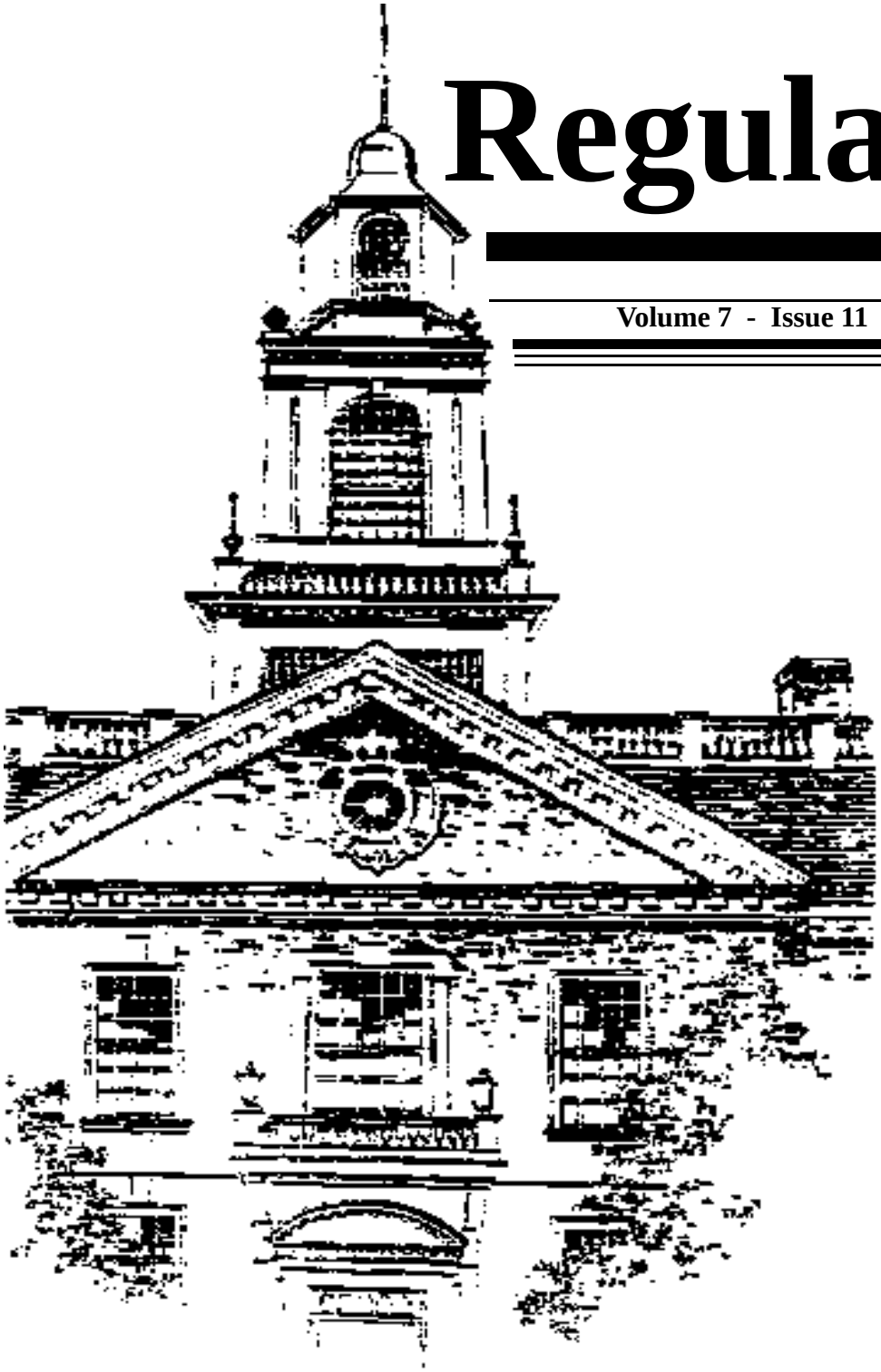
Delaware Register of Regulations

Issue Date: May 1, 2004

Volume 7 - Issue 11 Pages 1359 - 1593



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 April 15, 2004.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

materials, upon all the testimonial and written 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
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.

DIVISION OF RESEARCH STAFF:

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

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.).

PROFESSIONAL STANDARDS BOARD

DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code, Section 6301, 7101(a) (3 **Del.C.** §6301, 7101(a))

POULTRY

ORDER RESCINDING EMERGENCY REGULATIONS

AND NOW this 5th day of April, the Secretary of Delaware's Department of Agriculture, having discharged his duties and responsibilities under 3 **Del.C.** §§6301 and 7101(a) to protect, prevent, suppress, control or eradicate dangerous, contagious, or infectious diseases within the poultry population of the State of Delaware, deems it proper to rescind regulations 3.0, 4.0, or 5.0, that were adopted on an emergency basis on February 25, 2004 to combat the recent outbreak of avian influenza that had been detected on two farms within Delaware, effective April 5, 2004 the state.

IT IS SO ORDERED.

Michael T. Scuse, Secretary
Delaware Department of Agriculture

Dated: April 5, 2004

Symbol Key

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

Proposed Regulations

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

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

24 **DE Admin. Code** 1300

Statutory Authority: 24 Delaware Code, Section 1304(b)(3) (24 **Del.C**. §1304(b)(3))

Public Notice

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 5.0 – Uniform, Patches, Badges, Seals, Vehicular Markings. This amendment will clarify the use of unmarked vehicles. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by May 31, 2004, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, July 29, 2004, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

1.0 Firearm's Policy

1.1 No person licensed under 24 **Del.C.** §1315 & §1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

1.2 Firearms - approved type of weapons

1.2.1 9mm

1.2.2 .357

1.2.3 .38

1.2.4 .40

1.3 All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.

1.4 Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.

1.5 All individuals must qualify with the same type of weapon that he/she will carry.

1.6 All ammunition will be factory fresh (no re-loads).

1.7 The minimum passing score is 75%.

1.8 All licenses are valid for a period of five (5) years, subject to proof of compliance of Rule 1.0 by submission of shoot sheets by January 31st of each year for the previous calendar year.

Adopted 11/04/1994

See 3 DE Reg. 960 (1/1/00)

See 7 DE Reg. (3/1/04)

2.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

To carry the above weapons/items a security guard must

have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

Adopted 11/04/1994

3.0 Personnel Rosters and Job Assignments

3.1 Anyone licensed under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sec, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60	W M	01/25/99	SG
Helen E. White	03/17/71	B F	03/17/00	FA
John F. Henry	05/23/43	B M	05/23/00	PI
James D. Williams	12/03/40	W M	06/30/99	MG
Frank G. Mongomery	07/24/55	BM	06/30/99	LH
Anne L. Murray	10/20/40	W F	06/30/99	CO

SG Security Guard
FA Firearm's
PI Private Investigator
MG Delaware Manager
LH License Holder
CO Corporate Officer

3.2 Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
Barley Mill Road
2200 - 0600 Hours, Monday, Wednesday, and Friday

Adopted 11/04/1994
See 3 DE Reg 960 (1/1/00)

4.0 Record Book; Right of Inspection

All persons licensed under 24 **Del.C.** Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

Adopted 11/04/1994
See 3 DE Reg 960 (1/1/00)

5.0 Uniforms, Patches, Badges, Seals, Vehicular Markings Amended 04/17/97

5.1 No person licensed under **24 Del.C. Ch. 13** shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

5.2 Advertisement and other forms of publications:

5.2.1 No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

5.2.2 All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

~~5.2.3 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.~~

5.3. Vehicle Identification

5.3.1 No person or entity licensed under Title 24, Chapter 13 of the Delaware Code shall utilize any vehicle in the course of activities covered by said Chapter 13, unless the appearance of the vehicle, including any identifying marking, shall have been first approved by the Board of Examiners using the standards and criteria set forth in this Rule.

5.3.2 The content of any vehicle marking shall be governed by the standards and criteria set forth in Rule 5.1 above.

5.3.3 No vehicle utilized for purposes covered by Title 24, Chapter 13 shall have an appearance that creates a reasonable likelihood of confusion with a police vehicle used by the Delaware State Police or a law enforcement agency of any state or governmental subdivision. The Board of Examiners shall have discretion to review the appearance of vehicles, and to make comparisons with known law enforcement vehicles, in order to enforce this Rule.

5.3.4 In the event that a vehicle is not approved by the Board of Examiners pursuant to this Rule, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standard and criteria set forth above.

5.3.5 Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

Adopted 11/04/1994

See 3 DE Reg. 960 (1/1/00)

6.0 Qualified Manager

6.1 A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

6.2 A qualified license holder must be an owner/ partner/corporate officer of the agency requesting licensure.

Adopted 11/04/1994

7.0 Employment Notification

7.1 It shall be the responsibility of each person licensed as a security guard under 24 **Del.C.** Ch. 13 to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact as well as the Director of the Board of Examiners.)

7.2 Employers Responsibility

7.2.1 A licensed private security agency, after investigation, shall notify the Detective Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

7.2.2 A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

7.2.2.1 The name of any employee arrested;

7.2.2.2 The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

7.2.2.3 The name of any employee disabled from carrying, owning, or possession a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

Adopted 11/04/1994

See 4 DE Reg. 361 (8/1/00)

8.0 Criminal Offenses

In addition to those qualifications set forth in 24 **Del.C.** §1314, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

Adopted 11/04/1994

9.0 Private Investigators

9.1 A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

9.2 At the time of processing, a Private Investigator must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

9.3 A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

Adopted 11/04/1994

10.0 Licensing Fees

10.1 Class A License - Private Investigative Agency

10.1.1 In-State License Holder

10.1.1.1 Individual - No Employees - Not Corporation

10.1.1.1.1 $230

10.1.1.1.2 $5,000 Bond

10.1.1.1.3 $1,000,000 Liability Insurance per occurrence

10.1.1.2 Corporation - Has Employees

10.1.1.2.1 $345

10.1.1.2.2 $10,000 Bond

10.1.1.2.3 $1,000,000 Liability Insurance per occurrence

10.1.2 Out-of-State

10.1.2.1 License Holder - Individual and Corporation

10.1.2.1.1 $345

10.1.2.1.2 $10,000 Bond

10.1.2.1.3 $1,000,000 Liability Insurance per occurrence

10.1.2.2 Delaware Manager

10.1.2.2.1 $230

10.1.2.1.2 $5,000 Bond

10.2 Class B License - Private Security Agency

10.2.1 In-State License Holder

10.2.1.1 Individual - No Employees - Not Corporation

10.2.1.1.1 $230

10.2.1.1.2 $5,000 Bond

10.2.1.1.3 $1,000,000 Liability Insurance per occurrence

10.2.1.2 Corporation - Has Employees

10.2.1.2.1 $345

10.2.1.2.2 $10,000 Bond

10.2.1.2.3 $1,000,000 Liability Insurance per occurrence
10.2.2 Out-of-State
10.2.2.1 License Holder - Individual and Corporation
10.2.2.1.1 $345
10.2.2.1.2 $10,000 Bond
10.2.2.1.3 $1,000,000 Liability Insurance per occurrence
10.2.2.2 Delaware Manager
10.2.2.2.1 $230
10.2.2.2.2 $5000 Bond
10.3 Class C License - Private Investigative & Private Security Agency
10.3.1 In-State License Holder
10.3.1.1 Individual - No Employees - Not Corporation
10.3.1.1.1 $345
10.3.1.1.2 $10,000 Bond
10.3.1.1.3 $1,000,000 Liability Insurance per occurrence
10.3.1.2 Corporation - Has Employees
10.3.1.2.1 $520
10.3.1.2.2 $15,000 Bond
10.3.1.2.3 $1,000,000 Liability Insurance per occurrence
10.3.2 Out-of-State
10.3.2.1 Individual and Corporation
10.3.2.1.1 License Holder
10.3.2.1.1.1 $520
10.3.2.1.1.2 $15,000 Bond
10.3.2.1.1.3 $1,000,000 Liability Insurance per occurrence
10.3.2.1.2 Delaware Manager
10.3.2.1.2.1 $345
10.3.2.1.2.2 $10,000 Bond
10.4 Class D License - Armored Car Agency License
10.4.1 License Holder
10.4.1.1 $345
10.4.1.2 Banking Commissioner License as required by 5 **Del.C.** §3203
10.4.1.3 $10,000 Bond
10.4.1.4 $1,000,000 Liability Insurance per occurrence.
10.4.2 Delaware Manager
10.4.2.1 $230
10.4.2.2 $5000 Bond
10.5

6 DE Reg. 637 (11/01/02)
7 DE Reg. (03/01/04)

11.0 Use Of Animals

The use of animals is prohibited in the performance of private security activities.

Adopted 04/23/1998
See 3 DE Reg 960 (1/1/00)

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

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

The Harness Racing Commission proposes to enact a new rule, Rule 8.3.3.5-Erythropietin, to provide that a horse that tests positive for EPO antibodies may be declared unfit to race, and may not resume racing until the owner or trainer submits a negative test for EPO antibodies.

The Commission will accept written comments from May 1, 2004 until May 31, 2004. Written comments should be sent to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, De 19901. A public hearing will be held at Harrington Raceway, Harrington, DE on June 1, 2004 at 10:15 a.m.

Proposed Amendment to the Harness Racing Commission Rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in 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.

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

Notwithstanding any inconsistent provision of this Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropietin was present in the sample taken from that horse.

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds which that person occupies or has the right to occupy, or in

that person's personal property or effects or vehicle in that person's care, custody or control, a drug, medication, chemical, foreign substance or other substance that is prohibited in a horse on a race day unless the product is labelled in accordance with this subsection.

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

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide (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:

8.3.5.3.1 If 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. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a $1,000 fine and up to a fifty day suspension.

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

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

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

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

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

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

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

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and 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.

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 122(e) (14 **Del.C.** §122(d))
14 **DE Admin**. Code 106

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

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)
107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)
108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

A. Type of Regulatory Action Required

New Regulations

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to adopt regulations 106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II), 107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II) and 108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II). The development of these regulations by the Department of Education was mandated in 14 **Del.C.** §1270(b).

These regulations shall be effective July 1, 2005 for all teachers, specialists and administrators. However, for the teachers, specialists and administrators in those districts that are participating in the pilot of this process the effective date shall be July 1, 2004.

These regulations will replace the three existing regulations for DPAS I, 110 Teachers and Specialists Appraisal Process, 112 Addendum to Teachers and Specialists Appraisal Process and 115 School Level Administrator Appraisal Process on July 1, 2005. The new regulations 106, 107 and 108 have the added component of student achievement as one of the evaluation elements and 108 Administrator Appraisal Process Delaware Performance Appraisal System includes all administrators not just building level administrators.

These regulations are being re-advertised because of the

changes made to most sections of the regulations in response to comments made. The regulations were previously advertised in the March 1, 2004 Volume 7, Issue 9 of the Register of Regulations.

C. Impact Criteria

1. Will the regulations help improve student achievement as measured against state achievement standards? The regulations are concerned with improving teacher, specialist and administrator quality which relates to student improvement. This is the last piece of the accountability system.

2. Will the regulations help ensure that all students receive an equitable education? The regulations address a staff appraisal process, not equity issues for students.

3. Will the regulations help to ensure that all students' health and safety are adequately protected? The regulations address a staff appraisal process, not students' health and safety.

4. Will the regulation help to ensure that all students' legal rights are respected? The regulations address a staff appraisal process, not students' legal rights.

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

6. Will the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The regulations will require new training and different procedures for the evaluation of staff in Delaware schools.

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

8. Will the regulations 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 regulations 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 regulations? The **Delaware Code** requires that the Department of Education promulgate regulations for a performance appraisal system for teachers, specialists and administrators.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The cost for these new regulations should not be more than the existing appraisal system.

106 Teacher Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 Teacher Appraisal Process shall be effective July 1, 2005 for all teachers; however, for teachers in those districts which are participating in the pilot of this process the effective date shall be July 1, 2004.

1.1 For teachers participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective teaching as defined in 7.0.

2.0 Definitions

"Announced Observation" shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation shall be of sufficient length, at least twenty (20) minutes, to analyze the lesson and assess performance.

"Board" shall mean a local board of education or charter school board of directors.

"Certified Evaluator" shall mean the individual, usually the supervisor of the teacher, who has successfully completed the evaluation training in accordance with 9.0.

"**DPAS"** shall mean the Delaware Performance Appraisal System in effect prior to July 1, 2005.

"**Experienced Teacher"** shall mean a teacher who holds valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003.

"Improvement Plan" shall be the plan that a teacher and evaluator mutually develop in accordance with section 8.0.

"**Novice Teacher"** shall mean a teacher who holds a valid and current Initial License.

"Satisfactory Component Rating" shall mean the teacher understands the concepts of the component and the teacher's performance in that component is acceptable.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

"Summative Evaluation" shall be the rating process at the conclusion of the appraisal cycle.

"Technical Assistance Document" shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The observation shall be of sufficient

length, at least twenty (20) minutes, to analyze the lesson and assess performance.

"Unsatisfactory Component Rating" shall mean that the teacher does not understand the concepts of the component and the teacher's performance in that component is not acceptable.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Experienced teachers who have earned a rating of "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. The minimum annual evaluation for an experienced teacher who has earned an effective rating, may be waived for the subsequent year but not for two (2) consecutive years. During the first full year of implementation, half of the experienced teachers in a building who received a rating of "Effective" or "Exemplary" on the most recent DPAS Performance Appraisal may have the annual Summative Evaluation waived.

3.2 Experienced teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These teachers shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.

3.3 Novice teachers shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice teachers who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

5.1 The following five (5) components shall be the basis upon which the performance of a teacher shall be evaluated by a certified evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Reserved

5.1.2 Classroom Environment

5.1.2.1 Reserved

5.1.3 Instruction

5.1.3.1 Reserved

5.1.4 Professional Responsibilities

5.1.4.1 Reserved

5.1.5 Student Improvement

5.1.5.1 Reserved

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Reserved

5.2.2 Reserved

5.2.3 Reserved

5.2.4 Reserved

5.2.5 Reserved

6.0 Summative Evaluation Ratings

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement", or "Ineffective".

6.2.1 Effective shall mean that the teacher has received Satisfactory Component ratings in all five (5) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the teacher has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.2.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.

6.2.3 Ineffective shall mean that the teacher has received three (3) or more Unsatisfactory Component ratings

out of the five (5) components of the appraisal criteria.

6.2.3.1 A teacher who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students the teacher is instructing.

6.2.3.2 If the teacher's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

7.0 A pattern of ineffective teaching shall be based on the most recent appraisal ratings of a teacher using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective teaching. The following appraisal ratings shall be determined to be a pattern of ineffective teaching:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a teacher who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a teacher's performance during an observed lesson is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the teacher to work with curriculum specialist(s), subject-area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the teacher and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The teacher shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the teacher and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

9.0 Evaluator Credentials

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques of observation and conferencing, content and relationships of frameworks for teaching training and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

10.0 Challenge Process

10.1 A teacher may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a teacher may challenge the conclusions of a lesson observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the teacher's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s), the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision

shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

107 Specialist Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 Specialist Appraisal Process shall be effective July 1, 2005 for all specialists; however, for specialists in those districts which are participating in the pilot of this process the effective date shall be July 1, 2004.

1.1 For specialists participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective practice as defined below.

1.2 Specialist shall mean a licensed and certificated staff person who is part of the school team and delivers professional services to students, teachers, staff and/or families. Specialists include but are not limited to guidance counselors, instructional support specialists, library media specialists, school psychologists, school nurses, student support specialists, and therapeutic services specialists.

2.0 Definitions

"Announced Observation" shall consist of the Pre-Observation Form and conference with the evaluator, an observation by the evaluator at an agreed upon date and time, and the associated formative conferences/reports. The observation for the specialist may be a collection of data over a specified period of time, up to four (4) weeks, or it may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

"Board" shall mean a local board of education or a charter school board of directors.

"Certified Evaluator" shall mean the individual, usually the supervisor of the specialist, who has successfully completed the evaluation training in accordance with 9.0.

"DPAS" shall mean the Delaware Performance Appraisal System in effect prior to July 1, 2005.

"Experienced Specialist" is a specialist who holds a valid and current Continuing or Advanced License, or Standard or Professional Status Certificate issued prior to August 1, 2003 or holds a valid and current license from their respective licensure body.

"Improvement Plan" shall be the plan that a specialist and evaluator mutually develop in accordance with section 8.0.

"Novice Specialist" is a specialist who holds a valid and current Initial License or holds a valid and current license from their respective licensure body and has less than three (3) years of experience as a specialist.

"Satisfactory Component Rating" shall mean the specialist understands the concepts of the component and the specialist's performance in that component is acceptable.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

"Summative Evaluation" shall be the rating process at the conclusion of the appraisal cycle.

"Technical Assistance Document" shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

"Unannounced Observation" shall consist of an observation by the evaluator at a date and time that has not been previously arranged and the associated formative conferences/reports. The unannounced observation for the specialist may be an observation of sufficient length to gather appropriate data but not less than twenty (20) minutes.

"Unsatisfactory Component Rating" shall mean that the specialist does not understand the concepts of the component and the specialist's performance in that component is not acceptable.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Experienced specialists who have earned a rating of "Effective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation for an experienced specialist who has earned an effective rating may be waived for the subsequent year but not for two (2) consecutive years. During the first full year of implementation, half of the experienced specialists in a building who received a rating of "Effective" or "Exemplary" on the most recent DPAS Performance Appraisal Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Experienced specialists who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. These specialists shall have an Improvement Plan which may require additional observations and other types of monitoring as outlined in the Technical Assistance Document.

3.3 Novice specialists shall receive a minimum of one (1) Announced Observation and one (1) Unannounced Observation with a Summative Evaluation at the end of the one year period. Novice specialists who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require additional observations or other types of monitoring as outlined in the Technical Assistance

Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.2 The Document shall contain, at a minimum, the following:

4.2.1 Specific details about each of the five (5) components listed in 5.1.

4.2.2 All forms or documents needed to complete the requirements of the appraisal process including Announced Observation, Unannounced Observation, Summative Evaluation, Improvement Plan and Challenge Form.

4.2.3 Specific procedures for observations, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

5.1 The following five (5) components shall be the basis upon which the performance of a specialist shall be evaluated by a certified evaluator:

5.1.1 Planning and Preparation

5.1.1.1 Reserved

5.1.2 Professional Practice and Delivery of Service

5.1.2.1 Reserved

5.1.3 Professional Collaboration and Consultation

5.1.3.1 Reserved

5.1.4 Professional Responsibilities

5.1.4.1 Reserved

5.1.5 Student Improvement

5.1.5.1 Reserved

5.2 Each of the five (5) components shall be weighted equally and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Reserved

5.2.2 Reserved

5.2.3 Reserved

5.2.4 Reserved

5.2.5 Reserved

6.0 Summative Evaluation Ratings

6.1 The Summative Evaluation shall include ratings of Satisfactory or Unsatisfactory on each of the five (5) components pursuant to 5.0.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".

6.2.1 Effective shall mean that the specialist has received Satisfactory Component ratings in all five (5) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the specialist has received at least three (3) Satisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.2.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.

6.2.3 Ineffective shall mean that the specialist has received three (3) or more Unsatisfactory Component ratings out of the five (5) components of the appraisal criteria.

6.2.3.1 A specialist who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available for the current group of students being served by the specialist.

6.2.3.2 If a specialist's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

7.0 A pattern of ineffective practice shall be based on the most recent appraisal ratings of a specialist using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective practice. The following appraisal ratings shall be determined to be a pattern of ineffective practice:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for a specialist who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component

Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if a specialist's performance during an observation is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the specialist to work with curriculum specialist(s), subject-area specialist(s), instructional specialist(s) or others with relevant expertise;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the specialist and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The specialist shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the specialist and evaluator shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

9.0 Evaluator Credentials

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of frameworks for practice and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

10.0 Challenge Process

10.1 A specialist may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or a specialist may challenge the conclusions of an observation if the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of the specialist's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of the Pre-observation Form(s) the Formative Feedback Form(s), the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

108 Administrator Appraisal Process Delaware Performance Appraisal System (DPAS II)

1.0 Administrator Appraisal Process shall be effective July 1, 2005 for all administrators; however, for administrators in those districts which are participating in the pilot of this process the effective date shall be July 1, 2004.

1.1 For administrators participating in the pilot, any rating received on a Summative Evaluation conducted during the pilot period shall not be included in the determination of a pattern of ineffective administration as defined in 7.0.

1.2 For purposes of this regulation, an administrator is a professional employee of a board in a supervisory capacity involving the oversight of an instructional program(s).

2.0 Definitions

"Board" shall mean the local board of education or charter school board of directors.

"Certified Evaluator" shall mean the individual, usually the supervisor of the administrator, who has successfully completed the evaluation training in accordance with 9.0. A superintendent shall be evaluated by member(s) of the local school board of education who shall also have successfully completed the evaluation training in accordance with 9.0.

"DPAS" shall mean the Delaware Performance Appraisal System in effect prior to July 1, 2005.

"Experienced Administrator" shall mean an administrator who has three (3) or more years of service as

an administrator.

"Formative Process" shall consist of the Goal Setting Conference, self evaluation, a survey of staff that are supervised by the administrator, and formative conferences/ reports.

"Improvement Plan" shall be the plan that an administrator and evaluator mutually develop in accordance with section 8.0.

"Inexperienced Administrator" shall mean an administrator who has less than three (3) years of service as an administrator.

"Satisfactory Component Rating" shall mean the administrator understands the concepts of the component and the administrator's performance in that component is acceptable.

"Satisfactory Evaluation" shall be equivalent to the overall "Effective" or "Needs Improvement" rating on the Summative Evaluation.

"Summative Evaluation" shall be the rating component at the conclusion of the appraisal cycle.

"Technical Assistance Document" shall mean the manual that contains the prescribed forms, detailed procedures, evaluation criteria and other relevant documents that assist in the appraisal process.

"Unsatisfactory Component Rating" shall mean the administrator does not understand the concepts of the component and the administrator's performance in that component is not acceptable.

"Unsatisfactory Evaluation" shall be the equivalent to the overall "Ineffective" rating on the Summative Evaluation.

3.0 Appraisal Cycles

3.1 Experienced administrators who have earned a rating of "Effective" on their most recent Summative Evaluation shall go through a minimum of one (1) Formative Process each year with a Summative Evaluation at the end of the one year period. This minimum annual evaluation may be waived for the subsequent year but not for two (2) consecutive years. During the first full year of implementation, half of the experienced administrators in a building who received a rating of "Effective" or "Exemplary" on the most recent Summative Evaluation may have the annual Summative Evaluation waived.

3.2 Experienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall go through a minimum of two (2) Formative Process(es) with a Summative Evaluation at the end of the one year period. These administrators shall have an Improvement Plan which may require an administrator to go through additional Formative Process(es) or other types of monitoring as outlined in the Technical Assistance Document.

3.3 Inexperienced administrators shall go through a minimum of two (2) Formative Process(es) with a Summative Evaluation at the end of the one year period. Inexperienced administrators who have earned a rating of "Needs Improvement" or "Ineffective" on their most recent Summative Evaluation shall have an Improvement Plan which may require an administrator go through additional Formative Process(es) or other types of monitoring as outlined in the Technical Assistance Document.

4.0 Technical Assistance Document

4.1 All districts and charter schools shall use the document entitled *Delaware Performance Appraisal System (DPAS) II Technical Assistance Document* as developed by the Department of Education to assist in the implementation of the appraisal system. The Technical Assistance Document shall be reviewed biannually by the State Board of Education. Any recommendations for change shall be submitted to the Department of Education for consideration.

4.1.1 The Document shall contain at a minimum the following:

4.1.1.1 Specific details about each of the four (4) components pursuant to 5.0.

4.1.1.2 All forms or documents needed to complete the requirements of the appraisal process including the Formative Process, Summative Evaluation, Improvement Plan and Challenge Form.

4.1.1.3 Specific procedures for the Formative Process, conferences, ratings, Summative Evaluation, Improvement Plan(s), and Challenges.

5.0 Appraisal Criteria

5.1 The following four (4) components shall be the basis upon which the performance of an administrator shall be evaluated by a certified evaluator(s):

5.1.1 Assessment of Leader Standards

5.1.1.1 Reserved

5.1.2Assessment on Goals and Priorities

5.1.2.1 Reserved

5.1.3 Assessment on the School or District Improvement Plan

5.1.3.1 Reserved

5.1.4 Assessment on Measures of Student Improvement

5.1.4.1 Reserved

5.2 Each of the four (4) components shall be equally weighted and assigned a rating of Satisfactory or Unsatisfactory on the Summative Evaluation.

5.2.1 Reserved

5.2.2 Reserved

5.2.3 Reserved

5.2.4 Reserved

6.0 Summative Evaluation Ratings

6.1 The Summative Evaluation shall include ratings of

Satisfactory or Unsatisfactory on each of the four (4) components pursuant to 5.0.

6.2 The Summative Evaluation shall also include one of three overall ratings: "Effective", "Needs Improvement" or "Ineffective".

6.2.1 Effective shall mean that the administrator has received Satisfactory Component ratings in all four (4) components of the appraisal criteria.

6.2.2 Needs Improvement shall mean that the administrator has received one (1) Unsatisfactory Component rating out of the four (4) components of the appraisal criteria.

6.2.2.1 An administrator who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available.

6.2.3 Ineffective shall mean that the administrator has received two (2) or more Unsatisfactory Component ratings out of the four (4) components of the appraisal criteria.

6.2.3.1 An administrator who has received an unsatisfactory rating on the student improvement component may have their next Summative Evaluation delayed until the Delaware Student Testing Program (DSTP) data is available.

6.2.3.2 If an administrator's overall Summative Evaluation rating is determined to be "Needs Improvement" for the third consecutive year, the rating shall be re-categorized as Ineffective.

