal system may be installed.~~

~~(2) For excavation from 25 - 36 inches a full depth gravity disposal system with extra stone may be installed if 36 inches can be maintained between the bottom of the stone and limiting zone.~~

~~(3) For excavation greater than 36 inches a sand lined disposal system may be installed.~~

6.07000 Septic Tanks:

6.07100 The standard ~~sewage~~ wastewater treatment system used for on-site ~~sewage~~ wastewater treatment and disposal shall be the septic tank.

6.07200 All septic tank treatment units shall be designed in accordance with the following requirements. (See Exhibit ~~F~~ G)

6.07201 The location of septic tanks shall be in accordance with the minimum isolation distances set forth in these Regulations as prescribed in Exhibit C.

6.07202 Minimum liquid volume capacity of a septic tank shall be 1,000 gallons.

6.07203 The capacity of septic tanks ~~for residential use~~ shall be:

(a) ~~For 1, 2, 3 or 4 bedroom residences: Minimum liquid capacity shall be 1000 gallons.~~ For flows ≤ 500 GPD the minimum liquid capacity shall be 1,000 gallons.

(b) ~~For each additional bedroom over 4: Minimum liquid capacity shall be an additional 250 gallons/ bedroom.~~ For flows > 500 GPD but ≤15,000 GPD shall have a capacity of 1.5 times the expected flow rate with a minimum liquid capacity of 1,500 gallons.

(c) For flows > 15,000 GPD shall be determined on a case by case basis at the sole discretion of the Department.

~~6.07204 All septic tanks shall be capable of providing twenty-four (24) hours detention at peak flow rates and maximum sludge and scum accumulation.~~

~~6.07205 Septic tanks for residential~~

~~community, commercial, industrial, and institutional use shall have a capacity of 1.5 times the peak flow rate for systems having flows less than 1,500 GPD. Flows in excess of 1,500 GPD but no greater than 15,000 GPD shall be sized according to the following equation:~~

~~V = 1,125 + 0.75 Q~~

~~where:~~

~~V = net volume of septic tank in gallons~~

~~Q = peak daily wastewater flow in gallons~~

6.07206 If large flow surges are anticipated the septic tank shall be increased in size to accommodate the surges without causing sludge or scum to be discharged from the tank.

6.07207 ~~Residential, commercial, industrial, and institutional flows greater than 15,000 GPD shall be pretreated by use of a two (2) compartment treatment tank which accomplishes sedimentation in the first compartment and sludge digestion in the second compartment. The treatment tank shall be designed by a Class C licensee and provide for adequate sludge and scum storage. The Department may approve such designs in its sole discretion.~~

6.07208 All tanks shall be watertight, non-corrosive, durable and structurally sound. Materials of construction for tanks shall be one of the following:

(a) Cast-in-place reinforced concrete.

(b) Pre-cast reinforced concrete.

~~(c) Concrete block, brick or other masonry materials for tanks with a liquid capacity of 2,000 gallons or more. If cinder blocks are used, the hollow cores shall be filled with concrete and reinforced steel.~~

~~[(d)~~ (c)] Or other suitable material approved as equal, by, and at the sole discretion of the Department.

6.07209 All septic tanks shall be of multi-compartment design with a minimum of two (2) compartments. The first compartment of a two (2) compartment tank shall contain two-thirds **[(2/3)]** the liquid capacity of the total volume of the tank. Tanks shall be of rectangular design.

6.07210 Pre-cast reinforced concrete tanks shall have a minimum wall thickness of two and one-half **[(2 1/2)]** inches.

6.07211 Cast-in-place reinforced concrete tanks shall have a minimum wall thickness of four (4) inches.

6.07212 All inlet and outlet connections shall be sanitary tees or baffles constructed of cast-in-place concrete, **~~[vitrified clay]~~** or PVC. Inlet openings may have a minimum diameter equivalent to the diameter of the house sewer but in no instance shall the diameter be less than three (3) inches. The outlet invert shall be two (2) inches below the inlet invert. The inlet and outlet baffles or sanitary tees shall extend at least twelve (12) inches below the liquid level, but to a level no deeper than 40% of the liquid depth. Baffles or sanitary tees are not necessary for any portion of the tank to be used as a pumping chamber.

6.07213 All pipe cutouts for inlet and outlet connections shall be sealed with watertight **[concrete (95%) &]** bentonite **[(5%)]** grout **[mix]** or standard rubber gaskets.

6.07214 Connections between multi-compartment tanks shall consist of either a four (4) inch diameter sanitary tee or two (2) or more openings equally spaced across the width of the tank. Such openings shall be six (6) inches wide. All compartment connections shall extend to a level no deeper than 40% of the liquid depth as measured from the liquid level.

6.07215 All inlet, outlet and inter-compartment connections shall be located to provide a minimum air space of one (1) inch between the top of the connection and the underside of the tank cover.

6.07216 Each tank compartment shall be equipped with an access opening and cover. The opening shall be located to provide access to each tank compartment as well as providing access to the inlet and outlet connections for routine inspections. Access openings shall be at least eighteen (18) inches square or in diameter. **~~[and extended to no more than twelve (12) inches below grade level with an appropriate manhole extension.]~~**

~~6.07217 A four (4) inch diameter inspection port shall be located over each inter compartment connection and shall be extended no more than six (6) inches below grade level to facilitate routine inspection.~~

6.07217 Each septic tank shall be constructed with a watertight access riser for each compartment and shall extend above grade. The riser and lid shall be made of concrete, masonry or an equivalent durable material.

~~6.07218 All below grade access covers shall be watertight and equipped with lifting lugs for easy removal.~~

6.07219 All above ~~G~~grade ~~level~~ access covers shall be water ~~and air~~ tight and ~~shall be~~ secure from vandalism.

6.07225 All septic tanks shall be equipped with an approved tank outlet filter. The maintenance of these filters is the responsibility of the property owner and must remain in service for the life of the septic tank. This unit must be maintained in accordance with the manufacturer's service instructions.

6.07300 All installations of septic tank treatment units shall be in accordance with the following requirements:

6.07301 Excavation: The excavation shall be large enough to allow safe, unencumbered working conditions but in no case shall the size of the excavation be less than two (2) feet beyond the perimeter of the tank. Excavations shall be kept dewatered from surface drainage until backfilling is complete.

6.07302 Foundations: The tank shall be placed on firm, dry, granular, undisturbed soil that has been graded level. A gravel bedding shall be used on damp or fine grained soils. A gravel bed foundation shall consist of stone

no larger than that which will pass through a 3/4" sieve and shall be placed level to a minimum thickness of six (6) inches in the excavation. The gravel bed shall extend one (l) foot beyond the perimeter of the tank.

6.07303 All tanks shall be placed on a level grade and at a depth that provides adequate gravity flow from the source. Where adequate flow from the source is maintained through the use of pumping equipment, the impact of pumping rates and potential surge flows shall be evaluated so as to maintain the treatment efficiency of the septic tank unit.

6.07304 Previously excavated material from the tank excavation may be used for backfill provided the excavation material is dry and free of stones larger than four (4) inches in diameter, construction debris, concrete, wood and other similar materials. To equalize external pressure against the septic tank, backfill material shall be placed and compacted, extending a minimum of two (2) feet beyond the perimeter of the tank.

6.07305 Backfill materials shall be placed in uniform layers not more than eight (8) inches thick and compacted to no less than 85% Modified Proctor Density. Tamping shall be done in a manner that will not produce undue stress or strain on the tank. ~~Backfilling machinery shall not be allowed within five (5) feet of any part of the system~~. All backfill shall be free of excessive moisture.

6.07400 Testing: All tanks constructed on-site (i.e., cast-in place, concrete block, etc.) shall be tested to ensure watertight conditions and to check alignment and operation of inlet, inter-compartment and outlet connections prior to backfill. When tested, tanks shall be filled to overflowing with water to observe operation of all connections and fittings. All visible leaks in the tank observed by the installer shall be repaired prior to backfilling.

6.08000 Grease Traps:

6.08010 Grease traps shall be utilized for commercial and industrial wastewater sources at the sole discretion of the Department to assure the effectiveness of on-site ~~sewage~~ wastewater treatment and disposal systems. Grease interceptors shall not be approved for new construction designs as replacement for the grease trap. Grease interceptors may be allowed for replacement systems when there are site limitations and low flow applications.

6.08020 All grease traps shall be designed in accordance with the following requirements. The minimum size grease trap shall be 1,000 gallons. (See Exhibits E & F)

6.08021 The location of grease traps shall be in accordance with the minimum isolation distances set forth in these Regulations as prescribed in Exhibit C.

6.08022 The sizing of grease traps shall be based on wastewater flow data and grease retention capacity. The grease retention capacity in pounds shall be equal to at least twice the peak flow capacity in gallons per minute. The flow capacity can be determined from the individual flows from fixtures discharging into the grease trap. Exhibit E contains the minimum flow rate fixture capacities which shall be used for grease trap designs when actual calibrated metered flow data indicating peak daily flows over a three **[(3)]** year period are not available.

6.08023 All grease traps shall have multi-compartments.

6.08024 All inlet and outlet connections shall be sanitary tees or baffles constructed of cast-in-place concrete, **~~[vitrified clay]~~** or PVC. Inlet and outlet openings shall be a minimum of four (4) inches in diameter. The outlet invert shall be two (2) inches below the inlet invert. The inlet baffle or sanitary tee shall extend at least **[twenty-four] (**24) inches below the liquid level. The bottom of the outlet baffle or sanitary tee shall be eight (8) inches above the tank bottom.

6.08025 Connections between multi-compartment tanks shall consist of a four (4) inch diameter sanitary tee. The bottom of the sanitary tee shall be twelve (12) inches above the tank bottom.

6.08026 The requirements of Section 6.07208, 6.07210, 6.07211, 6.07213, 6.07215, 6.07216, 6.07217~~,~~ ~~6.07218~~ and 6.07219 shall apply to all grease traps approved in accordance with these Regulations.

6.08030 All installations of grease traps shall be in accordance with the requirements of Section 6.07300 and testing shall be conducted in accordance with Section 6.07400 of these Regulations.

6.08031 Grease traps must have access at grade.

6.09000 Dosing and Diversion Systems

6.09010 Effluent from on-site ~~sewage~~ wastewater treatment and disposal systems shall be transmitted to the ~~disposal area~~ absorption facility by gravity or pressure distribution systems or lifted by a lift station (see Exhibit V) to overcome elevational differences between the septic tank and the absorption facility.

6.09020 Gravity dosing and distribution systems may be used when the design ~~sewage~~ wastewater flow requires less than 2,500 ft^2 of disposal area for seepage trenches or seepage beds and the percolation rate is equal to or slower than six (6) minutes per inch.

6.09030 Gravity distribution systems shall conform to the following requirements:

6.09031 All unperforated gravity transmission pipe up to the distribution box shall be Sch. 40 PVC or ANSI Class 22 thickness cast iron and shall be at least four **[(4)]** inches or greater in diameter unless lifted by a lift station to a surge tank or the distribution box in which case 1 ½ inch or 2 inch Sch. 40 PVC pipe would be permissible with a minimum of twenty (20) feet of **[four]** (4) inch diameter Sch. 40 PVC pipe prior to entering the distribution box.

6.09032 All gravity transmission pipes shall be

placed on a firm undisturbed or well compacted soil. All joints shall be watertight. A minimum grade of 1/4 inch per foot shall be provided for gravity transmission piping. Clean backfill shall be placed around and over the pipe and hand tamped to provide compaction.

6.09033 All gravity distribution laterals shall be thin walled or Sch. 40 PVC and shall be at least four **[(4)]** inches or greater in diameter. Perforated PVC pipe shall have 3/8 to 3/4 inch diameter holes a maximum of thirty (30) inches on center. Coiled and corrugated piping shall not be used. A grade of less than two (2) inches per one hundred (100) feet shall be provided for all gravity distribution laterals.

6.09034 The design and construction of the gravity distribution system shall provide uniform application of the effluent. All distribution laterals shall be of equal length unless approved by the Department. The effluent shall be equally divided between laterals of the gravity distribution system by means of a distribution box.

6.09035 ~~Serial distribution systems may be used on sloping ground. All perforated distribution pipe shall be thin-walled or Sch. 40 PVC and shall be at least four (4) inches in diameter. A grade of less than two (2) inches per one hundred (100) feet shall be provided. All serial relief lines shall be ANSI Class 22 thickness cast iron or Sch. 40 PVC pipe and shall be at least four inches in diameter and of the same diameter as the perforated distribution pipe it interconnects. All relief line joints shall be watertight and lines shall be placed on a firm undisturbed or well compacted soil. Clean backfill shall be placed around and over the pipe and hand tamped to provide compaction (See Exhibit R).~~ Stepped trenches shall be used on sloping ground.

6.09040 All distribution boxes shall conform to the following requirements (see Exhibit H):

6.09041 Location: Distribution boxes shall be used with all gravity ~~dosed~~ systems. They shall be located in accordance with the minimum horizontal isolation distances set forth in Exhibit C. A minimum distance of three **[(3)]** feet shall separate the inlet face of the distribution box from the septic tank outlet.

6.09042 Capacity: Distribution boxes shall be sized to accommodate the number of distribution laterals required for the distribution system.

6.09043 An inlet baffle shall be installed in all distribution boxes. The baffle shall be perpendicular to the inlet pipe and situated six (6) inches from the end of the inlet. The baffle shall be constructed of the same material as the distribution box and shall be a twelve (12) inch square rising from the box floor, centered with the inlet connection, and permanently affixed. PVC tee's may be incorporated as baffles when plastic distribution boxes are used.

6.09044 The inverts of all outlets shall be of the same elevation and at least one (l) inch below the inlet invert.

6.09045 Each inlet and outlet distribution lateral shall be connected separately to the distribution box. Unperforated distribution piping shall extend a minimum of five feet from the distribution box.

6.09046 The requirements of Sections 6.07208, 6.07210, 6.07211, 6.07213 and 6.07215 shall apply to all distribution boxes approved in accordance with these Regulations.

6.09047 Distribution boxes shall be accessible either by means of a removable cover ~~**[approved by the Department]** constructed of steel or reinforced concrete~~ or access manhole which shall be located not more than twelve (12) inches below grade **[unless another distance is approved by the Department]**.

6.09048 All installations of distribution boxes shall be in accordance with the requirements of Section 6.07300.

6.09049 All installed distribution boxes shall be tested to insure watertight conditions and leveled to insure an even distribution of flow to each lateral under operating conditions.

6.09050 Pressure distribution systems shall be utilized with:

(a) Trench or bed systems receiving flows requiring more than ~~1,250~~ 2,500 ft^2 of disposal area.

(b) All sand mounds.

(c) ~~All sand filter systems~~.

(d) ~~All~~ Certain sand-lined systems.

(e) All absorption ~~systems~~ facilities located on soils where percolation rates are faster than six (6) minutes per inch ~~or slower than 60 minutes per inch~~.

(f) All low pressure pipe systems.

6.09060 Pressure distribution systems shall conform with the following requirements:

6.09061 All unperforated pressure transmission pipes shall be Sch. 40 or SDR 26 PVC pipe unless approved by the Department. The pipe shall be ~~two (2) to four (4) inches in diameter and~~ sized to provide a minimum flow rate of two (2) feet per second in the pipe. ~~At the discretion of the Department, larger diameter pipes may be used for large systems provided all proper engineering principles and practices are adhered to.~~

6.09062 All pressure transmission pipe shall be placed below the frost line, ~~whenever possible~~. All joints shall be watertight and all pipes shall be placed on a firm undisturbed or well compacted soil. Clean backfill shall be placed around and over the pipe and hand tamped to provide compaction. Frost line minimums for each county are as follows:

Sussex – ~~[18~~ 24] inches, **Kent** – 24 inches, **New Castle** – **~~[32~~ 30]** inches.