7.0 A pattern of ineffective administrative performance shall be based on the most recent appraisal ratings of an administrator using the DPAS II process. Two consecutive ratings of Ineffective shall be deemed as a pattern of ineffective administration. The following appraisal ratings shall be determined to be a pattern of ineffective administration:

Ineffective	Ineffective	
Needs Improvement	Ineffective	Needs Improvement
Needs Improvement	Needs Improvement	Ineffective
Ineffective	Needs Improvement	Needs Improvement
Ineffective	Needs Improvement	Ineffective
Needs Improvement	Ineffective	Ineffective

8.0 Improvement Plan

8.1 An Improvement Plan shall be developed for an administrator who receives an overall rating of Needs Improvement or Ineffective on the Summative Evaluation or a rating of Unsatisfactory (Unsatisfactory Component Rating) on any component on the Summative Evaluation regardless of the overall rating.

8.1.1 An Improvement Plan shall also be developed if an administrator's performance during the Formative Process is unsatisfactory. This unsatisfactory performance shall be noted by the evaluator(s) on the Formative Feedback form by typing "PERFORMANCE IS UNSATISFACTORY" and initialing the statement.

8.2 The Improvement Plan shall contain the following:

8.2.1 Identification of the specific deficiencies and recommended area(s) for growth;

8.2.2 Measurable goals for improving the deficiencies to satisfactory levels;

8.2.3 Specific professional development or activities to accomplish the goals;

8.2.4 Specific resources necessary to implement the plan, including but not limited to, opportunities for the administrator to work with curriculum specialist(s) or other administrator(s) with relevant experience;

8.2.5 Procedures and evidence that must be collected to determine that the goals of the plan were met;

8.2.6 Timeline for the plan, including intermediate check points to determine progress;

8.2.7 Procedures for determining satisfactory improvement.

8.3 The Improvement Plan shall be developed cooperatively by the administrator and evaluator. If the plan cannot be cooperatively developed, the evaluator shall have the authority and responsibility to determine the plan as specified in 8.2 above.

8.4 The administrator shall be held accountable for the implementation and completion of the Improvement Plan.

8.5 Upon completion of the Improvement Plan, the administrator and evaluator(s) shall sign the documentation that determines the satisfactory or unsatisfactory completion of the plan.

9.0 Evaluator(s) Credentials

9.1 Evaluators shall have completed the DPAS II training as developed by the Department of Education. Evaluators shall receive a certificate of completion which is valid for five (5) years and is renewable upon completion of professional development focused on DPAS II as specified by the Department of Education.

9.2 The training for the certificate of completion shall include techniques for observation and conferencing, content and relationships of ISLLC standards, and a thorough review of the Technical Assistance Document. Activities in which participants practice implementation of DPAS II procedures shall be included in the training.

9.3 The credentialing process shall be conducted by the Department of Education.

10.0 Challenge Process

10.1 An administrator may challenge any rating on the Summative Evaluation, either a Component Rating or the Overall Rating, or an administrator may challenge the conclusions of the Formative Process in the statement "PERFORMANCE IS UNSATISFACTORY" has been included on the Formative Feedback form by submitting additional information specific to the point of disagreement in writing within ten (10) working days of the date of administrator's receipt of the Summative Evaluation. Such written response shall become part of the appraisal record and shall be attached to the Summative Evaluation. All challenges together with the record shall be forwarded to the supervisor of the evaluator.

10.1.1 Within ten (10) working days of receiving the written challenge, the supervisor of the evaluator shall review the record which consists of information from the Formative Process, the Summative Evaluation and the written challenge, and issue a written decision.

10.1.2 If the challenge is denied, the decision shall state the reasons for denial.

10.1.3 The decision of the supervisor of the evaluator shall be final.

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

805 The School Health Tuberculosis (TB) Control Program

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

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

School staff continue to be required to have the Mantoux tuberculin skin test within 12 months of employment and be assessed; but every five years thereafter the assessment will be done via the *Department of Education TB Health Questionnaire for School Employees* rather than a Mantoux TB skin test as previously required.

All new school enterers shall show proof of Mantoux tuberculin skin test results from a test administered within the past 12 months or the results of a TB risk assessment questionnaire which may be administered by the school nurse and the definition of "new school enterers" has been changed.

Procedures for volunteers 2.0 and positive reactors 4.0 remain the same.

C. Impact Criteria

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~4.0 Positive Reactors~~

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

~~4.1.1Skin test reaction recorded in millimeters.~~

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

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

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

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

~~4.1.1Verification from a Health Care Provider or Division of Public Health shall be required only once if treatment was completed successfully.~~

~~4.2 If documentation of the test is unavailable, the individual should be tested. If the individual refuses to be skin tested again, the individual shall provide from a Health Care Provider or the Division of Public Health information related to disease status and treatment.~~

~~4.3 Updated information regarding disease status and treatment shall be provided to the district designee by October 15 every fifth year if treatment was previously contraindicated, incomplete or unknown.~~

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

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

805 The School Health Tuberculosis (TB) Control Program

1.0 School Staff and Extended Services Personnel

1.1 Definition

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

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

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

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

1.3.1 If a public school staff member or

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

2.0 Volunteers

2.1 Definition:

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

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

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

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

3.0 Students

3.1 Definition:

"New School Enterer" means any child between the ages of one year and twenty one (21) years entering or being admitted to a Delaware public school for the first time, including but not limited to, foreign exchange students, immigrants, students from other states and territories, and children entering from nonpublic schools. For purposes of this regulation, "new school enterer" shall also include any child who is re-enrolled in a Delaware public school following travel or residency of six months in a location or facility identified by the Delaware Division of Public Health as an area at risk for TB exposure.

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

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

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

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

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

4.0 Positive Reactors

4.1 Definition:

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

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

4.2.1 Skin test reaction recorded in millimeters;

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

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

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

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

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

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

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

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

DEPARTMENT OF EDUCATION
PROFESSIONAL STANDARDS BOARD

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

1501 Knowledge, Skills And Responsibility Based Supplements For Educators

A. Type of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** §1501 Knowledge, Skills and Responsibility Based Salary Supplements for Educators. This regulation includes the requirements for, and payment of, salary supplements established by 14 **Del.C.** §1305. This regulation applies to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary for gaining knowledge and skills that lead to more effective instruction, for achieving certification from the National Board for Professional Teaching Standards, or from an equivalent program, and/or for accepting additional responsibility supplements that impact student achievement. It is necessary to amend this regulation to add requirements for reauthorization, replication and re-qualification of clusters and to set forth procedures for payment of salary increments to educators.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement through enhanced educator knowledge and skills. The regulation requires that knowledge and skills lead to more effective instruction and that responsibility supplements impact student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps ensure that all educators have access to high quality opportunities to acquire knowledge and skills that lead to more effective instruction. It does not address student equity.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses educator knowledge, skills, and responsibility based salary supplements, not students' health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses educator knowledge, skills, and responsibility based salary supplements, not students' legal rights.

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

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

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

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

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

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? The knowledge, skills, and responsibility based salary supplements are subject to an annual appropriation by the Legislature. The Department of Education shall provide for funding the supplement provisions of this regulation in its annual budget. There is no additional cost to local school boards for compliance with the regulation.

1501 Knowledge, Skills, and Responsibility Based Salary Supplements for Educators

1.0 Content:

1.1 The following requirements shall be met in order to receive the salary supplements established by 14 **Del.C.** §1305. This regulation shall apply to the awarding of salary supplements as a percentage of the state portion of an educator's annual salary paid in accordance with the provisions of 14 **Del.C.** §1305 for gaining knowledge and skills that lead to more effective instruction, for achieving

certification from the National Board for Professional Teaching Standards, or from an equivalent program, and for accepting additional responsibility assignments ~~supplements~~ that impact student achievement. Supplements are available subject to an annual appropriation from the Legislature.

5 DE Reg. 2297 (6/1/02)

2.0 Definitions:

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

"Approved Cluster" means a professional development cluster that meets the criteria specified in 3.1 of this Regulation and that has been ~~designated~~ approved by the Standards Board and the State Board as the basis for awarding a specific salary supplement.

"Delaware Administrator Standards" means standards for education administrators approved by the ~~Secretary of Education~~ Standards Board and the State Board of Education, as per 14 **Del.C.** ~~394~~ 1594, Delaware Administrator Standards.

"Delaware Content Standards" means K-12 ~~student~~ curriculum content standards approved by the Secretary of Education and the State Board of Education, as per 14 **Del.C.** §501, State Content Standards.

"Delaware Professional Teaching Standards" means standards ~~of teaching~~ for teachers approved by the ~~Secretary of Education~~ Standards Board and the State Board of Education, as per 14 **Del.C.** §~~393~~ 1593, Delaware Professional Teaching Standards.

"Department" means the Delaware Department of Education.

"Educator" means ~~an employee paid under 14 **Del.C.** §1305~~ a public school employee who holds a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers.

"Hours of Engagement" means time spent in classes, seminars, workshops, collaborative work groups, learning communities, cohort, school, or district teams, and time engaged in research-based activities which result in the acquisition of knowledge and skills which lead to more effective instruction.

"Knowledge and Skills" means understandings and abilities that, when acquired by educators, lead to more effective instruction.

"NSDC Standards for Staff Development" means standards adopted by the National Staff Development Council for high quality staff and professional development.

"Professional Development Cluster" or **"Cluster"** means a focused group of professional development activities that leads to measurable and observable knowledge and skills.

"Provider" means a local school district, charter school, college, educationally related organization, or professional organization that delivers professional development clusters approved by the Standards Board and the State Board to educators.

"Reauthorization of an Approved Cluster" means the process a provider uses to seek continued approval, after the initial five year approval period, of an approved cluster.

"Replication of Approved Clusters" means an approved cluster being delivered by a provider other than the developer of the cluster.

"Re-qualification of an Approved Cluster" means the process a provider uses to set forth the activities that an educator would engage in to qualify for an extension of five(5) additional years of a salary supplement.

"Responsibilit~~ies~~y Assignments" means ~~educators'~~ additional ~~responsibility~~ assignments for educators that are academic in nature and that impact student achievement. For purposes of this regulation and pPursuant to 14 **Del.C.** §1305(o) ~~E~~extra curricular or non-instructional supervisory activities are specifically excluded from ~~this definition~~ responsibility assignments ~~under this regulation~~.

"Salary Supplement", when referring to knowledge, skills, and responsibility based supplements, means additional state salary, as described in 14 **Del.C.** §1305.

"Standards Board" means the Professional Standards Board of the State of Delaware established in response to 14 **Del.C.** §1205.

"State Board" means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

3.0 Knowledge and Skills:

3.1 The Standards Board shall, on no less than an annual basis, submit to the State Board for approval, lists of proposed new professional development clusters in specific areas of knowledge and skills which shall serve as the basis for awarding salary supplements.

3.~~1~~2 The criteria for evaluating professional development clusters designed to promote acquisition of knowledge and skills are based upon:

3.~~1~~2.1 Delaware Professional Teaching Standards or Delaware Administrator Standards or their equivalent (i.e., national standards from educators' specialty-area organizations that complement the Delaware standards).

3.~~1~~2.2 Delaware content standards or their equivalent (i.e., national standards from content-specialty groups, if there are no Delaware standards for the content area).

3.~~1~~2.3 National Staff Development Council Standards for Staff Development (NSDC, 2001).

3.~~2~~3 Clusters may include a combination of formal courses at graduate or undergraduate levels, and other research-based activities which conform to the NSDC

Standards for Staff Development.

3.~~2~~4 Clusters may be comprised of related segments which may be completed separately over a specified period of time, not to exceed 5 years, as included in the cluster design and approved by the Standards Board and the State Board.

3.~~2~~5 Voluntary performance or assessment-based specialty certifications awarded for meeting standards established by national professional organizations shall be evaluated as proposed clusters in accordance with this regulation.

3.~~2~~6 The specific percentage of salary assigned to each knowledge and skills supplement, provided that no supplement may be less than 2% nor more than 6% of an educator's base state salary, shall be submitted with the list of professional development clusters and specific areas of knowledge and skills.

3.~~5~~6.1 A cluster qualifying an educator for a supplement of 2% shall consist of no less than 90 hours of engagement by the educator.

3.~~5~~6.2 A cluster qualifying an educator for a supplement of 4% shall consist of no less than 180 hours of engagement by the educator.

3.~~5~~6.3 A cluster qualifying an educator for a supplement of 6% shall consist of no less than 270 hours of engagement by the educator.

3.~~6~~7 Knowledge and skills which, once acquired, are expected to lead to more effective instruction for the duration of an educator's career are designated as permanent supplements.

3.~~7~~8 Knowledge and skills related to new technologies, curriculum adoptions, and short-term strategies shall have a duration of five (5) years, ~~and may be renewed by successfully completing renewal~~ Educators may re-qualify for a cluster for an additional five (5) years by completing the activities set forth in accordance with cluster ~~approval~~ re-qualification procedures established by the Standards Board.

3.~~8~~9 The provider ~~will~~ shall present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator. The provider shall provide the Department with a list of educators who have satisfactorily completed an approved cluster

~~3.9 Annually, the Standards Board shall submit to the State Board for approval a list of all clusters proposed for continued approval, renewal, and non-renewal.~~

~~4.0 Responsibilities:~~

~~The Standards Board shall, on no less than an annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.~~

~~4.1 Responsibility assignments shall be:~~

~~4.1.1 Focused on school improvement issues that impact student achievement;~~

~~4.1.2 Supported by high quality, targeted professional development, and~~

~~4.1.3 Academic in nature.~~

~~4.2 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.~~

~~5 DE Reg. 2297 (6/1/02)~~

4.0 Replication of Approved Clusters.

4.1 The developer of an approved cluster shall decide if a cluster can be replicated, and shall set forth the conditions, if any, under which the approved cluster may be offered by a provider other than the developer of the approved cluster. The Professional Development and Associated Compensation Committee shall review and approve applications for replication of a cluster, and shall forward approved applications for replication to the Standards Board for action. The Standards Board shall forward approved applications for replication to the State Board for concurrence.

~~5.0 Approval of Professional Development Clusters and Responsibilities:~~

~~5.1 The Standards Board's standing committee on professional development and associated compensation shall provide the Standards Board with recommended lists of professional development clusters and responsibility assignments in accordance with this regulation.~~

~~5.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.~~

~~5.3 The lists of professional development clusters and responsibilities shall be forwarded to the State Board with a recommendation for approval.~~

5.0 Procedures for Re-qualification of a Cluster.

5.1 The cluster provider may submit a proposal for activities for re-qualification to update an individual educator's skills and knowledge acquired in an approved cluster to the Professional Development and Associated Compensation Committee for review. The Professional Development and Associated Compensation Committee may recommend to the Standards Board approval of activities for

re-qualification of a cluster for a period not to exceed five (5) years. The Standards Board and the State Board shall review and approve all re-qualification requirements.

5.2 The proposal for re-qualification activities of an approved cluster must include activities which are at least as rigorous as the original activities of the cluster and shall include, but are not limited to, the following:

5.2.1 The planned activities required to update the skills and knowledge acquired.

5.2.2 The number of hours of engagement the participant must participate in to be eligible for re-qualification of a salary supplement. The number of hours of engagement for the re-qualification of a cluster must be the same level as the original cluster, unless the provider submits re-qualification activities for a lesser percentage (i.e., a 4% cluster re-qualifies as a 2% cluster).

5.2.3 The specific skills and knowledge that will be updated or re-qualified and how such activities will directly impact students in the classroom.

5.3 All proposals for re-qualification activities must be reviewed by the Professional Development and Associated Compensation Committee, and approved by the Standards Board and the State Board.

~~6.0 Confirmation of Educators' Eligibility for Salary Supplements:~~

~~6.1 Knowledge and Skills: The district or charter school shall notify educators annually, in writing, of the clusters it approves from the State Board approved list for knowledge and skills salary supplements.~~

~~6.2 Those clusters approved by districts or charter schools shall not require any additional prior approval. After completing the entire cluster, an educator shall submit documentation to the local district of fulfilling the requirements of the cluster's design.~~

6.0 Procedures for Reauthorization of Approved Clusters.

6.1 A provider of a cluster may apply for reauthorization of a cluster by submitting an application for reauthorization to the Professional Development and Associated Compensation Committee, which shall review the application and, if appropriate, forward a recommendation to the Standards Board and the State Board for approval. Reauthorization approval of a cluster shall be for a period of five (5) years.

6.2 Approval of a cluster is valid for five years, and may be reauthorized upon review and approval of an application for reauthorization from the provider.

6.3 Cluster developers shall, when applying for reauthorization, provide the Professional Development and Associated Compensation Committee with an evaluation of the effectiveness of a cluster in achieving the stated goals. The evaluation shall include evidence of a positive impact on educators' skills and knowledge and student learning. Evaluation reports shall be submitted on the form provided by the Standards Board.

~~7.0 Payment of Salary Supplements:~~
~~[RESERVED]~~

7.0 Revocation of Approval of a Cluster.

7.1 Cluster applications are approved for a period of five years. The Standards Board may, however, revoke the approval of a cluster at any time during the five year period of approval for good cause. "Good cause" includes, but is not limited to:

7.1.1 Failure on the part of the provider to complete the delivery of a cluster; or

7.1.2 Failure of the provider to submit evidence of completers to DOE; or

7.1.3 Evidence, as supplied by participant evaluation and verified by the Professional Development and Associated Compensation Committee, of failure to provide content and activities as set forth in the approved application.

7.1.4 Other conduct which negatively impacts the ability of educators to gain new knowledge and skill, such as misrepresentation of the cluster content on the application.

~~8.0 Salary supplements paid to an educator shall not exceed 15% of the state share of the educator's salary.~~

~~5 DE Reg. 2297 (6/1/02)~~

8.0 Responsibility Assignments.

8.1 The Standards Board shall, on no less than an annual basis, submit to the State Board a list of specific responsibility assignments for approval as the basis for awarding responsibility salary supplements.

8.2 Responsibility assignments shall be:

8.2.1 Focused on school improvement issues that impact student achievement;

8.2.2 Supported by high quality, targeted professional development, and

8.2.3 Academic in nature.

8.3 In order to qualify for a responsibility assignment salary supplement, an educator shall have completed the state approved training program for the position, or, in the absence of a training program, shall meet the criteria set forth for the position by the Standards Board or local district, charter school, or other employing authority, and shall provide state and district approved levels of service, participate in designated activities throughout the period of responsibility, and document the satisfactory fulfillment of the specified responsibility assignment.

8.4 Extra responsibility salary supplements may be renewed.

9.0 Approval of Professional Development Clusters and Responsibilities:

9.1 The Standards Board's Standing Committee on Professional Development and Associated Compensation shall provide the Standards Board with recommendations for approval of professional development clusters, reauthorized clusters, re-qualification activities, and responsibility assignments in accordance with this regulation.

9.2 The Standards Board shall examine the proposed lists and previously approved lists of clusters to evaluate the system of professional development to determine its overall balance and accessibility.

9.3 If approved by the Standards Board, the lists of professional development clusters, reauthorized clusters, re-qualification requirements and responsibility assignments shall be forwarded to the State Board with a recommendation for approval.

9.4 Each district, charter school or other employing authority shall notify educators at least annually, in writing, of the clusters it disapproves from the State Board approved list of knowledge and skills clusters.

10.0 Educators' Eligibility for Salary Supplements

10.1 Skills and Knowledge Salary Supplements.

10.1.1 The provider will present an educator who satisfactorily completes an approved cluster with a certificate of completion to verify eligibility for a salary supplement. The certificate shall certify the knowledge and skills acquired and demonstrated by the educator.

10.1.2 After completing the entire cluster, the cluster provider shall submit documentation to the Department certifying that the educator fulfilled the requirements of the cluster's design.

10.2 Responsibility Assignments: An educator shall provide the local district, charter school or other employing authority with such information as may be required to enable the local district, charter school or other employing authority to verify that the educator has fulfilled the requirements of 8.3 of this regulation.

11.0 Payment of Salary Supplements:

11.1 Salary Supplements for Clusters.

11.1.1 Salary supplements earned by educators who are paid in accordance with the provisions of **14 Del.C. §1305** as a result of completion of an approved knowledge and skills cluster shall be effective the first of the month following receipt by the Department of satisfactory completion of a cluster, and shall be paid as part of the educator's salary for the duration of the time approved for the cluster by the Standards Board and the State Board. No educator is entitled to payment for the same cluster more than once.

11.2 Salary Supplements for Extra Responsibility Assignments.

11.2.1 Salary supplements earned by educators who are paid in accordance with the provisions of **14 Del.C. §1305** as a result of fulfilling extra responsibility assignments shall be effective the first of the month following receipt by the Department of documentation from the school district, charter school, or other employing authority of satisfactory completion of the duties associated with the extra responsibility assignment, and shall be paid annually as a single payment or as an additional salary amount spread evenly across an educator's contract period.

12.0 Salary supplements paid to an educator paid in accordance with the provisions of **14 Del.C. §1305** shall not exceed 15% of the State share of the educator's salary.

PROFESSIONAL STANDARDS BOARD

Repeal Of Regulation

1505 Professional Growth Programs

A. Type Of Regulatory Action Requested

Repeal

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 **DE Admin. Code** §1505 Professional Growth Programs. It is necessary to repeal this regulation as it is effective through June 30, 2004 only. It will be replaced by regulation 1507 Professional Growth Salary Increments, which addresses movement by educators on the salary schedule set forth in14 **Del.C.** §1305.

~~**1505 Professional Growth Programs (Effective through 6/30/04 only)**~~

~~1.0 Content:~~

~~This regulation shall apply to professional growth programs for educators, pursuant to 14 **Del.C.** §1305.~~

~~7 DE Reg. 161 (8/1/03)~~

~~2.0 Definitions:~~

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

~~**"Department"** means the Delaware Department of Education.~~

~~**"Graduate level course"** means any course to be used herein which is offered at a regionally accredited college or university that is considered graduate level at that institution.~~

"Individual professional growth credits" means individual activities (i.e., projects, travel, and work experience) which contribute to the professional growth of the school employee in his/her assignment.

"In-service credit" means credit offered by school districts, charter schools, Delaware educationally related organizations, the Department, or individual professional growth programs and approved by the state in-service committee.

7 DE Reg. 161 (8/1/03)

3.0 Credits.

3.1 Three (3) in-service credits will be allowed for each activity, for a maximum of nine (9) individual professional growth credits. Individual professional growth credits must have the prior approval of the Department and the local employing school district superintendent or charter school principal. A written evaluation report by the individual earning the credit shall be required at the conclusion of the activity.

3.2 Credit Calculation.

3.2.1 All credits must be expressed in terms of semester hours. College or university credits expressed in quarter hours and approved CEUs will be converted to semester hours by multiplying the number of quarter hours by two-thirds. In the case in-service credits, fifteen (15) clock hours of class time is considered the equivalent of one (1) credit. Credits earned for professional growth activities will be calculated in the same manner as in-service credits.

3.3 Acceptable Grades

3.3.1All grades for college-level credit submitted for a professional growth program must be a grade that earns a "C" or better from the granting institution. In the case of credits earned on a pass-fail basis, a grade of pass is acceptable.

3.4 Acceptable Credits

3.4.1Credits for the professional growth programs (B+15, B+30, M+15, M+30, M+45) shall be earned after the Bachelor's degree has been conferred. They may be graduate, undergraduate, or in-service. CEUs from regionally accredited colleges can also be used (1 CEU = 10 clock hours = 2/3 semester hour)

3.4.2Up to nine (9) individual professional growth credits may be counted from the B+15 through the M+45.

3.4.3Undergraduate and graduate credits must be earned at regionally accredited institutions of higher learning. Any credits not counted toward a graduate degree shall be counted in the B+15, B+30, M+15, M+30, M+45 programs.

3.4.4Undergraduate, in-service, and individual professional growth credits shall have the prior approval of the employing local district superintendent/designee before submission to the State Office of Certification. These credits shall be relevant and usable to the applying employee.

3.4.5For Trade and Industry teachers, a Bachelor's degree equivalent shall be two years of college and six years of work experience (14 **Del.C.** §1301).

3.5 Salary Increment.

3.5.1An applicant shall hold a Delaware Standard or Limited Standard license before a Professional Growth Program salary increment can be approved.

3.6 Admittance to Graduate School: Applicants for a professional growth program need not be admitted to a graduate school in order to have graduate level courses accepted for these programs.

3.7 Acceptable Professional Degrees

3.7.1Professional degrees earned in areas other than professional education will not be accepted for the professional growth program unless the degree is directly related to an area of specialty in which the individual is employed.

3.7.2To be counted for the professional growth program, a degree for any individual involved in instruction, curriculum, or the supervision of instruction must be a degree in professional education.

3.7.3Individual courses in any area may be considered for acceptance in the professional growth program upon receipt of a written rationale from the applicant with an endorsement by his/her local employing school district superintendent.

3.8 Usable Credits.

3.8.1All credits and programs to be accepted for the professional growth program/state supported salary increments shall be relevant and usable to the professional school employee and may be approved or disapproved by the local employing school district superintendent.

3.9 Excess Graduate Level Credits.

3.9.1Graduate level credits earned after a Bachelor's degree or before earning a Master's degree may be used in the B+15 and the B+30 professional growth programs so long as the same credit is used only one time. Credits earned in excess of those required for the Master's degree by the granting institution can be used in a M+15, M+30 and M+45 professional growth program.

3.10Effective Date of Salary Adjustment

3.10.1 The salary adjustment shall be made after the evaluation and approval of the candidate's application by the Office of Professional Accountability. The adjustment will be authorized to be made retroactive to the first of the month following the date certified by transcript, official grade slip, or approved in-service slip, as to when the program or credit was completed.

3.10.2 Retroactive salary adjustment may be by a single payment or by payments divided equally among all the pay periods remaining in a current fiscal year as may be determined by the district or state fiscal officers.

3.11 Appeals Committee.

3.11.1 A committee shall be called to review and

~~make recommendations regarding an appeal that may result as these rules are administered. The committee shall include the following: one (1) representative from the professional organization which represents the applicant, one (1) staff member from the Department; and one (1) representative from the Chief School Officers organization.~~

~~3.12 Application Procedures~~

~~3.12.1 The applicant shall secure the proper form from the local school district office, complete the form, and return it to his/her school district office for transmittal to the Office of Professional Accountability.~~

~~3.12.2 The applicant shall arrange for the appropriate authority or institution to provide verification, if needed, regarding graduate level of courses or any other information that might be needed to support his/her application for the professional growth program.~~

~~3.12.3 Application for evaluation shall not be submitted prior to the completion of the professional growth program.~~

~~3.13 A salary increment for fiscal year 2004 (July 1 - June 30) based upon approval of the application must be received in the Office of Professional Accountability by June 1. This cut-off date is necessary to allow adequate time for evaluation and notification to the district payroll office for salary adjustment. No salary credit shall be retroactive into a prior fiscal year.~~

~~7 DE Reg. 161 (8/1/03)~~

PROFESSIONAL STANDARDS BOARD

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

1509 Meritorious New Teacher Candidate Designation

A. Type Of Regulatory Action Requested

New Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to adopt 14 **DE Admin. Code** §1509 Meritorious New Teacher Candidate Designation. This regulation applies to designating new teachers who meet criteria developed by the Mid Atlantic Regional Teachers Project as Meritorious New Teacher Candidates. This designation will be affixed to the new teacher's Initial License, issued pursuant to 14 **DE Admin. Code** §1510.

C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation concerns educator licensure, not student achievement.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation helps ensure that highly qualified educators are attracted to the field and rewarded for exhibiting outstanding achievement.

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

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

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

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

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

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

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

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

1509 Meritorious New Teacher Candidate Designation

1.0 Content.

1.1 This regulation shall apply to the issuance of a

Meritorious New Teacher Candidate Designation to a candidate for an initial license who meets the criteria set forth by the Mid-Atlantic Regional Teachers Project., pursuant to 14 **Del.C.** §1210.

2.0 Definitions.

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

"Department" means the Delaware Department of Education.

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

"Meritorious New Teacher Candidate Designation" means a designation of excellence for new teachers which enables them to teach in Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, and Virginia.

"Met the Highest Standard" means achieved the highest grade or score awarded by the institution.

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

3.0 An applicant for an initial license who meets the requirements for an initial license and who also meets the criteria set forth by the Mid-Atlantic Regional Teachers Project shall have a Meritorious New Teacher Candidate Designation affixed to the Initial License, upon receipt of a recommendation from the candidate's teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.

3.1 Criteria for the Meritorious New Teacher Candidate Designation are:

3.1.1 Verbal Skills:

3.1.1.1 Scores in the upper quartile of students nationally at the time the test was taken on the verbal portion of the SAT, ACT, or GRE.

3.1.2 Content Knowledge:

3.1.2.1 Elementary Education (Grades preK-6):

3.1.2.1.1 A minimum 3.5 cumulative GPA in an undergraduate professional education program, or a minimum 3.7 cumulative GPA in a graduate professional education program; and

3.1.2.1.2 Scores in the upper quartile of students nationally at the time the test was taken in math, science, social studies, and English/language arts in the PRAXIS II Content Knowledge for Elementary Teachers test or Elementary Education: Curriculum, Instruction, and Assessment test.

3.1.2.2 Middle School Education (Grades 6 – 8):

3.1.2.2.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought; and

3.1.2.2.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant's specialty area.

3.1.2.3 Secondary Education (Grades 9 – 12):

3.1.2.3.1 A minimum 3.5 cumulative GPA in an undergraduate academic major or a minimum 3.7 cumulative GPA in a graduate program in the subject area in which a standard certificate is sought.

3.1.2.3.2 Scores in the upper quartile of students nationally at the time the test was taken on the PRAXIS II test in the applicant's specialty area.

3.1.3 Professional Preparation and Recommendation:

3.1.3.1 Completion of a state-approved teacher preparation program, of traditional or alternative format, with a minimum 3.5 cumulative GPA in an undergraduate professional studies program, or a minimum 3.7 cumulative GPA in a graduate professional education program.

3.1.3.2 Completion of a minimum of 400 hours of supervised clinical experience, of which at least 300 hours are directed instructional student teaching. Clinical experience may occur within any state-approved model, including total immersion experiences as teachers of record.

3.1.3.3 Met the highest standard of both the university supervisor and the cooperating teacher on the institution's formal student teacher or immersion component of the required clinical experience.

3.1.3.4 Met the highest standard on the institution's professional preparation assessment.

3.1.3.5 Received a recommendation by the teacher preparation program that the candidate be awarded the designation of Meritorious New Teacher Candidate.

4.0 Applicants for initial licensure and the Meritorious New Teacher Candidate Designation who completed teacher preparation in Delaware will be given expedited consideration of their application a by the Delaware Department of Education.

5.0 A Meritorious New Teacher Candidate Designation issued to a licensee from one of the participating jurisdictions who has less than three (3) years of teaching experience, shall be honored by the Department. The applicant shall be issued a Delaware Initial License pursuant to 14 **DE Admin. Code** §1510 with a Meritorious New Teacher Candidate Designation and any Delaware Standard Certificate for which the candidate qualifies.

6.0 This designation shall be valid for the duration of the

individual's Initial License.

PROFESSIONAL STANDARDS BOARD

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

1528 Foreign Language Teacher Comprehensive
1529 Foreign Language Teacher Secondary
1533 Foreign Language Teacher Elementary
1537 Bilingual Teacher (Spanish) Secondary
1558 Bilingual Teacher (Spanish) Primary/Middle Level

A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to amend 14 **DE Admin. Code** §1528 Foreign Language Teacher Comprehensive; §1529 Foreign Language Teacher Secondary; §1533 Foreign Language Teacher Elementary; §1537 Bilingual Teacher (Spanish) Secondary, and §1558, Bilingual Teacher (Spanish) Primary/Middle. Level. These regulations apply to the requirements for Standard Certificates for Foreign Language and Bilingual Teachers as established by 14 **Del.C.** §1220(a). The amendments to these regulations are necessary to reflect the adoption of PRAXIS™ II qualifying scores for Delaware educators. In addition, course requirements and requirements for acquisition of foreign languages by teachers were revised.

C. Impact Criteria

1. Will the amended regulations help improve student achievement as measured against state achievement standards? The amended regulations concern educator certification, not student achievement. However, highly qualified teachers have a positive impact on student achievement.

2. Will the amended regulations help ensure that all students receive an equitable education? The amended regulations helps ensure that all educators demonstrate high standards for the issuance of a standard certificate.

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

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

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

6. Will the amended regulations place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulations 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 subjects to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subjects to be regulated rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

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

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

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

1528 Standard Certificate Foreign Language Teacher Comprehensive

1.0 Content

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher Comprehensive (Grades K-12).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

"License" means a credential which authorizes the holder to engage in the practice for which the license is

issued.

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a foreign language teacher comprehensive to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally-accredited college or university and,

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Elementary and Secondary Foreign Language Teaching in the language to be taught or,

3.2.2 A minimum of 27 semester hours to include Human Development, Methods of Teaching Foreign Language ~~at the Elementary School Level, Methods of Teaching Foreign Language at the Secondary School Level~~ (methods courses to include second language acquisition), Identifying and Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education; Second Language Assessment and Testing; Curriculum and Material Design; and,

~~3.3 Specific Teaching Field~~

3.~~3.1~~2.3 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

~~3.3.2 Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,~~

3.~~3.3~~2.4 A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.~~3~~2.5 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board ~~(when validated)~~ and an A~~a~~dvanced Low Level ~~plus score~~ on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.*

* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4 an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

7 DE Reg. 775 (12/1/03)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - comprehensive after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

7 DE Reg. 775 (12/1/03)

1529 Standard Certificate Foreign Language Teacher - Secondary

1.0 Content:

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher - Secondary (required in grades 9-12, and valid in grades 5-8 in a middle level school).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a foreign language teacher - secondary to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from an regionally accredited college or university and,

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in the language to be taught or,

3.2.2 A minimum of 24 semester hours to

include Human Development, Methods of Teaching Foreign Language, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, Second Language Assessment and Testing, Curriculum and Material Design; and

~~3.3 Specific Teaching Field~~

3.~~3.1~~2.3 Major in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively*; or,

~~3.3.2Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,~~

3.~~3.3~~2.4 Minimum of up to 30 semester hours above the intermediate level for the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher holds 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.~~3.4~~2.5 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board ~~(when validated)~~ and, an A~~a~~dvanced Low Level ~~plus score~~ on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively.*

* Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a country or an ethnic community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

7 DE Reg. 775 (12/1/03)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - secondary after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

7 DE Reg. 775 (12/1/03)

1533 Standard Certificate Foreign Language Teacher - Elementary

1.0 Content

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Foreign Language Teacher - Elementary (required in grades K-6, and valid in grades 7-8 in a middle level school).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a foreign language teacher elementary to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Bachelor's degree from a regionally-accredited college or university and,

3.2 Professional Education

3.2.1 Completion of an approved teacher education program in Elementary Education/Foreign Language in the language to be taught; or,

3.2.2 Completion of an approved teacher education program in elementary education and,

3.2.2.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language Acquisition and,

3.2.2.2 Demonstrated knowledge of the culture in which the language is spoken natively including significant personal connection with that culture through life or work experience or appropriate course work in the culture; or ~~and~~,

3.2.3 Completion of an approved secondary teacher education program in the language to be taught and,

3.2.3.1 A minimum of 6 semester hours in foreign language education to include Methods of Teaching Foreign Language at the Elementary School Level and Second Language acquisition and,

3.2.3.2 A minimum of 24 semester hours to include Child/Human Development, Methods of Teaching Foreign Language at the Elementary School Level including Second Language Acquisition, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and,

3.3 Specific Teaching Field

3.3.1 Major in the language to be taught, including at least one semester, one winter session, or one

summer session of study in a country in which the foreign language is spoken natively* or,

3.3.2 Completion of an approved teacher education program in the language to be taught, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.3 A minimum of 30 semester hours above the intermediate level in the language to be taught, or 24 semester hours above the intermediate level in the language to be taught if the teacher has earned 30 semester hours in another language, including at least one semester, one winter session, or one summer session of study in a country in which the foreign language is spoken natively* or,

3.3.4 Demonstrated fluency in the language to be taught as determined by passing scores on the PRAXIS II tests in that language, as adopted by the Standards Board and the State Board, ~~(when validated)~~ and an Aadvanced Low Level ~~plus score~~ on the ACTFL Oral Proficiency Interview and verification of study (at least as extensive as that noted above) in a country or community in which the foreign language is spoken natively*.

*Persons not meeting the requirement for study abroad upon employment shall fulfill the requirement within three years. Through 3.3.4, an individual can meet the requirement for study abroad by demonstrating that he/she grew up and was educated in a community (such as a China Town or Spanish Harlem) where the target language is the dominant language.

7 DE Reg. 775 (12/1/03)

4.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a foreign language teacher - elementary after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

7 DE Reg. 775 (12/1/03)

1537 Standard Certificate Bilingual Teacher (Spanish) Secondary

1.0 Content

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Bilingual Teacher (Spanish) B Secondary.

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a bilingual teacher (Spanish) - Secondary to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A Bachelor's degree from a regionally accredited college or university and completion of a teacher education program in Bilingual Education ~~at the Secondary Level (grades 7-12)~~ in the Language area of Spanish.

7 DE Reg. 775 (12/1/03)

4.0 If the candidate does not meet the requirements in 3.0 the following shall apply:

4.1 Complete the required course work in a teacher education program at the secondary level (grades 7-12) in a content area such as Biology, English or Special Education plus the following:

4.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

4.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This course work shall be at or above the intermediate level; and demonstration of oral proficiency in the language area of Spanish ~~by scoring 165 on the PRAXIS II Test Module: Productive Language (0192)~~; as adopted by the Standards Board and the State Board; or

4.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Tests, as adopted by the Standards Board and the State Board ~~Modules as follows: 159 on Spanish: Content and Knowledge (0191) and 165 on Spanish: Productive Language (0192);~~ and

4.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

4.1.3 In addition to 4.1.1 and 4.1.2 all candidates must meet the following requirements:

4.1.3.1 Completion of course work as indicated:

4.1.3.1.13 semester hours Methods of Teaching English as a Second Language;

4.1.3.1.23 semester hours Second Language Testing;

4.1.3.1.33 semester hours Remedial Reading (English); or 3 semester hours Remedial Reading (Spanish); and

4.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

4.1.3.2.1 A three (3) semester hour course in Spanish culture; or documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.

7 DE Reg. 775 (12/1/03)

5.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a bilingual teacher (Spanish) - Secondary after that date must comply with the requirements set forth in 14 **Del C.** §1516.

7 DE Reg. 775 (12/1/03)

1558 Standard Certificate Bilingual Teacher (Spanish) Primary/Middle Level

1.0 Content

This regulation shall apply to the requirements for a standard certificate, pursuant to 14 **Del.C.** §1220(a), for Bilingual Teacher (Spanish) Primary/Middle Level (K-8).

7 DE Reg. 775 (12/1/03)

2.0 Definitions

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

"Department" means the Delaware Department of Education.

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

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

7 DE Reg. 775 (12/1/03)

3.0 In accordance with 14 **Del.C.** §1220(a), the Department shall issue a standard certificate as a bilingual teacher (Spanish) Primary/Middle to an applicant who holds a valid Delaware initial, continuing, or advanced license; or standard or professional status certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 A Bachelor's degree from a regionally accredited college or university and completion of a teacher education program in Elementary, Primary or Middle Level (grade configurations K-8) Bilingual Education in the Language Area of Spanish.

7 DE Reg. 775 (12/1/03)

4.0 If the candidate does not meet the requirements in 3.0 the following shall apply:

4.1 Complete the required course work in a teacher education program in Elementary, Primary or Middle Level (grade configurations K-8) Regular Education plus provide the following:

4.1.1 Verification of language proficiency in Spanish as demonstrated by one of the two options below:

4.1.1.1 Completion of a minimum of 15 semester hours from a regionally accredited college in the language area of Spanish. This course work shall be at or above the intermediate level; and Demonstration of oral proficiency in the language area of Spanish by meeting the appropriate qualifying score on the PRAXIS II Tests, as adopted by the Standards Board and the State Board; ~~scoring 165 on the PRAXIS II Test Module: Productive Language (0192);~~ or

~~4.1.1.2 Demonstration of content knowledge and oral proficiency in the language area of Spanish by meeting the appropriate qualifying scores on the PRAXIS II Test Modules as follows:~~

~~4.1.1.2.1159 on Spanish: Content and Knowledge (0191) and~~

~~4.1.1.2.2165 on Spanish: Productive Language (0192); and~~

~~4.1.2~~4.1.2 Demonstration of English speaking ability, when English is not the first language, by scoring 50 on the TOEFL: Test of Spoken English (TSE) and

4.1.3 In addition to 4.1.1 and 4.1.2 all candidates must meet the following requirements:

4.1.3.1 Completion of course work as indicated:

4.1.3.1.1 3 semester hours Methods of Teaching English as a Second Language;

4.1.3.1.2 3 semester hours Second Language Testing;

4.1.3.1.3 3 semester hours Remedial Reading (English); or

4.1.3.1.4 3 semester hours Remedial Reading (Spanish); and

4.1.3.2 Verification of knowledge of the Spanish culture as demonstrated by:

4.1.3.2.1 A three (3) semester hour course in Spanish culture; or

4.1.3.2.2 Documentation of personal interaction with the target community via study abroad, work experience, formative experience, etc.; and

7 DE Reg. 775 (12/1/03)

5.0 This regulation shall be effective through June 30, 2006 only. Applicants who apply for a standard certificate as a bilingual teacher (Spanish) primary/middle level after that date must comply with the requirements set forth in 14 **Del.C.** §1516.

7 DE Reg. 775 (12/1/03)

DEPARTMENT OF FINANCE

GAMING CONTROL BOARD

Statutory Authority: 28 Delaware Code, Section 1122(a) and 29 Delaware Code, Section 10115 (28 **Del.C.** §1122(a) and 29 **Del.C.** §10115)

NOTICE

The Delaware Gaming Control Board proposes to amend its Bingo Regulations pursuant to 28 **Del.C.** §1122(a) and 29 **Del.C.** §10115. The Board proposes to amend Bingo Regulation 2.3 to provide that all bingo applications, original and supplemental, shall be filed with the Board at least six weeks before the scheduled event. The Board will accept written comments from May 1, 2004 through May 30, 2004. The Board will hold a public hearing on the proposed rule amendments on June 3, 2004 at 12:00 p.m. at the Division of Professional Regulation, Cannon Building, Second Floor Conference Room, 861 Silver Lake Boulevard, Suite 203, Dover, DE. Written comments should be submitted to Sherry Clark, Division of Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, DE 19904-2467.

401 Regulations Governing Bingo

1.0 Definitions

"Bingo" A game of chance played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers as objects similarly numbered are drawn from a receptacle and the game being won by the person who first covers a previously designated arrangement of numbers on such a-card.

"Bingo Statute" The statutory law concerning bingo, as contained in **28 Delaware Code, Section 1101 et. seq**.

"Board" The Delaware Gaming Control Board.

"Color Coded" A different color for each of the five letters of the word "BINGO."

"Cookie Jar Bingo" A game of chance in which players pay a set fee into a cookie jar or other container and receive a number which entitles the player to entry into a later drawing for the total funds deposited by all other players in the cookie jar or container.

See 2 DE Reg. 1224

"Districts" Those districts mentioned in Article II, 917A of the Delaware Constitution.

"Equipment" The receptacle and color coded numbered objects to be drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address systems, tables, chairs, and other articles essential to the operation, conduct and playing of bingo.

"Game" The game of bingo.

"Instant Bingo" A game of chance played with sealed or covered cards which must be opened in some fashion by the holder such that the cards reveal instantly whether the holder has won a prize. This type of game includes but is not limited to games commonly known as "rip-offs" or "Nevada pull-tabs."

See 2 DE Reg. 1224

"Member in Charge" A bona fide, active member of the "Qualified Organization" in charge of, and primarily responsible for the conduct of the game on each occasion.

"Occasion" A single gathering or session at which a series of successive bingo games (regular, special, or otherwise) is played, not to exceed forty (40) in number.

"Proceeds" The gross income received from all activities engaged in or on occasion when bingo is played, less only, such actual expenses incurred as are authorized in the Bingo Statute and these Rules and Regulations.

"Qualified Organization" A volunteer fire company, veterans organization, religious or charitable organization, or fraternal society that is operated in a manner so as to come within the provisions of Section 170 of the U.S. Secretary of the Treasury.

2.0 Applications For Bingo License.

2.1 original applications shall be filed upon:

2.1.1 the first application of an organization for a license;

2.1.2 after the first application and upon a subsequent change in the organization's charter or bylaws; or

2.1.3 in the event of a subsequent application after a prior refusal, suspension, or revocation by the Board.

2.2 Supplemental applications for bingo licenses shall be filed in all instances except those covered by the original application. All promotional give-away events, as defined under 28 **Del.C.** §1139(h)(2), must be listed on an applicant's application for licensure, giving the dates of the promotional give-away events. If the event is not listed on the application, no promotional give-away event can be conducted.

2.3 All original and supplemental applications shall be filed with the Secretary of the Board at least six (6) weeks prior to the date of the occasion. ~~All supplemental applications shall be filed fifteen (15) days prior to the first date of the occasion.~~

2.4 No applications (original or supplemental) shall be accepted unless the applicant, at the time of the filing,

attaches a check or money order for the full amount of the fees payable by law for each occasion requested. In the event an application is refused by the Board, the application fees shall be refunded in full to the applicant. There shall be a license fee of $15 for each occasion on which bingo is conducted under a license.

2.5 No application shall be received by the Commission unless it clearly shows that the applicant is located in and seeks to conduct the game in a district which has approved the licensing of bingo by referendum, and on premises owned or regularly leased by the applicant. If the applicant desires to conduct games on premises specially leased for the occasion, a separate written request therefor (together with supporting reasons) shall accompany the application. The Board reserves the right to accept or reject any application for the conduct of games on specially leased premises. Organization conducting a Function shall prepare and have available on the premises a list of all persons taking part in the management or operation of the Function. Such list shall be maintained as part of the licensees, records of the Function and shall be made available to any member or agent of the Board or law enforcement officer.

See 2 DE Reg. 1224

3.0 Bingo Licenses

3.1 Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

3.2 The Board may issue a license only after it determines that:

3.2.1 The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

3.2.2 The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

3.2.3 The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

3.2.4 The proceeds are to be disposed of as provided in the State Constitution and statutes.

3.2.5 No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

3.3 The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

3.4 If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.

3.5 In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be unduly inconvenienced.

3.6 No license shall be effective for a period of more t an one year from the date it was issued.

3.7 No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

3.8 No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

3.9 No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 **Del. Laws,** 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July,14, 1998 whose license lapses for six (6) months or more due to non-renewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

3.10 The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

See 2 DE Reg. 1224
See 3 DE Reg. 1692
See 4 DE Reg. 334

4.0 Conduct of Bingo.

4.1 The officers of a licensee shall designate a bona

fide, active member to be in charge of and primarily responsible for the conduct of the game of chance on each occasion. The member in charge shall supervise all activities on the occasions for which he is in charge and shall be responsible for the making of the required report thereof. The member in charge shall be familiar with the provisions of the Bingo Statute, and these rules and regulations.

4.2 The room where any game is being held, operated, or conducted, or where it is intended that any game shall be held, operated, or conducted, or where it is intended that any equipment be used, shall at all times be open to inspection by the appropriate law enforcement officers and agents of the District in which the premises are situated, and to the Board and its agents and employees. Bingo games shall not be commenced prior to 1:30 p.m. and the operation of a function shall be limited to six hours. Instant bingo is permitted during any event sponsored by the organization that is licensed to conduct it, regardless of the day or time.

4.3 No person under the age of eighteen (18) shall be permitted in any bingo game, the prize for which is money. No person under the age of 18 shall be permitted to participate in any instant bingo game. No person under the age of sixteen (16) shall participate in any game of bingo nor shall such person conduct or assist in the conduct of the playing of any game of bingo, except that persons no younger than the age of fourteen (14) may act as waiters and waitresses in the handling of food or drinks at an occasion on which a licensee conducts bingo.

4.4 No organization licensed prior to enactment of 71 **Del. Laws** 444 (July 14, 1998), may hold, operate, or conduct bingo more often than ten (10) days in any calendar month. No bingo licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998) shall conduct more than one bingo event per week. A bingo licensee licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 **Del. Laws** 444 (July 14, 1998).

4.5 The Board and its duly authorized agents and employees may examine the books and records of any licensee, so far as those books and records relate to any transaction connected with the holding, operating, and conducting of the game of bingo, and may examine any manager, officer, director, agent, member, employee, or assistant of the licensee under oath in relation to the conduct of the game of bingo.

4.6 (Deleted.)

4.7 No prize greater in an amount or value than $250 shall be offered or given any single game and the aggregate amount or value of all prizes offered or given in all games played on a single occasion shall not exceed $1,000. All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played. The value of any promotional giveaways, which shall be no more than $500 per annum to be distributed at an organizational anniversary date and no more than three (3) holiday dates per year, shall not be counted towards the dollar amounts described in this section. However, a licensee may offer inducements, including but not limited to cookie-jar bingo games that do not exceed $500 per game per night, free refreshments, and free transportation of players to and from bingo events, to attract bingo players to the bingo event, provided that the fair market value of inducements is limited to 15% of the total amount of all other prizes offered or given during the bingo event.

4.7.1 Any amounts in any cookie-jar bingo games shall not be included in the limitations of this section or in any prize money limitations. A bingo licensee may not have more than two $500 cookie jar bingo pots at any one time which are to be awarded to players. The licensee must award the first cookie jar bingo pot before it may start a third cookie jar bingo pot. In the event that a licensee has a first cookie jar bingo pot of $500 and then accrues a second cookie jar bingo pot of $500, the licensee must award the first cookie jar pot to a player on the occasion at which the second cookie jar pot reaches the $500 limit. On such occasion, if the first cookie jar pot is not awarded by the end of the occasion, the licensee shall conduct a final special bingo game of "full card" or "black out" bingo using a separate, single card, and the first $500 cookie jar shall be won by the player or players who first covers all spaces on their entire card.

4.8 Two or more organizations may not hold games of bingo at the same place on the same day. Unless a bingo licensee has been licensed prior to the enactment of 71 **Del. Laws** 444 (July 14, 1998), only one licensed organization may hold bingo games in a licensed organization's building during any given week.

4.9 No alcoholic beverages shall be permitted in the room from the time the bingo hall opens until the conclusion of the last bingo game of the occasion.

4.10 All games shall be conducted with equipment that is owned absolutely by the licensee or that is leased for fees not in excess of those allowable under the Schedule of Rental for leasing of equipment on file with the Board. Equipment shall include playing cards. If the licensee uses cards that are for more than one session of playing bingo, these cards should be identified as the property of the licensee.

4.11 All winners shall be determined and all prizes shall be awarded in any game played on any occasion within the same calendar day as that upon which the game is played.

4.12 When more than one player is found to be the winner on the call of the same number in the same game, the designated prize shall be divided equally as possible; and

when division is not possible, substitute prizes, whose aggregate value shall not exceed that of the designated prize, shall be awarded; but such substitute prizes shall be of equal value to each other.

4.13 The equipment used in the playing of bingo and the method of play shall be such that each card shall have an equal opportunity to be a winner. The objects drawn shall be essentially equal as to size, shape, weight, and balance, and as to all other characteristics that may control their selection, and all shall be present in the receptacle before each game is begun. All numbers shall be announced so as to be visible or audible to all players present.

4.14 The particular arrangement of numbers required to be covered in order to win the game shall be clearly described and announced to the players immediately before each game is begun.

4.15 No arrangement of numbers shall be required to be covered in order to win the game other than the following:

4.15.1 one unspecified horizontal row;

4.15.2 one unspecified vertical row;

4.15.3 one unspecified full diagonal row;

4.15.4 one unspecified row (horizontal, vertical, or diagonal);

4.15.5 Two or more of the foregoing, forming a specified arrangement;

4.15.6 The entire card;

4.15.7 Four corners;

4.15.8 Eight spaces surrounding the free space.

4.16 Within the limits contained in 28 **Del.C.** §1132(b), alternate prizes may be offered depending upon the number of calls within which bingo is reached, provided the application for the bingo license and the license so specify.

4.17 Any player shall be entitled to call for a verification of all numbers drawn at the time a winner is determined, and for a verification of the objects remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the member designated to be in charge on the occasion, but if such member is also the announcer, then in the immediate presence of an officer of the licensee.

4.18 No licensee shall conduct more than forty (40) games on a single occasion.

4.19In the playing of bingo, no person who is not physically present in the room where the game is actually conducted shall be allowed to participate as a player in the game.

4.20 Within the limits contained in 28 **Del.C.** §1132(6), the prizes offered may be varied depending upon the number of people who attend the occasion, provided the application for bingo license and license so specify. If a licensee avails itself of the provisions of this rule, it must announce at the beginning of each game the number of people present and the prizes to be awarded.

4.21 The entire proceeds of the games of bingo must be used solely for the promotion or achievement of the purposes of the licensee.

4.22 Any local rules adopted by the licensee that affect the conduct of the players or the awarding of prizes shall be prominently posted in at least four locations within the area where the bingo games are conducted.

4.23 The licensee shall be permitted to reserve seats within the area where the bingo games are conducted to provide for the special needs of handicapped persons, and the licensee shall ensure that the remaining seats are made available to the players on an equal basis.

4.24 A licensee may charge an admission fee to a game event in any room or area in which a game is to be conducted. The admission fee shall entitle the game player (a) to a card enabling the player to participate without additional charge in all regular games to be played under the license at the event, or (b) to free refreshments. The licensee may charge an additional fee to a game player for a single opportunity to participate in a special game to be played under license at the event.

4.25 No person shall conduct or assist in conducting any game except an active member of the organization to which the license is issued.

4.26 No item of expense shall be incurred or paid in connection with the conduct of the game except shall be incurred or paid in connection with the conduct of the game except such as are bona fide items of a reasonable amount for merchandise furnished or services rendered which are reasonably necessary for the conduct of the game.

See 2 DE Reg. 1224

See 2 DE Reg. 1761

5.0 Reports After Games

5.1 When no game is held on any date when a licensee is authorized to hold such game, a report to that effect shall nonetheless be filed with the Secretary of the Board.

5.2 If a licensee fails to file a report within the time required or if a report is not properly verified, or not fully, accurately, and truthfully completed, no further license shall be issued to it and any existing license shall be suspended until such time as the default has been corrected.

6.0 Suspension and Revocation of Licenses

6.1 Proceedings to suspend or to revoke a license shall be brought by notifying the licensee of the ground thereof and the date set forth for a hearing thereon. The Commission may stop the operation of a game pending hearing, in which case the hearing must be held within five (5) days after such action.

6.2 When suspension or revocation proceedings are begun before the Commission, it shall hear the matter and make written findings in support of its decision. The

licensee shall be informed of the decision and of the effective date of the suspension or revocation.

6.3 When a license is suspended or revoked, the licensee shall surrender up the license to the Board on or before that effective date set forth in the notice of decision. In no case shall any license be valid beyond the effective date of suspension or revocation, whether surrendered or not.

6.4 Upon finding of the violation of these rules and regulations or the Bingo Statute, such as would warrant the suspension or revocation of a license, the Board may in addition to any other penalties which may be imposed, declare the violator ineligible to conduct a game of bingo and to apply for a license under said law for a period not exceeding thirty (30) months thereafter. Such declaration of the ineligibility may be extended to include, in addition to the violator, any of its subsidiary organizations, its parent organization and any other organization having a common parent organization or otherwise affiliated with the violator, when in the opinion of the Board, the circumstances of the violation warrant such action.

7.0 Severability

If any provision of these Regulations or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of these Regulations and the applicability of such provisions to other persons or circumstances shall not be affected thereby.

See 2 DE Reg. 1224

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

Statutory Authority: 16 Delaware Code, Section 3006A (16 **Del.C.** §3006A)

PUBLIC NOTICE

Regulations for Assisted Living Facilities

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared proposed regulations to amend the current regulations pertaining to assisted living facilities. These proposed regulations redefine the terms "Incident" and "Reportable Incident," and clarify requirements for assisted living facilities to report incidents. The proposed regulations also amend the current regulations by requiring emergency electrical generators in assisted living facilities. Additionally, the proposed regulations revise the prohibition barring an individual with a central line from an assisted living facility by creating an exception for subcutaneous venous ports.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Wednesday, June 2, 2004, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Thursday, June 3, 2004, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

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

Written comments are also invited on these proposed regulations and should be sent to:

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

Written comments will be accepted until the conclusion of the June 3 public hearing.

Regulations for Assisted Living Facilities

SECTION 63.0 PURPOSE

The Department of Health and Social Services is issuing these regulations to promote and ensure the health, safety, and well-being of all residents of assisted living facilities. These regulations are also meant to ensure that service providers will be accountable to their residents and the Department, and to differentiate assisted living care from skilled nursing care. The essential nature of assisted living is to offer living arrangements to medically stable persons who do not require skilled nursing services and supervision. The regulations establish the minimal acceptable level of services for residents of assisted living facilities.

SECTION 63.1 AUTHORITY AND APPLICABILITY

These regulations are promulgated in accordance with 16 **Del.C.** Chapter 11 and shall apply to any facility providing assisted living to elderly individuals or adults with disabilities**.** The term "assisted living" shall not be used as part of the official name of any facility in this State unless

the facility has been so licensed by the Department of Health and Social Services.

SECTION 63.2 GLOSSARY OF TERMS

63.201 Activities of Daily Living ("ADLs") - Normal daily activities including but not limited to ambulating, transferring, range of motion, grooming, bathing, dressing, eating, and toileting.

63.202 Administration of Medication - The process whereby a single dose of a prescribed drug is given to a resident by an authorized licensed person, as described in 24 **Del.C.** §1902.

63.203 Assisted Living - A special combination of housing, supportive services, supervision, personalized assistance and health care designed to respond to the individual needs of those who need help with activities of daily living and/or instrumental activities of daily living.

63.204 Assisted Living Facility – A licensed entity that provides the services described in 63.203.

63.205 Assistive Technology - Any item, piece of equipment or product system whether acquired commercially off the shelf, modified, or customized that is used to increase or improve functional capabilities of adults with disabilities.

63.206 Assistance With Self-Administration of Medication ("AWSAM") - Help with medication provided by facility personnel who are not nurses or nurse practitioners but who have successfully completed a Board of Nursing-approved medication training program in accordance with the Delaware Nurse Practice Act, 24 **Del.C.** Ch. 19, and applicable rules and regulations. Help with medication includes holding the container, opening the container, and assisting the resident in taking the medication, other than by injection, following the directions of the original container, and documenting in the medication log that each medication has been taken by the residents.

63.207 Communicable Disease - An illness caused by a microorganism or its toxin characterized by spread from host to victim by air, contact, blood, or bodily fluids.

63.208 Contract – A legally binding written agreement between the facility and the resident which enumerates all charges for services, materials, and equipment, as well as non-financial obligations of both parties, as specified in these regulations.

63.209 Cuing - The act of guiding residents, verbally or by gestures, to facilitate memory and/or organize verbal and/or behavioral responses.

63.210 Department - Department of Health and Social Services.

63.211 Division - Division of Long Term Care Residents Protection.

63.212 Durable Medical Equipment - Equipment capable of withstanding repeated use, primarily and customarily used to serve a medical purpose, generally not useful to a person in the absence of an illness or injury, and needed to maintain the resident in the facility, e.g., wheelchairs, hospital beds, oxygen tanks.

63.213 Homelike - Having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one's living area to suit one's individual preferences, in accordance with the facility's policies. A homelike environment provides residents with an opportunity for self-expression and encourages interaction with community, family, and friends.

63.214 Hospice - An agency licensed by the State of Delaware that provides palliative and supportive medical and other health services to terminally ill residents and their families.

63.215 Incident - An occurrence or event, a record of which must be maintained in facility files, ~~that results or might result in harm to a resident. Incident includes alleged abuse, neglect, mistreatment and financial exploitation; incidents of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls; and errors or omissions in medication/treatment.~~ which includes all reportable incidents and the additional occurrences or events listed in Section 63.1805 of these regulations. (Also see Reportable Incident, 63.222.)