6.09063 All pressure distribution laterals shall

be Sch. 40 and SDR 26 PVC pipe with ~~a~~ diameters ~~between one (1) to three (3) inches~~ as determined by a Class C **~~[licensee~~.deisgner.]** Minimum hole diameters for perforated pressure distribution laterals shall be **~~[1/4~~ 5/32]** to 1/2 inch **~~[for trenches and beds and 3/16 inch diameter holes for LPP's placed no less than 30 inches on center along the length of the pipe]~~**, and spacing intervals as determined by a Class C **~~[licensee~~ designer]** and be placed on center along the length of the pipe. **~~[Recommended]~~** Maximum hole spacing shall be determined by percolation rates as follows:

Percolation Rate	Maximum Hole Spacing
20 - **~~[30~~ 25]** MPI	Sixty (60) inches
30 - 60 MPI	Seventy **[two]** (7**~~[0~~2]**) inches
6**~~[0~~5 -120 90]** MPI	Ninety six (96) inches
~~[90 - 120 MPI~~	**~~One hundred twenty (120) inches]~~**

6.09064 All laterals shall be connected to manifolds with tees or sanitary tees constructed of PVC, ~~one (1) to three (3) inches in diameter~~, corresponding to the size of the connecting laterals.

6.09065 Distribution of effluent from the ~~dosing chamber header~~ pressure transmission pipe to the distribution laterals shall be by a central PVC manifold ~~ranging in diameter from one and one-half (1-1/2) inches to three (3) inches~~.

6.09066 The dose volume shall be designed so that the estimated daily flow shall be discharged to the absorption facility in a minimum of equal four (4) doses. Dose volume shall be five (5) times the internal (liquid) capacity of the pressure transmission pipe, manifold, and laterals not flooded.

6.09067 The size of the dosing pumps or siphons shall be selected to maintain a minimum pressure of one (1) psi (2.31 feet of head) at the end of each distribution line. Pump characteristics and head calculations which include maximum static lift, pipe friction and orifice head requirements shall be submitted with permit applications.

6.09100 Dosing Chambers (See Exhibit I)

6.09101 Location: Dosing chambers shall be located in compliance with the minimum isolation distances of these Regulations (See Exhibit C).

6.09102 Size/capacity: ~~The dosing chamber shall be designed so that the estimated daily flow shall be discharged to the absorption facility in a minimum of three (3) equal doses. Dose volume shall be five (5) times the internal (liquid) capacity of the dosing chamber header, manifold, and laterals. The volume per dosing cycle shall not exceed 1.25 gallons per square foot of absorption area. The dosing volume for installations without check valves shall be sized to account for backflow of effluent into the dosing chamber after the end of the dosing cycle~~. If the design daily flow is ≤ 500 GPD, the dosing chamber shall have a minimum liquid capacity equal to the designed dose volume plus the design daily flow. If the design daily flow is > 500 GPD, the dosing chamber shall have minimum liquid capacity equal to two (2) times the designed dose volume. ~~(The dosing chamber shall have a minimum liquid capacity equal to the designed dose volume plus the design daily flow volume. The size of the dosing pumps or siphons shall be selected to maintain a minimum pressure of one (1) PSI (2.31 feet of head) at the end of each distribution line. Pump characteristics and head calculations which include maximum static lift, pipe friction, and orifice head requirements shall be submitted with permit applications~~.

6.09103 The requirements of Sections 6.07208, 6.07210, 6.07211, 6.07215, 6.07216~~, 6.07218~~, and 6.07219 shall apply to all dosing chambers approved in accordance with these Regulations.

6.09104 All inlet pipe connections shall be located above the high water level as predetermined by the pump or siphon installation.

6.09105 All pipe cutouts shall be sealed watertight with **[concrete (95%) &]** bentonite **[(5%)]** grout **[mix]** or standard rubber gaskets.

6.09106 Dosing chambers shall be constructed with a ventilation port and a watertight access manhole. The ventilation port shall be extended at least six (6) inches above grade while the access manhole shall be extended to the finished grade at a minimum, the Department recommends six (6) inches above grade. The vent shall be three (3) inches in diameter and the access manhole shall be sized for easy removal of pumps or siphons. In no case shall the manhole be less than twenty (20) inches square in diameter. The vent shall be turned down and shall be fitted with ~~and~~ insect and rodent proof, corrosion resistant screen.

6.09107 Pumps and siphons which are suitable for handling septic tank effluent shall be used to meet dosing requirements**~~[. Pumps and siphons~~ and]** shall be installed in accordance with the manufacturer's recommendations.

6.09108 Dosing chambers using pumps shall have an installed pump for which a replacement is readily available in the event of failure.

6.09109 Pumps and siphons shall be sized to discharge a flow rate equal to the combined flows from all discharge holes in the laterals when operating at designed level or head.

6.09110 Pumps and valves shall be equipped with suitable connections so that they may be removed for inspection or repair without entering the dosing chamber. A slide rail system or disconnect coupling accessible from outside the dosing chamber shall be utilized to allow removal and access to the pump and pump check valve for repairs and maintenance. A corrosion-proof lifting ~~chain~~ device shall be attached to the pumps and tied off at the access manhole.

6.09111 Check valves shall be ~~allowed only with dual pumping systems piping discharges below the frost line. All systems larger than 500 gallons per day shall utilize~~

~~check valves~~ required on all pressure distribution systems.

6.09112 An audible and visual high level warning device shall be installed for all siphons and pumps, and shall be installed on a separate AC circuit from the pump. ~~when a pump is required.~~

6.09113 All pump electrical connections and alarm controls shall be corrosion resistant and waterproof. ~~Controls for systems larger than 500 gallons per day shall also be explosion proof~~.

6.09114 ~~Maximum and minimum~~ Eelevations for pump controls and high water level sensor elevations shall be provided in the ~~plan and specifications~~ design.

6.09115 ~~Unperforated distribution piping shall extend a minimum of five (5) feet from the distribution manifold. This requirement does not apply in the case of tee'd or branched manifolds.~~

6.09120 Testing: All dosing chambers constructed on-site (i.e., cast-in-place, concrete block, etc.) shall be field tested to ensure watertight conditions. Pumps, siphons, alarm controls and related appurtenances shall also be field tested to ensure accuracy and proper operation in accordance with the manufacturer's recommendations. A minimum schedule for periodic testing and calibration of the dosing chambers, pumps, siphons, alarm controls and related appurtenances shall be established and incorporated into the permit. All installed pumps and siphons shall be accompanied by instruction manuals **[which** **that]** include operation and maintenance procedures and pump characteristics.

6.09200 Diversion Boxes and Diversion Valves.

6.09210 Location: Diversion boxes or diversion valves for ~~alternating~~ dual systems shall be located according to the requirements set forth in Exhibit C.

6.09220 Capacity: Diversion boxes and valves shall be sized to accommodate the piping connected to them.

6.09230 Diversion Valves: All pressure dosed ~~alternating~~ dual ~~disposal~~ systems shall use diversion valves.

6.09240 All installation of diversion boxes shall be in accordance with the requirements of Section 6.07300.

6.09250 Diversion boxes shall be pre-cast concrete or other approved products. ~~with treated cypress or redwood gates~~. Diversion valve systems shall be commercially available diversion or gate valves constructed of durable cast iron or plastic.

6.09260 Diversion Box and Diversion Valve Specifications: (See Exhibit ~~K~~ J)

6.09261 All diversion boxes and diversion valves shall be installed level with connecting piping to minimize stress.

6.09262 Cast iron valves shall be free of dirt and rust. Plastic valves shall be clean and dry before installation.

6.09263 Diversion boxes may be standard distribution boxes with selective flow diversion devices.

6.09264 All inlet and outlet cutout connections shall be sealed watertight with grout or approved rubber gaskets.

6.09270 Appurtenances: All buried valves shall be furnished with a suitable box constructed of durable material extended to grade with a tight fitting access cap.

6.09280 Testing: Installed valves and gates shall be tested in the field prior to back fill. Pre-cast boxes shall be tested for watertight conditions.

6.10000 Building Sewers

6.10010 The minimum requirements contained in this Section shall apply to all conduits, pipes or sewers which transmit ~~sewage~~ wastewater flows from building or house drains to a septic tank (or other treatment device) and from the septic tank (or other treatment device) to the distribution box or dosing tank. Collection systems servicing three (3) or more units (i.e., community systems) ~~meet all other requirements of the Ten States Standards~~ shall be in conformance with National Standards.

6.10020 Building sewers shall comply with the following requirements:

6.10021 Location: A minimum horizontal separation of ten (10) feet shall be provided between a house or building sewer and any water line. Suction lines from wells shall not cross under house or building sewers.

6.10022 Size: Building sewers shall be sized to serve the expected flow from the connected fixtures. All building gravity sewer ~~sewers~~ plumbing shall be at least as large as the internal building ~~sewer~~ plumbing but in no case less than three (3) inches in diameter. Pressure building sewers transmitting wastewater to a septic tank (or other device) shall be a minimum of two inches in diameter.

6.10023 Foundation: All building sewers shall be laid on a firm compacted bed through its entire length. Building sewers placed in wet soil shall have a four (4) inch bedding of 3/4" to 1-1/2" ~~gravel or stone~~ aggregate.

6.10024 Materials: Building sewers shall be constructed of ANSI Class 22 thickness cast iron, Sch. 40 or Sch. 80 PVC, reinforced concrete, or Sch. 40 or Sch. 80 ABS pipe. Cast iron pipe ~~of~~ or PVC pipe ~~in a cast iron sleeve~~ encased in six (6) inches of concrete shall be used for building sewers located ~~under~~ < 3 feet below driveways, parking area, or other areas subject to vehicular traffic or similar loadings. The cast iron pipe or encasement shall extend a minimum of two (2) feet beyond the edge of driveways, parking areas, or other areas subject to vehicular traffic or similar loading and shall be adequately bedded.

6.10025 Joints: All pipe joints shall be watertight and protected against external and internal loads.

6.10026 Grade: A building sewer shall be installed in a straight line to the maximum extent practicable with a uniform continuous grade not less than l/8 inch/foot, unless it can be demonstrated to the satisfaction of the Department

that an alternative design can maintain adequate flow from the source and is approveable under the applicable local building code.

6.10027 Cleanouts: Building sewer cleanouts shall be installed at minimum intervals of fifty (50) feet for three (3) inch diameter pipe and one hundred (100) feet for four (4) inch and larger diameter pipe. Cleanouts shall be provided at all changes in direction greater than 45^{o}. Wherever possible, bends should be limited to 45^{o}. Every house or building sewer shall have at least one (1) cleanout fitting to provide access to the ~~sewer~~ plumbing. Cleanouts may be placed at greater distances provided National Standards are used to design the total collection system.

6.11000 Water Conservation Devices.

6.11010 Twenty five percent reductions in design flow are allowed for water conservation. ~~However, there shall be suitable reserve area available to dispose of the proposed design flow without the reductions for conservation methods~~. The ~~soil~~ absorption ~~system~~ facility shall be enlarged to the original required size if the conservation devices are removed, become inoperative, or the system malfunctions.

6.11020 Water saving plumbing devices are encouraged to lengthen the life of the ~~soil~~ absorption ~~system~~ facility. However, only permanent water saving plumbing devices such as low flush toilets shall be considered in reducing the size of the ~~disposal area~~ absorption facility. Devices such as inserts in showers are considered temporary.

~~6.12000 Alternative Sewage Wastewater Treatment and Disposal Systems~~

~~6.12010 The Department shall consider applications for alternative sewage treatment and/or disposal systems on a case-by-case basis. when it has been demonstrated that the use of a standard sewage treatment and/or disposal system is unacceptable. For the purposes of this section, applications for community systems that employ pretreatment devices which are in conformance with standard engineering practice as determined by the Department shall not be considered alternative.~~

~~6.12020 Applications for alternative sewage treatment and/or disposal systems shall provide documentation of the capabilities of the proposed system. Such documentation shall be in the form of proven data of long term usage of facilities similar to those specified in these Regulations, or short term documentation from controlled projects from reliable sources such as Universities or the National Sanitation Foundation. The Department shall approve only treatment and/or disposal system applications which provide thorough documentation of proven technology. Alternative sewage treatment and/or disposal systems shall provide, at a minimum, an equivalent level of treatment and disposal as a conventional wastewater system. provided by those treatment and/or disposal systems specified in these Regulations.~~

~~6.12030 Applications for alternative sewage treatment and/or disposal systems shall include, but not be limited to, the following:~~

~~(a) Volume and rate of sewage flow.~~

~~(b) Characteristics of the sewage.~~

~~(c) The degree and extent of treatment expected.~~

~~(d) Design criteria, specifications, and drawings including a description of the system, its capabilities, operation and maintenance requirements, unique technical features and system advantages for treatment systems.~~

~~(e) Materials of construction.~~

~~(f) For disposal systems the type of sewage treatment preceding the disposal system and the degree and extent of treatment expected with respect to: bacteria and virus removal; nitrate generation and removal; inorganic, organic, soluble and suspended solids removal.~~

~~(g) The seal of a Professional Engineer having a Class C license.~~

~~(h) Any other information required by the Department.~~

~~6.12040 Alternative sewage treatment and/or disposal systems shall be designed and operated to achieve the following criteria:~~

~~(a) Within the project boundaries the total discharge from all sources to the groundwaters of the State does not exceed 0.0000834 pounds of total nitrogen per gallon of discharge.~~

~~(b) No pathogen or virus migration beyond the boundaries of the project site.~~

~~6.13000 Sand Filter Systems~~

~~6.13010 Each sand filter system installed under these Regulations may be inspected annually. An annual fee may be required. The Department may waive the annual fee during years when the inspection is not performed.~~

~~6.13020 Sand filters may be permitted on any site meeting requirements for standard disposal systems contained under Section 6.06000 or where disposal trenches would be used, and all the following minimum site conditions can be met:~~

~~(a) The highest level attained by the water table would be equal to or more than distances specified as follows:~~

~~**Soil Textures**~~	~~**Minimum Separation Distance from Bottom of the Seepage Area**~~
~~sandy, loamy sand, sandy loam~~	~~24 inches~~

Loam, silt loam, sandy clay loam, clay loam	18 inches
silty clay loam, silty clay, clay, sandy clay	12 inches

(b) Soils or fractured bedrock diggable with a backhoe occur such that a standard twenty four (24) in deep trench can be installed.

6.13030 Shallow disposal trenches (placed not less than twelve (12) inches into the original soil profile) may be used with a capping fill to achieve the minimum separation distances from the water table. The fill shall be placed in accordance to the provisions of these Regulations.

6.13040 Water table levels shall be determined in accordance with methods contained in Section 5.01000. Sand filters shall not discharge more than five hundred (500) gallons of effluent per one half (1/2) acre per day except where:

(a) A site specific geologic and hydrogeologic analysis discloses loading rates exceeding five hundred (500) gallons per one half (1/2) acre per day would not increase the total nitrogen concentrations in the groundwater beneath the site, or any down gradient location, above ten (10) milligrams per liter.

6.13050 The size of sand filter absorption facilities shall be determined in the same manner as provided under Section 6.01020 for subsurface disposal system sizing except that, the minimum disposal area may be reduced to one third of the area determined by the appropriate sizing equation.

6.13060 Sites with soil textures of sand, loamy sand, or sandy loam in a continuous section at least two (2) feet thick in contact with and below the bottom of the sand filter, that meet all other requirements of Section 6.13000, may utilize either a conventional sand filter without a bottom or a sand filter in a trench that discharges treated effluent directly into those materials. The application rate shall be based on the design sewage flow and the basal area of the sand in either type of sand filter. A minimum twenty four (24) inch separation shall be maintained between a water table and the bottom of the sand filter.

6.13070 Materials:

6.13071 All materials used in sand filter system construction shall be structurally sound, durable and capable of withstanding normal installation and operation stresses. Component parts subject to malfunction or excessive wear shall be readily accessible for repair and replacement.

6.13072 All filter containers shall be placed over a stable level base.

6.13073 Piping and fittings for the sand filter distribution system shall be as required under these Regulations for pressure distribution systems.

6.13080 Conventional Sand Filter Design Criteria

6.13081 Design sewage flows for a system proposed to serve a single family dwelling or commercial facility shall be limited to five hundred (500) gallons or less per day except as provided in these Regulations.

6.13082 Minimum Filter Area. Sand filters shall be sized based on an application rate of no more than one and twenty-three hundredths (1.23) gallons septic tank effluent per square foot medium sand surface per day.

6.13083 Sand filter containers, piping, medium sand, gravel, gravel cover, and soil crown material for a sand filter system discharging to disposal trenches shall meet minimum specifications indicated in Exhibit Q unless otherwise authorized by the Department.