63.216 Individual Living Unit - A separate dwelling area within an assisted living facility which has living and sleeping space for one or more residents, as prescribed in these regulations.

63.217 Instrumental Activities of Daily Living ("IADLs") - Home management skills, such as shopping for food and personal items, preparing meals, or handling money.

63.218 Managed/Negotiated Risk Agreement – A signed document between the resident and the facility, and any other involved party, which describes mutually agreeable action balancing resident choice and independence with the health and safety of the resident or others.

63.219 Medication Log – A written document in which licensed personnel and unlicensed personnel who have completed AWSAM training record administration/ assistance with the resident's medications. The log shall list the resident's name; date of birth; allergies; reason the medication is given; prescribing practitioner and phone number; special instructions; and the dosage, route(s), and time(s), for all medications received/taken with staff administration or staff assistance. The log is signed/initialed by a staff member after each resident has received/taken the appropriate medication, or when the medication was not taken/given as prescribed.

63.220 Medication Management by an Adult Family Member/Support Person – Any help with prescription or non-prescription medication provided by an adult family member/support person, as identified in the resident's

contract and service agreement.

63.221 Personal Care Supplies - Those supplies, often disposable, used by a resident, such as incontinence products and hygiene supplies.

63.222 Reportable Incident - An occurrence or event which must be reported ~~at once~~ immediately to the Division and for which there is reasonable cause to believe that a resident has been abused, neglected, mistreated or subjected to financial exploitation as those terms are defined in 16 Del. Code §1131. Reportable incident also includes ~~an incident of unknown source which might be attributable to abuse, neglect or mistreatment; all deaths; falls with injuries; and significant errors or omissions in medication/treatment which cause the resident discomfort or jeopardize the resident's health and safety.~~ an occurrence or event listed in Section 63.1807 of these regulations. (Also see Incident, 63.215.)

63.223 Representative - A person acting on behalf of the resident pursuant to Delaware law.

63.224 Resident - An individual 18 years old or older who lives in an assisted living facility. Where appropriate in the context of these regulations, "resident" as used herein includes an authorized representative as defined in 63.223.

63.225 Resident Assessment - Evaluation of a resident's physical, medical, and psychosocial status as documented in a Uniform Assessment Instrument (UAI), by a registered nurse.

63.226 Resident Assistant – Any unlicensed direct caregiver who, under the supervision of the assisted living director or director of health services, assists the resident with personal needs and monitors the activities of the resident while on the premises to ensure his/her health, safety, and well-being.

63.227 Secretary - Secretary of the Department of Health and Social Services.

63.228 Service Agreement - A written document developed with each resident which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, and, if applicable, the expected outcome.

63.229 Shared Responsibility - The concept that residents and assisted living facilities share responsibility for planning and decision-making affecting the resident.

63.230 Significant Change - A major deterioration or improvement in a resident's health status or ability to perform ADLs; a major alteration in behavior or mood resulting in ongoing problematic behavior or the elimination of that behavior on a sustained basis. Significant change does not include ordinary, day-to-day fluctuations in health status, functioning, and behavior, or a short-term illness such as a cold, unless these fluctuations continue to recur, nor does it include deterioration that will normally resolve without further intervention.

63.231 Social Services - Services provided to assist residents in maintaining or improving their ability to manage their everyday physical, mental and psychosocial needs.

63.232 Third-Party Provider - Any party, including a family member, other than the assisted living facility which furnishes services/supplies to a resident.

63.233 Uniform Assessment Instrument ("UAI") - A document setting forth standardized criteria developed by the Division to assess each resident's functional, cognitive, physical, medical, and psychosocial needs and status. The assisted living facility shall be required to use the UAI to evaluate each resident on both an initial and ongoing basis in accordance with these regulations.

SECTION 63.3 LICENSING REQUIREMENTS AND PROCEDURES

63.301 No entity shall hold itself out as being an assisted living facility unless such entity has been duly licensed under these regulations and in accordance with state law. The Secretary or his/her designee shall issue a provisional or annual license for a specified number of beds.

63.302 Procedures for assisted living facility applications and for issuance, posting, and renewal of licenses shall be in accordance with 16 **Del.C**. Ch. 11, Subchapter I., Licensing By The State.

63.303 Inspections and monitoring shall be conducted in accordance with 16 **Del.C**. Ch. 11, Subchapter I., Licensing By The State.

63.304 Upon receipt of written notice of a violation of these regulations, the assisted living facility shall submit a written plan of action to correct deficiencies cited within 10 working days or such other time period as may be required by the Department. The plan of action shall address corrective actions to be taken and include all measures and completion dates to prevent their recurrence**:** 1) how the corrective action will be accomplished for those residents found to have been affected by the deficient practice; 2) how the facility will identify other residents having the potential to be affected by the same deficient practice; 3) what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur; and 4) how the facility will monitor its corrective actions to ensure that the deficient practice is being corrected and will not recur, i.e., what program will be put into place to monitor the continued effectiveness of the systemic changes.

63.305 The Department may impose civil money penalties and/or other enforcement remedies in accordance with the procedures outlined in 16 **Del.C.**, Chapter 11, Subchapter I., Licensing By The State.

63.306 The Department may suspend or revoke a license, or refuse to renew it, in accordance with 16 **Del.C.**, Ch. 11, Subchapter I., Licensing By The State.

63.307 Separate licenses are required for agencies maintained in separate locations, even though operated under the same management. A separate license is not

required for separate buildings maintained by the same management on the same grounds. Under conditions of assignment or transfer of ownership, a new license shall be required.

63.308 If a facility or part of a facility plans to close:

A. The assisted living facility shall notify representatives of the appropriate state agencies of the plan of closure at least 90 days before the planned closure.

B. The facility staff must notify each resident advising him/her of the action in progress at least 90 days before the planned closure.

C. The resident must be given the opportunity to designate a preference for a specific facility or for other arrangements.

D. The assisted living facility must arrange for the relocation to other facilities in the area in accordance with the residents' preference, if possible.

E. Any applicant for admission to the assisted living facility shall be advised of the planned closure date.

F. All residents' records and any medications must accompany the residents to their new residences.

63.309 The Department may adopt, amend or repeal regulations governing the operation of the agencies defined in 16 **Del.C.**, Ch. 11, Subchapter I., Licensing By The State.

SECTION 63.4 GENERAL REQUIREMENTS

63.401 All written information provided by the assisted living facility shall be accurate, precise, easily understood and readable by a resident, and in compliance with all applicable laws.

63.402 All records maintained by the assisted living facility shall at all times be open to inspection and copying by the authorized representatives of the Department, as well as other agencies as required by state and federal laws and regulations. Such records shall be made available in accordance with 16 **Del.C.**, Ch. 11, Subchapter I., Licensing By The State.

63.403 The assisted living facility shall adopt internal written policies and procedures pursuant to these regulations. No policies shall be adopted by the assisted living facility which are in conflict with these regulations.

63.404 The assisted living facility shall establish and adhere to written policies and procedures regarding the rights and responsibilities of residents, and these policies and procedures shall be made available to authorized representatives of the Department, facility staff, and residents.

63.405 The assisted living facility shall develop and adhere to policies and procedures to prevent residents with diagnosed memory impairment from wandering away from safe areas. However, residents may be permitted to wander safely within the perimeter of a secured unit.

63.406 The assisted living facility shall arrange for emergency transportation and care.

63.407 Inspection summaries and compliance history information shall be posted by the facility in accordance with 16 Del.C., Chapter 11, Subchapter I., Licensing By The State.

63.408 An assisted living facility shall recognize the authority of a representative acting on the resident's behalf pursuant to Delaware law, as long as such representative does not exceed his/her authority. The facility shall request and keep on file any documents such as an advance directive, living will, do not resuscitate, and power(s) of attorney.

63.409 An assisted living facility shall not admit, provide services to, or permit the provision of services to individuals who, as established by the resident assessment:

A. Require care by a nurse that is more than intermittent or for more than a limited period of time;

B. Require skilled monitoring, testing, and aggressive adjustment of medications and treatments where there is the presence of, or reasonable potential of, an acute episode unless there is an RN to provide appropriate care;

C. Require monitoring of a chronic medical condition that is not essentially stabilized through available medications and treatments;

D. Are bedridden for more than 14 days;

E. Have developed stage three or four skin ulcers;

F. Require a ventilator;

G. Require treatment for a disease or condition which requires more than contact isolation;

H. Have an unstable tracheotomy or have a stable tracheotomy of less than 6 months' duration;

I. Have an unstable peg tube;

J. Require an IV or central line~~;~~ with an exception for a completely covered subcutaneously implanted venous port provided the assisted living facility meets the following standards:

1. Facility records shall include the type, purpose and site of the port, the insertion date, and the last date medication was administered or the port flushed.

2. The facility shall document the presence of the port on the Uniform Assessment Instrument, the service plan, interagency referrals and any facility reports,

3. The facility shall not permit the provision of care to the port or surrounding area, the administration of medication or the flushing of the port or the surgical removal of the port within the facility by facility staff, physicians or third party providers;

K. Wander such that the assisted living facility would be unable to provide adequate supervision and/or security arrangements;

L. Exhibit behaviors that present a threat to the health or safety of themselves or others, such that the assisted living facility would be unable to eliminate the threat either through immediate discharge or use of immediate appropriate treatment modalities with measurable

documented progress within 45 days; and

M. Are socially inappropriate as determined by the assisted living facility such that the facility would be unable to manage the behavior after documented, reasonable efforts such as clinical assessments and counseling for a period of no more than 60 days.

63.410 The provisions of Section 63.409 above do not apply to residents under the care of a Hospice program licensed by the Department as long as the Hospice program provides written assurance that, in conjunction with care provided by the assisted living facility, all of the resident's needs will be met without placing other residents at risk.

SECTION 63.5 RESIDENT WAIVERS

63.501 An assisted living facility may request a resident-specific waiver so that it may serve a current resident who temporarily requires care otherwise excluded in section 63.409. A waiver request shall contain documentation by a physician stating that the resident's condition is expected to improve within 90 days.

63.502 The facility shall provide interim needed services by appropriate health care professionals while any waiver request is pending.

63.503 The assisted living facility shall submit in writing a request for a waiver, which shall include the following information:

A. An explanation of why the assisted living facility is seeking the waiver, to include physician documentation and a service agreement which details how staff will provide care;

B. An explanation of why denial of the waiver will impose a substantial hardship for the resident;

C. An explanation of why the waiver will not adversely affect the resident for whom the waiver is sought or other residents; and

D. The duration of the waiver, not to exceed 90 days for each incident or condition.

63.504 In evaluating a waiver request submitted under this regulation, the Department shall review the statements in the application and may:

A. Inspect the assisted living facility;

B. Confer with the Assisted Living Director or his/her designee;

C. Discuss the request with the resident to determine whether he/she believes a waiver is in his/her best interest; and/or

D. Review other waivers currently in place at the assisted living facility.

63.505 The Department shall issue a written decision on a waiver request submitted pursuant to these regulations within 5 business days of receipt of the request. If the Department grants the waiver, the written decision shall include the waiver's duration. If the Department denies the waiver, the written decision shall explain the reason(s) for the denial. The assisted living facility may submit a revised waiver request no later than five days after the receipt of the denial. While the second waiver request is pending, the facility shall provide needed services by health care professionals as outlined in the second waiver request.

63.506 If an assisted living facility violates any condition of a waiver, or if it appears to the Department that the health or safety of residents will be adversely affected by the continuation of a waiver, the Department may revoke it. The revocation may be appealed; however, discharge procedures in accordance with Regulation 906E. shall be commenced immediately.

SECTION 63.6 SPECIALIZED CARE FOR MEMORY IMPAIRMENT

63.601 Any assisted living facility which offers to provide specialized care for residents with memory impairment shall be required to disclose its policies and procedures which describe the form of care or treatment provided, in addition to that care and treatment required by the rules and regulations herein.

63.602 Said disclosure shall be made to the Department and to any person seeking specialized care for memory impairment in an assisted living facility.

63.603 The information disclosed shall explain the additional care that is provided in each of the following areas:

A. Philosophy: a written statement of the agency's overall philosophy and mission which reflects the needs of residents affected by memory impairment;

B. Resident Population: a description of the resident population to be served; the service agreement and its implementation;

C. Pre-Admission, Admission & Discharge: the process and criteria for placement, transfer or discharge from this specialized care;

D. Assessment, Care Planning & Implementation: the process used for assessment and establishing and updating the service agreement and its implementation,

E. Staffing Plan & Training Policies: staffing plan, orientation, and regular in-service education for specialized care;

F. Physical Environment: the physical environment and design features, including security systems, appropriate to support the functioning of adults with memory impairment;

G. Resident Activities: the frequency and types of resident activities;

H. Family Role in Care: the family involvement and family support programs;

I. Psychosocial Services: the process for addressing the mental health, behavior management, and social functioning needs of the resident;

J. Nutrition/Hydration: the frequency and types

of nutrition and hydration services provided; and

K. Program Costs: the cost of care and any additional fees.

63.604 Any significant changes in the information provided by the assisted living facility shall be reported to the Department at the time the changes are made.

SECTION 63.7 MEDICATION MANAGEMENT

63.701 An assisted living facility shall establish and adhere to written medication policies and procedures which shall address:

A. Obtaining and refilling medication;

B. Storing and controlling medication;

C. Disposing of medication; and

D. Administration of medication, self-administration of medication, assistance with self-administration of medication, and medication management by an adult family member/support person.

E. Provision for a quarterly pharmacy review which shall include:

1. Assisting the facility with the development and implementation of medication-related policies and procedures;

2. Physical inspection of the medication storage areas;

3. Review of each resident's medication regimen with written reports noting any identified irregularities or areas of concern.

63.702 Each assisted living facility shall have a drug reference guide, with a copyright date no older than 2 years, available and accessible for use by employees.

63.703 Medication stored by the assisted living facility shall be stored and controlled as follows:

A. Medication shall be stored in a locked container, cabinet, or area that is only accessible to authorized personnel;

B. Medication that is not in locked storage shall not be left unattended and shall not be accessible to unauthorized personnel;

C. Medication shall be stored in the original labeled container;

D. A bathroom or laundry room shall not be used for medication storage; and

E. All expired or discontinued medication, including those of deceased residents, shall be disposed of according to the assisted living facility's medication policies and procedures.

63.704 Residents who self-administer medication shall be provided with a locked container.

63.705 A separate medication log must be maintained for each resident documenting administration of medication by staff and staff assistance with self-administration.

63.706 Within 30 days after a resident's admission and concurrent with all UAI-based assessments, the assisted living facility shall arrange for an on-site review by an RN of the resident's medication regime if he or she self-administers medication. The purpose of the on-site review is to assess the resident's cognitive and physical ability to self-administer medication or the need for assistance with or staff administration of medication.

63.707 The assisted living facility shall ensure that the review required by section 63.706 is documented in the resident's records, including any recommendations given by the reviewer.

63.708 Concurrently with all UAI-based assessments, the assisted living facility shall arrange for an on-site medication review by a registered nurse, for residents who need assistance with self-administration or staff administration of medication, to ensure that:

A. Medications are properly labeled, stored and maintained;

B. Each resident receives the medications that have been specifically prescribed in the manner that has been ordered;

C. The desired effect of each medication is achieved, and if not, that the appropriate authorized prescriber is so informed;

D. Any undesired side effects, adverse drug reactions, and medication errors are identified and reported to the appropriate authorized prescriber; and

E. Any unresolved discrepancy of controlled substances shall be reported to the Delaware Office of Narcotics and Dangerous Drugs.

63.709 Records shall be kept on file at the facility for those who have completed the AWSAM course which is required by 24 Del. C., Chapter 19 for those who assist the residents with self-administration of medication.

63.710 Each assisted living facility shall complete an annual AWSAM report on the form provided by the Board of Nursing. The report must be submitted pursuant to the Delaware Nurse Practice Act, 24 Del. C., Chapter 19.

SECTION 63.8 INFECTION CONTROL

63.801 The assisted living facility shall establish written procedures to be followed in the event that a resident with a communicable disease is admitted or an episode of communicable disease occurs. It is the responsibility of the assisted living facility to see that:

A. The necessary precautions stated in the written procedures are followed; and

B. All rules of the Delaware Division of Public Health are followed so there is minimal danger of transmission to staff and residents.

63.802 Any resident found to have active tuberculosis in an infectious stage may not continue to reside in an assisted living facility.

63.803 A resident, when suspected or diagnosed as having a communicable disease, shall be placed on the

appropriate isolation or precaution as recommended for that disease by the Centers for Disease Control. Those with a communicable disease which has been determined by the Director of the Division of Public Health to be a health hazard to visitors, staff, and other residents shall be placed on isolation care until they can be moved to an appropriate room or transferred.

63.804 The admission or occurrence of a resident with a notifiable disease within an assisted living facility shall be reported to the County Public Health Administrator. See Appendix A.

63.805 The assisted living facility shall have on file results of tuberculin tests:

1) performed annually for all employees and

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

63.806 The assisted living facility shall have on file evidence of annual vaccination against influenza for all residents, as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against influenza must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.807 The assisted living facility shall have on file evidence of vaccination against pneumococcal pneumonia for all residents older than 65 years and as recommended by the Immunization Practice Advisory Committee of the Centers for Disease Control, unless medically contraindicated. All residents who refuse to be vaccinated against pneumococcal pneumonia must be fully informed by the facility of the health risks involved. The reason for the refusal shall be documented in the resident's medical record.

63.808 The assisted living facility shall have policies and procedures for infection control as it pertains to staff, residents, and visitors.

63.809 All assisted living facility staff shall be required to use Standard Precautions.

SECTION 63.9 RESIDENT APPLICATIONS AND CONTRACTS

63.901 The assisted living facility shall have a written application process and provide clear reasons in writing if an applicant is rejected.

63.902 The assisted living facility shall recommend review of the contract by an attorney or other representative chosen by the resident.

63.903 Prior to executing the contract, each assisted living facility shall provide to the prospective resident a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the resident during the period of occupancy.

63.904 The resident shall sign a contract within 3 business days after admission that:

A. Is a clear and complete reflection of commitments agreed to by the parties and the actual practices that will occur in the assisted living program;

B. Is accurate, precise, legible, and written in plain language; and

C. Conforms to all relevant state and local laws and regulations.

63.905 The assisted living facility shall retain the contract on-site and make it available for review by the Department or its designee. The facility shall also provide a copy to the resident.

63.906 The contract or service agreement shall include, at a minimum, the following non-financial provisions:

A. A listing of basic and optional services provided by the assisted living facility including the availability of licensed nursing staff;

B. A listing of optional services that may be provided by third parties;

C. A statement of the resident's rights, as set forth in 16 **Del.C.** Chapter 11, Subchapter II and an explanation of the assisted living facility's grievance procedures;

D. Occupancy provisions, including:

1. Policies regarding bed and room assignment, including the specific room and bed assigned to the resident at the time of admission;

2. Policies regarding residents modifying their living area;

3. Procedures to be followed when the assisted living facility temporarily or permanently changes the resident's accommodation by:

a. Relocating the resident within the facility;

b. Making a change in roommate assignment; and

c. Increasing or decreasing the number of individuals occupying a room.

4. Procedures to be followed in transferring the resident to another facility;

5. Security procedures which the licensee shall implement to protect the resident and the resident's property;

6. The staff's right to enter a resident's room;

7. The resident's rights and obligations

concerning use of the facility, including common areas;

8. The assisted living facility's policy in case of unavoidable or optional absences such as hospitalizations, recuperative stays in other settings, or vacation, and payment terms;

9. Provisions for interim service in the event of an emergency; and

10. An acknowledgment that the resident has reviewed all assisted living facility rules, requirements, restrictions, or special conditions that the facility will impose on the resident.

E. Discharge/temporary absence policies and procedures, including:

1. Those actions, circumstances, or conditions that temporarily disqualify individuals from continued residence in the assisted living facility or may result in the resident's discharge from the facility;

2. The procedures which the assisted living facility shall follow if it intends to discharge a resident and thereby terminate the contract, including a provision under which the assisted living facility shall give at least 30 days notice to the resident before the effective date of the discharge and termination of the contract, except in the case of a health emergency or substantial risk to the health and safety of the other residents or facility staff;

3. The procedures which the resident shall follow if the resident wishes to terminate the contract, including a provision that the resident, or appropriate representative, shall give at least 30 days notice to the assisted living facility before the effective date of the termination, except in the case of a health emergency;

4. The procedures which the assisted living facility shall follow in helping the resident find an appropriate placement;

5. In a living unit in which more than one resident is the contracting party, the terms under which the contract may be modified in the event of one of the resident's discharge or death, including the provisions for termination of the contract and appropriate refunds**.**

F. Obligations of the facility and the resident as to:

1. Arranging for or overseeing medical care; and

2. Monitoring of the status of the resident.

G. The assisted living facility's formal internal grievance process which shall protect residents from reprisal by the facility or its employees.

H. An inventory of the resident's personal belongings, if the resident so desires.

63.907 The contract shall include, at a minimum, the following financial provisions:

A. Party responsible for:

1. Handling the finances of the resident;

2. Purchasing or renting essential or desired equipment and supplies;

3. Arranging and contracting for services not covered by the contract;

4. Ascertaining the cost of and purchasing durable medical equipment; and

5. Disposing of the resident's property upon discharge or death of the resident.

B. Rate structure and payment provisions including:

1. All rates to be charged to the resident, including, but not limited to:

a. Service packages;

b. Fee for service rates; and

c. Other ancillary charges.

2. Notification of the rate structure and the criteria to be used for imposing additional charges for the provision of additional services, if the resident's service and care needs change;

3. Identification of the persons responsible for payment of all fees and charges and a clear indication of whether the person's responsibility is or is not limited to the extent of the resident's funds;

4. A provision which provides at least 60 days notice of any rate increase, except if necessitated by a change in the resident's medical condition;

5. Billing, payment, and credit policies, including the procedures that the assisted living facility will follow in the event the resident can no longer pay for services provided or for services or care needed by the resident; and

6. A description of any prepaid fees or charges and the terms governing refund of those fees or charges in the event of a resident's discharge from the assisted living facility or termination of the contract.

63.908 The contract shall be amended by the parties to reflect any applicable increase or decrease in charges.

63.909 All notices to be provided pursuant to an assisted living contract shall be in writing and mailed or hand-delivered to the resident.

63.910 No contract shall be signed before a full assessment of the resident has been completed and a service agreement has been executed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

SECTION 63.10 RESIDENT ASSESSMENT

63.1001 Each assisted living facility shall use a Uniform Assessment Instrument (UAI) developed by the Division. The UAI shall be used in conducting all resident assessments.

63.1002 A resident seeking entrance shall have an initial UAI-based resident assessment completed by a registered nurse (RN) acting on behalf of the assisted living

facility no more than 30 days prior to admission. In all cases, the assessment shall be completed prior to admission. Such assessment shall be reviewed by an RN within 30 days after admission and, if appropriate, revised. If the resident requires specialized medical, therapeutic, nursing services, or assistive technology, that component of the assessment must be performed by personnel qualified in that specialty area.

63.1003 Within 30 days prior to admission, a prospective resident shall have a medical evaluation completed by a physician.

63.1004 The resident assessment shall be completed in conjunction with the resident.

63.1005 The UAI, developed by the Department, shall be used to update the resident assessment. At a minimum, regular updates must occur 30 days after admission, annually and when there is a significant change in the resident's condition.

63.1006 If the needs of a resident exceed the care which the assisted living facility can provide and a waiver has not been requested, the facility shall assist the resident in making arrangements for an appropriate transfer within 30 days. While a transfer is pending, the assisted living facility shall coordinate the provision of services needed by the resident.

63.1007 The assisted living facility shall provide an instrument to assess interests, strengths, talents, skills and preferences of each resident within 30 days of admission to be used in activity planning.

SECTION 63.11 SERVICES

63.1101 The assisted living facility shall ensure that:

A. Three meals, snacks and prescribed food supplements are available during each 24-hour period, 7 days per week;

B. Meals and snacks are varied, palatable, and of sufficient quality and quantity to meet the daily nutritional needs of each resident with specific attention given to the special dietary needs of each resident;

C. Food service complies with the Delaware Food Code; and

D. A resident who chooses not to follow prescribed dietary recommendations shall be provided documented counseling on potential adverse outcomes.

63.1102 As part of the licensure approval and renewal process, an assisted living applicant or licensee shall submit at least a 4-week menu cycle with documentation by a dietician or nutritionist that the menus are nutritionally adequate. Thereafter, menus are to be written at least one week in advance and maintained on file, as served, for two months.

63.1103 The assisted living facility shall ensure that the resident's service agreement is being properly implemented.

63.1104 In accordance with the service agreement, the assisted living facility shall provide or ensure the provision of all necessary personal services, including all activities of daily living, and shall ensure that personal care supplies are available.

63.1105 The assisted living facility shall ensure that laundry and housekeeping services are offered and that all areas of the facility are maintained in a clean and orderly condition.

63.1106 In accordance with the service agreement, the assisted living facility shall be responsible for facilitating access to appropriate health care and social services for the resident.

63.1107 The assisted living facility shall assess each resident and provide or arrange appropriate opportunities for social interaction and leisure activities which promote the physical and mental well-being of each resident, including facilitating access to spiritual activities consistent with the preferences and background of the resident.

SECTION 63.12 SERVICE AGREEMENTS

63.1201 A service agreement based on the needs identified in the UAI shall be completed prior to or no later than the day of admission. The resident shall participate in the development of the agreement. The resident and the facility shall sign the agreement and each shall receive a copy of the signed agreement. All persons who sign the agreement must be able to comprehend and perform their obligations under the agreement.

63.1202 The service agreement or contract shall address the physical, medical, and psychosocial services that the resident requires as follows:

A. Assistance with activities of daily living and instrumental activities of daily living;

B. Services provided by licensed nurses;

C. Food, nutrition, and hydration services;

D. Environmental services including housekeeping, laundry, safety, trash removal;

E. Psychosocial/emotional services including those related to memory impairment and other cognitive deficits;

F. Banking, record keeping, and personal spending services;

G. Transportation services;

H. Individual living unit furnishings;

I. Notification procedures when an incident occurs or there is a change in the health status of the resident;

J. Assistive technology and durable medical equipment;

K. Rehabilitation services;

L. Qualified interpreters for people who have a hearing impairment or do not speak English; and

M. Reasonable accommodations for persons with disabilities as defined by applicable state and federal law.

63.1203 The resident's personal attending physician(s) shall be identified in the service agreement by name,

address, and telephone number.

63.1204 The facility shall be responsible for appropriate documentation in the service agreement for services provided or arranged by the facility.

63.1205 The service agreement shall be developed and followed for each resident consistent with that person's unique physical and psychosocial needs with recognition of his/her capabilities and preferences.

63.1206 The service agreement shall be reviewed when the needs of the resident have changed and, minimally, in conjunction with each UAI. Within 10 days of such assessment, the resident and the assisted living facility shall execute a revised service agreement, if indicated.

63.1207 The service agreement shall be based on the concepts of shared responsibility and resident choice. To participate fully in shared responsibility, residents shall be provided with clear and understandable information about the possible consequences of their decision-making. If a resident's preference or decision places the resident or others at risk or is likely to lead to adverse consequences, a managed/negotiated risk agreement section may be included in the service agreement.

63.1208 The following are criteria for a managed/ negotiated risk agreement:

A. The risks are tolerable to all parties participating in the development of the managed/negotiated risk agreement;

B. Mutually agreeable action is negotiated to provide the greatest amount of resident autonomy with the least amount of risk; and

C. The resident living in the facility is capable of making choices and decisions and understanding consequences.

63.1209 If a managed/negotiated risk agreement is made a part of the service agreement, it shall:

A. Clearly describe the problem, issue or service that is the subject of the managed/negotiated risk agreement;

B. Describe the choices available to the resident as well as the risks and benefits associated with each choice, the assisted living facility's recommendations or desired outcome, and the resident's desired preference;

C. Indicate the agreed-upon option;

D. Describe the agreed upon responsibilities of the assisted living facility, the resident, and any third parties;

E. Become a part of the service agreement, be signed separately by the resident, the assisted living facility, and any third party with obligations under the managed/ negotiated risk agreement that the third party is able to fully comprehend and perform; and

F. Include a time frame for review.

63.1210 The assisted living facility shall have sufficient staff to meet its responsibilities under the managed/ negotiated risk agreement.

63.1211 The assisted living facility shall not use managed/negotiated risk agreements to provide care to residents with needs beyond the capability of the facility. A managed/negotiated risk agreement shall not be used to supersede any requirements of these regulations.

63.1212 The assisted living facility shall make no attempt to use the managed/negotiated risk portion of the service agreement to abridge a resident's rights or to avoid liability for harm caused to a resident by the negligence of the assisted living facility and any such abridgement or disclaimer shall be void.

SECTION 63.13 RESIDENT RIGHTS

63.1301 Assisted living facilities are required by 16 **Del.C.** Chapter 11, Subchapter II, to comply with the provisions of the Rights of Patients covered therein.

63.1302 Each resident has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the resident.

SECTION 63.14 QUALITY ASSURANCE

63.1401 The assisted living facility shall develop**,** implement, and adhere to a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures resident satisfaction.

63.1402 On at least a semi-annual basis, the assisted living facility shall survey each resident regarding his/her satisfaction with services provided.

A. The assisted living facility shall retain all surveys for at least two years which shall be reviewed during inspection.

B. The assisted living facility shall maintain documentation for at least one year which addresses what actions were taken as a result of the surveys.

SECTION 63.15 STAFFING

63.1501 As used herein "staff" includes permanent employees of the assisted living facility and independent contractors, including "temps."

63.1502 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the residents shall be employed and shall comply with applicable state laws and regulations.

63.1503 All direct care staff shall be familiar with the service agreement for each resident for whom they provide care.

63.1504 Every assisted living facility shall have a Director. Facilities licensed for 25 beds or more shall have a full-time Nursing Home Administrator. Facilities licensed for 5 through 24 beds shall have a part-time Nursing Home Administrator on-site and on-duty at least 20 hours a week. If the assisted living facility is part of a continuing care retirement community (CCRC) or part of a campus under the same ownership, the CCRC or campus may operate under

one licensed Nursing Home Administrator.

63.1505 The Nursing Home Administrator shall comply with the provisions of 24 Del. C., Chapter 52, and the Board's Rules and Regulations.

63.1506 The Director/Nursing Home Administrator shall have overall responsibility for managing the assisted living facility such that all requirements of state law and regulations are met.

63.1507 The Director of a facility for 4 beds or fewer shall meet one of the following criteria:

A. A baccalaureate degree in a health or social services field or business administration; or

B. An associates degree in a health or social services field or business administration and at least 2 years of full-time equivalent work experience in these disciplines; or

C. An RN with a combined total of 4 years full-time equivalent education and related work experience; or

D. At least 4 years full-time equivalent work experience as an LPN, or 5 years full-time equivalent work experience in a health or social services field or business administration.

63.1508 The Director of a Facility for 4 beds or fewer shall be on-site at least 8 hours a week.

63.1509 Each facility for 4 beds or fewer shall have a full-time, on-site house manager who shall at a minimum:

A. Possess a high school diploma or its equivalent;

B. Be certified as a CNA with at least three years experience providing care in a health care setting;

C. Complete an orientation program in accordance with the CNA regulations; and

D. Receive, at a minimum, 12 hours of regular in-service education annually, which may include but not be limited to the topics listed below:

1. The health and psychosocial needs of the population being served;
2. The resident assessment process;
3. Use of service agreements;
4. Cuing, coaching, and monitoring residents who self-administer medications, with or without assistance;
5. Providing assistance with ambulation, personal hygiene, dressing, toileting, and feeding;
6. 16 Del. C., Chapter 11, pertaining to resident's rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;
7. Fire and life safety, and emergency disaster plans;
8. Infection control, including Standard Precautions;
9. Basic food safety;
10. Basic first aid, CPR, and the Heimlich Maneuver; and
11. Hospice services.

63.1510 Assisted living facilities administering therapies and/or treatments shall have staff adequate in number and appropriately qualified and/or licensed.

63.1511 Every assisted living facility shall have a Director of Nursing who is a registered nurse. Facilities licensed for 25 assisted living beds or more shall have a full-time Director of Nursing. Facilities licensed for 5 through 24 assisted living beds shall have a part-time Director of Nursing on-site and on-duty at least 20 hours a week. The nursing director of a facility for 4 assisted living beds or fewer shall be on-site at least 8 hours a week.

63.1512 The Director of Nursing shall comply with the provisions of 24 **Del.C.** Ch. 19 and the rules and regulations of the Board of Nursing.

63.1513 The Director of Nursing shall have overall responsibility for the coordination, supervision and provision of the nursing department /services.

63.1514 Assisted living facility resident assistants shall, at a minimum:

A. Be at least 18 years old;

B. Participate in a facility-specific orientation program that covers the following topics:

1. Fire and life safety, and emergency disaster plans;
2. Infection control, including Standard Precautions;
3. Basic food safety;
4. Basic first aid and the Heimlich Maneuver;
5. Job responsibilities;
6. The health and psychosocial needs of the population being served;
7. The resident assessment process; and
8. The use of service agreements;
9. 16 Del. C., Chapter 11, pertaining to residents' rights; reporting of abuse, neglect, mistreatment, and financial exploitation; and the Ombudsman Program;
10. Hospice services.

C. Receive, at a minimum, 12 hours of regular in-service education annually which may include but not be limited to the topics listed in 63.1514 B*;*

D. Receive training to competently assist in activities of daily living or provide documentation of such training, and

E. Complete a Delaware Board of Nursing-approved AWSAM training course if assisting with self-administration of medications.

63.1515 The assisted living facility shall have a staffing plan which shall specify supervisory responsibilities, including the person responsible in the Assisted Living Director's absence.

63.1516 The assisted living facility shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.1517 The assisted living facility shall maintain a copy of each employee's signature and handwritten initials.

63.1518 The assisted living facility shall maintain records of each employee's regular in-service education hours.

63.1519 The assisted living facility shall provide orientation training to all new staff.

63.1520 Temporary agency staff placed in a facility in which they have not worked within the past 6 months shall undergo an orientation prior to beginning their first shift. The orientation shall cover the following topics:

A. Tour of the facility;

B. Fire and disaster plans;

C. Emergency equipment and supplies;

D. Communication and documentation requirements of the facility;

E. Process for reporting emergencies and change of condition; and

F. Review of current assigned resident issues/ needs.

63.1521 All personnel records for permanent employees, including employment applications, shall be maintained for a minimum of five years consistent with the assisted living facility policies and applicable state laws.

63.1522 At a minimum, every assisted living facility shall have an awake staff person on-site 24 hours per day who is qualified to administer or assist with self-administration of medication ("AWSAM") and who has knowledge of emergency procedures, basic first aid, CPR, and the Heimlich Maneuver.

63.1523 Written policies and procedures shall be required and adhered to for any assisted living facility utilizing volunteers.

SECTION 63.16 ENVIRONMENT AND PHYSICAL PLANT

63.1601 Each assisted living facility shall comply with applicable federal, state and local laws including:

A. Rehabilitation Act, Section 504;

B. Fair Housing Act as amended; and

C. Americans with Disabilities Act.

63.1602 Assisted living facilities shall:

A. Be in good repair;

B. Be clean;

C. Have a hazard-free environment*;* and

D. Have an effective pest control program.

63.1603 Heating and cooling systems in common areas shall be maintained at a temperature between 71° F and 81° F. A resident with an individual temperature-controlled residential room or unit may heat and cool to provide individual comfort.

63.1604 Common areas shall be lighted to assure resident safety.

63.1605 For all new construction and conversions of assisted living facilities with more than 10 beds, there shall be at least 100 square feet of floor space, excluding alcoves, closets, and bathroom, for each resident in a private bedroom and at least 80 square feet of floor space for each resident sharing a bedroom.

A. Sharing of a bedroom shall be limited to 2 residents;

B. Each facility shall have locked storage available for the resident's valuables, in accordance with the facility's policies;

C. Bedrooms and all bathrooms used by residents in assisted living facilities, except in specialized care units for memory impairment, shall be equipped with an intercom or other mechanical means of communication for resident emergencies. For specialized care units for memory impairment, staff must be equipped to communicate resident emergencies immediately.

63.1606 Resident kitchens shall be available to residents either in their individual living unit or in an area readily accessible to each resident. Residents shall have access to a microwave or stove/conventional oven, refrigerator, and sink. The assisted living facility shall establish and adhere to policies and procedures to ensure that common kitchens are used and maintained in such a way as to provide:

A. A clean and sanitary environment;

B. Safe storage of food; and

C. A means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.1607 Bathroom facilities shall be available to residents either in their individual living units or in an area readily accessible to each resident. There shall be at least 1 working toilet, sink, and tub/shower for every 4 residents.

63.1608 Hot water at resident bathing and hand-washing facilities shall not exceed 120 degrees Fahrenheit.

63.1609 An assisted living facility shall have a functioning emergency generator adequate to supply power in the event that the normal electrical supply is interrupted. The required emergency generating system shall conform to NFPA 99 Life Safety Code and NFPA 101 Life Safety Code.

63.1610 The emergency generator shall supply power for the following:

A. Illumination of means of egress in stairs, facility vestibules, aisles, corridors and ramps leading to an exit. Illumination shall not be less than one foot candle.

B. Illumination of exit signs and exit directional signs. Illumination shall not be less than one foot candle.

C. Fire detection, fire alarm and fire extinguishing systems.

D. Communication systems including telephones, public address system and nurse call or resident intercom system.

E. Lighting in dining and recreation areas to

provide illumination to exit ways. Illumination shall not be less than 5 foot candles.

F. Elevator cab lighting, control, communication and signal systems including the capacity to operate the elevator to release passengers trapped between floors.

G. Task illumination and at least one electrical receptacle in each area listed below. The cover plate on such receptacles shall have a distinctive color or marking.

1. Medication dispensing areas.
2. Direct care charting areas.
3. Resident rooms.
4. Kitchen.

H. Refrigeration units, kitchen hood and/or exhaust systems.

I. Sump pump.

J. Heating/air conditioning, sufficient to prevent resident distress, in corridors, common areas and any selected room(s) designated for congregate use during a power outage.

SECTION 63.17 FIRE SAFETY AND OTHER EMERGENCY PLANS

63.1701 The assisted living facility shall comply with all applicable state and local fire and building codes. All applications for license or renewal of license shall include a letter certifying compliance by the Fire Marshal having jurisdiction. Notification by the Fire Marshal of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for enforcement remedies in 16 Del. C., Chapter 11, Subchapter I, Licensing By The State.

63.1702 The assisted living facility shall:

A. Develop and implement through staff training and drills a plan for use in fire and other emergencies, which clearly outlines the procedures to be followed and the responsibilities designated to staff.

63.1703 Develop a plan for relocation and/or evacuation and continuous provision of services to residents in the event of permanent or temporary closure of the assisted living facility. The evacuation plan shall be approved by the Fire Marshal having jurisdiction and shall include the evacuation route, which shall be conspicuously posted on each floor and in each unit.

63.1704 The assisted living facility shall promote staff knowledge of fire and other emergency safety by:

A. Orienting staff to the emergency plan and to individual responsibilities within 24 hours of the commencement of job duties;

B. Documenting completion of orientation in staff member's personnel file with employee's signature;

C. Conducting facility fire drills in accordance with State of Delaware Fire Prevention Regulations;

D. Conducting other facility emergency drills or training sessions on all shifts at least annually; and

E. Maintaining records for two years of facility fire and other emergency drills/training sessions.

63.1705 The assisted living facility shall promote resident fire and other emergency safety by:

A. Orienting residents to the emergency plan within 24 hours of their admission into the assisted living facility;

B. Documenting the orientation such that it is signed and dated by the resident; and

C. Maintaining records identifying residents needing assistance for evacuation.

SECTION 63.18 RECORDS AND REPORTS

63.1801 The assisted living facility shall be responsible for maintaining appropriate records for each resident. These records shall document the implementation of the service agreement for each resident.

63.1802 Records shall be available, along with the equipment to read them if electronically maintained, at all times to legally authorized persons; otherwise such records shall be held confidential.

63.1803 The assisted living facility resident clinical records shall be retained for a minimum of 5 years following discharge before being destroyed.

63.1804 In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures shall be acceptable. In cases when such attestation is done on computer records, safeguards to prevent unauthorized access and reconstruction of information must be in place. The following is an example of how such a system may be set up:

A. There is a written policy, at the assisted living facility, describing the attestation policy(ies) in force at the facility;

B. The computer has built-in safeguards to minimize the possibility of fraud;

C. Each person responsible for an attestation has an individualized identifier;

D. The date and time is recorded from the computer's internal clock at the time of entry;

E. An entry is not to be changed after it has been recorded; and

F. The computer program controls what sections/ areas any individual can access/enter data based on the individual's personal identifier.

63.1805 Incident reports, with adequate documentation, shall be completed for each incident. Records of incident reports shall be retained in facility files for the following:

A. All reportable incidents.

B. Falls without injury and falls with injuries that do not require transfer to an acute care facility or do not require reassessment of the resident.

C. Errors or omissions in treatment or medication.

D. Injuries of unknown source.

E. Lost items, in accordance with facility policy, which are not subject to financial exploitation. Adequate documentation shall consist of the name of the resident(s) involved; the date, time and place of the incident; a description of the incident; a list of other parties involved, including witnesses and any accused persons; the nature of any injuries; resident outcome; and follow-up action, including notification of the resident's representative or family, attending physician and licensing or law enforcement authorities when appropriate.

63.1806 ~~Incident reports shall be kept on file in the facility~~. Reportable incidents shall be ~~communicated~~ reported immediately, which shall be within 8 hours of the occurrence of the incident, to the Division of Long Term Care Residents Protection, 3 Mill Road, Suite 308, Wilmington, DE 19806; telephone number: 1-877-453-0012; fax number: 1-877-264-8516. The immediate reporting of reportable incidents shall be by oral communication, for which a fax may be substituted, followed within 48 hours by a written report on a form provided by the Division.

63.1807 Reportable incidents include:

A. Abuse as defined in 16 **Del.C.** §1131.

1. Physical abuse.

a. Staff to resident with or without injury.

b. Resident to resident with or without injury.

c. Other (e.g., visitor, relative) to resident with or without injury.

2. Sexual abuse.

a. Staff to resident sexual acts.

b. Resident to resident non-consensual sexual acts.

c. Other (e.g., visitor, relative) to resident non-consensual sexual acts.

3. Emotional abuse.

a. Staff to resident.

b. Resident to resident.

c. Other (e.g., visitor, relative) to resident.

B. Neglect as defined in 16 **Del.C.** §1131.

C. Mistreatment as defined in 16 **Del.C.** §1131.

D. Financial exploitation as defined in 16 **Del.C.** §1131.

E. Resident elopement.

1. Any circumstance in which a resident's whereabouts are unknown to staff and the resident suffers harm.

2. Any circumstance in which a cognitively impaired resident, whose whereabouts are unknown to staff, exits the facility.

3. Any circumstance in which a resident cannot be found inside or outside a facility and the police are summoned.

F. Death of a resident in a facility or within 5 days of transfer to an acute care facility.

G. Significant injuries.

1. Injury from an incident of unknown source in which the initial investigation concludes that there is reasonable suspicion that the injury was caused by abuse, neglect or mistreatment.

2. Injury from a fall which results in transfer to an acute care facility for treatment or evaluation or which requires periodic reassessment of the resident's clinical status by facility professional staff for up to 48 hours.

3. Injury sustained while a resident is physically restrained.

4. Injury sustained by a resident dependent on staff for toileting, mobility, transfer and/or bathing.

5. Significant error or omission in medication/treatment, including drug diversion, which causes the resident discomfort , jeopardizes the resident's health and safety or requires extensive monitoring for up to 48 hours.

6. A burn greater than first degree.

7. Choking resulting in transfer to an acute care facility.

8. Areas of contusions or lacerations which may be attributable to abuse or neglect.

9. Serious unusual and/or life-threatening injury.

H. Attempted suicide.

I. Poisoning.

J. Epidemic outbreak or quarantine.

K. Fire within a facility due to any cause.

L. Utility interruption lasting more than 8 hours in one or more major service including electricity, water supply, plumbing, heating or air conditioning, fire alarm, sprinkler system or telephone system.

M. Structural damage or unsafe structural conditions.

1. Structural damage to a facility due to natural disasters such as hurricanes, tornadoes, flooding or earthquakes.

2. Water damage which impacts resident health, safety or comfort.

SECTION 63.19 WAIVERS AND SEVERABILITY

63.1901 Waivers may be granted by the Division for good cause.

63.1902 Should any section, sentence, clause or phrase of these regulations be legally declared unconstitutional or invalid for any reason, the remainder of said regulations shall not be affected thereby.

See 6 DE Reg. 525 (10/1/02)

APPENDIX A
Notifiable Diseases

Acquired Immune Deficiency Syndrome (S)
Anthrax (T)
Botulism (T)
Brucellosis
Campylobacteriosis
Chancroid (S)
Chlamydia trachomatis infections (S) g
Cholera
Cryptosporidiosis
Cyclosporidiosis
Diphtheria (T)
E. Coli 0157:H7 infection (T)
Encephalitis
Ehrlichiosis
Foodborne Disease Outbreaks (T)
Giardiasis
Gonococcal infections (S)
Granuloma Inguinale (S)
Hansen's Disease (Leprosy)
Hantavirus infection (T)
Hemolytic uremic syndrome (HUS)
Hepatitis A (T)
Hepatitis B (S)
Hepatitis C & unspecified
Herpes (congenital) (S)
Herpes (genital) (N)
Histoplasmosis
Human Immunodeficiency Virus (HIV) (N)
Human papillomavirus (genital warts) (N)
Influenza (N)
Lead Poisoning
Legionnaires Disease
Leptospirosis
Lyme Disease
Lymphogranuloma Venereum (S)
Malaria
Measles (T)
Meningitis (all types other than meningoccal)
Meningococcal infections (all types) (T)
Mumps (T)
Pelvic Inflammatory Disease (resulting from onococcal and/or chlamydial infections) (S)
Pertussis (T)
Plague (T)
Poliomyelitis (T)
Psittacosis
Rabies (man, animal) (T)
Reye's Syndrome
Rocky Mountain Spotted Fever
Rubella (T)
Rubella (congenital)(T)
Salmonellosis
Shigellosis
Smallpox (T)
Streptococcal disease (invasive group A)
Streptococcal toxic shock syndrome (STSS)
Syphilis (S)
Syphilis (congenital) (T)
Tetanus
Toxic Shock Syndrome
Trichinosis
Tuberculosis
Tularemia
Typhoid Fever (T)
Vaccine Adverse Reactions
Varicella
Waterborne Disease Outbreaks (T)
Yellow Fever (T)

Also, any unusual disease and adverse reaction to vaccine

County Health Offices:

New Castle County	995-8632
Kent County	739-5305
Sussex County	856-5355

(T) report by rapid means
(N) report in number only when so requested
For all diseases not marked by (T) or (N):
(S) – sexually transmitted disease, report required in 1 day
Others – report required in 2 days

See 6 DE Reg. 525 (10/1/02)

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 133(16 **Del.C**. §133)

Nature of the Proceedings

Pursuant to 16 Delaware Code, Section 133, the Department of Health and Social Services is proposing "Cancer Treatment Program Regulations" that will establish medical insurance coverage for Delawareans for treatment of cancer. The program will serve Delawareans who are diagnosed with cancer, have no health insurance and meet certain financial eligibility criteria as established within these regulations.

Notice of Public Hearing

The Center of Health Information Management and Disease Prevention, Division of Public Health, Department

of Health and Social Services will hold a public hearing to discuss the proposed Cancer Treatment Program Regulations. The public hearing will be held on May 21, 2004 at 9:30 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

The Center of Health Information Management and Disease Prevention
Jesse Cooper Building
Federal and Water Streets, Dover, Delaware
Telephone: (302) 744-4544

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by May 20, 2004. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by May 31, 2004 to:

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

203 Cancer Treatment Program

1.0 Purpose

The Cancer Treatment Program (CTP) is a program of Delaware Health and Social Services (DHSS), Division of Public Health (DPH) intended to provide medical insurance coverage to Delawareans for the treatment of cancer. The program serves Delawareans who have no health insurance.

2.0 Availability Of Funds

2.1 Benefits will be available to enrollees provided that funds for this program are made available to DHSS.

2.2 In the event that funds are not available, DHSS will notify enrollees and providers.

3.0 General Application Information

3.1 The application must be made in writing on the prescribed CTP form. An individual, agency, institution, guardian or other individual acting can make this request for assistance for the applicant with his knowledge and consent. The CTP will consider an application without regard to race, color, age, sex, handicap, religion, national origin or political belief as per State and Federal law.

3.2 Each individual applying for the CTP is requested, but not required, to furnish his or her Social Security Number.

3.3 Filing an application gives the applicant the right to receive a written determination of eligibility and the right to appeal the written determination.

4.0 Technical Eligibility

4.1 The following are required to receive benefits under this program. The applicant must:

4.1.1 Need treatment for cancer in the opinion of the applicant's licensed physician of record. Cancer treatment will not include routine monitoring for pre-cancerous conditions, or monitoring for recurrence during or after remission.

4.1.2 Be a Delaware resident.

4.1.3 Have been a Delaware resident at the time cancer was diagnosed.

4.1.4 Have no health insurance.

4.1.4.1 Examples of health insurance include comprehensive, major medical and catastrophic plans, Medicare, and Medicaid.

4.1.4.2 Excepted are the following types of insurance plans, which do not exclude eligibility for the CTP: dental, vision, dismemberment, drug, mental health, nursing home, blood bank, workman's compensation, accident, family planning, the Delaware Prescription Assistance Program, the Delaware Chronic Renal Disease program, and non-citizen medical coverage.

4.1.4.3 The CTP is the payer of last resort and will only provide benefits to the extent that they are not covered by the plans listed in 4.1.4.2.

4.1.5 Be over the age of 18 years.

4.1.6 Be diagnosed with any cancer on or after July 1, 2004, or be receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004.

4.2 An inmate of a public institution shall be eligible for the CTP, provided that the benefits of the CTP are not otherwise provided in full or in part.

4.2.1 For the purposes of the CTP, the definitions of public institution and inmate shall be the same as used by the Delaware Medicaid program.

4.3 The Medical Assistance Card is the instrument used to verify an individual's eligibility for benefits. Prior to rendering services, medical providers are required to verify client eligibility using the client's identification number by accessing one of the Electronic Verification Systems (EVS) options. Instructions for accessing EVS are described in the EVS section of the billing manual.

5.0 Financial Eligibility

5.1 To be eligible for the CTP the applicant must have countable household income that is less than 500% of the Federal Poverty Level (FPL).

5.2 Income is any type of money payment that is of gain or benefit to an individual. Income is either counted or excluded for the eligibility determination.

5.3 Countable income includes but is not limited to:

5.3.1 Social Security benefits – as paid after deduction for Medicare premium

5.3.2 Pension – as paid

5.3.3 Veterans Administration Pension – as paid

5.3.4 U.S. Railroad Retirement Benefits – as paid

5.3.5 Wages – net amount after deductions for taxes and FICA Senior Community Service Employment – net amount after deductions for taxes and FICA

5.3.6 Interest/Dividends – gross amount

5.3.7 Capital Gains – gross amount from capital gains on stocks, mutual funds, bonds.

5.3.8 Credit Life or Credit Disability Insurance Payments – as paid

5.3.9 Alimony – as paid

5.3.10 Rental Income from entire dwelling – gross rent paid minus standard deduction of 20% for expenses

5.3.11 Roomer/Boarder Income – gross room/ board paid minus standard deduction of 10% for expenses

5.3.12 Self Employment – countable income as reported to Internal Revenue Service (IRS)

5.3.13 Unemployment Compensation - as paid

5.4 Excluded income includes but is not limited to:

5.4.1 Annuity payments

5.4.2 Individual Retirement Account (IRA) distributions

5.4.3 Payments from reverse mortgages

5.4.4 Capital gains from the sale of principal place of residence

5.4.5 Conversion or sale of a resource (i.e. cashing a certificate of deposit)

5.4.6 Income tax refunds

5.4.7 Earned Income Tax Credit (EITC)

5.4.8 Vendor payments (bills paid directly to a third party on behalf of the individual)

5.4.9 Government rent/housing subsidy paid directly to individual (i.e. HUD utility allowance)

5.4.10 Loan payments received by individual

5.4.11 Proceeds of a loan

5.4.12 Foster care payments made on behalf of foster children living in the home

5.4.13 Retired Senior Volunteer Program (RSVP)

5.4.14 Veterans Administration Aid and Attendance payments

5.4.15 Victim Compensation payments

5.4.16 German reparation payments

5.4.17 Agent Orange settlement payments

5.4.18 Radiation Exposure Compensation Trust Fund payments

5.4.19 Japanese-American, Japanese-Canadian, and Aleutian restitution payments

5.4.20 Payments from long term care insurance or for inpatient care paid directly to the individual

5.5 Determination of the household income will be based on the family budget group, which is the total number of persons whose income is budgeted together. This will always include the following:

5.5.1 Married couples if they live together.

5.5.2 Unmarried couples who live together as husband and wife.

5.5.3 Couples will be considered as living together as husband and wife if:

5.5.3.1 They say they are married, even if the marriage cannot be verified.

5.5.3.2 They are recognized as husband and wife in the community.

5.5.3.3 One partner uses the other's last name.

5.5.3.4 They state they intend to marry.

5.5.3.5 They jointly hold resources.

5.6 In households that include a caretaker, the caretaker's children and other children that are the caretaker's responsibility, the caretaker's income and those of his/her children are always budgeted together. The income of any other children in the home will be considered separately. In these situations, the separate budget groups can be combined to form a single family budget group only when the following conditions are met:

5.6.1 CTP benefits would be denied to any of the recipients by maintaining separate budget groups.

5.6.2 The caretaker chooses to have his/her income and those of his/her children considered with the income of any other people in the home.

6.0 Residency

6.1 A Delaware resident is an individual who lives in Delaware with the intention to remain permanently or for an indefinite period, or where the individual is living and has entered into a job commitment, or seeking employment whether or not currently employed.

6.2 Factors that may be taken into account when determining residency are variables such as the applicant's age, location of dwellings and addresses, location of work, institutional status, and ability to express intent.

6.3 Eligibility:

6.3.1 Will not be denied to an otherwise qualified resident of the State because the individual's residence is not maintained permanently or at a fixed address.

6.3.2 Will not be denied because of a durational residence requirement.

6.3.3 Will not be denied to an institutionalized individual because the individual did not establish residence in the community prior to admission to an institution.

6.3.4 Will not be terminated due to temporary absence from the State, if the person intends to return when the purpose of the absence has been accomplished.

6.4 When a State or agency of the State, including an

entity recognized under State law as being under contract with the State, arranges for an individual to be placed in an institution in another State, the State arranging that placement is the individual's State of residence.

7.0 Verification of eligibility information

7.1 The CTP may verify information related to eligibility. Verification may be verbal or written and may be obtained from an independent or collateral source.

7.2 Documentation shall be date stamped and become part of the CTP case record.

7.3 Verifications received and/or provided may reveal a new eligibility issue not previously realized. Additional verifications may be required.

7.4 Failure to provide requested documentation may result in denial or termination of eligibility.

8.0 Disposition of applications

8.1 The CTP will dispose of each application by a finding of eligibility or ineligibility, unless:

8.1.1 There is an entry in the case record that the applicant voluntarily withdrew the application, and that the CTP sent a notice confirming the applicant's decision;

8.1.2 There is a supporting entry in the case record that the applicant is deceased; or

8.1.3 There is a supporting entry in the case record that the applicant cannot be located.

9.0 Changes in circumstances and personal information

9.1 Enrollees are responsible for notifying the CTP of all changes in his circumstances that could potentially affect eligibility for the CTP. Failure to do so may result in overpayments being processed and legal action taken to recover funds expended on his/her behalf during periods of ineligibility.

9.2 Enrollees are responsible for notifying the CTP of changes in the enrollee's name, address and telephone number.

10.0 Termination of eligibility

10.1 Eligibility terminates:

10.1.1 When the enrollee attains other medical insurance, including Medicare, Medicaid, and the Medicaid Breast and Cervical Cancer treatment program.

10.1.2 When the enrollee is no longer receiving treatment for cancer as defined in 4.1.1.

10.1.3 When the enrollee no longer meets the technical or financial eligibility requirements.

10.1.4 12 months after the date of cancer diagnosis

10.2 If eligibility is terminated, it may only be renewed for an individual who is diagnosed with another cancer for which coverage has not been previously provided.

11.0 Coverage and benefits

11.1 Coverage is limited to the treatment of cancer as defined by DHSS.

11.2 There is no managed care enrollment.

11.3 Benefits will be paid at rates equivalent to Medicaid under a fee for service basis. If a Medicaid rate does not exist for the service provided, the CTP will determine a fair rate.

11.4 Benefits will only be paid when the provider of the cancer treatment services is a Delaware Medicaid Assistance Provider.

11.5 Benefits for patients enrolled prior to September 1, 2004 (or whatever date is established by DHSS as having an operational benefits management information system), may not be paid until after that date.

11.6 The CTP is the payer of last resort and will only provide benefits to the extent that they are not otherwise covered by another insurance plan.

11.7 Eligibility may be retroactive to the day of diagnosis provided that the application is filed within one year of that day. In such circumstances, covered services will only be provided for the time period that the applicant is determined to have been eligible for the CTP.

11.8 In no case will eligibility be retroactive to a time period prior to July 1, 2004, except if the enrollee was receiving benefits for the treatment of colorectal cancer through the Division of Public Health's Screening for Life program on June 30, 2004. If this exception occurs, eligibility will be retroactive only to the date the enrollee was receiving benefits for colorectal cancer treatment through the Screening for Life program.

12.0 Cancer treatment services which are not covered

12.1 The cost of nursing home or long-term care institutionalization is not covered. (The cost of cancer treatment services within a nursing home or long term care institution is a covered benefit.)

12.2 Services not related to the treatment of cancer as determined by DHSS are not covered.

12.3 Cancer treatment services for which the enrollee is eligible to receive by other health plans as listed in 4.1.4.2 are not covered.

13.0 Changes in program services

13.1 When changes in program services require adjustments of CTP benefits, the CTP will notify enrollees who have provided an accurate and current name, and address or telephone number.

14.0 Confidentiality

14.1 The CTP will maintain the confidentiality of application, claim, and related records as required by law.

15.0 Review of CTP decisions

15.1 Any individual who is dissatisfied with a CTP decision may request a review of that decision.

15.2 Such request must be received by the CTP in writing within 30 days of the date of the decision in question.

15.3 The CTP will issue the results of its review in writing. The review will be final and not subject to further appeal.

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C**. §512)

PUBLIC NOTICE

Food Stamp Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/ Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by May 31, 2004.

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

Summary Of Proposed Change

Citations

7 CFR 273.10(f) – Certification Periods
7 CFR 273.12(a)(1)(vii) – Household Responsibility to Report

In October 2003, DSS expanded simplified reporting to all households except households where all members are elderly or disabled without earned income. Simplified reporting means those household only have to report when their monthly gross income exceeds 130% of the Federal Poverty Level (FPL) for the household size. Households are given that amount when they are approved. Households subject to simplified reporting must have a certification period of six-months. Households, where all members are elderly or disabled without earned income, can be given a 12-month certification period. These households are called change reporters and must report changes when the household becomes aware of the change. To support simplified reporting, which has helped lower our food stamp error rate, the DCIS system was programmed to give households based on their circumstances either a six or twelve month certification period. Policy under 9068 is being changed to reflect that change.