6.13090 Container Design and Construction

6.13091 A reinforced concrete container consisting of floor and walls as shown in Exhibit Q is required where water tightness is necessary to prevent groundwater from infiltrating into the filter.

6.13092 The container may be constructed of materials other than concrete where equivalent function, workmanship, watertightness and at least a twenty (20) year serve life can be documented.

6.13093 Flexible membrane liner (FML) materials shall have properties which are at least equivalent to thirty (30) ml unreinforced polyvinyl chloride (PVC) described in Exhibit S. To be approved for filter installation, FML materials must:

(a) Have field repair instructions and materials which are provided to the purchaser with the liner; and

(b) Have factory fabricated "boots" suitable for field bonding onto the liner to facilitate the passage of piping through the liner in a waterproof manner.

6.13094 Where accepted for use, flexible membrane liners shall be placed against relatively smooth, regular surfaces. Surfaces shall be free of sharp edges, corners, roots, nails, wire, splinters and other projections which might puncture, tear, or cut the liner. Where a smooth, uniform surface cannot be assured in the field, filter system plans must include specifications for liner protection. A four (4) inch bed of clean sand or a non-degradable filter fabric acceptable to the Department, shall be used to provide liner protection.

6.13100 Other Sand Filter Design Criteria

6.13101 Other sand filters which vary in design from the conventional sand filter may be authorized by the Department if they can be demonstrated to produce comparable effluent quality.

6.13102 Pre-application Submittal. Prior to applying for a construction permit for a variation to the conventional sand filter the Department must approve the design. To receive approval the applicant shall submit the following required information to the Department:

(a) Effluent quality data. Filter effluent quality samples shall be collected and analyzed by a testing agency

acceptable to the Department using procedures identified in the latest edition of "Standard Methods for the Examination of Wastewater", published by the American Public Health Association, Inc. The duration of filter effluent testing shall be sufficient to ensure results are reliable and applicable to anticipated field operation conditions. The length of the evaluation period and number of data points shall be specified in the test report. The following parameters shall be addressed: BOD_5, Suspended Solids; Fecal Coliform; Total Nitrogen; Ammonia Nitrogen; Organic Nitrogen; Nitrite Nitrogen; and Nitrate Nitrogen.

(b) A description of unique technical features and process advantages.

(c) Design criteria, loading rates.

(d) Filter media characteristics.

(e) A description of operation and maintenance details and requirements.

(f) Any additional information specifically requested by the Department.

6.13103 Construction Procedure. Following pre-application approval, a permit application shall be submitted in the usual manner. Applications shall include applicable drawings, details and written specifications to fully describe proposed construction and allow system construction by contractors. Included must be the specific site details peculiar to that application, including soils data, groundwater type and depth, slope, setbacks existing structures, wells, roads, streams, etc. Applications shall include a manual for homeowner operation and maintenance of the system.

6.13110 Sand Filter System Operation and Maintenance

6.13111 Sand filter operation and maintenance tasks and requirements shall be specified in the construction permit and may be supplemented in the Certificate of Satisfactory Completion. Where a conventional sand filter system or other sand filter system with comparable operation and maintenance requirements is used, the system owner shall be responsible for the continuous operation and maintenance of the system.

6.13112 The owner of any sand filter system shall provide the Department written verification that the system's septic tank has been pumped at least once each thirty-six (36) months by a licensed liquid waste hauler. Service start date shall be assumed to be the date of issuance of the Certificate of Satisfactory Completion. The owner shall provide the Department certification of tank pumping within two (2) months of the date required for pumping.

6.13113 No permit shall be issued for the installation of any other sand filter which in the judgment of the Department would require operation and maintenance significantly greater than the conventional sand filter, unless arrangements for system operation and maintenance meeting the approval of the Department have been made which will ensure adequate operation and maintenance of the system.

6.13114 Each permitted installation may be inspected by the Department at least every twelve (12) months and checked for necessary corrective maintenance. The payment of an annual fee will be required. The Department may waiver the annual fee during years when the inspection is not performed.

6.14000 Standardized Pressure Dosed Systems (See Exhibit T)

6.14010 The standardized systems contained in these Regulations may be utilized in locations where a pressure distribution system is required by Section 6.09050, Paragraph (e). Designs for standardized pressure dosed systems shall conform with the approved criteria described in Exhibit T and may be prepared by either a Class B or Class C Designer.

6.14020 The pressure distribution system shall conform to the requirements of Section 6.09060. The dosing chamber shall conform to the requirements of Section 6.09100. (See Exhibit I)

6.14030 Pumps: Pumps shall be submersible sewage pumps consisting of a motor, shaft, pump impeller and casing. The pump motor shall be designed for continuous submersible service, within open windings, operating in clean dielectric oil. The motor shaft and housing shall be sealed with a mechanical shaft seal with seal ring of ceramic and carbon materials, or other approved seal designed to prevent the entry of water or dirt into the motor housing. The motor shaft shall be stainless steel. The motor and pump housing shall be cast iron, bronze, or another approved corrosion-resistant material. The pump impeller shall be non-clog, capable of passing 1-1/4 inch spherical solids, constructed of cast iron, bronze, or another approved corrosion-resistant material. The pump shall have a minimum two (2) inch discharge. All fasteners shall be stainless steel. The pump shall be capable of running dry without damage to the components, and shall have a maximum operating temperature of 150 degrees Fahrenheit.

6.14040 Controls: The pump level controls shall be float type mercury switches set to control the pumps according to the levels required by the design selected. The mercury tube switches shall be sealed in solid floats of polyurethane or another approved material, designed for corrosion and shock resistance. Each float shall be suspended on a support wire with a heavy neoprene jacket and a weight shall be attached to the cord above the float to hold the switch in place in the pumping chamber. Three float switches shall be provided, one each for pump off, pump on and high water alarm (this may be reduced to two switches if a single switch can be adjusted to provide the proper dosing volume between the pump off and pump on levels). Manufacturers may submit float specifications to the Department for prequalification.

6.14050 Accessories: The pump shall be equipped

~~with a quick-disconnect coupling or slide rail system in order to provide easy removal for maintenance or repair. If a quick-disconnect coupling is installed, it shall be placed in the discharge piping within reach of the access manhole. If a slide rail system is used, the rails and other hardware shall be of a corrosion-resistant material. The pump shall be equipped with a lifting chain or strap made of stainless steel, nylon webbing or other corrosion-resistant materials designed to lift the weight of the pump and piping. The lifting chain or strap shall be tied off on a hook within reach of the access manhole. All piping is to meet the requirements of Section 6.09061.~~

~~6.14060 Electrical: The pump motors shall be designed for operation with 115 volt, single phase, 60 hertz electrical service (three phase motors may be substituted). All wiring within the pumping chamber shall be water and oil proof. All wiring connections to the motor, float controls and junction boxes shall be waterproof. Junction boxes, control boxes, or any other electrical enclosures located within the pumping chamber shall be minimum NEMA Type 4. Each pumping system shall be supplied with a control panel equipped with a contactor and circuit for the pump (one for each pump if a duplex system is installed), mercury switch level controls, a hand-off-automatic switch,and, if necessary, a transformer to supply a control current. The control panel shall be contained in a suitable enclosure, NEMA Type 3R if installed outside, NEMA Type 1 if installed inside. Each system shall be equipped with a high water alarm activated by the high water alarm float, consisting of both an audio and visual alarm. The audio alarm may be either a bell or a horn, and the visual horn shall be a flashing red light. The alarm may be installed in the system control panel enclosure, or within it own enclosure, which shall meet the requirements for the control panel enclosure. All electrical work shall meet the requirements of the National Electrical Code, the National Electrical Safety Code, and any applicable local codes. Upon completion of the installation, an electrician licensed in the State of Delaware shall certify that the electrical work complies with all of the requirements of this Section.~~

~~6.14070 Pump Selection: The use of the Standardized Pressure Dosed Systems requires the selection of a pump by the Designer. Exhibit T indicates the Pump Group required for each system. The minimum performance requirements for each Pump Group are as follows:~~

~~Pump Group A - 90 GPM @ 12.0' TDH~~

~~Pump Group B - 100 GPM @ 12.0' TDH~~

~~Pump manufacturers may submit specifications and performance data on their pumps for prequalification by the Department in any of the Pump Groups listed above. The Designer shall select the pump he wishes to use from the Department prequalified list and specify it on the application.~~

SECTION 7.00000 -- SITING DENSITY AND HYDROGEOLOGICAL REQUIREMENTS

7.01000 The minimum isolation distances and siting densities set forth in these Regulations shall be maintained when designing, locating, constructing, repairing, replacing and installing holding tanks, commercial and individual on-site ~~or~~ and community wastewater treatment and disposal systems.

7.02000 The following maximum siting densities shall be maintained:

7.02010 For residential dwellings, the maximum siting density shall be one (1) dwelling unit per one-half (1/2) acre.

(a) For single family residences, only the area within the property lines of the lot shall be considered.

(b) For multiple family dwellings or where more than one (1) dwelling is to be served by an on-site ~~sewage~~ wastewater treatment and disposal system, the maximum siting density shall be based on the net pervious area (i.e., unpaved, without structures) available for groundwater recharge after total project completion. The following criteria shall be utilized in determining the maximum siting densities:

(i) For projects utilizing only a ~~standard~~ septic tank for treatment prior to discharge to the ~~soil~~ absorption facility ~~system~~, the maximum siting density shall be one (1) dwelling unit per one-half (1/2) acre of pervious area.

(ii) For projects utilizing advanced treatment systems, in conformance with standard engineering practice and providing higher degrees of nitrogen removal, the maximum siting density shall be determined based on the degree of nitrogen removal prior to discharge to the ~~soil~~ absorption facility ~~system~~. The degree of nitrogen removal required shall be determined in accordance with Exhibit U. The degree of nitrogen removal may be adjusted in accordance with a schedule for total project completion submitted by the applicant and approved by the Department. The owner of a treatment system which provides a higher degree of nitrogen removal, shall post a performance bond or certified letter of credit in an amount equal to the total cost of the treatment system for the project. The performance bond shall be held by the Department until, such time as the treatment system demonstrates an acceptable level of compliance with the terms and conditions of a permit for a minimum period of one (1) year. Upon demonstration of a satisfactory level of compliance, the performance bond or certified letter of credit will be returned to the owner.

7.02020 For commercial facilities the maximum siting density shall be established by dividing the projected design flow by five hundred (500) gallons per day per one-half (1/2) acre and shall be based on the net pervious area (i.e., unpaved, without structures) available for

groundwater recharge after total project completion. Campgrounds intended for overnight or transient use are evaluated as commercial facilities as opposed to **[~~mobile~~ manufactured]** home **[~~parks~~ communities]**, which are evaluated as single family residential facilities.

7.02030 In establishing maximum siting densities the Department may consider impervious areas where it can be demonstrated that through the establishment of an acceptable stormwater management plan, all runoff will be recharged to the groundwater of the State within the boundaries of the project site. Stormwater management plans shall be based upon a ten (10) year - one (1) hour storm event as a minimum and provide recharge of the runoff within **[seventy two]** (72) hours of the storm event.

7.03000 If the deed or instrument, under which an owner acquired title to a lot or parcel, was of record prior to April 8, l984 and if such lot or parcel does not conform to the requirements of Section 7.02010, then the Department may approve a feasibility study and/or issue a construction permit for an on-site wastewater treatment and disposal system. This system is to serve a single family dwelling or for multiple systems to serve dwellings to be situated within an area which has been given final site plan approval prior to April 8, l984 for single or multi-family dwellings provided that:

(a) The number of dwelling units per net pervious area (i.e., unpaved, without structures) does not increase from those approved prior to April 8, l984 by the local governmental unit having jurisdiction; and

(b) At the time the permit is issued or ~~report of site suitability~~ feasibility study is approved, the lot or parcel complies with the requirements of Section 3.00000 through Section 6.00000 of these Regulations.

When it may be necessary to increase the net pervious area or reduce the number of dwelling units within a lot or parcel and thus create a new date of recordation or final site plan approval, the Department shall utilize the previous date of recordation or approval in determining conformance with these Regulations. The owner shall provide, prior to any action by the Department, all documentation determined by the Department to be necessary in establishing conformance with this section.

7.04000 For lots created by plats or deeds recorded after April 8, l984 and/or when the on-site wastewater treatment and disposal system will serve a commercial facility, the Department may approve a feasibility study ~~evaluation of site suitability~~, and/or issue a construction permit for a new on-site wastewater treatment and ~~sewage~~ disposal system if it is determined that all Regulations of the Department can be met.

7.05000 Isolation distances and siting densities may be modified by the Department based upon a site specific ~~geological and hydrogeological analysis~~ Groundwater Impact Assessment (GIA) provided that in the sole discretion of the Department such modification will allow for the protection of environmental resources and ~~the~~ public health, safety and welfare. A site specific ~~geologic and hydrogeologic analyses~~ GIA may not be required when the proposed treatment prior to disposal will discharge no greater than five (5) milligrams per liter of total nitrogen as an average of all samples collected within a calendar year and not exceed ten (10) milligrams per liter of total nitrogen during any one month while providing adequate disinfection at all times.

~~7.06000 Site specific geological and hydrogeological analyses shall be performed by a Registered Professional Geologist and shall be based upon site-specific investigations and testing which shall include:~~

~~(a) Topographic location of the proposed disposal area.~~

~~(b) Relationship of topography to groundwater flow.~~

~~(c) Depth of water table at the proposed site, including seasonal variations.~~

~~(d) Existing groundwater quality, quantity, and uses of existing wells within a 1000 foot perimeter surrounding the proposed disposal area. Groundwater quality characteristics shall include but not be limited to the following:~~

~~(1) Total and Fecal Coliform~~

~~(2) pH~~

~~(3) Total nitrogen~~

~~(4) BOD_5~~

~~(5) Turbidity~~

~~(e) The location, quality, flow characteristics and designated uses of any surface water within 1000 feet of the proposed disposal area.~~

~~(f) A valid analytical groundwater dispersion equation which shall be utilized to demonstrate the following:~~

~~(1) The groundwater quality at representative locations around the perimeter of the disposal area for parameters specified by the Department.~~

~~(2) The distances from the proposed disposal area where the total nitrogen concentration is 10 mg/l.~~

~~(3) Validity and accuracy of the equation parameters used in the dispersion equation.~~

~~Upon receipt, the Department shall attempt to review the analysis within thirty (30) days. The Department may require more detailed hydrogeological information based upon the information submitted and the projected impact on the environmental resources, public health, safety and welfare.~~

7.06000 The Department may require an applicant, owner or operator to perform a site specific Groundwater Impact Assessment (GIA) **[when a proposed or existing large system will likely or is likely causing unacceptable environmental impacts and/or risk to public health]** The

GIA should be performed by a Delaware Registered Professional Geologist and shall be based upon site specific investigations and testing. If information required in the GIA was previously submitted in a PGIA for the site, the required information need not be resubmitted. The applicant may reference the PGIA and state that the information was submitted in the report. The Department will provide **[general and site specific]** guidelines for preparation of the GIA.

7.0~~9~~7000 The requirements of this Section are subject to waiver by the Department for a specific area upon petition by an appropriate governmental unit. Such petition shall provide reasonable evidence that development using individual on-site ~~sewage~~ wastewater treatment and disposal systems will not cause unacceptable degradation of groundwater quality or surface water quality or it shall provide equally adequate evidence that degradation of groundwater or surface water quality will not occur as a result of such waiver.

~~7.10000 No waiver of the minimum siting densities or isolation distances shall be made until after a public notice of the proposed action has been made and a public hearing held in accordance with 7 **Del. C.**, Chapter 60, Section 6006.~~

SECTION 8.00000 -- MAINTENANCE

8.01000 The owner shall be responsible for maintaining and operating on-site wastewater treatment and disposal systems. Upon transfer of ownership, the new owner shall be responsible for proper operation and maintenance of the system and will be subject to all penalties for any violation of these Regulations.

8.02000 Each on-site wastewater treatment and disposal system shall be pumped by a licensed liquid waste hauler ~~in accordance with a schedule established in the permit~~ once every three years and alternative treatment systems shall be pumped according to manufacturer recommendations unless determined that the tank is less than one-third (1/3) full of sludge. The schedule shall be prescribed in accordance with current Department guidelines based on the size of the treatment unit and anticipated number of residents. The owner of the on-site wastewater treatment and disposal system shall maintain a record indicating the system has been pumped and provide such documentation to the Department upon request.