DSS PROPOSED REGULATION #04-09

REVISIONS:

9068.1 Certification Period Length

DSS will assign the ~~longest~~ certification period ~~possible~~ according to each household's circumstances.

~~Households should be assigned certification periods of at least 6 months, unless the household's circumstances are unstable or the household contains an ABAWD.~~

~~Households with unstable circumstances, such as households with zero net income, and households with an ABAWD member should be assigned shorter certification periods but not less than 3 months.~~

~~Only assign 1-2 month certification periods when it appears likely that the household will become ineligible for food stamps in the near future.~~

Households subject to change reporting where all members are elderly or disabled and have no earned income will be assigned a 12-month certification period.

Households subject to simplified reporting will be assigned a 6-month certification period. A shorter certification period of no less than 4 months can be assigned on a case-by-case basis if the household's circumstances warrant it.

2 DE Reg. 2271 (6/1/1999)

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR AND WASTE MANAGEMENT

WASTE MANAGEMENT SECTION

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

REGISTER NOTICE

1. Title Of The Regulations:

Delaware *Regulations Governing Solid Waste* (DRGSW)

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

The Department of Natural Resources and Environmental Control (DNREC), Solid and Hazardous Waste Management Branch (SHWMB), is proposing to make changes to Delaware's *Regulations Governing Solid Waste*. To receive input from those potentially affected by the proposed changes, a workshop was conducted on November 12, 2003. After reviewing comments and input received at the workshop, the SHWMB is proposing the following amendments to DRGSW:

General:

- Reinsert previously deleted Table of Contents at the beginning of the regulations.

Section 3: Definitions

- Add new definition for "Gross Vehicle Weight Rating."

Section 4: Permit Requirements and Administrative Procedures

- Clarify language in section 4.A.2 stating that costs of publishing public notices for a permit application shall be borne by the applicant;
- Revise time frame in section 4.A.6 for renewing an expiring permit;
- Amend section 4.E.1 regarding requirements for submitting Transfer Station Applications;
- Move section 4.E.3 regarding transfer station closure to Section 10.F;
- Amend language in section 4.G for transporter permit application procedures.

Section 5: Sanitary Landfills

- Amend section 5.I.2.c regarding daily cover at a sanitary landfill;

Section 6: Industrial Landfills

- Add language in section 6.I.5 prohibiting acceptance of hazardous waste at an industrial landfill.

Section 7: Transporters

- Add language in section 7.A prohibiting permitted transporters from using agents or subcontractors who do not hold permits for transporting solid waste.
- Delete sections 7.B.8 and 7.C.7 regarding sub-leases and sub-contractors.

Section 9: Resource Recovery Facilities

- Correct an internal reference in Section 9.E.2.b.

Section 10: Transfer Stations

- Revise wording in section 10.A.2.b for material recovery facilities.
- Amend section 10.A.2 by adding an exemption from transfer station permit requirements for temporary debris and collection sites established as a result of a natural or man-made disaster.
- Insert and amend transfer station closure requirements moved from section 4 to section 10.F.2.

Section 11: Special Wastes Management: Part 1 – Infectious Waste

- Amend language in section 11.A.1 to clarify who must obtain infections waste Infectious Waste Identification Numbers.
- In section 11.C revise certain infectious waste definitions, and add new definition for Large Quantity Generator of infectious waste.

3. Possible Terms Of The Agency Action:

None

4. Statutory Basis Or Legal Authority To Act:

Amendments to DRGSW are proposed and amended in accordance with the provisions found at 7 Delaware Code, Chapter 60.

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

None

6. Notice Of Public Comment:

A public hearing on the proposed amendments to DRGSW will be held on Tuesday, June 8, 2004, 6:00 p.m. to 9:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. A downloadable version of the proposed amendments may be obtained by visiting DNREC's Division of Air and Waste Management Website at:

http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/hw/indexsw.htm and clicking on "Proposed Amendments to the Solid Waste Regulations." A hardcopy version may also be obtained by contacting the Solid and Hazardous Waste Management Branch at (302) 739-3689.

7. Prepared By:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

REGULATIONS GOVERNING SOLID WASTE

SECTION 1: DECLARATION OF INTENT

The Delaware Department of Natural Resources and Environmental Control finds and declares that improper solid waste handling and disposal practices may result in environmental damage, including substantial degradation of the surface and ground water and waste of valuable land and other resources, and may constitute a continuing hazard to the health and welfare of the people of the State. The Department further finds that the utilization of solid waste handling and disposal facilities which are properly located, designed, operated, and monitored will minimize environmental damage and protect public health and welfare.

It is the intent of the Department to require that solid waste handling and disposal be conducted in a manner and under conditions which will eliminate the dangerous and deleterious effects of improper solid waste handling and disposal upon the environment and upon human health, safety, and welfare.

The purposes of these regulations are:

1. To encourage, in all appropriate ways, recycling, reuse, and reclamation processes, and

2. To implement the provisions of 7 **Del.C.** Ch. 60, which directs the Department to put into effect a program for improved solid waste storage, collection, transportation, processing, transfer, and disposal by providing that such activities may henceforth be conducted only in an environmentally acceptable manner pursuant to a permit obtained from the Department.

SECTION 2: SCOPE AND APPLICABILITY

A. AUTHORITY

1. These regulations are enacted pursuant to 7 **Del.C.** Ch. 60.

2. These regulations shall be known as "Regulations Governing Solid Waste" and shall repeal the "Delaware Solid Waste Disposal Regulation".

B. APPLICABILITY

1. These regulations apply to any person using land or allowing the use of land for the purposes of storage, collection, processing, transfer, or disposal of solid waste; and to any person transporting solid waste in or through the State of Delaware. The following shall be subject to the provisions of these regulations:

a. Sanitary landfills
b. Industrial landfills
c. Resource recovery facilities
d. Transfer stations
e. Special wastes handling
f. Transportation of solid waste
g. Storage of solid waste

2. These regulations do not apply to those agricultural wastes that are subject to regulations promulgated by the Division of Water Resources.

3. For the purposes of these regulations, all wastes defined herein and that are subject to regulations promulgated by the Division of Water Resources shall not be regulated as solid wastes.

4. These regulations do not apply to any waste which meets the criteria of hazardous waste as described in the Delaware Regulations Governing Hazardous Waste.

C. EXEMPTIONS

The following activities are exempted from these regulations:

1. Disposal or land application on a farm of the agricultural wastes that are generated on the farm or result from the operation of the farm. The disposal or land application must be conducted in a manner that is in compliance with all federal, state, and local regulatory requirements and that does not threaten human health or the environment.

2. Composting, on a private property, the leaves, grass clippings, and other vegetation originating on the property.

3. Disposal of clean fill.

4. Creation of brush piles on the property on which the material was generated.

5. The use of vegetative matter and untreated ground wood products to construct berms on the property on which the materials were generated. (Notification must be made to the Department prior to commencing this activity.)

D. COMPLIANCE

1. Existing facilities

All existing facilities must comply with the provisions of these regulations with the following exceptions:

a. Closed facilities or closed portions of facilities will not be required to disturb or replace their cap or cover system for the purpose of coming into compliance with these regulations.

b. Facilities currently operating under a permit which does not require a liner and/or a leachate detection system will not be required to install a liner or leachate detection system in closed or currently active areas for the purpose of coming into compliance with these regulations.

2. New facilities and expansions of existing facilities

All new facilities and all expansions of existing facilities shall comply with the provisions of these regulations.

E. COMPOSTING AND RECYCLING APPROVALS

Composting Approvals

Other than individual household composting, all other composting operations must obtain written approval from the Department prior to commencing a composting operation. To obtain an approval, a person must submit the following information to the Department:

a. A written plan of operation demonstrating to the Department that the requestor of the approval and the person responsible for operating the composting facility understand and will apply the principles and proper methods of composting. The plan of operation must also demonstrate that the composting facility will be operated in a manner that will not pose a threat to human health and the environment; and

A written statement explaining how the applicant intends to use the compost.

Recycling Approvals

Recycling solid waste into specific market applications requires written approval prior to commencing this activity. To obtain an approval, a person must submit the following information to the Department:

A written plan of operation describing the types and quantities of materials that will be accepted at the facility, the processing methods and equipment that will be used, and the products that will be produced, and

Documentation demonstrating the existence of a market or markets for the product(s).

F. Other Applicable Requirements. Nothing in these regulations shall be construed as relieving an owner or operator of a facility from the obligation of complying with any other laws, regulations, orders, or requirements which may be applicable.

SECTION 3: DEFINITIONS

The following words, phrases, and terms as used in these regulations have the meanings given below:

"**100 YEAR FLOOD**" means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"**ACTION LEAKAGE RATE**" means the quantity of liquid collected from a leak detection system of a double liner system over a specified period of time which, when exceeded, requires certain actions to be taken as described in the Action Leakage Rate response plan approved by the Department.

"**ACTIVE LIFE**" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities.

"**ACTIVE PORTION**" means that portion of a facility that presently has an operating permit issued by the Department of Natural Resources and Environmental Control.

"**AGRICULTURAL WASTE**" means carcasses of poultry or livestock, crop residue, or animal excrement.

"**AQUIFER**" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells, springs or surface water.

"**ASTM**" means the American Society for Testing and Materials.

"**AUTHORIZED REPRESENTATIVE**" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, landfill manager, superintendent, or person of equivalent responsibility.

"**BOTTOM ASH**" means the residue remaining in the bottom of the combustion chamber of an incinerator after the combustion of fuel or waste.

"**BUFFER ZONE**" means those onsite areas adjacent to the facility property line which shall be left undeveloped during the active life as well as the inactive life of the facility.

"**BULKY WASTE**" means items whose large size or weight precludes or complicates their handling by normal collection, processing, or disposal methods.

"**CAP" or "CAPPING SYSTEM**" means the material used to cover the top and sides of a sanitary or industrial landfill when fill operations cease.

"**CELL**" means a discrete engineered area that is designed for the disposal of solid waste and that is a subpart of a landfill.

"**CERTIFICATION**" means a statement of professional opinion based upon knowledge and belief.

"**CFR**" means the Code of Federal Regulations.

"**CLAY**", as a soil separate, means the mineral soil particles less than 0.002 mm in diameter. As a soil textured class, "CLAY" means soil material that is 40% or more clay, less than 45% sand, and less than 40% silt. Clay used as a liner or cap should be classifiable as a CL or CH (Unified Soil Classification System) with a liquid limit between 30 and 60, should place above the A-line on the plasticity chart, and should have a minimum plastic index of 15. A clay liner should have a cation exchange capacity greater than 15 meq/ 100 grams and be in the neutral pH range.

"**CLEAN FILL**" means a non-water-soluble, non-decomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass, and/or clay or ceramic products.

"**CLOSED PORTION**" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all other applicable closure requirements.

"**CLOSURE**" means the cessation of operation of a facility or a portion thereof and the act of securing such a facility so that it will pose no significant threat to human health or the environment.

"**CLOSURE PLAN**" means written reports and engineering plans detailing those actions that will be taken by the owner or operator of a facility to effect proper closure of that facility or a portion thereof.

"**COMMERCIAL WASTE**" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities.

"**COMPOST**" means a product of composting that has been stabilized to a humus-like product, is free of pathogens at an infectious level and of viable plant seeds, that does not attract insects or vectors, can be handled and stored without nuisance, and is beneficial to the growth of plants.

"**COMPOSTING**" means the biological decomposition and stabilization of organic material, under conditions that allow development of thermophilic temperatures as a result of biologically produced heat, to produce a final product that is stable, free of pathogens and viable plant seeds, and can be beneficially applied to the land.

"**COMPOSTING FACILITY**" means a facility where organic material is processed using composting technology which may include but is not limited to physical turning, windrowing, in vessel composting, or other mechanical handling of organic material.

"**CONFINED AQUIFER**" means 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. A confined aquifer is overlain by material of distinctly lower permeability ("confining bed") than the aquifer.

"**CONTAMINANT**" means any substance that enters the environment at a concentration that has the potential to endanger human health or degrade the environment.

"**CONTROLLING SLOPES**" means slopes on those areas of a liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

"**DAILY COVER**" means a layer of compacted earth, or other suitable material as approved by the Department, used to enclose a volume of solid waste each working day.

"**DEPARTMENT**" means The Department of Natural Resources and Environmental Control.

"**DIKE**" means an embankment or ridge of either natural or man-made materials used to prevent or to control the movement of solids, liquids, or other materials.

"**DISCHARGE**" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a substance into or onto any land, water, or air.

"**DISPOSAL**" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or upon any land or water.

"**DISPOSAL FACILITY**" means any facility or portion of a facility at which solid waste is intended to be and/or is intentionally placed into or onto any land and at which solid waste will remain after closure has taken place.

"**DOUBLE LINER SYSTEM**" means a liner system consisting of two liners with a leachate detection and collection system in between.

"**DRY WASTE**" (formerly called "INERT SOLID WASTE") means wastes including, but not limited to, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"**ENVIRONMENTAL ASSESSMENT**" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"**ENVIRONMENTALLY UNSOUND**" means characterized by any condition, resulting from the methods of operation or design of a facility, which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated federal, state, county or municipal standard.

"**EXISTING FACILITY**" means a facility which was in operation or for which construction had commenced on or before the date of enactment of these regulations, provided that the facility was being constructed or operated pursuant to all permits and/or approvals required by the Department at the time of enactment. A facility has commenced construction if either:

(i) an onsite physical construction program has begun and is moving toward completion within a reasonable time; or

(ii) the owner or operator has entered into contractual obligations - which cannot be cancelled or modified without substantial loss - for physical construction to be completed within a reasonable time.

"**EXPANSION**" means the process of increasing the areal dimensions, vertical elevations, or slopes beyond the original approved limits of the facility.

"**FACILITY**" means all contiguous land, and structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations thereof).

"**FINAL COVER**" means the material used to cover the top and sides of a landfill cell when fill operations cease.

"**FLOOD PLAIN**" means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100YEAR FLOOD.

"**FLY ASH**" means a powdery residue resulting from the combustion of fuel or waste and captured by air pollution control equipment prior to exiting the smokestack.

"**FREE LIQUIDS**" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure, using any or all of the following tests: EPA Paint Filter Test; EPA Plate Test; EPA Gravity Test.

"**GARBAGE**" means any putrescible solid and semisolid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

"**GENERATION**" means the act or process of producing solid waste.

"**GENERATOR**" means the producer or the source of the solid waste.

"**GEOMEMBRANE**" means a prefabricated continuous sheet of flexible polymeric or geosynthetic material.

"GROSS VEHICLE WEIGHT RATING (GVWR)" or gross vehicle weight means the value specified by the manufacturer as the loaded weight of a single vehicle.

"**GROUND WATER**" means any water naturally found under the surface of the earth.

"**HAZARDOUS WASTE**" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible, illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the Delaware Regulations Governing Hazardous Waste.

"**HOUSEHOLD WASTE**" means any solid waste derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"**HYDRAULIC CONDUCTIVITY**" means the capacity to transmit water. It is expressed as the volume of water that will move in a unit of time under a unit hydraulic gradient through a unit area.

"**IMPERMEABLE**" means having a hydraulic conductivity equal to or less than 1 x 10^{-7} cm/sec as determined by field and laboratory permeability tests made according to standard test methods which may be correlated with soil densification as determined by compaction test.

"**INDUSTRIAL LANDFILL**" means a land site at which industrial waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"**INDUSTRIAL WASTE**" means any water-borne liquid, gaseous, solid, or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development of any agricultural or natural resource.

"**INFECTIOUS WASTE**": see Section 11, Part 1.C for definitions pertaining to infectious waste.

"**INSTITUTIONAL WASTE**" means solid waste that is generated by institutional enterprises such as social, charitable, educational, and government services and that is similar in nature to household waste.

"**INTERMEDIATE COVER**" means a layer of compacted earth, or other suitable material as approved by the Department, applied to a partially completed landfill.

"**LANDFILL**" means a natural topographic depression and/or man-made excavation and/or diked area, formed primarily of earthen materials, which has been lined with man-made and/or natural materials or remains unlined and which is designed to hold an accumulation of solid wastes.

"**LEACHATE**" means liquid that has passed through, contacted, or emerged from solid waste and contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste.

"**LIFT**" means a completed series of compacted layers within a cell.

"**LINER**" means a continuous layer of impermeable material beneath and on the sides of a landfill or landfill cell.

"**LIQUID WASTE**" means a waste that contains less than 20 percent solids or releases free liquids.

"**LOCAL AGENCY**" means any special district, authority, municipality, county, or any other political subdivision.

"**MATERIALS RECOVERY FACILITY**" means a facility at which materials, other than source separated materials, are recovered from solid waste for recycling or for use as an energy source.

"**MUNICIPAL SOLID WASTE**" means household waste and solid waste that is generated by commercial, institutional, and industrial sources and is similar in nature to household waste.

"**MUNICIPAL SOLID WASTE ASH**" means the ash resulting from the combustion of municipal solid waste in a thermal recovery facility.

"**NEW SANITARY LANDFILL CELL**" means any municipal solid waste landfill unit which has not received waste prior to the effective date of these regulations. "SANITARY LANDFILL CELL" has the same meaning as "MUNICIPAL SOLID WASTE LANDFILL UNIT" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"**NEW SOLID WASTE FACILITY**" means a facility which was not in operation or for which construction had not commenced on or before the date of enactment of these regulations.

"**ONSITE**" means on the same or geographically

contiguous property which may be divided by public or private right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access are also considered onsite property.

"**OPEN BURNING**" means the combustion of solid waste without:

(1) Control of combustion air to maintain adequate temperature for efficient combustion,

(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of the emission of the combustion products.

"**OPERATOR**" means the person responsible for the overall operation of a solid waste facility.

"**OWNER**" means the person who owns a facility or any part of a facility.

"**PERMITTEE**" means a person holding a permit issued by the Department pursuant to this regulation.

"**PERSON**" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, any interstate body, company, society, or any organization of any form.

"**PERSONNEL**" or "**FACILITY PERSONNEL**" means all persons who work at, or oversee the operations of, a solid waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the Delaware Solid Waste Regulations or other regulations under the jurisdiction of the State of Delaware.

"**POSTCLOSURE CARE**" means maintenance and long-term monitoring of, and financial responsibility for, a closed facility.

"**RECHARGE AREA**" means that portion of a drainage basin in which the net saturated flow of ground water is directed away from the water table.

"**RECYCLABLE MATERIAL**" means a solid waste that exhibits the potential to be used repeatedly in place of a virgin material.

"**RECYCLING**" means the process by which recyclable materials, which would otherwise be disposed of as solid waste, are returned to the economic mainstream in the form of raw materials or products.

"**REFUSE**" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

"**REGULATED MEDICAL WASTE**": see Section 11, Part 1.C for definitions pertaining to REGULATED MEDICAL / INFECTIOUS WASTE.

"**RESOURCE RECOVERY**" means the process by which materials, excluding those under control of the Nuclear Regulatory Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or another purpose, including use as an energy source.

"**RESOURCE RECOVERY FACILITY**" means a facility that is either a MATERIALS RECOVERY FACILITY or a THERMAL RECOVERY FACILITY.

"**RUBBISH**" means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings, small pieces of wood, excelsior, rubber, leather, crockery, and other waste materials.

"**RUNOFF**" means any precipitation that drains over land from any part of a facility.

"**RUNON**" means any precipitation that drains over land onto any part of a facility.

"**SALVAGING**" means the controlled removal of solid waste from any facility for reuse of the waste material.

"**SANITARY LANDFILL**" means a land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"**SANITARY LANDFILL CELL BOUNDARY**" means a vertical surface located at the hydraulically downgradient limit of the cell. This vertical surface extends down into the uppermost aquifer. "Sanitary Landfill Cell Boundary" has the same meaning as "Waste Management Unit Boundary" in the RCRA Subtitle D (40 CFR Part 258) Regulations. "Sanitary Landfill" has the same meaning as "MSWLF" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"**SATURATED ZONE**" means that part of the earth's crust in which all the voids are filled with water.

"**SCAVENGING**" means the uncontrolled and/or unauthorized removal of solid waste from any facility.

"**SECRETARY**" means the Secretary of the Department of Natural Resources and Environmental Control or his or her duly authorized designee.

"**SETBACK**" means the area between the actual disposal area and the property line which can be used for construction of environmental control systems such as runoff diversion ditches, monitoring wells, or scales.

"**SITE**" means the area of land or water within the property boundaries of a facility where one or more solid waste treatment, resource recovery, recycling, storage or disposal areas are located.

"**SLUDGE**" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"**SOLID WASTE**" means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under 7 **Del.C.** Ch. 60, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of l954, as amended.

"**SOURCE SEPARATED**" means divided into its separate recyclable components at the point of generation.

"**SPECIAL SOLID WASTES**" means those wastes that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

"**STORAGE**" means the holding of solid waste for a temporary period, at the end of which time the solid waste is treated, disposed of, or stored elsewhere.

"**SUBBASE**" means the supporting soil layers beneath a liner.

"**SURFACE WATER**" means water occurring generally on the surface of the earth.

"**THERMAL RECOVERY FACILITY**" means a facility designed to thermally break down solid waste and to recover energy from the solid waste.

"**TOPSOIL**" means the friable dark upper portion of a soil profile that contains mineral substances and organic material in varying degrees of decomposition and is capable of supporting vegetation.

"**TRANSFER STATION**" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling, or disposal.

"**TRANSPORTATION**" means the movement of solid waste by air, rail, water, over the roadway, or on the ground.

"**TRANSPORTER**" means any person engaged in the transportation of solid waste.

"**TREATMENT**" means the process of altering the physical, chemical, or biological condition of the waste to prevent pollution of water, air, or soil or to render the waste safe for transport, disposal, or reuse.

"**UNCONFINED AQUIFER**" means an aquifer in which the upper surface of the zone of saturation is at atmospheric pressure.

"**UPPERMOST AQUIFER**" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"**VARIANCE**" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure, as provided in 7 **Del.C.** Ch. 60.

"**VECTOR**" means a carrier organism that is capable of transmitting a pathogen from one organism to another.

"**VEHICLE**" means a motorized means of transporting something. "Vehicle" includes both the motorized unit and all containerized units of a conveyance attached thereto.

"**WATER TABLE**" means that surface in a ground water body at which the water pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the water body just far enough to hold standing water.

"**WELL**" means 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 or artificial recharge of underground water, and where the depth is greater than the diameter or width.

"**WORKING FACE**" means that portion of a landfill where waste is discharged, spread and compacted prior to placement of daily cover.

SECTION 4: PERMIT REQUIREMENTS AND ADMINISTRATIVE PROCEDURES

A. GENERAL PROVISIONS

1. Permit required

a. No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under Section 2.C, without first having obtained a permit from the Department.

b. No person that is subject to the requirements of Section 7.B or 7.C of these regulations shall transport solid waste in or through the State of Delaware without first having obtained an appropriate solid waste transporter's permit from the Department.

c. Permittees shall abide by the conditions of their permit issued by the Department.

2. Public notice; hearing

Within 60 days after receipt of a completed application and all other required information, the Department will give public notice and the opportunity for a public hearing as provided in 7 **Del.C.** Ch. 60. The cost of the advertisement ~~may~~ shall be borne by the applicant. A 15 day comment period will follow the publication date of each public notice. If no meritorious adverse public comments are received during this period, and the Secretary does not deem a public hearing to be in the best interest of the State, the Department will enter into the permit approval/denial phase. If a meritorious request for a hearing is received during the comment period, or if the Secretary deems a hearing to be in the best interest of the State, a public hearing will be held as

provided in 7 **Del.C.** §6004 and 6006.

3. Approval/denial

The Department shall act upon an application for a permit within 60 days after the close of the public notice comment period or upon receipt of the hearing officer's report if a hearing was required. When a final determination is made on an application, the Department shall issue a permit or send a letter of denial to the applicant explaining the reasons for the denial.

4. Suspension, revocation of permit

A permit may be revoked or suspended for violation of any condition of the permit or any requirement of this regulation, after notice and opportunity for hearing in accordance with 7 **Del.C.** Ch. 60.

5. Duration of permit

A permit will be issued for a specific duration which will be determined by the Department.

a. Solid waste facility operating permits (landfills, resource recovery facilities, transfer stations, incinerators) shall not be issued for periods greater than 10 years.

b. Post-closure permits shall be valid and enforceable throughout the entire post-closure period.

6. Permit renewal

Any person wishing to renew an existing permit that is to expire shall, not less than ~~90~~ 180 days prior to the expiration date of ~~that~~ the existing permit, submit to the Department, a permit renewal application form~~,~~ with all supporting documentation and appropriate fees as required by these regulations ~~provided by the Department~~.

In the event that the permittee submits a timely application, (~~i.e.,~~ not less than ~~90~~ 180 days prior to the expiration date of the existing permit ~~expiration date) application for permit renewal,~~ and the Department, through no fault of the permittee, is unable to make a final determination on the application before the expiration date of the ~~current~~ existing permit, the Department may, at its discretion, grant an extension of ~~the~~ that permit. If the Department issues an extension, all conditions of the permit~~,~~ ~~and all modifications previously requested by the Department,~~ will remain in effect, for a period of time which will be determined by the Department.

7. Modification of permit

A permittee may request modifications to a permit. All such requests must be submitted in writing to the Department.

The Department may initiate modification of a permit if it finds that the existing permit conditions either are not adequate or are not necessary to protect human health and the environment.

Public notice and opportunity for hearing in accordance with paragraph A.2 of this Section shall be accomplished for all major modifications proposed for the permit. In the event a hearing is requested or deemed necessary by the Secretary, only the permit conditions subject to the modification shall be reopened for public comment.

Public notice shall not be required for minor modifications to the permit. Minor modifications are those which if granted would not result in any increased impact or risk to the environment or to the public health. Minor modifications include but are not limited to:

Changes in operation or design which are not related to pollution control devices or procedures.

Improvements to approved pollution control devices or procedures.

Administrative changes.

A change in monitoring or reporting frequency.

The correction of typographical errors.

8. Transfer of permit

The new owner must submit to the Department a written request for the transfer of a permit at least 90 days prior to the date of the proposed transfer. The transfer request must include the following submissions:

All of the information requested in 7 **Del.C.** Ch. 79.

A revised solid waste facility or transporter permit application, as appropriate.

A written agreement between the new and existing owner containing a specific date upon which the transfer of the permit will occur.

A demonstration that the new owner has satisfied any financial assurance requirements imposed by these regulations. For additional information on financial assurance requirements see section 4.A.11 of these regulations.

Once the aforementioned requirements have been submitted and are considered complete to the Department's satisfaction, the Department will give public notice and the opportunity for a public hearing as provided in 7 **Del.C.** Ch. 60. For additional information on the public notice procedure see Section 4.A.2 of these regulations.

When a final determination is made on the permit transfer request, the Department shall issue a revised permit or send a letter of denial explaining the reasons that a revised permit could not be issued.

9. Enforcement

a. The Department reserves the right to inspect any site, or any vehicle intended for use in the transportation of solid waste, before issuing a solid waste permit for the site or the transporter.

b. The Department may, at any reasonable time, enter any permitted solid waste facility or inspect any vehicle being used in the transportation of solid waste in order to verify compliance with the permit and these regulations.

c. The Department may require such reports, interviews, tests or other information necessary for the evaluation of permit applications and the verification of

compliance with the permit and these regulations.

d. Any person using land, or allowing the use of land, for the storage, processing, or disposal of solid waste who violates a requirement of this regulation shall be subject to the provisions of Sections 6005, 6013, 6018, and 6025(c) of 7 **Del.C.** Ch. 60.

10. Replacement of Contaminated Water Supplies

If the Department determines, based on information obtained by or submitted to the Department or the Division of Public Health, that any drinking water supply well has become contaminated as a result of the construction or operation of a solid waste facility, the owner or operator of the facility will be required to construct and maintain, at his or her expense, a permanent alternative water supply of comparable quantity and quality to the source before it was contaminated. Such a determination will be subject to the review procedures contained in 7 **Del.C.** Ch. 60.

11. Financial Assurance Criteria

a. Applicability and effective date

The requirements of this section apply to owners and operators of all solid waste facilities, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of the State or the United States.

b. Financial Assurance for Closure, Post-Closure Care, and Corrective Action

(1) The owner or operator of a solid waste facility must provide assurance that the financial costs associated with closure, post-closure care, and corrective action can be met throughout the life of the facility until released from these requirements by the Department after demonstrating successful completion of compliance with the requirements for each of these activities.

(2) The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners or operators must choose from the options specified in paragraphs (a) through (i) of this section, and comply with any conditions noted therein.

(a) Trust Fund

Condition 1: The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2: The trust agreement shall be worded as prescribed by the Department.

Condition 3: The owner or operator shall submit the receipt from the trustee for the initial payment into the trust fund as well as the originally signed duplicate of the trust agreement for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 4: Pay-in periods and amounts for all solid waste facilities shall be in accordance with those specified in 40 CFR Part 258.74, subsections (a)(2),(a)(3), (a)(4) and (a)(6) or otherwise acceptable to the Department.

Condition 5: Schedule A, attached to the trust agreement, shall list the facility name and address and the current cost estimate. Schedule A must relate the trust agreement to the specific facility and obligation(s) being assured and shall be updated at least annually to account for inflation or other increases to the cost estimate. Costs reflected in Schedule A shall not be reduced without the written consent of the Department.

Condition 6: Schedule B, attached to the trust agreement, shall list the property or money that the fund consists of initially. Property must consist of cash or securities acceptable to the trustee. Other property (e.g., real estate) is not an acceptable payment into the trust fund.

Condition 7: Exhibit A, attached to the trust agreement, shall list the persons designated by the Grantor to sign orders, requests, and instructions to the trustee.

Condition 8: Annual valuation. Annually, the trustee shall furnish to the Department and to the owner or operator, a statement confirming the value of the trust fund. Any securities in the trust fund shall be valued at market value as of no more than 60 days prior to the date the statement is submitted to the Department. If possible, the statement should be submitted during the month that Schedule A is adjusted annually.

Condition 9: The trustee shall make payments from the fund only as the Department directs to provide for the payment for the costs of corrective action, closure, and/or post-closure care.

Condition 10: After beginning closure, post-closure care, or corrective action, an owner or operator or other person authorized in accordance with Condition 7 may request reimbursements for partial expenditures by submitting itemized bills to the Secretary. The owner or operator may request reimbursements for partial closure, post-closure care, or corrective action only if sufficient funds are remaining in the trust fund to cover the maximum costs of completing the activities for which the trust agreement was established. Within 60 days after receiving bills for reimbursable closure, post-closure care, or corrective action activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing. Reimbursements will be allowed only if the Secretary determines that the partial or final expenditures are in accordance with the approved closure, post closure care, or corrective action plan or are otherwise justified. If the Secretary has reason to believe that the maximum cost of closure over the remaining life of the

facility will be significantly greater than the value of the trust fund, he/she may withhold reimbursements of such amounts as he/she deems prudent. If the Secretary does not instruct the trustee to make such reimbursements, he/she will provide the owner or operator with a detailed written statement of reasons.

Condition 11: Amendments. The trust agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

Condition 12: Irrevocability and termination. Subject to Condition 11, the trust agreement shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

(b.) Surety Bond for Payment or Performance

Condition 1: At a minimum, the surety company issuing the bond must be listed in Circular 570 of the U.S. Department of Treasury as qualified in the state where the bond was executed.

Condition 2: The surety's underwriting limit must be at least as great as the amount of the surety bond.

Condition 3: The surety bond shall be worded as prescribed by the Department.

Condition 4: The owner or operator shall submit the bond and standby trust fund for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: Standby trust fund. The owner or operator must establish a standby trust fund, and the standby trust fund must meet the requirements of these regulations except that initial and annual payments are not required. Updates of Schedule A, and annual valuation reporting will not be required until payment is made into the trust fund. Payments made under the terms of the surety bond shall be deposited by the issuing institution directly into the standby trust fund.

Condition 6: The payment surety bond may not be used for corrective actions.

Condition 7: Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation to the Secretary of the Department, to the Solid and Hazardous Waste Management Branch, and to the owner and operator at least 120 days in advance of cancellation. If the Surety cancels the bond, the owner or operator must obtain alternate financial assurance. The Department may draw on the surety bond if the owner or operator has not provided alternative financial assurance within 90 days after receipt by the Solid Waste Management Branch of a notice of cancellation from the surety.

Condition 8: The owner or operator may cancel the surety bond if the Department provides its written consent to do so. The Department will provide such written consent when the owner substitutes alternate financial assurance as specified in these regulations or the bonded activity has been completed in accordance with these regulations.

Condition 9: The surety shall become liable on the bond when the owner or operator has failed to fulfill the closure, post-closure care or corrective action activities as required. Upon notification by the Department that the owner or operator has failed to perform closure or post-closure care guaranteed by a payment bond, the surety shall place funds in the amount guaranteed for the facility into the standby trust fund. Upon notification that the owner or operator has failed to perform closure, post-closure care, or corrective action as guaranteed by a performance bond, the surety shall either perform the activities guaranteed by the bond or place funds in the amount guaranteed for the facility into the standby trust fund.

(c.) Letter of Credit

Condition 1: The issuing financial institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2: The letter of credit shall be worded as prescribed by the Department.

Condition 3: Accompanying letter. The owner or operator shall also submit an accompanying letter referring to the letter of credit by number and listing the following information: complete name and address of facility, issuing institution and date, and amount and purpose of funds assured.

Condition 4: The owner or operator shall submit the letter of credit and accompanying letter for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5: The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies the Secretary of the Department, the Solid and Hazardous Waste Management Branch, and the owner or operator of a decision not to extend the expiration date.

Condition 6: Once the issuing financial institution notifies the Solid and Hazardous Waste Management Branch of its intent not to extend the Letter of Credit, the owner or operator must, within 90 days, provide alternate financial assurance. The Department may draw on

the letter of credit if the owner or operator has not provided alternative financial assurance within 90 days.

Condition 7: Following a determination by the Secretary of the Department that the owner or operator has failed to perform closure, post-closure care, or corrective action when required to do so, the Department may draw on the letter of credit.

(d.) Insurance

Condition 1: The insurer must be licensed to transact the business of insurance in one or more states or be eligible to provide insurance as an excess or surplus lines insurer in one or more states.

Condition 2: Captive insurance companies and risk retention groups can not be used to satisfy the requirements of this section.

Condition 3: Insurance is not an allowable mechanism for demonstrating financial responsibility for corrective action.

Condition 4: The policy must guarantee that the funds will be available whenever needed and that the insurer will be responsible for paying out funds to authorized persons.

Condition 5: The policy must allow assignment to a successor owner or operator. Assignment may be conditional upon consent of the insurer provided that such consent is not unreasonably refused.

Condition 6: The policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.

Condition 7: If the owner or operator fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the Secretary of the Department, to the Solid and Hazardous Waste Management Branch, and to the owner or operator of the facility, at least 120 days in advance of the cancellation and date of expiration. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration, the Secretary of the Department deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Secretary of the Department, or a U.S. District Court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) USC; or the premium due is paid.

Condition 8: Prior to requesting reimbursement from the insurer, owners or operators shall submit justification and documentation of the reimbursable expenses to the Department for its consent.

Condition 9: A copy of the policy shall be submitted to the Department for its approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(e) Local Government Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as specified by the Department.

Condition 3: A local government is not eligible to assure its obligations by this mechanism if it: is currently in default of any outstanding general obligation bonds; or has any general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement, and the Department deems the reason for the qualification as significant.

Condition 4: Bond Rating/Financial Ratio Alternatives. The local government must meet one of the following two financial tests: a) If the local government has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's on all such general obligation bonds; or b) Based upon the most recently audited annual financial statement, a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

Condition 5: The total costs being assured through a financial test must not exceed 43 percent of the local government's total annual revenue. If the local government assures other environmental obligations through financial tests; including those associated with UIC facilities under 40 CFR 144.62, underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265; it must add those costs to the closure costs it seeks to assure under this mechanism.

Condition 6: Public Notice. The local government shall place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR).

Condition 7: Accountant's Opinion. A Certified Public Accountant's opinion of the local government's financial statements for the most recent fiscal year must also be included in the initial financial assurance

package and annually no later than 90 days after the close of the local government's fiscal year. The opinion must be unqualified and demonstrate that the local government has prepared its financial statements in accordance with the requirements of the General Accounting Standards Board Statement 18.

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the local government has complied with Conditions 3, 4, 5, and 6. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year.

Condition 9: If, at the end of any fiscal year, the local government fails to meet the financial test criteria required by conditions 3, 4, or 5, then the local government shall send, within 90 days, by certified mail, notice to the Secretary of the Department and to the Solid and Hazardous Waste Management Branch, that they intend to provide alternate financial assurance as required by these regulations. The local government shall, within 210 days following the close of the fiscal year, obtain alternative financial assurance that meets the requirements of these regulations.

Condition 10: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 11: The guarantee shall remain in force unless the local government sends notice of cancellation by certified mail to the Secretary of the Department and to the Solid and Hazardous Waste Management Branch. Such notice shall be given at least 120 days in advance of the cancellation. Within 90 days of receipt of this notice of cancellation by the Solid and Hazardous Waste Management Branch, the local government shall provide alternative financial assurance acceptable to the Department.

(f) Corporate Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as prescribed by the Department.

Condition 3: A resolution agreeing to the terms and conditions of the guarantee and signed by the guarantor's board of directors shall be attached to the guarantee.

Condition 4: The guarantor must be the direct or higher tier parent company of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator.

Condition 5: Minimum size requirement. The guarantor must have a tangible net worth equal to the sum of the costs they seek to assure through a financial test, plus $10 million. The costs that the guarantor seeks to assure are equal to the current cost estimates for closure, post-closure care, corrective action, and any other environmental obligation assured by a financial test and/or corporate guarantee by the guarantor (including other landfills or solid waste facilities; PCB storage facilities; underground storage tanks; hazardous waste treatment, storage, disposal facilities; or underground injection control program facilities).

Condition 6: Bond Rating/Financial Ratio Alternatives. Guarantors must meet one of the following three financial tests:

a) A most recent bond rating no lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's.

b) A leverage ratio of less than 1.5 based on the ratio of total liabilities to tangible net worth.

c) A profitability ratio of greater than 0.10 based on the sum of the net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities.

Condition 7: Domestic Assets Requirement. Guarantors must have assets in the United States at least equal to the costs they seek to assure through a financial test (costs include those reported for Condition 5).

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the guarantor has complied with Conditions 4, 5, 6, and 7. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the guarantor's fiscal year.

Condition 9: Accountant's Opinion. A Certified Public Accountant's opinion of the guarantor's financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the guarantor's fiscal year. The opinion must be unqualified (not modified by conditions or reservations) and demonstrate that the firm has prepared its financial statements in accordance with generally accepted accounting principals for corporations.

Condition 10: Special Report. In the event that the CFO does not use financial test figures directly form the annual statements provided to the Securities and Exchange Commission, then a special report from an independent accountant shall be required. In the report, the Certified Public Accountant must confirm that the data used in the CFO letter was appropriately derived from the audited, year-end financial statements.

Condition 11: Incapacity. The

guarantor shall notify the Secretary of the Department and the Solid and Hazardous Waste Management Branch by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 Bankruptcy, USC, naming the guarantor, owner or operator of the facility as debtor, within 10 days after commencement of the proceeding.

Condition 12: If, at the end of any fiscal year, the guarantor fails to meet the financial test criteria required by conditions 5, 6, or 7, then the guarantor shall send, within 90 days, by certified mail, notice to the Secretary of the Department, to the Solid and Hazardous Waste Management Branch, and to the owner or operator, that guarantor intends to provide alternate financial assurance as required by these regulations. Within 120 days of such fiscal year, the guarantor shall establish such financial assurance unless the owner or operator has done so.

Condition 13: Within 30 days of being notified by the Department that a determination has been made that the guarantor no longer meets the requirements stated in Conditions 5, 6, or 7, the guarantor shall establish alternate financial assurance in accordance with these regulations.

Condition 14: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(g) Department-Approved Mechanism.

(h) State Assumption of Responsibility.

Use of Multiple Financial Mechanisms (any combination of the options listed above).

The language of the financial assurance mechanisms listed in this section must satisfy the following criteria:

(a) They must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed.

(b) They must ensure that funds will be available in a timely fashion when needed.

(c) They must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.

(3) They must be legally valid, binding, and enforceable under State law.

(4) Upon request by the Department, the applicant or permittee shall provide a third party review of the financial assurance documents submitted. The third party review must certify to the Department that the financial assurance documents as submitted by the applicant or permittee meet the requirements of Section 4.A.11.b(2) of these regulations, and be sealed and signed by a Certified Public Accountant duly registered in Delaware, or other professional acceptable to the Department.

(5) The application shall not be deemed complete until and unless the applicant has complied with Section 4.A.11.b(4) of these regulations as specified above.

c. Cost Estimate for Closure

(1) The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility that is consistent with the closure plan developed in accordance with the closure requirements for that type of facility. The estimate must equal the maximum cost of closure at any time during the active life of the facility. The owner or operator shall also notify the Secretary in writing that the estimate has been placed in the records to be maintained at the facility.

(2) Until final closure of the facility, the owner or operator must annually adjust the closure cost estimate for inflation, facility expansions, and any other applicable requirements which impact the cost of closure.

(3) The owner or operator must increase the cost estimate and the amount of financial assurance provided for closure if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The Department may approve reduction in the amount of financial assurance provided for closure if the latest cost estimate is significantly less than the maximum cost of the current closure plan. The owner or operator must submit to the Secretary in writing the justification for the reduction of the closure cost estimate and the amount of financial assurance. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

d. Cost Estimate for Post-Closure Care

(1) The owner or operator of a solid waste facility for which post-closure care is required must demonstrate financial assurance for the cost of thirty (30) years of post-closure care. The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste facility in compliance with the post-closure plan. This estimate must be based on the most expensive costs of post-closure care during the post-closure care period. The owner or operator must also notify the Department in writing that the estimate has been placed in the records to be maintained at the facility.

(2) During the active life of the solid waste facility and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation and other applicable factors.

(3) The owner or operator must increase the

post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure plan or solid waste facility conditions increase the maximum costs of post-closure care.

(4) The Secretary may approve the reduction of the post-closure cost estimate and the amount of financial assurance provided if the latest cost estimate is significantly less than the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit to the Secretary in writing the justification for the reduction of the post-closure cost estimate. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

e. Cost Estimate for Corrective Action

(1) An owner or operator of a solid waste facility required to undertake a corrective action program must submit to the Secretary in writing a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must also notify the Secretary that the cost estimate has been placed in the records to be maintained at the facility.

(2) The owner or operator must annually adjust the estimate for inflation and any other applicable factors until the corrective action program is completed.

(3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(4) The Secretary may approve reduction of the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must submit to the Secretary in writing the justification for the reduction of the corrective action cost estimate. The owner or operator must also notify the Secretary in writing that the amended amount of financial assurance has been placed in the records to be maintained at the facility.

B. APPLICATION PROCEDURES FOR SANITARY AND INDUSTRIAL LANDFILLS

1. Application

Any person desiring to construct or operate a sanitary or industrial landfill or cell must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used,

A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility,

A description of the proposed monitoring methods,

A description of the proposed methods for controlling noise, litter, odors, insects, and rodents, and

A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment).

d. An engineering report

This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:

(1) Descriptions and specifications of all proposed design features,

A description of the proposed installation methods and procedures,

A schedule of events for construction of the facility,

Proposed design capacity in both tons and cubic yards per day, and projected life expectancy of the facility,

A construction quality assurance plan.

A schedule of events for construction of the facility,

Proposed design capacity in both tons and cubic yards per day, and projected life expectancy of the facility.

A construction quality assurance plan.

e. A hydrogeological assessment

A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to

points of ground water discharge,

(5) Approximate ground water flow rates and travel times from the facility to points of discharge (including wells and/or surface water).

In addition, delineation of the anticipated maximum elevation of the seasonal high water table shall be provided.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality
Water quality
Stream flow
Fish and wildlife
Plants
Threatened or endangered species
Water uses
Land use
Aesthetics
Traffic
Public health and safety
Cultural, recreational, and natural areas
Historic sites
Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

(5) Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

(6) Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate.

(7) Proof of financial responsibility for closure and post-closure care, as described in Section 4.A.11.

(8) Proof that the facility meets the siting criteria required by Section 5.A. or 6.A.

(9) Any other related reports, data, maps, or information that the Department requires.

h. Construction and Operation

1. The applicant shall not commence construction of the landfill or cell until the Department has issued the solid waste permit required by these regulations.

2. After construction has been completed and prior to the placement of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the landfill or cell was completed in accordance with the engineering report to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not place solid waste into the newly constructed landfill or cell until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

a. Any person wishing to modify their current permit to allow closure of a facility or part thereof must submit the following to the Department at least 180 days prior to the projected date when wastes will no longer be accepted:

(1) Notification of intent to close,

(2) Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate,

(3) Post-closure care plan describing how the requirements of Section 5.K or 6.K (as appropriate) will be met.

(4) If the Department determines that the closure plan and supporting documents are sufficient to ensure closure, it will modify the permit to allow closure to be performed. The owner or operator of the landfill shall not commence closure of the landfill or cell without first obtaining the necessary permit modifications.

(5) After closure has been completed, the permittee shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the Construction Quality Assurance Plan,

construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell shall not be considered closed until the Department has provided its written notification that the closure has been accomplished in accordance with the solid waste permit and these regulations.

(6) Facilities entering the Post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

C. THIS PARAGRAPH RESERVED

D. APPLICATION PROCEDURES FOR RESOURCE RECOVERY FACILITIES

1. Application

Any person desiring to construct or operate a resource recovery facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.

Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must also be submitted.

2. A plan of operation

This shall include the following:

A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used.

A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility. This shall include a description of the procedures for facility start up and for scheduled and unscheduled shut down operations.

A description of the solid wastes that will be accepted at the facility, the manner in which recyclable components will be removed from the solid waste stream, the markets for these recyclable materials, and the proposed disposition of the nonrecyclable components and residuals.

A description of the proposed monitoring methods.

A description of the measures that will be used to ensure that unauthorized and unwanted solid wastes are prevented from entering the facility.

A description of the personnel training program, including training that will be provided to ensure compliance with Sections 9.D.2.e and 9.D.2.g of these regulations.

A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, fires, and explosions.

A detailed contingency plan to be implemented in case of an emergency such as a spill, accident, or explosion.

d. An engineering report

This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:

A drawing or drawings showing the complete layout of the proposed facility.

Mass and energy balances, including calculations and pertinent facts relating to the development of these balances.

Descriptions and specifications of all proposed design features that the engineer has provided to the owner of the facility.

A description of the proposed installation methods and procedures.

A plan for third party quality assurance for the construction and installation of components of the facility that will be used in the processing, handling, and/or monitoring of solid waste.

A schedule of events for construction of the facility.

Proposed design capacity per day, and life expectancy of the facility.

A description of potential safety hazards and methods of control.

An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.

An identification of possible ground water and surface water discharges.

e. A recycling analysis

This analysis shall consist of the following:

(1) Identification of available and potential markets for recovered recyclables.

(2) An evaluation of the impact that alternative source separation/recyclables recovery programs could have on the facility. If a thermal recovery facility is the subject of the application, this shall include an engineering analysis of the BTU value of the solid waste before and after recyclables recovery for the proposed life of the project to determine if increases in recycling activities will necessitate changes in facility size and capacity.

f. A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing

shall be in accordance with Delaware's Regulations Governing Hazardous Waste or other testing protocol acceptable to the Department. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.

g. A hydrogeological assessment, if deemed necessary by the Department

A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.

h. An environmental assessment

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include, but are not necessarily limited to:

Air quality
Water quality
Water uses
Land use
Soil quality
Traffic
Public health and safety
Cultural, recreational, and natural areas
Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

i. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

The locations and names of all water supply wells or surface water intakes within 1/4 mile of the site boundaries.

j. Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.

A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

Proof of financial responsibility for closure, as described in Section 4.A.11.b.

Proof that the facility meets the siting criteria required by Section 9.B.

Any other related reports, data, maps, or information that the Department requires.

2. Construction and operation

The applicant shall not commence construction of a new resource recovery facility or operate an existing resource recovery facility until the applicant has received a permit from the Department in accordance with these regulations.

After the construction of a new resource recovery facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the resource recovery facility was completed in accordance with the engineering report to include the quality assurance plan, construction and material specifications and design drawings. The final report shall be certified correct by the third-party quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person desiring to close a resource recovery facility shall, at least 180 days before the date on which the facility will stop accepting solid waste, submit the following to the Department:

a. Written notification of intent to close.
b. Updated closure plan.
c. Closure schedule
d. An evaluation of the impact that closing the facility will have on the flow of solid waste in the region serviced by the facility, and a plan for minimizing any disruption in the flow.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

E. APPLICATION PROCEDURES FOR TRANSFER STATIONS

1. Application

Any person desiring to construct or operate a transfer station must submit a letter of intent to the

Department. For proposed facilities, ~~T~~the letter ~~should indicate~~ shall narrate the projected design and usage of the ~~proposed~~ facility; provide a tentative schedule for construction and startup, and summarize the applicant's experience and training with transfer station operations. For existing facilities, the letter shall state the reason for the application submittal and include a narration about design, usage, and schedule only if new construction is proposed. ~~The letter of intent shall be followed by the submission, by the applicant, of the following additional information~~ After submitting the Letter of Intent, the applicant shall submit the following:

a. A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must be submitted.

c. A plan of operation

~~This shall include~~ The applicant shall submit a plan of operation in a format that includes a dated title page (title, name/location of facility, author, permittee name), a table of contents, numbered pages, labeled chapters and subsections, and numbered paragraphs. Content of the plan shall include the following:

1. A narrative description of the type of facility and of the solid waste handling procedures to be used.

2. A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility.

3. A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, leachate, and facility washdown water.

4. A description of the methods that will be used to prevent unauthorized wastes from entering the facility.

5. A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment.)

d. An engineering report

This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:

Descriptions, plans, and specifications of all proposed design features.

A description of the proposed installation methods and procedures.

A schedule of events for construction of the facility.

Proposed design capacity in both tons and cubic yards per day.

e. A hydrogeological assessment, if deemed necessary by the Department.

1. A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

a. The occurrence and characteristics of the water table aquifer.

2. Ground water flow directions.

3. Ambient ground water quality.

4. Potential pathways of contaminants to points of ground water discharge.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment.

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality
Water quality
Water uses
Land use
Soil quality
Traffic
Public health and safety
Cultural, recreational, and natural areas
Historic sites
Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

1. The legal boundaries of the property as determined by a survey performed by a surveyor registered in Delaware; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

2. The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

3. The locations and names of all water supply wells or surface water intakes within 1/4 mile of the

handling site boundaries.

h. Proof that all applicable zoning approvals have been obtained and that application has been made for all other appropriate federal, state, and local environmental permits.

i. A conceptual closure plan. This shall address the items listed in Section 10.F.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

j. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

k. Proof that the facility meets the siting criteria required by Section 10.B.

1. Any other related reports, data, maps, or information that the Department reasonably requires.

2. Construction and operation

a. The applicant shall not commence construction of a new transfer station or operate an existing transfer station until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new transfer station has been completed, and prior to the receipt of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the transfer station was completed in accordance with the permit requirements. The final report shall be certified correct by a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

~~3. Closure~~

~~Any person desiring to close a transfer station shall, at least 60 days before the date on which the facility will stop accepting waste, submit the following to the Department:~~

~~a. Written notification of intent to close.~~

~~b. Updated closure plan.~~

~~c. Closure schedule.~~

~~If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.~~

F. APPLICATION PROCEDURES FOR FACILITY FOR INFECTIOUS WASTE MANAGEMENT

1. Application

Any person desiring to construct or operate an infectious waste management facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:

a. A Solid Waste Management Facility Application, provided by the Department. All information provided by the applicant is certified to be true, accurate, and complete by the applicant's signature on the provided application.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

1. This plan shall include the following:

a. The source(s) of the infectious waste (generator names and locations);

b. A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;

c. A description of the facility where the waste will be rendered non-infectious, including the name and the exact location of the facility;

d. A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility;

e. A description of the processing methods to be used for each type of waste, including schematic drawings (e.g., blueprints, etc.);

f. A description showing that the facility has developed a validation program which demonstrates the effectiveness of the treatment method by performing an Initial Efficacy Test and Periodic Verification Test(s).

g. A description of the measures that will be used to ensure that unauthorized and unwanted wastes are prevented from entering the facility;

h. A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of time of storage;

i. A description of the alternatives to be used if the processing equipment is inoperable, and the procedures to be used for the management of the waste if it cannot be promptly processed;

j. A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required;

k. A description of the proposed methods for controlling noise, litter, odors, vectors, dust, fires, and explosions;

l. A contingency plan to be implemented in case of emergency.

m. In addition, if the proposed facility is an incinerator, the Plan of Operation shall include a plan for sampling, analysis, and disposition of the ash generated in the incinerator. The plan shall include a strategy for ash testing during the test burn phase of construction. Testing

shall be in accordance with Delaware's Regulations Governing Hazardous Waste. The plan also shall include a strategy for treating and/or disposing of the ash if it is found to exhibit hazardous waste characteristics. A sanitary landfill in Delaware will not be considered an acceptable disposal facility for ash that exhibits hazardous waste characteristics.

d. An engineering report

1. This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:

2. Descriptions and specifications of all proposed design features.

3. A description of the proposed installation methods and construction procedures.

4. A schedule of events for construction of the facility, if deemed necessary by the Department.

5. Proposed design capacity in both tons and cubic yards per day, and life expectancy of the facility.

6. Materials and energy balance of the facility.

e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation may be required at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to points of ground water discharge.

In addition, an evaluation shall be made of the elevation of the seasonal high water table.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality
Water quality
Stream flow
Fish and wildlife
Plants
Threatened or endangered species
Water uses
Land use
Aesthetics
Traffic
Public health and safety
Cultural, recreational, and natural areas
Historic sites
Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps, if deemed necessary by the Department.

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

1. The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

2. The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

3. The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

4. The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

5. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

6. Closure plan that conforms with Section 11.H., as appropriate.

7. Proof of financial responsibility for closure as described in Section 4.A.11,b and d.

8. Proof that the facility meets the siting criteria required by Section 11, Part 1,B.

9. Any other related reports, data, maps, or information that the Department requires.

2. Construction and operation

The applicant shall not commence construction of a new infectious waste facility or operate an existing infectious waste facility until the applicant has received a permit from the Department in accordance with these regulations.

After the construction of a new infectious waste facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the facility was completed in accordance with the engineering report. The permittee shall not commence operations or store or receive

solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person wishing to close an infectious waste facility must submit the following to the Department:

a. Notification of intent to close.

b. A detailed plan for closing the facility so as to achieve the objectives described in Section 11 Part 1,J.

c. If the Department approves the closure plan, it will modify the facility's permit to allow closure to take place.

G. APPLICATION PROCEDURES FOR SOLID WASTE TRANSPORTERS

Any person required to obtain a permit to transport solid waste must submit a completed application to the Department. The application shall ~~be on a form prescribed by the Department and shall~~ be accompanied by all applicable supporting documentation and ~~the~~ appropriate application fees as required by these regulations. All information provided by the applicant shall be ~~is~~ certified to be true, accurate, and complete by the applicant's signature on the provided application.

~~Prior to Public Notice of proposed changes to these Regulations which would affect holders of transporter permits, the Department shall attempt, by reasonable means, to individually notify transporter permit holders of such proposed changes and of the date of the upcoming Public Hearing.~~

SECTION 5: SANITARY LANDFILLS

(NOTE: This section applies only to landfills that accept household waste.)

A. SITING

1. Sanitary landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All sanitary landfill facilities shall be constructed to at least minimum design requirements as contained in Section 5.B. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. The owner or operator of any proposed sanitary landfill within a 5mile radius of any airport runway must notify the airport and the Federal Aviation Administration (and provide proof of notification to the Department).

4. No new cell of a sanitary landfill shall be located:

a. Within the 100-year flood plain as delineated by the Federal Emergency Management Agency.

b. In an area that may cause or contribute to the degradation of any state or federally regulated wetlands unless the owner or operator can demonstrate to the satisfaction of the appropriate wetlands regulatory agency that:

(1) there is no impact to any regulated wetlands on the site, or

(2) any impact will be mitigated as required.

c. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

d. Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

e. So as to be in conflict with any locally adopted land use plan or zoning requirement.

f. Within the wellhead protection area of a public water supply well or well field or a formally designated aquifer resource protection area.

g. Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)

h. Within a seismic impact zone unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

For the purposes of this section:

(1) Seismic impact zone means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

(2) Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt or unconsolidated earth materials, soil or regolith lying at or near the earth surface.

i. In unstable areas, unless engineering measures have been incorporated in the design to insure the integrity of the structural components of the waste facility (including liners, leachate collection systems, run-on/runoff control,

capping and anything affecting the containment and/or possible release of contaminants.) Unstable areas include those of (1) poor foundation conditions (possible subsidence), (2) susceptibility to mass movement or (3) Karst terrane.

j. In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

k. Within 200 feet of the facility property boundary unless otherwise approved by the Department.

B. DESIGN

1. General

Sanitary landfills shall be planned and designed by a Professional Engineer registered in Delaware. Planning and design of these facilities shall be consistent with the declared purpose and intent and in accordance with the provisions of this regulation and based on empirically derived data and state of the art technology.

2. Minimum design requirements

a. All sanitary landfills shall be designed to minimize contaminant releases and to prevent significant adverse impacts on human health or the environment and to achieve the following performance standards:-

(1) Ensure that the contaminant concentrations do not prevent appropriate use of the ground water in the uppermost aquifer at the relevant point of compliance (examples are water supply, potability, stream flow maintenance, etc., as appropriate).

(a) The point of compliance shall be specified by the Department and shall be no more than 150 meters from the landfill cell boundary and shall be located on property owned by the owner of the landfill.

(b) In determining the relevant point of compliance, the Department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the landfill and surrounding land;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, availability and direction of flow of ground water;

(iv) The proximity and withdrawal rate of ground water users;

(v) The availability of alternate drinking water supplies;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impacts on ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

(vii) Public health, safety and welfare effects; and

(viii) Practical capability of the landfill owner or operator.

(2) Ensure that surface water quality standards will not be violated (except within designated mixing zones) as a result of contaminant discharges from the landfill.

All sanitary landfills shall be designed to have:

(1) A liner and internal leachate collection system which meet the requirements of Sections 5.C. and 5.D. of these regulations respectively,

(2) A setback area, including a buffer zone with appropriate screening,

(3) A gas control system that meets the requirements of Section 5.E.,

(4) A surface water management system that meets the requirements of Section 5.F.,

(5) A ground water monitoring system that meets the requirements of Section 5.G., and

(6) A capping system that meets the requirements of Section 5.H.

C. LINER

1. General provisions

a. An impermeable liner shall be provided at every sanitary landfill to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a composite liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (or the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table as measured in the uppermost aquifer beneath the landfill. This 5-foot requirement may be reduced for a more stringent liner system design which provides enhanced protection of ground water.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations.

e. Qualifications of the construction quality assurance staff (CQA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall meet the requirements of the approved Quality Assurance plan and be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute’s Laboratory Accreditation

Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. Composite liner

A composite liner must have, as a minimum:

(1) A primary (upper) liner which meets the following:

(a) Is at least 45 mils thick.

(b) Is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) Is made of synthetic material that meets minimum requirements of the National Sanitation Foundation's publication, "Standard Number 54-1993, Flexible Membrane Liners" for membrane materials covered by this standard, or of other materials of equal or better performance as approved by the Department.

(d) Is chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) Is compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) Is free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and nondispersed ingredients.