8.03000 Organic chemical septic tank cleaning agents shall not be used in individual or community on-site wastewater treatment and disposal systems.

8.04000 Grease traps shall be cleaned when **[seventy five]** (75) percent of the grease retention capacity has been reached.

8.05000 The sites of the initial and replacement absorption facilities shall not be covered by asphalt or concrete or subject to vehicular traffic or other activity which would adversely affect the soils. These sites shall be maintained so that they are free from encroachments by accessory buildings and additions to the main building.

8.06000 The Department may impose specific operation and maintenance requirements for ~~individual or community~~ on-site wastewater treatment and disposal systems to assure continuity of performance. ~~Unless otherwise required by permit, community systems shall be inspected at least annually by the responsible entity~~.

8.07000 For large systems which serve communities that experience a significant variation in flow on an annual basis, the Department may prescribe specific criteria in the permit for taking certain treatment units out of service during periods of low flow. The criteria will establish procedures for winterization and restart and the minimum levels of treatment which must be provided at all times and in no event shall it be less than the level of treatment provided by a ~~standard sewage~~ conventional on-site wastewater treatment and disposal system.

8.08000 The Department shall impose, in any permit for large or community systems, standards for evaluating treatment system performance and compliance with these Regulations. The standards may be in the form of limitations on flow and pollutant concentrations and/or mass loadings. The standards shall reflect the utilization of best management and operational practices.

8.09000 Unless otherwise required by a permit, all community and large systems shall be inspected annually by the Department or its designee.

8.09500 Alternative systems shall be inspected **[by the Department or its designee]** once every three years and a fee may be required ~~**[by the Department]**~~.

8.09600 ~~**[In addition, t T]**~~he Department recommends alternative systems be inspected annually, at a minimum**[.]**~~**[, by a Class H inspector.]**~~

SECTION 9.00000 -- PRELIMINARY ~~SUBDIVISION [APPROVAL~~ REVIEW]

9.01000 It is the policy of the Department to facilitate compliance with these Regulations through review of proposed development projects as early as possible in the development process to avoid unnecessary conflicts and expense. **[Any development project, which may or may not constitute a major subdivision can submit a feasibility study to satisfy other local government approval processes. Any project that] ~~[These persons]~~** propos~~**[ing]**~~**[es]** to ~~**[subdivide a parcel and]**~~ use individual on-site ~~**[or large and/or**~~ **and/or community/large]** wastewater treatment and disposal systems must submit a ~~preliminary plan~~ letter of intent prior to initiating any preliminary soils investigations.

9.01010 The Letter of Intent must contain the following details:

(a) The name of the Developer and landowner

(b) The size of parcel and number of proposed

lots or projected flow rates

(c) Indication of type of system(s) – individual versus large/community

(d) Projected start date of site/soil investigative work

9.01020 A ~~preliminary plan~~ feasibility study shall be filed with the Department setting forth the proposed manner of compliance with these Regulations. **~~[Other development projects may submit a feasibility study to satisfy other local government approval processes.]~~** The ~~plan~~ feasibility study shall contain ~~information of the nature required to accompany a permit application under these Regulations, and satisfy~~ the following information:

(a) Site plan must b~~B~~e drawn to scale not to exceed one (1) inch equals 200 feet.

(b) Illustrate topography by two (2) foot contour~~s~~ intervals unless the Department approves the use of an alternate scale due to extreme variations in elevation on the site.

(c) Illustrate the location of all wells, water ~~systems~~ courses, ~~sewerage systems, septic tanks, on-site sewage disposal systems~~, roads**~~[, houses, rights of way, and easements~~ and on-site wastewater treatment and disposal systems]** within ~~200~~ 150 feet of the perimeter of the property.

(d) Conduct a soil suitability evaluation of the project site following procedures prescribed in Section 5.01000. The extent and nature of the soil evaluation shall be determined by a Class D **~~[licensed e~~ site evaluator].** The **[site evaluator ~~Class D licensee]~~** shall coordinate the planning of the soils evaluation with the Department prior to initiating work.

(e) Indicate the type of limiting zone, its depth, and list the results of the site and soils analysis on the appropriate forms. ~~as provided by the Department.~~

(f) ~~A representative number of percolation tests shall be conducted on the project site. The licensed Class A percolation tester shall coordinate his planning with the Class D site evaluator and the Department prior to initiating work.~~ Each soil **~~[mapping~~ interpretive]** unit identified for potential on-site wastewater **[treatment and]** disposal shall have at least one **[(1)]** percolation test conducted within it to establish representative percolation rates for each mapping unit.

(g) Lot numbers and approximate lot areas shall be provided.

(h) A general site location map shall be included on the preliminary plan for reference identification of the area.

(i) ~~The results of a geological and hydrogeological analysis conducted pursuant to the requirements of Section 7.00000 shall be included where the maximum siting density does not conform to the requirements of these Regulations~~. Proposed stormwater management areas

(j) Location of **[any]** jurisdictional wetlands, if delineated.

[(k) Any other information required by the Department on a case by case basis.]

9.02000 The Department shall conduct a general review of the preliminary plan and give the owner/developer a ~~non-binding~~ soil investigation report which shall contain a statement of on-site wastewater treatment and disposal feasibility. This Section shall not be construed to relieve the applicant of the responsibility of obtaining individual site evaluations and ~~a~~ permits from the Department for each lot prior to commencement of construction of any on-site wastewater treatment and disposal system. ~~If site specific soil analysis information is submitted, and the Department determines that the soils conditions identified are representative of the entire parcel or subdivision, the Department may waive individual lot site evaluation requirements at the sole discretion of the Department. However, in any event, a minimum of one (1) soil profile per acre shall be submitted. If granted, such a waiver must be in writing and accompany the statement of feasibility.~~

~~[9.03000 All wastewater treatment and disposal systems which are proposed for construction in a watershed where total maximum daily loads (TMDL's) have been established for nitrogen and phosphorus shall be designed to reduce effluent nutrient levels prior to discharging to the absorption facility. The wastewater treatment system shall be designed to reduce nutrient concentration by the percentage reduction established by the Pollution Control Strategy (PCS) for that watershed.]~~

[9.03000] [9.04000] If, in the estimation of the Department, more than fifty five (55) percent of the proposed absorption facilities for the subdivision will require pressurized **~~[disposal]~~** systems, due to limiting conditions, a community wastewater treatment and disposal system shall be utilized unless lot density is **~~[equal to or greater than one acre per dwelling unit]~~[greater than 2 (2) acres]**.

~~[9.05000 Any lot created, recorded or platted after April 8, 1984 shall not have permanent holding tanks permitted as a means of on-site wastewater treatment and disposal.~~

~~9.06000 Any other information required by the Department.]~~

SECTION 10.0000 -- VARIANCES

10.01000 Rural Area Variances

10.01010 Variances for any provision of these Regulations may be granted by the Secretary in certain rural zones provided that:

(a) ~~The governing zoning agency designates and the Department accepts specific rural zoning classifications for purposes of this Section; and~~ The owner executes and records in the appropriate County Office of the

Recorder of Deeds an affidavit, on a form approved by the Department, which notifies prospective purchasers that the property is subject to a Rural Area Variance; and

(b) ~~The minimum parcel size considered under this Section is designated by the governing zoning agency, but in no event shall it be less than ten (10) acres; and~~ The parcel size is not less than ten (10) acres; and

~~[(c) The parcel is an existing parcel that does shall not have an area approveable for any standard type of on site wastewater treatment and disposal system. The Class D licensee shall provide a soils map of the subject area and identify the area most suitable for wastewater treatment and disposal. Logged soil profile descriptions shall be provided for this area. Representative descriptions shall be provided for each other mapping unit identified; and]~~

[~~(d)~~ (c)] The permit is for an on-site wastewater treatment and disposal system designed to serve a single family dwelling~~, or for a commercial facility with an equivalent or less sewage flow permitted by county zoning regulations; and~~

[~~(e)~~ (d)] The on-site wastewater treatment and disposal system will function in a satisfactory manner so as not to create a public health hazard~~, or cause pollution of waters of the State~~; and

~~(f) Requiring strict compliance with these Regulations would in the sole discretion of the Department be unreasonable, burden- some, or impractical due to special physical conditions.~~

[~~(f)~~ (e)] Applications must be completed per Section 10.02030 to obtain final approval for the Rural Area Variance.

~~10.01020 The conditions for rural area variances shall be set forth in a memorandum of agreement (contract) between the governing zoning agency and the Department.~~

10.02000 Formal Variances

10.02010 Variances from any provisions contained in these Regulations may be granted after a public notice and hearing, if any. Notice shall be provided to all contiguous property owners. A public hearing will be held if a meritorious request is received within a reasonable time as stated in the advertisement. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the variance's probable impact.

10.02020 No variance may be granted unless the hearing officer finds, or in the case of an appeal to the Environmental Appeals Board, it is found that;

(a) The requirements of 7 Del. C., Chapter 60, Section 6011 have been satisfied; and

(b) Strict compliance with the provision of these Regulations is inappropriate for cause; or

(c) Special physical conditions render strict compliance unreasonable, burdensome, or impractical.

10.02030 Applications for Variances

10.02031 A separate application shall be made to the Department for each site considered for a variance.

10.02032 Each Rural Area Variance application shall ~~be accompanied by~~ include:

(a) A site evaluation report conducted by a Class D **~~[licensee~~ site evaluator]**, unless waived by the Department, to include the requirements of Section 10.01000; and

(b) ~~A percolation test conducted by a Class A licensee~~ Proof the parcel is a minimum of ten (10) acres (survey or statement from zoning office); and

~~[(c) Plans and specifications for the proposed system prepared by a Class B or C licensee Site evaluation report of the entire parcel by the Class D licensee with information including logged soil borings, detailed plot drawing and statement from the licensee that no suitable soils were found on the parcel and a wetland delineation shall also accompany the site evaluation report depicting any jurisdictional wetlands; and]~~

[(c) Wetland delineation and jurisdictional determination; and]

(d) ~~The appropriate fee~~ A proposed disposal location which is a minimum of 100 feet from all property boundaries (when soil conditions allow); and

(e) ~~Other information necessary for rendering a proper decision~~ The location of all wells within **[one thousand]** 1,000 feet of the proposed absorption facility; and

(f) The property owner~~'s signature~~ shall provide a list of all property owners names and addresses within **[one thousand]** 1,000 feet of parcels property lines; and

(g) A percolation test conducted by a Class A percolation tester or an assigned percolation rate by the Class D **~~[licensee~~ site evaluator]** based upon USDA soil textures (see Exhibit W); and

(h) Submit soils report with appropriate site evaluation fee, if fee not paid already. Upon reviewing the soils report, the Department will determine the system type, design specifications and return this information to the owner, or designated agent**~~[: and]~~**

10.2035 Upon completion of Section 10.02032, the following criteria will be required:

(a) A completed permit application prepared by a licensed designer; and

(b) An affidavit of a Rural Area Variance (as part of the permit application); and

(c) Appropriate fee's for the permit application and Rural Area Variance, if not already paid; and

(d) The Department shall advertise the application for a Rural Area Variance in a local newspaper to include direct notification of adjacent property owners. The

Department will not hold a public hearing unless a meritorious request is made to the Department.

10.03000 Hardship Variances

10.03010 The Secretary may grant variances from any provision of these Regulations in cases of extreme and unusual hardship.

10.03020 The Department may consider the following factors in reviewing an application for a variance based on hardship:

(a) Advanced age or bad health of the applicant.

(b) Need of applicant to care for aged, incapacitated, or disabled relatives.

(c) Relative insignificance of the environmental impact of granting a variance.

10.03030 Hardship variances granted by the Secretary may contain conditions such as:

(a) Permits for the life of the applicant.

(b) Limiting the number of permanent residents using the system.

(c) Use of ~~experimental~~ conventional on-site wastewater treatment and disposal systems for specified periods of time.

(d) Any other conditions which the Secretary finds in his**[/her]** sole discretion to be appropriate.

10.03040 ~~Before an application is considered for a hardship variance it must have been denied a formal variance on the basis of technical Regulation considerations~~. At the time of the application, the applicant must designate on the application that it is ~~to be reconsidered~~ for a hardship variance.

10.03050 Documentation of hardship must be provided before the application is referred to the Department for action.

10.03060 Department personnel shall strive to aid and accommodate the needs of applicants for variances due to hardship.

10.04000 Variance Hearings

10.04010 The hearing officer shall hold a public hearing in conformance with 7 Del. C., Chapter 60, Section 6006.

10.04020 The hearing shall be held in the county where the property ~~described in the application~~ is located.

~~10.04030 Each hearing shall be held within thirty (30) days after receipt of a completed application and public notice has been given subsequent to receipt of the completed application.~~

~~10.04040 A decision to grant or deny the variance shall be made in writing to the applicant within thirty (30) days after completion of the hearing. If the variance is granted, the Department shall issue the appropriate construction permit and perform necessary inspections to assure proper installation of the system.~~

10.05000 Variance Appeals

10.05010 Decisions of the Secretary to grant or deny a variance may be appealed to the Environmental Appeals Board.

Table of Contents
Exhibits A through Z

EXHIBIT C
MINIMUM ISOLATION DISTANCES (FEET)

Compo-nents	Well or Suction Line	Water Supply Pressure Line	Watercourse (Streams, Lakes, Federal or State Regulated Wetlands or other surface water)	Dwellings, Property Line, ~~Easement or Right of way~~	Other active on-lot sys-tems	Natural or man-made Slope >25%

Septic tank	50	10	25	10 (f)	--	--
Grease trap	50	10	25	10	--	--
Distributio n box	50	10	25	10	--	--
Dosing chamber	50	10	25	10	--	--
Disposal area (c) (h) (i)	100 (a)(d)(e)	10	100(b)	10 (g)	~~20~~ 10	15
Diversion valve or box	50	10	25	10	--	--

Notes:

a) Approval of a lesser distance to a minimum isolation distance of 50 feet may be approved by the Department ~~if the well has a permanent watertight casing installed through the aquifer receiving the effluent from the on-site disposal system~~ as per the Delaware Regulations Governing the Construction and Use of Wells, adopted February 6, 1997. The applicant shall provide documentation regarding well distances, depths, and construction to the Department upon request.

b) Approval of a lesser distance to a minimum isolation of fifty (50) feet may be approved by the Department if the watercourse has not been designated for use as a public water supply or shellfish or the applicant and/or agent can prove there will be no adverse effect to the watercourse. NOTE: There is no setback from an ephemeral watercourse. It is the sole responsibility of the Class D licensee to determine whether a watercourse is, by definition, ephemeral.

c) For elevated sand mound and capping fill systems distances shall be measured from the outer edge of the ~~berm or fill~~ stone or gravel less chamber.

d) For public or industrial wells the minimum isolation distance shall be 150 feet. **NOTE:** Paragraph 8.03(c) of Regulations Governing the Use of Water Resources and Public Subaqueous Lands states, "Every new or replacement well shall be located at least 150 feet from septic tanks, tile fields (absorption facility), and seepage pits."

e) ~~For lots created by plat or deed and recorded prior to April 8, 1984~~, Aan isolation distance of 50 feet between domestic and commercial wells and ~~disposal area~~ absorption facility may be considered by the Department where the lot size will not allow an isolation distance of 100 feet and an alternative source of water supply is not available. The well must be cased to a depth of ~~50~~ 40 feet exclusive of the screen and pressure grouted with either concrete or bentonite clay to a minimum depth of 40 feet. The applicant shall provide documentation regarding well distances, depths, and construction to the Department upon request.

f) Except in the case of a septic tank for a central sewer system where the ~~disposal field~~ absorption facility is not located on the same lot as the septic tank in which case the distance shall be 5 feet from the interior lot ~~or easement~~ lines ~~within a recorded subdivision~~.

g) Except in the case of a central sewer system where the ~~disposal area~~ absorption facility can be 5 feet from an interior lot ~~of easement~~ lines ~~within a recorded subdivision~~.

h) For replacement systems, if an additional twelve (12) inches of suitable soil exists below the required separation distance then the well isolation distance may be reduced from 100 feet to 50 feet. (ie. 36 inch separation for gravity systems to 48 inch separation for well isolation reduction).

i) For replacement systems, if advanced treatment is incorporated then the well isolation distance may be reduced from 100 feet to 50 feet.

EXHIBIT D

~~SEWAGE~~ WASTEWATER DESIGN FLOW RATES

TYPE OF ESTABLISHMENT	UNIT	GALLONS/ UNIT/DAY
Airport	Person	5
Assembly Hall, Auditoriums, Indoor Theaters	Seat	3
Banquet Halls With bar & food	Seat	15 30
Barber Shop	Chair	50
Bar w/min food prep	Seat	20
Bath House	Person	10
Beauty Shop	Chair	125
Boarding or rooming houses Staff	Person Person	50 10
Bowling Alley with no bar or restaurant With bar or restaurant	Lane Lane	100 200
Camps Work Summer Trailer w/o sewer h/up Trailer w/ sewer h/up	 Person Person Site Site	 ~~50~~ 40 ~~50~~ 40 50 ~~150~~ 125
Churches	Seat	5
Country Clubs	Person	~~70~~ 100
Day Care Day Care – In-home	Child or Employee Bedroom + per child	15 120/bedroom + 8/child
Dentist Office Office staff add	Chair Person	200 20
Factories w/ shower	Person Person	25 35

Gas & Go's w/o food and w/ restrooms	Employee/ shift	10
Gas & Go's w/food and w/ public restrooms	Bathroom/ shift	130
Hospitals	Bed	~~225~~ 250+
Hotels	Room	120
Laundromat	Machine	500
Marinas	Boat Slip	10
Marinas w/restrooms	Boat Slip	30
Mini-markets w/food w/o restrooms	Ft ^{2}	.1
Mini-markets w/food w/ restrooms	Bathroom/ shift	130
Motels	Room	100
w/ kitchen	Room	150
Medical office buildings and clinics	Persons	70
Doctors, nurses and medical staff		20
Office staff		7
Patients		
Offices	Employee	20
Outdoor sporting facilities	Persons per day	5
Parks with beaches		
Lavatory waste only	Person	5
Bath house, showers, lavatories	Person	13
Picnic Grounds, Public Swimming Pools		
Picnic with toilets only	Person	5
Picnic with lavatories and showers	Person	11
Swimming Pools and Beaches with lavatories and showers	Person	13
Residential Dwellings	Bedroom	120
Restaurants	Seat	~~35~~
24 hour service		40
18 hour service		30
12 hour service		20
Add for bars & cocktail lounges		5
Rest/Nursing Homes	Bed	125
Schools	Student	10
w/ gym, showers, cafeteria	Student	~~20~~ 25
	Student	15
w/ cafeteria	Student	75
Boarding	Staff	15
Non-resident staff		
Service Station	Island	500
Stores (Retail)	ft^2	.1
Theaters		
Drive in	Space	10
Movie Theaters	Seat	4

EXHIBIT E
GREASE TRAP DESIGN CAPACITIES

TYPE OF FIXTURE	FLOW RATE (GPM)	GREASE RETENTION CAPACITY (LB)	REQUIRED CAPACITY PER FIXTURE CONNECTED TO TRAP (GAL)
Restaurant kitchen sink	15	30	50.0
Single-compartment sink	20	40	50.0
Double-compartment sink	25	50	62.5
Triple-compartment sink	30	60	75.0
2 single compartment sinks	25	50	62.5
2 triple compartment sinks	40	80	100.0
Dishwasher for restaurants			
Up to 30 gallons water	15	30	50.0
Up to 50 gallons	25	50	62.5
50 to 100 gallons	40	80	100.0

EXHIBIT S

FLEXIBLE MEMBRANE LINERS FOR SAND FILTERS TREATING SEPTIC TANK EFFLUENT.

Unsupported polyvinyl chloride (PVC) shall have the following properties:

	Property	Test Method	
(a)	Thickness	ASTM D1593 30 mil, minimum Para 8.1.3	
(b)	Specific Gravity (minimum)	ASTM D792 Method A	
(c)	Minimum Tensile Properties (each direction)	ASTM D882	
(A)	Breaking Factor (pounds/inch width)	Method A or B69 (1 inch wide)	
(B)	Elongation at Break (percent)	Method A or B300	
(C)	Modulus (force) at 100% Elongation (pounds/inch width)	Method A or B27	
(d)	Tear Resistance (pounds, minimum)	ASTM D10048 DIE C	
(e)	Low Temperance	ASTM D1790 -20°F	
(f)	Dimensional Stability (each direction, percent change maximum)	ASTM D1204 +/-5	212°F, 15 min
(g)	Water Extraction	ASTM D1239 -0.35% max.	
(h)	Volatile Loss	ASTM D1203 0.7% max. Method A	
(i)	Resistance to Soil Burial (percent change max. in original value)	ASTM D3083	
(A)	Breaking Factor	-5	
(B)	Elongation at Break	-20	
(C)	Modulus at 100% Elongation	+/-10	
(j)	Bonded Seam Strength (factory seam, breaking factory, ppi width)	ASTM D3083	55.2
(k)	Hydrostatic Resistance	ASTM D7512 Method A	

Installation Standards:

(a) Patches, repairs and seams shall have the same physical properties as the parent material.

(b) Site considerations and preparation:

(A) The supporting surface slopes and foundation to accept the liner shall be stable and structurally sound including appropriate compaction. Particular attention shall be paid to the potential of sink hole development and differential settlement.

(B) Soil stabilizers such as cementations or chemical binding agents shall not adversely affect the membrane, cementations and chemical binding agents may be potentially abrasive agents.

(c) Only fully buried membrane liner installation shall be considered to avoid weathering.

(d) Unreinforced liners have high elongation and can conform to irregular surfaces and follow settlements within limits. Unreasonable strain reduces effective thickness and may reduce life expectancy by lessening the chemical resistance of the thinner (stretched) material. Every effort shall be made to minimize the strain (or elongation) anywhere in the flexible membrane liner.

(e) Construction of site:

(A) Surface condition:

(i) Preparation of earth subgrade. The prepared subgrade shall be of soil types no larger than Unified Soil Classification System (USCS) sand (SP) to a minimum of four (4) inches below the surface and free from loose earth, rock, fractured stone, debris, cobbles, rubbish and roots. The surface of the completed subgrade shall be properly compacted, smooth, uniform and free from sudden changes in grade. Importing suitable soil may be required.

(ii) Maintenance of subgrade. The earth subgrade shall be maintained in a smooth, uniform and compacted condition during installation of the lining.

(B) Climatic conditions:

(i) Temperature: The desirable temperature range for membrane installation is 42°F to 78°F. Lower or higher temperatures may have an adverse effect on transportation, storage, field handling and placement, seaming and backfilling and attaching boots and patches may be difficult. Placing liner outside the desirable temperature range shall be avoided.

(ii) Wind: Wind may have an adverse effect on liner installation such as interfering with liner placement. Mechanical damage may result. Cleanliness of areas for boot connection and patching may not be possible. Alignment of seams and cleanliness may not be possible. Placing the liner in high wind shall be avoided.

(iii) Precipitation: When field seaming is adversely affected by moisture, portable protective structures and/or other methods shall be used to maintain a dry sealing surface. Proper surface preparation for bonding boots and patches may not be possible. Seaming, patching and attaching "boots" shall be done under dry conditions.

(C) Structures: Penetration of a flexible liner by any designed means shall be avoided. Where penetrations are necessary, such as horizontal and vertical pipes, it is essential to obtain a secure, liquid-tight seal between the pipes and the flexible liner. Liners shall be attached to pipes with a mechanical type seal supplemented by a chemically compatible caulking or adhesive to effect a liquid-tight seal. The highest order of compaction shall be provided in the

area adjacent to pipes to compensate for any settlement.

(D) Liner Placement:

(i) Size: the final cut size of the liner shall be carefully determined and ordered to generously fit the container geometry without field seaming or excess straining of the liner material.

(ii) Transportation, handling and storage: Transportation, handling and storage procedures shall be planned to prevent material damage. Material shall be stored in a secrured area and protected from adverse material.

(iii) Site Inspection: A site inspection shall be carried out by the Department and the installer prior to liner installation to verify surface conditions, etc.

(iv) Deployment: Panels shall be positioned to minimize handling. Seaming should not be necessary. Bridging or stressed conditions shall be avoided with proper slack allowances for shrinkage. The liner shall be secured to prevent movement and promptly backfilled.

(v) Anchoring trenches: The liner edges should be secured frequently in a backfilled trench.

(vi) Field seaming: Field seaming, if absolutely necessary, shall only be attempted when weather conditions are favorable. the contact surfaces of the materials should be clean of dirt, dust, moisture, or other foreign materials. The contact surfaces shall be aligned with sufficient overlap and bonded in accordance with the suppliers recommended procedures. Wrinkles shall be smoothed out the seams should be inspected by nondestructive testing techniques to verify their integrity. As seaming occurs during installation, the field seams shall be inspected continuously and any faulty area repaired immediately.

(vii)Field repairs: It is important that traffic on the liner area be minimized. Any necessary repairs to the liner shall be patched using the same lining material and following the recommended procedure of the supplier.

(viii) Final Inspection and acceptance: As completed, the liner installation should be tested for functional integrity. All joints, seams and mechanical seals should be checked both during and after installation. Hydrostatic testing to evaluate watertightness of the completed liner installation before placement of any backfill may be required at the discretion of either the Department or the owner/purchaser. The lined basin shall be filled to the four (4) foot level with water after the pipe inlets and outlets have been fitted with temporary plugs. Acceptance of workmanship shall be based upon a leakage rate of no more than 0.25 inches in a 24 hour period. Virtually no leakage should result from good workmanship, however.

(ix) Operation and Maintenance Standards: The owner/purchaser of a sand filter system must recognize that he assumes the continuous responsibility to preserve the installation as near as practical in its "as built" state. This responsibility includes the control or erosion of any "mound", the control and removal of large perennial plants, the fencing out of livestock and the control of burrowing animals.

EXHIBIT T
STANDARDIZED PRESSURE DOSED TRENCH SYSTEMS

PARAMETERS						
Width of trench (in)	24	24	24	36	36	36
Design flow (gpd)	240	360	480	240	360	480
No. of laterals	4	6	8	3	4	5
Length of laterals(ft)	45	45	45	40	45	50
Diam of laterals (in)	1 1/2	1 1/2	1 1/2	2	1 1/2	1 1/2
Diam of holes (in)	1/4	1/4	1/4	5/16	1/4	1/4
Spacing of holes (in)	30	36	42	30	30	30
Dosing Volume (gal)	80	120	120	80	120	120
Diam of transmission line (in)	2 1/2	3	3	2 1/2	2 1/2	3
Pump Group	a	b	b	a	a	b

STANDARDIZED PRESSURE DOSED BED SYSTEMS

PARAMETER			
Design flow (gpd)	240	360	480
Bed size (ft)	15 X 30	14 X 30	18 X 50
No. of laterals	3	3	3
Spacing of laterals (in)	4.5	4	6.0
Diameter of laterals (in)	1.5	2	2
Diameter of Holes (in)	5/16	5/16	5/16
Spacing of holes (in)	30	30	30
Dosing volumes (gal)	80	120	120
Diameter of transmission line (in)	2 1/2	2 1/2	2 1/2
Pump group	a	b	b

EXHIBIT U
TOTAL NITROGEN EFFLUENT CONCENTRATIONS REQUIRED FOR COMMUNITY TREATMENTS SYSTEMS PROVIDING A HIGH DEGREE OF NITROGEN REMOVAL (mg/L)

Average Dwelling Unit Design Flow (GPD)

	240	300	360	420	480
Maximum Siting Density (dwelling units per pervious acre)	35	30	23	22	14
3	29	22	14	13	11
4	22	13	11	10	10
5	14	11	10	10	10
6	13	10	10	10	10
7	11	10	10	10	10
8	10	10	10	10	10
9	10	10	10	10	10
10					

EXHIBIT X
LOW PRESSURE PIPE DESIGN PERCOLATION RATES
& MAXIMUM HOLE SPACING DISTANCES

MPI	FACTOR	MAX. SPC'G
20	3.70	60
25	4.20	60
30	4.80	72
35	5.50	72
40	5.58	72
45	5.87	72
50	6.16	72
55	6.45	72
60	6.65	72
65	7.35	96
70	8.05	96
75	8.75	96
80	9.45	96
85	10.15	96
90	10.99	96
95	11.76	96
100	12.74	96
105	13.86	96
110	15.26	96
115	16.52	96
120	17.50	96

PERCOLATION RATES
BASED UPON USDA SOIL TEXTURES

USDA TEXTURE	DNREC ASSIGNED PERCOLATION RATE (MPI)*
Sands	5
Loamy Sand	10
Sandy Loam	20
Sandy Clay Loam	30
Loam	30
Silt Loam	50
Silt	50
Clay Loam	75
Silty Clay Loam	75
Sandy Clay	120
Silty Clay	120
Clay	120

* Other soil properties such as high bulk density, structure, total porosity, and size and continuity of the pores may significantly affect these percolation rates. Textures of loamy coarse sand and coarse sandy loam may have percolation rates faster than assigned, while loamy very fine sand, loamy fine sand, very fine sandy loam and fine sandy loam may have percolation rates slower than assigned.

Percolation Class	Percolation Rate (mpi)
Very Slow	>120
Slow	50 – 120
Moderate	25 – 49
Moderately Rapid	10 – 25
Rapid	6 – 10
Very Rapid	< 6

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

CRIMINAL HISTORY UNIT

Statutory Authority: 31 Delaware Code, Section 309 (31 **Del.C.** §309)

The Delaware Department of Services for Children, Youth and Their Families initiated proceedings to amend the regulations bringing them into compliance with the Adoption and Safe Families Act of 1997 and to reflect updated wording in reference to changes within the Department, Delaware code and for general clarification. The Department's proceedings to amend its regulations were initiated pursuant to 31 Delaware Code Section 309.

The Department published its notice of proposed regulation changes pursuant to 31 Delaware Code Section 309 in April, 2001 Delaware Register of Regulations requiring written comment from the public concerning the proposed regulations to be produced by April 30, 2001 at

which time the Department would receive written comment to the said proposed changes to the regulations.

Two written comments were received relating to the amended regulations.

Summary Of Information Submitted

The State Council For Persons With Disabilities and the Governor's Advisory Council For Exceptional Citizens both commented that statute Title 31 Del.C. Sec. 309(a) covers residential child care facilities with either a DSCYF license or a contract and requires their employees to submit to a criminal history record check. Both Councils recommended the regulations be amended to consistently conform to the statute.

The regulations were amended to consistently include Department contracted agencies.

The Councils also commented that there were inconsistent references to prospective adoptive parents and recommended that references be consistent when addressing how adoptive parents are covered by criminal history record checks.

Adoptive parents are included in the definition of "foster parents" who are defined as "foster/respite/adoptive parents". Any reference to foster parents shall also apply to respite and/or adoptive parents.

The Governor's Advisory Council For Exceptional Citizens also commented that within the legal base statement "Subsection 309" should be "Section 309". The correction was made.

Finding Of Fact

The Department finds that the proposed changes as set forth the attached copy should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Criminal History Record Checks For Child Care Persons are adopted and shall be final effective May 1, 2002.

Cari DiSantis, Secretary
Department of Services for Children, Youth
and Their Families

REGULATIONS FOR CRIMINAL HISTORY RECORD CHECKS FOR CHILD ~~/YOUTH~~ CARE PERSONS

1.0 LEGAL BASE

1.1 The legal base for these regulations is in the Delaware Code, ~~Title 31~~, Chapter 3, ~~Chapter 3~~, Title 31 **[~~Subs~~ S]**ection 309.

2.0 PURPOSE

2.1 The overall purpose of these regulations is the protection of children ~~/youth~~ who are in the care or custody of the Department. To this end, persons in residential child care facilities and/or employees or volunteers of the Department **[or a Department contractor]** will have their criminal history checked prior to employment or during a conditional period of employment **~~[with the Department or one of its contractors]~~**. In addition, foster/respite/adoptive parents will have their criminal history checked prior to approval or during a period of provisional approval with the Department or contracted providers. **[Each employer may use his/her own employment/acceptance criteria which may be stricter than those described herein.]**

3.0 DEFINITIONS

"Child ~~/Youth~~ Care Person" means any person employed in a residential child care facility and/or employed by the Department **[or one of its contractors]** in a position which involves supervisory or disciplinary authority over a child ~~/youth~~ or in a position which provides the opportunity to have direct access to/contact with foster parents a child ~~/ youth~~ without the presence of other employees or adults. This definition includes foster parents and volunteers.

"Conditional Child /~~Youth~~ Care Person" means a child ~~/youth~~ care person who has been offered a position or has agreed to volunteer with the Department **[or one of its contractors]** or in a residential child care facility. Under the provisions of the law, a child ~~/youth~~ care person may be hired on a temporary basis until the determination of suitability is made by the Department. Foster parents may be provisionally approved prior to the results of the criminal background check and in accordance with the Division of ~~Child Protective~~ Family Services policy. If a determination of unsuitability is made, the child ~~/youth~~ care person will be dismissed and in the case of foster parents the conditional placement will be rescinded.

"Criminal History ~~Specialist~~ Supervisor" means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies and procedures.

"Criminal History Specialist" means the Department staff member, located in the Office of Child Care Licensing, who is responsible for processing and reviewing criminal history information consistent with Departmental policies, procedures and regulations.

"Department" means the Department of Services for Children, Youth and Their Families.

"Direct Access" means the opportunity to approach children ~~/youth~~ without the presence of other adults in the course of one's assigned duties and responsibilities.

"Employer" means any of the following:

• The Divisions within the Department of Services for Children, Youth and Their Families (PLEASE NOTE: The Divisions within the Department do not "employ" foster/

adoptive parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)

• Any **[Delaware]** contractor who operates a program **~~[that matches the definition of a residential child care facility~~ provides regular direct access to children~~]~~**.

• Any contractor who provides foster care ~~and/~~ or adoption services.

"Foster Parents" means foster/respite/adoptive parents and all household members 18 years of age or older.

"Residential Child Care Facility" means any facility that provides care ~~and/~~ or treatment for children ~~/youth~~ overnight ~~and/~~ or is a 24 hour facility. This facility is State owned and operated or is **~~[both]~~** licensed by **~~[and contracts with]~~** the Department to provide services.

"Volunteer" means any person who has direct access to children ~~/youth~~ in the performance of unpaid duties and who will be in a facility or in the service of the Department for 5 or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will be required to have a criminal history check under these regulations. (For limited, occasional, sporadic, one-time volunteer efforts that last less than 5 days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

4.0 INDIVIDUALS SUBJECT TO THE LAW (formerly Section 13)

4.1 Generally, child ~~/youth~~ care persons subject to a criminal history record check shall be 1) persons employed or volunteering in a residential child care facility; or 2) employed by the Department; or 3) foster/ adoptive parents; **[or 4) employed or volunteering at an agency that contracts with the Department;]** who are in a position which involves:

4.1.1 Supervisory or disciplinary authority over children ~~/youth~~, or

4.1.2 The opportunity to have direct access to ~~/~~ or contact with a child ~~/youth~~ without the presence of other employees or adults.

4.1.3 Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

4.2 Residential Child Care Facilities **[and Department Contractors]** (formerly Section 14)

4.2.1 Criminal history record checks shall be conducted on the following **~~[types of]~~** employees of **~~[State owned and operated~~ licensed]** residential child care facilities and **~~[those facilities which are both licensed by and contract with the Department for residential child care services~~ Department contractors]**:

4.2.1.2 Child care workers

4.2.1.3 Child care supervisors

4.2.1.4 Maintenance, transportation, kitchen, clerical workers

4.2.1.5 Teachers, aides, principals

4.2.1.6 Administrators, coordinators, directors

4.2.1.7 Volunteers as defined in 3.0

4.2.1.8 Social Workers

4.2.1.9 Recreation staff

4.2.1.10 Medical staff

(This list is not necessarily all-inclusive, due to the various titles used in different facilities. Section 4.2 above is to be used for guidance.)

4.3 Foster/Adoptive Parents (formerly Section 15)

4.3.1 Criminal history record checks shall be conducted on:

4.3.1.1 Applicants for foster/respite care within the Department and in licensed child placing agencies providing foster care.

4.3.1.2 Applicants for adoption within the Department and in licensed child placing agencies providing adoption services.

4.3.1.3 Petitioners in relative adoptions.

4.3.1.4 Interstate applicants for adoption or foster placement when a child is from another state and is being placed in Delaware and when a Delaware child is being placed in another state.

4.3.1.5 A criminal history check will not be required in a stepparent adoption.

4.4 Department Employees (formerly Section 16)

4.4.1 Criminal history record checks shall, at the discretion of the Cabinet Secretary, be conducted on individuals filling the following positions within the Department:

4.4.1.1 all Division of ~~Administration Education~~ Management Support Services employees

4.4.1.2 all Division of ~~Child Protective~~ Family Services employees

4.4.1.3 all Division of Youth Rehabilitative Services employees

4.4.1.4 all Division of Child Mental Health employees

~~E. Division of Program Support~~

~~i. Division Director~~

~~ii. Deputy Director~~

~~iii. Master Family Service Specialists~~

~~iv. Child Care Licensing Specialists~~

~~v. Criminal History Specialist~~

~~vi. Institutional Abuse Investigator~~

~~vii. Child Care Licensing Supervisors~~

~~F. Division of Administration~~

~~i. Cabinet Secretary~~

~~ii. Division Director~~

~~iii. Deputy Director~~

5.0 CRIMINAL HISTORY RECORD CHECK PROCESS (formerly Sections 17-25)

5.1 The employer shall require each individual subject to the law, either as soon as that individual has accepted a position, or has agreed to serve as a volunteer, or no later than the fifth working day to complete the Criminal History Record Request form and be fingerprinted. In the case of foster parents, the Criminal History Record Request form and fingerprinting must be completed prior to completion of pre-service training or the home study process.

5.2 The child ~~/youth~~ care person or foster parent goes to ~~any~~ a designated Delaware State Police Barrack and has two sets of fingerprints taken.

5.3 The Delaware State Police follow established State Bureau of Identification procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of ~~Identification~~ Investigation. A report of the child ~~/youth~~ care person's or foster parent's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History Specialist.

5.4 Simultaneously, the Criminal History Specialist conducts a review of the Child Abuse Registry to determine if the child ~~/youth~~ care person is named as a perpetrator in a substantiated report of child abuse or neglect.

5.5 When the Criminal History Specialist receives the information from the State Bureau of Identification, Child Abuse Registry, and Federal Bureau of ~~Identification~~ Investigation she/he reviews that information, along with the Criminal History Record Request form. This review is guided by the criteria specified in Sections 6.1-7.2.

5.6 When there is no record, the Criminal History Specialist provides notification to the appropriate Division Director, who notifies the employer or child placing agency and the child ~~/youth~~ care person or foster parent.

. 5.7 When there is a criminal history, the Criminal History Specialist provides a written summary of the findings of the check with a recommendation to the appropriate Division Director.

5.8 The appropriate Division Director makes the determination of suitability for employment, volunteering or foster parenting and notifies the child ~~/youth~~ care person or foster parent and employer or child placing agency, with a copy of the findings attached.

5.9 In the event that the child ~~/youth~~ care person or foster parent has reason to provide additional information regarding the information in her/his criminal history check, an administrative review will be held, as delineated in sections 9.1-9.10.

6.0 CRITERIA FOR PROHIBITED OFFENSES (formerly Sections 26-27)

6.1 Child ~~/youth~~ care persons or foster parents convicted of a sexually related offense(s) or other offenses against children shall be prohibited from employment, volunteering or foster care/adoption without consideration of other criteria. ~~The following offenses shall be considered prohibited offenses.~~ The prohibited offenses shall include but not be limited to:

6.1.1 Incest

6.1.2 Unlawful sexual contact

6.1.3 ~~Unlawful sexual penetration~~ Rape

6.1.4 ~~Unlawful sexual intercourse~~ Continuous sexual abuse of a child

6.1.5 Sexual exploitation of a child

6.1.6 Abandonment of child

6.1.7 ~~Promoting prostitution of a person less than 18 years old~~ Sexual solicitation of a child

6.1.8 ~~Obscene literature harmful to minors~~ Unlawful dealing with a child

6.1.9 Unlawfully dealing in material depicting a child engaging in a prohibited sexual act

J. Distribution of drugs to a minor

K. Delivery of drugs to a minor

6.1.10 Murder of a child.

6.1.11 Endangering the welfare of a child

6.2 The Adoption and Safe Families Act of 1997 prohibits individuals from becoming foster or adoptive parents if they have the following felony convictions:

6.2.1 Child abuse or neglect, spousal abuse, crimes against children (including child pornography), and crimes involving violence including rape, sexual assault and homicide committed at any time.

6.2.2 Physical assault, battery and drug related offenses committed within the past five years.

7.0 CRITERIA FOR UNSUITABILITY (formerly Sections 28-29)

[(Please note: each employer uses his/her own employment/acceptance criteria which are different from and may be stricter than those described herein.)]

7.1 Information received from the criminal history record and Child Abuse Registry checks shall be reviewed by the Criminal History Specialist and Division Director on the basis of the following criteria for a determination of suitability for employment, volunteering, or foster care/ adoption.

7.1.1 Type of offense(s)/child abuse or neglect activity

~~i. A prohibited offense(s) shall require a determination of unsuitability for employment, volunteering, or foster care/adoption without consideration of other criteria.~~

7.1.1.1 Offenses other than those that are prohibited shall be reviewed in consideration of other criteria below. Other convictions and arrests for offenses which may make a child ~~/youth~~ care person unsuitable for employment or volunteering, or may make a prospective

foster parent unsuitable for foster parenting, are those in the Delaware Code, Titles 11 and 16 which may contain (but are not limited to) the following characteristics:

7.1.1.1.1 Offenses against the person where physical harm or death has taken place

7.1.1.1.2 Offenses involving weapons, explosive devices or threat of harm

7.1.1.1.3 Offenses involving public indecency and obscenity which may have been the result of plea bargain situations

7.1.1.1.4 Offenses that show a disregard of others, such as reckless endangering, arson

7.1.1.1.5 Cruelty to animals or deviant behavior such as abusing a corpse

7.1.1.1.6 Offenses against the Uniform Controlled Substances Act

7.1.1.2 The existence of a substantiated report of child abuse ~~/~~ or neglect involving the child/youth care person or foster parent as perpetrator shall be reviewed in consideration of other criteria below.

7.1.2 Frequency of offense (s)

7.1.3 Length of time since the offense(s)

7.1.4 Age at the time of the offense(s)

7.1.5 Severity of the offense(s)

7.1.6 Record since the offense(s)

7.1.7 Relationship of the offense(s) to the type of job assignment and/or responsibilities of the child ~~/youth~~ care person or foster parent

7.1.8 Policies of the agency

7.2 Failure by a child ~~/youth~~ care person or foster parent to disclose relevant criminal history or child abuse registry information on the Criminal History Record Request form that is subsequently disclosed as a result of the criminal history record check may be grounds for immediate termination of an employee or denial of approval for foster or adoptive care.

8.0 SANCTIONS (formerly Sections 30-32)

8.1 Sanctions against employers (division/facility/ agency) shall be applied and enforced in the following circumstances:

8.1.1 An employer fails to require criminal history record checks for affected employees, volunteers, or applicants for foster care ~~/~~ or adoption.

8.1.2 An employer knowingly hires or approves a child ~~/youth~~ care person who is prohibited from employment or foster care ~~/~~ or adoption as a result of a conviction for a prohibited offense.

8.1.3 An employer does not comply with the final recommendation of an administrative review.

8.2 Sanctions applied to contracted **[agencies]** residential facilities and child placing agencies for violation of the law ~~and/~~ or the regulations may include:

8.2.1 Amendment or dissolution of any agreements with the Department to provide the contracted service

8.2.2 Removal of children ~~/youth~~ from placement

8.2.3 Suspension of future child referrals

8.2.4 Revocation of licensure

8.3 Sanctions against Department Divisions for violation of the law ~~and/~~ or regulations shall be applied to responsible staff by the Secretary on a case-by-case basis and may include:

8.3.1 Involuntary reassignment

8.3.2 Discipline up to and including dismissal

9.0 ADMINISTRATIVE REVIEW (formerly Sections 33-41)

9.1 Criminal history is only one factor being considered in the hiring ~~/~~ or approval process. If the employer makes an adverse judgment based on any criterion other than criminal history, this administrative review process does not apply.

9.2 Any child ~~/youth~~ care person or foster parent who is denied~~/~~ , recommended for termination~~/~~ , terminated from employment~~/~~ , volunteering or foster care~~/adoption~~ as a result of an adverse judgment made on the basis of a criminal history record check shall be entitled to an administrative review.

9.3 The child ~~/youth~~ care person will be notified of the right to an administrative review when a determination of unsuitability has been made.

9.4 If the child ~~/youth~~ care person believes the criminal history information is incorrect or incomplete, she/he shall submit a request for a review of the facts of the criminal history to the Criminal History Specialist in writing or reduced to writing within 5 working days of the receipt of the decision for denial/recommending termination/ termination of employment, volunteering, ~~or~~ foster care ~~/~~ or adoption resulting from a determination of unsuitability. When the corrected information is obtained by the child ~~/ youth~~ care person, it will be reviewed by the Criminal History Specialist's Supervisor ~~or the Division of Program Support Director~~ and the Criminal History Specialist. A ~~report/~~recommendation will be issued to the appropriate Division Director based on the corrected information. The Division Director makes a final decision and notifies the child ~~/youth~~ care person, ~~or~~ foster or adoptive parent and copies the employer or child placing agency and the Criminal History Specialist.

9.5 If the child ~~/youth~~ care person believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he shall submit a written or reduced to writing request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with a copy to the employer and the Criminal History Specialist. This shall be submitted within 10 working days of the receipt of the decision for denial ~~/~~ , recommendation

~~termination/termination of~~ to terminate employment, volunteering ~~,~~ ~~or~~ foster care ~~/~~ , or adoption resulting from a determination of unsuitability. The Division Director makes a final decision and notifies the child ~~/youth~~ care person or foster parent and copies the employer or child placing agency and the Criminal History Specialist.

9.5.1 If the individual had previously requested a review of the facts of the criminal history, the request for an administrative review shall be submitted within 5 working days of the receipt of the decision based on the results of that review.

9.5.2 The child ~~/youth~~ care person may also request to give an oral presentation at her/his administrative review.

9.6 When a child ~~/youth~~ care person has requested a review of the facts of the criminal history and/or an administrative review, the following shall apply:

9.6.1 The child ~~/youth~~ care person shall be removed from direct access to children ~~/youth~~ or provisions made for on-site supervision of the person during working hours pending the results of the review.

9.6.2 In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.

9.6.3 In the case of adoptive parents, the application shall remain active, but children may be removed from the home pending results of the review.

9.6.4 The employer shall notify the Criminal History Specialist of the action taken with the child ~~/youth~~ care person pending the results of the administrative review. (This notification is in addition to following established procedures already governing state personnel or individual facilities ~~/~~ or agencies.)

9.7 In the case of a review of a decision involving a Department operated facility or Department staff, the Division Director (or designee) shall conduct the review in conjunction with Personnel and within the context of these regulations, merit rules/labor agreements and the employment status of the child ~~/youth~~ care person. The Criminal History Specialist shall be present as a witness.

9.8 When the review involves a Division of ~~Child Protective~~ Family Services approved foster parent, the Director of the Division of ~~Child Protective~~ Family Services (or designee) shall conduct the review with the County Foster Home Coordinator staffing the review and the Criminal History Specialist present as a witness.

9.9 In the case of a review of a decision involving a contracted facility or child placing agency, the Director (or designee) of the contracting Division shall conduct the review with the employer staffing the review and the Criminal History Specialist present as a witness.

9.10 The employer and the child ~~/youth~~ care person shall be bound by the final decision of the administrative review which is made by the Division Director or designee. If the employer does not accept the decision, sanctions shall apply.

10.0 EMPLOYER RESPONSIBILITIES (formerly Sections 42-44)

10.1 The employer (division/facility/agency) shall ensure that a Criminal History Record Request has been completed as specified by law and that the employer copy is maintained in the personnel/application file. Employers shall direct child ~~/youth~~ care persons to the State Police to have fingerprints taken and shall ensure the completion of this process.

10.1.1 The employer whenever possible, will notify the Criminal History Specialist if a child ~~/youth~~ care person is terminated prior to completion of the criminal history check process.

10.1.2 The employer shall require all child ~~/youth~~ care persons and foster parents to notify them of any subsequent arrests ~~/~~ or charges as a condition of continued employment ~~/~~ or approval.

10.2 When the employer is notified of a history of prohibited offense(s), the employer shall immediately take steps to terminate the child ~~/youth~~ care person. A copy of this letter shall be sent to the Criminal History Specialist and a copy maintained in the personnel/application file.

10.3 In the event that a child ~~/youth~~ care person requests an administrative review, the employer shall notify the Criminal History Specialist of the action taken to remove the child ~~/youth~~ care person from direct access to children ~~/ youth~~ pending the results of the review. The employer shall abide by the decision of the administrative review. Copies of written documentation related to the administrative review shall be maintained in the personnel/application file.

11.0 CONFIDENTIALITY (formerly Sections 45-50)

11.1 Title 11, subsection 8513 (c) (1) of the Delaware Code permits the State Bureau of Identification to ~~"~~furnish information pertaining to the identification and conviction data of any person ~~...~~ of whom the Bureau has record ~~...~~ to ~~...~~ individuals and agencies for the purpose of employment of the person whose record is sought, provided~~: ... b. T~~ the use of the conviction data ~~shall be~~ is limited to the purpose for which it was given~~;"~~ .

11.2 The Department shall ensure that written and electronically recorded criminal history record information shall be stored in a systematic manner, to provide for the security and confidentiality of records and to protect against any anticipated threats to their security and integrity.

11.3 The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment ~~/~~ or approval to provide child care services for child ~~/youth~~ care persons or foster parents as defined in these regulations.

11.4 The Department shall not release to employers as defined in these regulations copies of actual written reports

of criminal history records prepared by the State Bureau of Identification, Federal Bureau of ~~Identification~~ Investigation or Division of ~~Child Protective~~ Family Services.

11.5 The Department shall provide to employers and child ~~/youth~~ care persons or foster parents written summaries of criminal record information for a child ~~/youth~~ care person or foster parent whose criminal history record check results in a finding of prohibited offense(s), other arrests and convictions, or information that the individual is named in the Child Abuse Registry as the perpetrator of a substantiated report of child abuse or neglect.

11.6 The following procedure shall be established to permit the review of criminal history record files by the child ~~/youth~~ care person or foster parent:

11.6.1 An individual shall submit a request in writing to the Criminal History Specialist for the on-site review of his/her criminal history record file.

11.6.2 An appointment shall be made for the individual to review the record in the offices of the Office of Child Care Licensing. Identification will be required at the time of the review.

11.6.3 The record shall be reviewed in the presence of the Criminal History Specialist.

11.6.4 Written documentation of the date and time of the review and the name of the reviewer shall be filed in the criminal history record file for the child ~~/youth~~ care person or foster parent.

11.6.5 The Department shall ensure that criminal history record files (written and ~~electronic~~ computer-generated) be removed from the secure files for any purpose other than to permit review by the named child ~~/youth~~ care person or foster parent.

11.7 Criminal history record information shall not be disseminated to any persons other than the child ~~/youth~~ care person or foster parent whose record is being sought and his/her employer, the Division Director or County Foster Home Coordinator, in compliance with Title 11, subsection 8513 (d) of the Delaware Code.

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER TWENTY-SIX

RE: RECOGNITION OF THE STATEWIDE RESPONSIBILITIES OF THE DELAWARE MENTORING COUNCIL

WHEREAS, research shows that mentoring improves the social and academic well-being of children; and

WHEREAS, Delaware enjoys broad-based community support and involvement in education; and

WHEREAS, both school-based and community-based mentoring programs have been shown to be effective; and

WHEREAS, statewide coordination and support of mentoring will ensure greater efficiency and effectiveness of mentoring programs;

NOW, THEREFORE:

I, RUTH ANN MINNER, by the power vested in me as Governor of the State of Delaware, hereby declare and order that:

1. The Delaware Mentoring Council (the "Council") shall be recognized and established as the statewide organization responsible for the coordination and facilitation of mentoring programs for school-aged children.

2. The Council, in cooperation with the Department of Education and the Department of Health and Social Services, Division ofVolunteerism, shall support a statewide mentoring network and promote both school-based and community-based mentoring that focuses on the building of academic and social life skills.

3. The Council shall have fifteen voting members appointed by the Governor. The membership of the Council shall composed of:

(a) The Secretary of the Department of Education;
(b) The Director of the Division ofVolunteerism;
(c) Department of Health and Social Services;
(d) A representative of the Governor's Office;
(e) A representative of the Department of Publlic Safety;
(f) The Chairperson of the House of Representatives Education Committee;
(g) The Chairperson of the Senate Education Committee;
(h) A representative of the Delaware State Education Association;
(i) A representative of the Delaware Association of School Administrators;
(j) A representative of the Chief School Officers Association;
(k) The President of the Delaware State Chamber of Commerce;
(l) Two representatives of statewide mentoring organizations;
(m) A representative of Delaware State University;
(n) A representative of each of Delaware Technical & Community College; and
(o) A representative of the University of Delaware.

4. The Governor shall appoint the Chair(s) of the Council. The Council shall have no more than fifteen non-voting members appointed by the voting members who shall include business and community leaders, parents, mentors and mentored youth and shall be appointed to such terms as the Council shall establish.

5. The Council shall:

(a) Advocate for the mentoring of children in our public and private schools and communities with the ultimate goal of providing a mentor to every child who needs one;
(b) Identify and promote best practices and standards, including the implementation of appropriate assessments of the ongoing effectiveness of mentoring in Delaware;
(c) Raise awareness and promote the recruitment of mentors;
(d) Work to ensure an adequate level of resources to support mentoring programs statewide;
(e) Support efforts to provide and improve training, technical assistance and evaluation of mentoring programs;
(f) Provide an annual report of its activities to the Governor each year after the executionof this order; and
(g) Conduct a full evaluation of its activities and administrative arrangements within five years of execution of this order and provide a report to the Governor of its evaluation, which shall include a recommendation as to the continuation of the Council.

6. The Department of Education may utilize the University of Delaware, College of Human Services, Education and Public Policy, for a period of up to five years, to provide staff and administrative support to the Council, using funding allocated to the Department of Education for such purposes. The Council shall, in its evaluation described above in paragraph 5(g), provide recommendations to the Governor for the prospective staffing and administrative support for the Council.

Approved this 10th day of January, 2002

Ruth Ann Minner, Governor

Attest:
Harriet Smith Windsor, Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER TWENTY-SEVEN

RE: REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2001 AND INITIAL SUBALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2002 AND RESCISSION OF EXECUTIVE ORDER NUMBER 25

WHEREAS, pursuant to 29 **Del.C.** §5091, as amended, the State's private activity bond volume cap ("Volume Cap") for 2001 under §103 of the Internal Revenue Code of 1986 (the "Code") has been allocated among various state and local government issuers; and

WHEREAS, pursuant to Executive Order Number Eighty-Four, entered December 28, 2000, $75,000,000 of the Volume Cap for 2001 which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, on December 21, 2001, I entered Executive Order Number 25, reallocating Volume Cap for calendar year 2001 and making an initial sub-allocation of Volume Cap for calendar year 2002; and

WHEREAS, as a result of the amendment of §146(d) of the Code and the amendment of 29 **Del.C.** §5091, there is additional Volume Cap for 2001 and 2002, in that (i) the State has $18,750,000 in additional allocable Volume Cap for 2001, (ii) the amount ofVolume Cap for 2001 reassigned to the State by other governmental issuers has increased by $7,500,000, and (iii) the State has $37,500 in additional allocable Volume Cap for 2002; and

WHEREAS, the allocation ofVolume Cap in Executive Order Number Eighty-Four is subject to modification by further Executive Order; and

WHEREAS, the State's Volume Cap for 2001 and 2002 is allocated among the various State and local government issuers by 29 **Del.C.** §5091(a), as amended; and

WHEREAS, Kent County has reassigned $18,750,000 of its unallocated Volume Cap for 2001 to the State of Delaware (inclusive of the increased Volume Cap referred to above); and

WHEREAS, Sussex County has reassigned $14,250,000 of its unallocated Volume Cap for 2001 to the State of Delaware (inclusive of the increased Volume Cap referred to above); and

WHEREAS, the Delaware Economic Development Authority has reassigned $37,500,000 of its unallocated Volume Cap for 2001 to the Delaware State Housing Authority; and

WHEREAS, pursuant to 29 **Del.C.** § 5091(b), the State's $112,500,000 Volume Cap for 2002 is to be sub-allocated by the Governor among the Delaware State Housing Authority, the Delaware Economic Development Authority and other governmental issuers within the State; and

WHEREAS, the Secretary of Finance recommends (i) that the $33,000,000 unallocated Volume Cap for 2001 reassigned to the State of Delaware by other issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (ii) that the $37,500,000 of unallocated Volume Cap reassigned by the Delaware Economic Development Authority be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the $18,750,000 of additional Volume Cap for 2001 be allocated to the State as described in the fourth recital hereto be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and (iv) that the State's $112,500,000 Volume Cap for 2002 be allocated equally between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendations of the Secretary of Finance.

NOW, THEREFORE, I, Ruth Ann Minner, by the authority vested in me as Governor of the State of Delaware, do hereby declare and order as follows:

1. The $33,000,000 of unallocated Volume Cap for 2001 that has been reassigned by other issuers to the State of Delaware is hereby reassigned to the Delaware State Housing Authority for carry forward use, in addition to the $37,500,000 previously sub-allocated to the Delaware State Housing Authority for 2001 under Executive Order Eighty-Four and the $37,500,000 of unallocated Volume Cap for 2001 that has been reassigned by the Delaware Economic

Development Authority, and the $18,750,000 of additional Volume Cap allocated to the State as described in the recitals hereto, for a total carry forward amount of $126,750,000.

2. The $112,500,000 allocation to the State of Delaware of the 2002 Volume Cap is herebysub-allocated as follows: $56,250,000 to the Delaware State Housing Authority and $56,250,000 to the Delaware Economic Development Authority.

3. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.

4. Each of the foregoing acts shall be effective as of December 21, 2001.

5. Executive Order Number 25, entered December 21, 2001, is hereby rescinded and repealed in its entirety.

Approved this day of 7th day of February, 2002

Ruth Ann Minner, Governor

Attest:
Richard J.Geisinberger, Asst. Secretary of State

STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER

EXECUTIVE ORDER
NUMBER TWENTY-EIGHT

RE: CHILD POVERTY

WHEREAS, the rate of child poverty in Delaware has steadily increased in Delaware since 1991, at the same time that the national poverty rate has decreased; and

WHEREAS poverty is an indicator of future academic and social difficulties for children; and

WHEREAS the State of Delaware, in spite of its current budget restraints, can make better use of its existing resources in fighting the causes and effects of child poverty;

I, RUTH ANN MINNER, Governor Of The State Of Delaware, Hereby Order On This 13th Day Of February, 2002:

1. The Delaware Division of Revenue is directed to compile a plan by May 1, 2002 describing what steps it can implement using existing resources to ensure that Delawareans are maximizing use of the federal Earned Income Tax Credit.

2. The Delaware State Housing Authority is directed to ensure that allocation plans for federal low-income housing tax credits prepared for all years after 2002 contain incentives for developers to create housing affordable for families living at or near the poverty line.

3. The Delaware Department of Education is directed to compile a specific proposal by May 1, 2002 to increase the percentage of eligible children who use the public schools' federally funded breakfast programs.

Ruth Ann Minner, Governor

Attest:
Harriet Smith Windsor, Secretary of State

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Architectural Accessibility Board	Mr. Joseph G. Farrell	1/14/06
Board of Occupational Therapy	Ms. Mara Beth Schmittinger	1/07/05
Board of Pilot Commissioners	Mr.Charles F. Macintire	1/11/06
Community Involvement Advisory Council	Dr. Kenneth W. Bell	1/08/03
	Ms. Mary L. Dantzler	1/08/05
	Mr. Glen J. Ernst	1/08/05
	Mr. James M. Falk	1/08/03
	Honorable Robert G. Frederick	1/08/03
	Ms. Juana Fuentes-Bowles	1/08/05
	Bethany Hall-Long, Ph.D., R.N.	1/08/04
	Ms. Pamela Meitner	1/08/04
	Ms. Rashmi Rangan	1/08/04
	Mr. Marvin P. Thomas	1/08/05
	Mr. Harold L. Truxon	1/08/04
Council on Boiler Safety	Mr. Theobald P. Omlor, Jr.	1/14/05
	Mr. Robert W. Whitman, Jr.	1/14/05
Council of Delaware Association of Professional Engineers	Ms. Anne H. Reigle	1/14/06
Delaware Commission for Women	Mr. Brian J. Bartley	1/14/05
	Ms. Eileen Conner	1/14/05
	Ms. Geraldine Lewis-Loper	1/14/05
	Ms. Kathryn Laffey Montgomery	Pleasure of the Governor
	Mary S. Schreiber, Ph.D.	1/14/05
	Mr. Donald E.Tuites	1/14/05
Delaware Department of Technology and Information	Mr. Thomas M. Jarrett	Pleasure of the Governor
Delaware 403(b) Program Council	Mr. Gerard P. Gallagher	Pleasure of the Governor
	Ms. Susan M. McNamara	Pleasure of the Governor
	Mr. Jeffrey A. Pyle	Pleasure of the Governor
	Ms. Dorcell S. Spence	Pleasure of the Governor
Delaware Greenways and Trails Council	Ms. Dana M. Levy	1/11/05
Delaware Nursing Home Residents Quality Assurance Commission	Master Sgt. John A. Fogelgren, Jr.	1/14/05

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Enhanced 911 Emergency Reporting System Service Board	Mr. Michael P. Cebrick	1/08/04
	Honorable James Ford, Jr.	Pleasure of the Governor
	Mr. Craig S. Harrington	1/08/03
	Mr. Thomas M. Jarrett	1/08/05
	Mr. Michael F. Metcalf	1/08/04
	Ms. Debra J. Sharp	1/08/03
	Mr. James E. Turner, III	1/08/05
Governor's Council on Lifestyles & Fitness	Avron Abraham, Ph.D.	1/14/04
	Michael J. Axe, M.D.	1/14/04
	Ms. Lisa C. Barkley	1/14/04
	Ms. Martha C. Bogdan	1/14/04
	Ms. Evelyn Burkle	1/14/04
	Ms.Annette Hubbard	1/14/04
	Mr. Donald L. Kjelleren	1/14/04
	Ms. Amy L. Milligan	1/14/04
	Lynn Snyder-Mackler, Sc.D., PT	1/14/04
	Mr. David Tiberi	1/14/04
	D. Allen Waterfield, Ph.D.	1/14/04
Industrial Accident Board	Ms. Alice M. Mitchell	1/23/08
Justice of the Peace for Kent County	Ms. Debora Foor	Four-Year Term from date of Swearing In
Pesticide Advisory Committee	Mr. John Barndt	1/14/05
	Mr. Daniel C. Bryan	1/14/05
	Mr. Robert Fugitt	1/14/05
	Mr. Charles A. Lesser	1/14/05
	Mr. Joseph J. Reardon	1/14/05
	Ms. Susan Whitney	1/14/05
State Board of Pharmacy	Ms. Carolyn Calio	7/01/03
State Board of Plumbing Examiners	Mr. Lawrence R. Carson	1/14/05
	Mr. Bruce F. Collins	1/14/05
State Election Commissioner	Mr. Frank B. Calio	7/22/03
Unemployment Insurance Appeals Board	Mr. Vance G. Daniels, Sr.	5/01/06

DEPARTMENT OF INSURANCE

Domestic/Foreign Insurers Bulletin No. 10

Reporting Risk Based Capital By Insurers Subject To 18 *Del. C.* § 1104

To: All Insurers And Licensees

From: Donna Lee H. Williams, Commissioner

Effective March 1, 2002, domestic insurers who transact business only in foreign countries under 18 *Del.C.*§ 103 and who calculate reserves under 18 *Del.C.*§ 1104, and which otherwise meet the requirements of 18 *Del. C.*§ 5809(d) shall be exempt from calculating the differences between the accounting practices permitted by Delaware for companies complying with 18 *Del.C.*§ 1104 and NAIC Statutory Accounting Practices and Procedures.

Donna Lee H. Williams, Commissioner
DATED: February 25, 2002

DEPARTMENT OF ADMINISTRATIVE SERVICES

PUBLIC SERVICE COMMISSION

Notice Of Proposed Rulemaking Revising Rules Governing Payphone Service Providers And Operator Services Providers

In 1997, the Public Service Commission ("the Commission") adopted "Regulations Governing Payphone Service Providers in Delaware ("Payphone Rules"). See PSC Order No. 4651 (Nov. 18, 1997). Those Payphone Regulations governed payphone service provided by both independent payphone service providers and other telecommunications carriers. By PSC Order No. 5868 (Jan. 29, 2002), the Commission now proposes to make revisions and amendments to these 1997 Payphone Regulations. The Commission proposes the changes in light of developments in the payphone industry since 1997 and to bring uniformity to the regulation of intrastate and interstate calls made from payphones utilizing the services of an Operator Services Provider.

Summary of Proposed Changes

One proposed revision will allow a payphone service provider ("PSP") to disclose the charge for obtaining directory assistance from the payphone provider by either posting such price on the payphone or implementing an oral disclosure system which will provide the price before the requested information is provided. See proposed section 4(f)(9) & 6(b). Other proposed amendments expand the scope of the Payphone Regulations to encompass services provided by Operator Services Providers ("OSPs"). These proposed additions require the OSP serving a payphone to grant the payphone consumer an opportunity to obtain an oral real-time quote of the price for a collect, credit card, and third-party billed calls handled by the OSP. See Proposed Section 6(c). In doing so, the proposed revisions will apply to intrastate calls the same price disclosure (and other call routing) obligations that the Federal Communications Commission ("FCC") has imposed on OSPs in their handling of interstate calls from the payphone. See 47 C.F.R. § 64.703. Third, two new obligations are imposed on payphone service providers. Under the revisions, such providers must have in place procedures to ensure prompt refunds to consumers and to promptly repair or replace damaged or inoperable payphones. See Proposed Section 3(f) & (g). Fourth, several revisions are made to the present provisions related to the payphone equipment which can be connected to the public switched network. These changes reflect a change in the regime adopted by the FCC for approving such terminal equipment. See Proposed Sections 2(d) and 4(a). Finally, numerous other provisions have been rewritten to improve style and format.

Solicitation of Materials and Notice of Public Hearing

You may review a copy of these proposed revisions and amendments to the Payphone Regulations by consulting the March 1, 2002 edition of the Delaware Register of Regulations. You may also find an unofficial copy of PSC Order No. 5868, the existing Payphone Regulations, and the proposed revised Regulations posted on the Commission's website located at "www.state.de.us/delpsc." You may also obtain a written copy of the proposed Regulations and the other relevant documents from the Commission at its Dover office during normal business hours. The address is set out below. The cost of such copies is $0.25 per page.

The Commission has the authority to adopt such rules under 26 Del. C. §§ 209 and 703. Pursuant to 29 Del. C. §§ 10115 & 10116, the Commission solicits suggestions, comments, data, briefs, memoranda, and other documents concerning the proposed revisions and amendments to its Payphone Regulations. Twelve copies of such materials should be submitted to the Commission on or before Wednesday, April 10, 2002. The Commission's address is:

Public Service Commission
Regulation Docket No. 12
861 Silver Lake Boulevard
Cannon Building, Suite 100
Dover, Delaware 19904

In addition, the Commission will conduct a public hearing on the proposed revisions and amendments to the Payphone Regulations, beginning at 9:30 AM on Wednesday, April 24, 2002. Such hearing will be conducted at the Commission's office at the address set out above. If you wish to participate in this proceeding, but will not file comments, you must file a Notice of Intent to Participate. Twelve copies of such notice must be submitted on or before Wednesday, April 10, 2002. Only persons who have filed written materials or such Notice to Participate will be provided individual notice of further proceedings in this matter.

If you are disabled and need assistance to review the documents in this matter or participate in the proceedings, please contact the Commission to discuss such aids or services. You can make such contact in person, by telephone (including TRS or text telephone), by Internet e-mail, or in written correspondence.

You can contact the Commission to discuss this proceeding by calling 1-800-282-8574 (toll-free in Delaware) or (302) 739-3227. Text telephone service is available at (302) 739-4247. You can also send inquiries by Internet e-mail to patstowell@state.de.us.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, March 15, 2002 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC HEALTH

Nature of the Proceedings

These regulations, "State of Delaware Regulations Governing the Care and Transportation of the Dead," replace by revision the current "State of Delaware Regulations Governing the Care and Transportation of the Dead" previously adopted in 1953.

In light of recent anthrax deaths and public health risks associated with handling dead bodies from such high-risk diseases, the Division of Public Health (DPH) determined that these revised rules should be adopted. These rules use the strictest interpretation when handling a dead body from high-risk disease. If a death occurs from a designated high-risk disease, these rules require immediate notification from the physician, other provider, or hospital to DPH, the family and the funeral director handling the body. Specific and complete instructions are provided for the preparation, labeling, handling, transport and disposal of said bodies.

Additional proposed changes involve the addition of language to comply with current names and responsibilities within the Department of Health and Social Services and the deletion of language in several sections that is either redundant or unnecessary.

Notice Of Public Hearing

The Office of Vital Statistics, Division of Public Health of the Department of Health and Social Services, will hold a public hearing to discuss the proposed changes to the State of Delaware Regulations Governing the Care and Transportation of the Dead. This public hearing will be held on March 26, 2002 at 1:00 PM in the 3rd Floor Conference Room, Jesse Cooper Building, 417 Federal Street, Dover, Delaware 19901.

Copies of the proposed revisions are available for review by contacting:

Office of Vital Statistics
Jesse Cooper Building
417 Federal Street
Dover, Delaware 19901
Telephone: (302) 739-4721

Anyone wishing to present his or her oral comments at this hearing should contact Dave Walton at (302) 739-4701 by close of business March 19, 2002. Anyone wishing to submit written comments as a supplement to, on in lieu of, oral testimony should submit such comments by close of business April 1, 2002 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, DE 19903-0637

DIVISION OF SOCIAL SERVICES

PUBLIC NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Food Stamp Program is proposing to implement policy changes to the following sections of the Division of Social Services Manual, Sections 9079.1 and 9079.7

Summary Of Changes

DSSM 9079.1 - Providing Replacement Issuances

- Benefits sent by registered or certified mail are not replaced when anyone in the household, anyone living with the household, or anyone visiting the household signed for the original benefit.

DSSM 9079.7 - Delivery of Coupons

- Households who are given a replacement benefit because they did not get the original benefit in the mail will have to go to an issuance site to pick up the replacement and all future benefits.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by March 31, 2002.

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

DEPARTMENT OF JUSTICE

DIVISION OF SECURITIES

Notice of Proposed Revisions to the Rules and Regulations Pursuant to the Delaware Securities Act

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and section 7325(b) of Title 6 of the Delaware Code, the Division of Securities of the Delaware Department of Justice hereby publishes notice of proposed revisions to the Rules and Regulations Pursuant to the Delaware Securities Act. The Division proposes hereby to amend sections 600, 601, 608 and 700 of the Rules and Regulations Pursuant to the Delaware Securities Act and to add a new section 610.

Persons wishing to comment on the proposed regulations may submit their comments in writing to:

James B. Ropp, Securities Commissioner
Department of Justice
State Office Building, 5th Floor
820 N. French Street
Wilmington, DE 19801

The comment period on the proposed regulations will be held open for a period of thirty days from the date of publication of this notice in the Delaware Register of Regulations.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANGEMENT
AIR QUALITY MANAGEMENT SECTION

Title Of The Regulations:

Regulation 38 - "Emission Standards For Hazardous Air Pollutants For Source Categories"

Brief Synopsis Of The Subject, Substance And Issues:

Federal regulations at 40 CFR Part 63 Subpart B implement sections 112(g) and 112(j) of the Clean Air Act. Both sections require State agencies to approve on a case-by-case basis maximum achievable control technology (MACT) emission limitations for major sources when there are no federal standards in place. The Department adopted section 112(g) requirements in April 1998 as subpart B of Regulation 38.

Federal section 112(j) requires State agencies to issue equivalent MACT emission limitations whenever the EPA Administrator fails to promulgate a MACT emission standard for a source category within 18 months of its scheduled promulgation date. This will happen on May 15, 2002.

The Department is proposing to amend existing Subpart B of Regulation 38 by promulgating regulatory requirements to implement the section 112(j) requirements.

Notice Of Public Comment:

The public comment period for this proposed amendment will extend through April 1, 2002. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Thursday, March 21, 2002 beginning at 6:00 PM in the Air Quality Management Office, 156 S. State Street, Dover, DE.

Prepared By:
James R. Snead (302) 323-4542February 5, 2002

DIVISION OF FISH & WILDLIFE

SAN# 2002-03&04

Title Of The Regulations:

Amendments To Shellfish Regulations

Brief Synopsis Of The Subject, Substance And Issues:

Oyster harvesting regulations need to be updated to cover the harvest season; the harvestable amount of oysters and areas where oysters may be landed in 2002. It is also proposed to make it illegal to take crabs from fish pots because recreational crabbers are using fish pots to take crabs in addition to their allowable two crab pots.

Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 19901, (302) 739-3441. A public hearing on this proposed amendment will be held on March 27, 2002 at 7:30 PM in

the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 12:00 PM, March 31, 2002.

Prepared By:
Charles A. Lesser, (302)739-3441, January 22, 2002

DIVISION OF FISH & WILDLIFE

REGISTER NOTICE
SAN# 2002-01

Title Of The Regulations:
Tidal Finfish Regulations

Brief Synopsis Of The Subject, Substance And Issues:

The Coast Wide Requirements For recreational black sea bass fishermen in 2002 is a 11.5 inches minimum size length with a 25 fish creel limit and no closed season. Delaware currently has an eleven inch minimum size limit, a 25 fish creel and closed season of March 1 through May 9. It is proposed to amend Tidal Finfish Regulation No. 23 to increase the minimum size limit in black sea bass from 11 inches to 11.5 inches for recreational fishermen and eliminate the closed season from March 1 through May 9.

There are no proposed changes to the weakfish fishery management plan. Nevertheless, the calendar dates for the periods it is unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Bay or Ocean with any fishing equipment other then a hook and line must be updated from 2001 to 2002. It is proposed to amend Tidal Finfish Regulation No. 10 so the closure dates in 2001 match the same time closures in 2001.

The Summer Flounder Fishery Management Plan details the annual process that the Summer Flounder Fishery Management Board, the Mid-Atlantic Management Council and the National Marine Fisheries Service are to use to establish conservation equivalency for the recreational summer flounder fishery. These agencies agreed that the states would implement conservationally equivalent measures rather than a coastwide management program for summer flounder in 2002. Delaware is obligated to achieve an additional 3.5 percent reduction to the 48 percent reduction required in 2001, relative to the 1998 landings. This can be achieved by either a spring or fall closure for a relatively short period of time. Another option would be to decrease the minimum size from 17.5 to 17 inches and implement a longer closure in the spring or fall. Reducing the creel limit lower than four is not considered acceptable. In any case, Tidal Finfish Regulation No. 4 will be amended to account for an additional 3.5 percent reduction to the 2001 reduction.

Notice Of Public Comment:

Individuals may present their comments or request additional information by contacting the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover DE 19901, (302) 739-3441. A public hearing on these proposed amendments will be held on March 21, 2002 at 7:30 PM in the DNREC Auditorium, 89 Kings Highway, Dover, DE 19901. The record will remain open for written comments until 4:30 PM, April 1, 2002.

Prepared By:
Charles A. Lesser, (302)739-3441, February 6, 2002

EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE

Notice Of Proposed Information Technology Training Grant Program Regulation

Title Of Regulation

Information Technology Training Grant Program Regulation

Nature Of Proceedings; Synopsis Of The Subject And Substance Of The Proposed Regulation

In accordance with procedures set forth in 29 **Del.C.,** Ch. 11, Subch. III and 29 **Del.C.**, Ch. 101, the Director of the Delaware Economic Development Office ("DEDO") is proposing to adopt a regulation for the administration and operation of the Information Technology Training Grant Program established in 73 **Del. Laws**, c. 74, § 62(i)(C) (June 28, 2001) and administered by the Workforce Development Section of DEDO. The proposed regulation sets forth the rules governing eligibility for grants under the Program and for the administration of the Program.

Statutory Basis And Legal Authority To Act

29 **Delaware Code**, § 5005(11); 73 **Del. Laws**, Ch. 74, § 62(i)(C) (June 28, 2001).

Other Regulations Affected

None.

How To Comment On The Proposed Regulation

Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing or calling Ms. Helen Groft, Delaware Economic Development Office, 99 Kings Highway, Dover, DE 19901, phone (302) 672-6807, or facsimile (302) 739-2028.

Members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Helen Groft at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before April 2, 2002.

ADMINISTRATIVE OFFICE OF THE COURTS

VIOLENT CRIMES COMPENSATION BOARD

The Violent Crimes Compensation Board proposed to amend several regulations. A public hearing is scheduled for:

March 28, 2002, 6:30 P.M. – 8:00 P.M.
Site: Delaware Technical and Community College
Corporate and Community Programs
Terry Campus, Dover DE

Comments: Written comments will be accepted until March 30, 2002, and may be sent to:

Delaware Violent Crimes Commission
240 N. James Street, Suite 203
Wilmington, DE 19804

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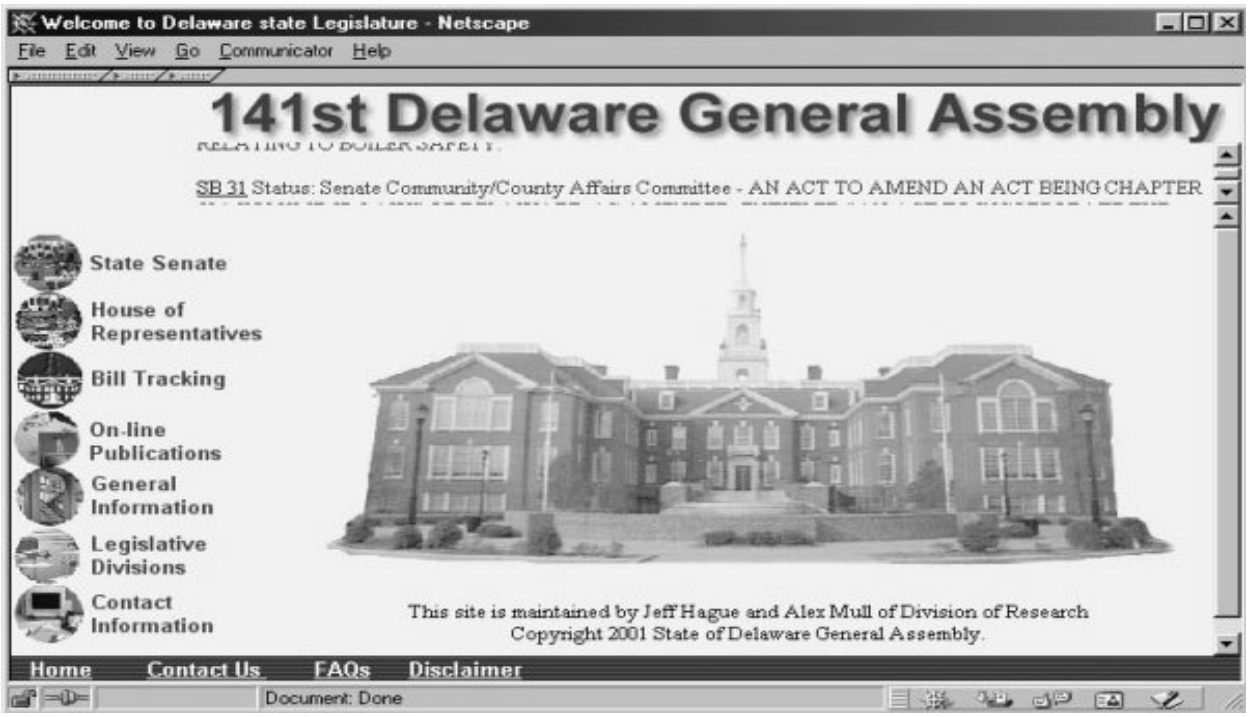

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