(2) A secondary (lower) liner composed of:

Compacted clay at least two feet thick with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, or

An equivalent material or combination of materials acceptable to the Department.

b. Natural liner

Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the postclosure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

Grain size
Classification
Compaction
Specific gravity
Hydraulic conductivity
Porosity
pH
Cation exchange capacity
Pinhole test (if required)
Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods described in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods”, EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), and IIIA (dated April 1998)], or other tests approved in writing by the Department.

(e) If onsite soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

(1) A double liner system shall meet the following requirements:

(a) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(b) The primary (upper) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 5.C.2.a(1)(b)-(f).

(c) The secondary (lower) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 5.C.2.a(1)(b)(f). If natural, it must meet the requirements of Section 5.C.2.b.

(d) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a

hydraulic conductivity greater than 1 x 10^{-2} cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(e) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department as part of the application package. The system shall be designed to operate without clogging through the postclosure care period of the facility.

(f) The upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2 feet of natural material with a permeability no greater than 10^{-7} cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

(2) A double liner system will be required where landfills are underlain by aquifers which are reasonably expected sources of water supply and/or capable of significant contaminant transport to adjacent surface waters.

3. Liner construction

a. Construction/installation of composite liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and postclosure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall either be:

(a) two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes, OR

the controlling and remaining slopes shall be designed to prevent the head on the liner, excluding sump areas, from exceeding a depth of twelve (12) inches including post settlement conditions.

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by the National Sanitation Foundation's "Standard Number 54-1993" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

(9) The synthetic membrane must be underlain by a secondary liner as described in Section 5.C.2.a(2).

b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural non-uniformities that can increase the saturated hydraulic conductivity above 1 x 10^{-7} cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

c. Construction/installation of double liner

(1) The secondary liner shall be constructed in accordance with Section 5.C.3.b (if it is a natural liner) or Section 5.C.3.a.(1)(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 5.C.3.a.(1) and (3)(8).

D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING

1. General provisions

a. All sanitary landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with a Departmentapproved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the postclosure care period of the facility.

2. Leachate collection

a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the postclosure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

(8) The leachate collection system must be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.

b. Construction standards

(1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than 1×10^{-2} cm/sec and a minimum controlling slope of two (2) percent.

(2) Alternate materials may be used for the drainage layer with prior written approval of the Department.

The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods:

Classification
Porosity
Relative density or compaction
Specific gravity
Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

c. Operational procedures

(1) The leachate collection system shall operate automatically, whenever leachate is present in the sump, to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump.

The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Departmentapproved scheduled maintenance program and more frequently if required.

3. Leachate treatment and disposal

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

(1) Complete treatment onsite with or without direct discharge to surface water,

(2) Pretreatment onsite with discharge to an offsite treatment works for final treatment,

(3) Storage onsite with discharge to an offsite treatment works for complete treatment,

(4) Direct discharge to an offsite treatment works, or

(5) Pretreatment on site with discharge on site.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

(1) The tank shall be placed above ground.

(2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. Onsite complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) The onsite treatment unit shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) Onsite treatment units shall be designed and constructed by staging of the units to allow for online modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the onsite treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with the Delaware Regulations Governing Hazardous Waste.

g. Recirculation of leachate may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. At new facilities and expansions of existing facilities, recirculation will be allowed only in areas constructed with a composite liner system or a double liner system. The method of recirculation at all facilities must be approved by the Department in advance and annually so long as the recirculation continues. Records of leachate collected and recirculated must be kept and reported and any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly.

b. Leachate monitoring shall be performed according to a Departmentapproved plan which includes quality control and quality assurance procedures.

c. In addition to the requirement in Section 5.D.4.b above, samples of leachate shall be collected and analyzed from each waste cell as follows:

(1) monthly, during the active life of a cell, and at an interval specified by the Department after closure of the cell, for the following parameters:

pH
Alkalinity (Alk)
Chemical Oxygen Demand (COD)
Biochemical Oxygen Demand (BOD)
Total Organic Carbon (TOC)
Specific Conductance (SpC)
Total Dissolved Solids (TDS)
Total Iron (Fe)
Total Manganese (Mn)
Chloride (C1)
Nitrate (NO_3-N), Nitrate (NO_2-N), and Ammonia (NH_3-N)
Sulfate (SO_4), and

(2) at an interval specified by the Department for additional parameters specified by the Department.

d. Leachate monitoring results shall be submitted to the Department as part of the annual monitoring report or more frequently as directed by the Department.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for the same parameters listed in Section 5.D.4.c.(1) and any additional parameters as required by the Department.

E. GAS CONTROL

1. General provisions

a. Gas control system shall be installed at all sanitary landfills.

b. The gas control system shall be designed and constructed to:

(1) Evacuate gas from within the waste to

prevent the accumulation of gas on-site or off-site.

(2) Prevent and control damage to vegetation.

(3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution.

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at the facility boundary shall not exceed 25% of the Lower Explosive Limit (LEL).

2. Design and construction standards

a. The owner or operator of a sanitary landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells at least quarterly and provide analytical results [as required by conditions specified in the facility permit] as part of the annual report.

c. At sanitary landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

4. Response Actions

a. If methane gas levels exceeding the limits specified in Section 5.E.1.c are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the Department.

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health.

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Department that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

b. For purposes of this section, lower explosive limit means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

F. SURFACE WATER MANAGEMENT

1. General provision

An owner or operator of a sanitary landfill shall design, construct, and maintain a surface water management system to:

a. Prevent erosion of the waste and cover,

b. Prevent the collection of standing water, and

c. Minimize surface water runoff onto and into the waste.

2. Design requirements

An owner or operator of a sanitary landfill shall include:

a. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 24hour, 25year storm.

b. A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24hour, 25year storm. The system shall be designed to include:

(1) Detention basins to provide temporary storage of the expected runoff from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent runoff generated within the active areas from moving off site of the lined areas.

3. Channeling of runoff

a. Runoff from the active areas within the active cell(s) must be channeled to the leachate treatment and disposal system.

Runoff from the unused portion of the active cell(s) that has not been in contact with waste shall be channeled to the detention basins or other approved sedimentation control devices.

Until vegetative cover has been established, runoff from closed cells will be directed to the detention basins or other approved sedimentation control devices.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

G. GROUND WATER MONITORING AND CORRECTIVE ACTION

1. General provision

Owners or operators of all sanitary landfill facilities shall install maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by, constructed under the direction of, and attested to by, a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality, both unaffected by (background) and potentially impacted by downgradient contaminant leakage from the facility. The downgradient monitor wells (which are points of compliance for ground water performance standards) must be no further than 150 meters from the edge of the sanitary landfill cell, and on the waste facility property.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

e. Monitoring of surface water, into which ground water flowing from beneath the landfill discharges, may also be required as part of the ground water monitoring program. Parameter analysis may include all those required for the ground water sampling plus any additional parameters or tests the Department deems necessary.

3. Ground water sampling and analyses

a. The owner or operator shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control

b. Sample parameters

(1) Water levels will be measured prior to sample collection

(2) Ground water samples will be analyzed for the following list of parameters:

pH
Alkalinity (Alk)
Chemical Oxygen Demand (COD)
Total Organic Carbon (TOC)
Specific Conductance (SpC)
Total Dissolved Solids (TDS)
Iron (Fe)
Manganese (Mn)
Chloride (C1)
Nitrate (NO_3-N) and Ammonia (NH_3-N)
Sulfate (SO_4)
Dissolved Oxygen (DO)
OxidationReduction Potential (ORP) or Eh

The parameters listed in Table I when requested by the Department.

Any additional parameters specified by the Department.

The Department may delete the requirement for any constituents where appropriate. Such deletions will be based on:

(a) The results of leachate monitoring (constituent is not a significant constituent of the leachate),

Local geochemical considerations (immobility in subsurface), and

Other relevant factors.

(3) Test methods used to determine the parameters of Section 5.G.3.b.(2) shall be those described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), and IIIA (dated April 1998)], or other tests approved in writing by the Department.

c. Monitoring frequency will be at least semiannual. An alternate frequency may be specified by the Department based on consideration of the following conditions:

(1) Lithology of the aquifer and unsaturated zone,

(2) Hydraulic conductivity of the aquifer and unsaturated zone,

(3) Ground water flow rates,

(4) Distance and travel time between the waste unit(s) and the downgradient monitor wells and possible points of exposure to any landfillderived contaminants in wells or receiving surface waters, and

(5) Resource value of the aquifer.

d. The Department may observe the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

4. Data evaluation

a. The owner or operator must establish the background quality for each sampling parameter or constituent. The background quality is that which would be expected with no impact by contaminant releases from the waste cells.

Table 1

Antimony	trans-1,4-Dichloro-2-butene
Arsenic	1,1-Dichloroethane; Ethylidene chloride
Barium	1,2-Dichloroethane; Ethylene dichloride
Beryllium	1,1-Dichloroethylene; 1,1-Dichloroethene
Cadmium	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene
Chromium	trans-1,2-Dichloroethylene
Cobalt	1,2-Dichloropropane
Copper	cis-1,3-Dichloropropene
Lead	trans-1,3-Dichloropropene
Nickel	Ethylbenzene
Selenium	2-Hexanone; Methyl butyl ketone
Silver	Methyl bromide; Bromomethane
Thallium	Methyl chloride; Chloromethane
Vanadium	Methylene bromide; Dibromomethane
Zinc	Methylene chloride; Dichloromethane
Acetone	Methyl ethyl ketone; MEK
Acrylonitrile	Methyl iodide; Iodomethane
Benzene	4-Methyl-2-pentanone; Methyl isobutyl ketone
Bromochloromethane	Styrene
Bromodichloromethane	1,1,1,2-Tetrachloroethane
Bromoform; Tribromomethane	1,1,2,2-Tetrachloroethane
Carbon disulfide	Tetrachloroethylene; Tetrachloroethene
Carbon tetrachloride	Toluene
Chlorobenzene	1,1,1-Trichloroethane; Methylchloroform
Chloroethane; Ethyl chloride	1,1,2-Trichloroethane
Chloroform; Trichloromethane	Trichloroethylene
Dibromochloromethane;Chlorodibromomethane	Trichlorofluoromethane; CFC-11
1,2-Dibromo-3-chloropropane; DBCP	1,2,3-Trichloropropane
1,2-Dibromoethane; Ethylene dibromide; EDB	Vinyl acetate
o-Dichlorobenzenze; 1,2-Dichlorobenzene	Vinyl chloride
p-Dichlorobenzenze; 1,4-Dichlorobenzene	Xylenes

b. The owner or operator must specify in the operating record the methods to be used for statistical evaluation of the monitoring data. These may include:

(1) A tolerance or prediction interval procedure in which a range for each constituent is established from the distribution of the background data and the level of each constituent in each compliance (downgradient) monitor well is compared to the upper tolerance or prediction limit,

(2) A control chart approach that plots concentrations of each constituent versus the background range, or

(3) Any other statistical method chosen to meet the following requirements and approved by the Department:

(a) Appropriate in distribution and number of available data to meet the requirements of the statistical test chosen;

(b) Capable of limiting individual constituent comparisons to Type I error levels less than 0.01 or multiple constituent comparisons to Type I error levels less than 0.05, for each testing period. (This requirement does not apply to tolerance intervals, prediction intervals, or control charts.)

(c.) If necessary, the statistical analysis method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(d.) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the monitoring program by comparisons using the chosen method of evaluation. This evaluation must be performed within a reasonable period of sampling and analysis normally within 30 days of obtaining sampling results.

(e.) If any statistically significant increase occurs, the permittee must:

(1) notify the Department and place the result in the operating record within 14 days, and

(2) assess the probable accuracy and possible risk associated with the finding in the annual report.

(f.) Performance standards will be established at each site which are intended to provide adequate protection for human health and the environment. The performance standards may be proposed by the permittee, but must be approved by the Department, and shall be incorporated in the facility permit. In general,

performance standards will be the maximum contaminant levels (MCLs) for public drinking water. However, the Department may specify performance levels which are more stringent to protect adjacent surface water (and prevent violation of surface water quality standards) or less stringent (where ground water at the site will not threaten existing or reasonably expected sources of drinking water or cause violation of surface water quality standards) as appropriate.

(g.) The points of compliance at which performance standards must be met must be no more than 150 meters from the edge of the furthest downgradient waste cell and must be on the waste management facility property.

(h.) If any release of contaminants from the landfill to the groundwater is detected, either by exceedance of background concentrations or violation of a performance standard in the downgradient wells (points of compliance), the owner or operator must:

(1) Notify the Department and place the result in the operating record within 14 days,

(2) Resample to confirm the result and/or demonstrate that the result was an error or that the increase was due to a source other than the permitted waste facility within 90 days,

(3) Notify the Department of the result of confirmation within 14 days of availability of the result, and

(4) If a release is confirmed, perform an assessment of corrective measure as described in Section 5.G.6.

5. Reporting

a. The owner or operator will compile and evaluate all ground water data within a reasonable period of time following sampling and analysis. A tabulation of water elevations and quality will be submitted to the Department within 60 days of each sampling event. Reports of any statistically significant increases in downgradient wells or violation of performance standards in wells or streams must be reported to the Department within 14 days as noted above.

b. An annual monitoring report must be submitted by the permittee to the Department which includes the following:

(1) Maps showing the locations of sampling points, water elevations, and ground water flow directions and approximate rates for each sampling period;

(2) Tabulation of all ground water levels and elevations, leachate volumes collected and treated and leachate and water quality data;

(3) Presentation of statistical results and graphs depicting water quality parameter concentrations with time;

(4) Identification of any statistically significant increases in compliance wells and/or exceedances of performance standards;

(5) Confirmation results and conclusions related to the accuracy of these results and/or reasonable explanation for the results;

(6) Recommendations for any changes in the monitoring program including changes in the number, location of sampling points, sampling frequency, parameters or procedures;

(7) An evaluation of the significance of the results including whether they indicate a contaminant release has occurred and any recommendations for corrective measures, if appropriate.

c. In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine-readable media in a format mutually acceptable to the Department and the permittee. With the approval of the Department, reports submitted on machine-readable media may be substituted for paper reports.

6. Assessment of Corrective Measures

a. An assessment (reassessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, geophysical surveys and/or other measures);

(2) Reassessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);

(3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases;

(c) Reduce, minimize or prevent the offsite migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives;

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

7. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will select a remedial action.

b. Remedies must:

(1) Be protective of human health and the

environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable), further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards, (i.e., does not represent a significant threat to human health or the environment).

8. Implementation of Corrective Action

a. Based on the schedule established under Section 5.G.6.b. for initiation of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 5.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 5.G.3 and approved by the Department.

H. CAPPING SYSTEM

1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas, promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the postclosure care period.

b. The capping system shall be in place 180 days following final waste disposal activity unless the Department approves a longer period of time.

c. The capping system shall extend beyond the edge of the lined area.

d. The proposed design of the capping system must be approved by the Department prior to installation.

2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least twelve inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. A low permeability layer to minimize infiltration, that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. This infiltration control layer must consist of at least the following:

(1) A 30 mil synthetic geomembrane underlain by a geotextile, or

(2) 24 inches of fine textured soil with a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

If the landfill has a synthetic liner system, it must have a synthetic infiltration control layer. Alternative materials that achieve an equivalent performance may be used for the infiltration control layer with prior written approval of the Department.

c. A final cover to provide plant rooting and prevent erosion consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth; and

(2) Six (6) inches of topsoil or other material

approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote runoff;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

1. General

a. Sanitary landfills shall be operated so as to create an aesthetically desirable environment and to prevent degradation of land, air, surface water, or ground water.

b. Sanitary landfills shall be maintained and operated to conform with the approved Plan of Operation.

2. Details of operation and maintenance

a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

b. Lift depth

The lift depth shall not exceed the limit specified in the Solid Waste permit.

c. Cover

~~(1) Daily cover: A layer of suitable cover material shall be placed over all solid waste by the end of each working day. This layer shall be of such depth that when compacted it produces a cover layer at least six inches in depth.~~

~~(2) Intermediate cover: Any area that receives daily cover and is not expected to receive either additional solid waste or a capping system within six months shall receive intermediate cover consisting of at least six inches of suitable compacted cover material (in addition to the daily cover). Intermediate cover may be required more frequently if deemed necessary by the Department.~~

~~(3) Cover material: The soil used as daily and intermediate cover material shall be of such character that it can be compacted to minimize percolation of water through the cover, does not crack excessively when dry, and is free of putrescible materials and large objects.~~

~~(4) Alternate cover materials: The Department may approve the use of other materials as daily and intermediate cover if they can be shown to be at least as effective as the required depths of compacted soil at preventing migration of the waste and controlling flies, rodents, and fires.~~

(1) Daily cover shall be placed over all solid waste by the end of the working day or, at more frequent intervals if necessary.

(a) Daily cover shall control odors, disease vector breeding, animal attraction, blowing litter, scavenging, and reduce the potential for fires.

(b) Daily cover shall consist of six inches of earthen material or an alternate material or thickness approved by the Department in accordance with Section 5.I.2.c.(4) of these regulations.

(c) The daily cover layer which remains in place under waste shall not preclude leachate flow downwards towards the leachate collection system.

(d) Exposed daily cover which remains in place for more than two days shall be inspected at least weekly and shall be maintained as necessary to control odors, disease vector breeding, animal attraction, blowing litter, scavenging, and fires.

(2) Intermediate cover shall be placed over any area that received daily cover and did not receive additional solid waste within 180 days. Intermediate cover may be required more or less frequently if deemed necessary by the Department.

(a) Intermediate cover shall control odors, disease vector breeding, animal attraction, blowing litter, scavenging, and reduce the potential for fires. Intermediate cover shall prevent leachate from entering storm water management systems or surface waters.

(b) Intermediate cover shall consist of 12 inches of earthen material, which may include daily cover. Intermediate cover consisting of alternate materials or thickness may be used as approved by the Department in accordance with Section 5.I.2.c.(4) of these regulations.

(c) Intermediate cover placement and maintenance shall be consistent with the operations plan and leachate control design of the landfill. If the intermediate cover has been placed to reduce infiltration of water into the landfill, it must be removed or otherwise modified to allow leachate to move downwards towards the leachate collection system prior to placement of additional solid waste.

(d) Intermediate cover shall be inspected

at least weekly and shall be maintained as necessary to control odors, disease vector breeding, animal attraction, blowing litter, scavenging, fires, and to prevent leachate from entering storm water management systems or surface waters.

(3) Daily or intermediate cover shall not contain putrescible materials or large objects.

(4) Alternate cover materials. The Department may approve alternate materials or material thickness as daily and intermediate cover once the owner or operator:

(a) provides written request to the Department, demonstrating that the material and supporting operations meet the performance criteria for daily and intermediate covers specified in these regulations without presenting an increased threat to human health or the environment.

(b) prescribes in the operations plan, any unique requirements for placement, maintenance, and inspection of the alternate material and for any additional conditions, equipment, or staff required.

d. Control of nuisances and hazards

(1) Odor: The operation of the landfill shall not result in odors associated with solid waste being detected off site.

(2) Litter: The scattering of refuse and windblown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

(3) Vectors, dust, fires: The operation of the landfill shall be conducted in a manner which eliminates to the extent possible insect and rodent breeding, dust problems, and fires.

e. Bulky waste

Adequate provision shall be made for the handling and compaction of bulky wastes when such wastes are not excluded from the site. Tires in quantities greater than ten per truckload shall be sliced or shredded before being landfilled.

f. Special solid wastes

The permittee may make provision for the limited disposal of specified special solid wastes. Disposal of these wastes shall be conducted pursuant to a plan submitted to and approved by the Department.

g. Access

Access roads to the point of waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry pursuant to 7 **Del.C.** 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

h. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

i. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

j. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Substitute equipment shall be obtained when maintenance or breakdown renders normal operating equipment inoperative for more than 24 hours. All refuse moving equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

k. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

l. Procedures for excluding the receipt of hazardous waste

(a) Owners or operators of all sanitary landfill cells must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes. This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of the Department if a regulated hazardous waste or PCB waste is discovered at the facility.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of

any new or existing sanitary landfill until the end of the postclosure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, gas control systems, cap-ping systems, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 5, Subsections C, D, E, F, G, and H.

b. Monitoring, testing, or analytical data where required by Section 5, Subsections D, E, F, G, and H.

c. Volume and/or weight of wastes received quarterly.

d. Types of waste received quarterly (industrial waste, asbestoscontaining waste, and other wastes which require Department approval prior to being landfilled).

e. Location of any monofilled waste.

f. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste landfilled at the facility;

b. The estimated remaining capacity of the facility, in both tonnage and years;

c. The volumes (or tonnages) and types of specified special solid wastes landfilled at the facility;

d. Leachate quantity and quality data as required in Section 5.D.4, and specified in the Solid Waste permit;

e. Gas monitoring data as required in Section 5.E.3, and specified in the Solid Waste permit;

f. An updated estimate of the cost of closure and postclosure care of the facility, as required in Section 5.J.3.d;

g. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year;

h. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

5. Prohibitions

a. The owner or operator of a sanitary landfill shall not knowingly accept for disposal any hazardous waste.

b. Open burning of any solid waste is prohibited within the active portion of the sanitary landfill.

c. Sanitary landfills are prohibited from accepting bulk or noncontainerized liquid waste unless the waste is a household waste other than septic waste.

d. Scavenging is prohibited on any landfill site.

J. CLOSURE

1. General

The owner or operator of a sanitary landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the postclosure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new sanitary landfill must submit a conceptual closure plan for the facility at the time of initial permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

c. If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 5.J.1, it will modify the solid waste permit to allow closure to take place.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the postclosure care period of the facility.

3. Closure plan contents

Closure plans for sanitary landfills must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 5.J.1.

b. A description of the capping system required under Section 5.H. This shall include a description of the system design, the type of material to be used, and a discussion of how the capping system will achieve the objectives of Section 5.J.1, above.

c. A description of other activities necessary to satisfy the closure performance standard including, but not limited to, the removal or disposal of all nonlandfilled wastes located on site (e.g., wastes from landfill runoff collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of postclosure monitoring and maintenance throughout the postclosure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 5.I.4.

e. A plan for postclosure care of the facility

sufficient to ensure that the standards described in Section 5.J.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the postclosure period.

(3) A description of the planned uses of the property during the postclosure period.

A plan for control and/or recovery of landfill gases.

A closure construction quality assurance plan.

4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 5.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all nonlandfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations.

The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the solid waste permit, the closure plan, and all applicable regulations; or

Determine that the site is not in compliance with the solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

K. POSTCLOSURE CARE

1. General

a. The owner or operator of a sanitary landfill must continue postclosure care for 30 years after the completion of closure.

b. At any time during the postclosure care period the Department may remove one or more of the postclosure care requirements described in Section 5.K.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the postclosure care period, the Department may reduce the length of the postclosure care period or terminate postclosure care if it determines that such care is no longer necessary.

d. Prior to the time that the postclosure care period is due to expire, the Department may extend the postclosure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the postclosure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

2. Minimum postclosure care requirements

Postclosure care shall be in accordance with the post-closure permit and must consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing runon and runoff from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water

monitoring system in accordance with Section 5.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control and/or recovery system in accordance with Section 5.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 5.F.

3. Prohibitions

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended postclosure use of the site.

4. Postclosure land use

The owner or operator shall implement the postclosure land use plan approved by the Department.

5. Notice in Deed to Property

a. The owner of the property on which a sanitary landfill is located must record a notation on the deed to the facility property, or some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property:

(1) The land has been used as a solid waste disposal site, and

The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

SECTION 6: INDUSTRIAL LANDFILLS

(NOTE: This section applies to those landfills that dispose of only industrial and/or dry waste.)

A. SITING

1. Industrial landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All industrial landfill facilities shall be constructed to at least minimum design requirements as contained in Section 6.B. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. No new cell of an industrial landfill shall be located in an area such that solid waste would at any time be deposited:

a. Within the 100 year flood plain.

b. In an area that may cause or contribute to the degradation of any state or federally regulated wetlands unless the owner or operator can demonstrate to the satisfaction of the appropriate wetlands regulatory agency that:

there is no impact to any regulated wetlands on the site, or any impact will be mitigated as required.

c. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

d. So as to be in conflict with any locally adopted land use plan or zoning requirement.

e. Within the wellhead protection area of a public water supply well or well field.

In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

Within 200 feet of the facility boundary unless otherwise approved by the Department.

In an area that is environmentally unique or valuable.

B. DESIGN

1. General

Industrial landfills shall be planned and designed by professional engineers registered in Delaware. Planning and design of these facilities shall be consistent with this regulation and based on empirically derived data and state of the art technology.

2. Minimum design requirements

All industrial landfills shall be designed to include at least the following:

a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Department.

b. A liner that meets the requirements of Section 6.C.

c. Leachate collection, treatment and disposal, and monitoring systems that meet the requirements of Section 6.D.

d. A gas control system, if deemed necessary by the Department. This system shall meet the requirements of Section 6.E.

e. A surface water management system that meets the requirements of Section 6.F.

f. A ground water monitoring system that meets the requirements of Section 6.G.

g. A capping system that meets the requirements of Section 6.H.

C. LINER

1. General provisions

a. An impermeable liner shall be provided at all industrial landfills to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a composite liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (of the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table, as measured in the uppermost aquifer beneath the landfill. This 5-foot requirement may be reduced by the Department if a more stringent liner system is used.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [(Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations.

Qualifications of the construction quality assurance staff (CQA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall be submitted to the Department for review prior to their performing these duties on site.

All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. Composite liner

A composite liner must have, as a minimum:

(1) A primary (upper) liner which meets the following:

(a) Is at least 45 mils thick.

(b) Is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) Is made of synthetic material that meets minimum requirements of the National Sanitation Foundation's publication, "Standard Number 54-1993, Flexible Membrane Liners" for membrane materials covered by this standard, or of other materials of equal or better performance as approved by the Department.

(d) Is chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) Is compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) Is free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and nondispersed ingredients.

(2) A secondary (lower) liner composed of:

Compacted clay at least two feet thick with a hydraulic conductivity no greater than 1×10^{-7} cm/sec, or

An equivalent material acceptable to the Department.

b. Natural liner

Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than 1×10^{-7} cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the postclosure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

Grain size
Classification
Compaction
Specific gravity
Hydraulic conductivity
Porosity
pH
Cation exchange capacity
Pinhole test (if required)
Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test

methods described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), and IIIA (dated April 1998)], or other tests approved in writing by the Department.

(e) If onsite soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

A double liner system shall meet the following requirements:

(1) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(2) The primary (top) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 6.C.2.a.(1)(b) - (f).

(3) The secondary (bottom) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 6.C.2.a (1)(b) - (f). If natural, it must meet the requirements of Section 6.C.2.b.

(4) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than 1×10^{-2} cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department for approval before construction of the liner is permitted. The system shall be designed to operate without clogging through the postclosure care period of the facility.

The upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2feet of natural material with a permeability no greater than 10^{-7} cm/sec. Alternate liner designs may be used with prior written approval of the Department.

3. Liner construction

a. Construction/installation of composite liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and postclosure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall either be:

two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes, OR

the controlling and remaining slopes shall be designed to prevent the head on the liner, excluding sump areas, from exceeding a depth of twelve (12) inches including post settlement conditions.

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquidtight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by the National Sanitation Foundation's "Standard Number 54-1993" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in

accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

(9) The synthetic membrane must be underlain by a secondary liner as described in Section 6.C.2.a(2).

b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural nonuniformities that can increase the saturated hydraulic conductivity above 1 x 10^{-7} cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

c. Construction/installation of double liner

(1) The secondary liner shall be constructed in accordance with Section 6.C.3.b (if it is a natural liner) or Section 6.C.3.a.(1)(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 6.C.3.a.(1) and (3)(8).

D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING

1. General provisions

a. All industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with the Departmentapproved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the postclosure care period of the facility.

2. Leachate collection

a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the postclosure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

(8) The leachate collection system must be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.

b. Construction standards

(1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than 1x10^{-2} cm/sec and a minimum post-loading controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer, with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods.

Classification
Porosity
Relative density or compaction
Specific gravity
Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

c. Operational procedures

(1) The leachate collection system shall operate automatically whenever leachate is present in the sump to remove accumulated leachate.

(2) Inspections shall be conducted weekly to

verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump. The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Departmentapproved scheduled maintenance program and more frequently if required.

3. Leachate treatment and disposal

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

(1) Complete treatment onsite with or without direct discharge to surface water

(2) Pretreatment onsite with discharge to an offsite treatment works for final treatment

(3) Storage onsite with discharge to an offsite treatment works for complete treatment

(4) Direct discharge to an offsite treatment works

(5) Pretreatment on site with discharge on site.

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

(1) The tank shall be placed above ground.

(2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. Onsite complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) Onsite treatment units shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) Onsite treatment units shall be designed and constructed by staging of the units to allow for online modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the onsite treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with Delaware's Regulations Governing Hazardous Waste.

g. Recirculation of leachate may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. Recirculation will be allowed only in areas constructed with a composite liner system or a double liner system. The method of recirculation must be approved by the Department in advance and annually so long as the recirculation continues. Records of leachate collected and recirculated must be kept and reported and any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly.

b. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed according to a Departmentapproved plan which includes quality control and quality assurance procedures.

c. Samples of leachate effluent and influent shall be analyzed as specified by the Department. The parameters to be analyzed will depend on the characteristics of the waste.

d. Leachate monitoring results shall be submitted to the Department as required.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for parameters required by the Department.

E. GAS CONTROL

l. General provisions

a. Gas control systems shall be installed at

industrial landfills where the materials landfilled would be expected to produce gas through biological activity or reaction.

b. The gas control system shall be designed and constructed to:

(1) Evacuate gas from within the waste to prevent the accumulation of gas onsite or offsite,

(2) Prevent and control damage to vegetation,

(3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution.

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at the facility boundary shall not exceed 25% of the lower explosive limit.

2. Design and construction standards

a. The owner or operator of an industrial landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells and provide analytical results as required by conditions specified in the facility permit.

c. At landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

F. SURFACE WATER MANAGEMENT

1. General provision

An owner or operator of an industrial landfill shall design, construct, and maintain a surface water management system to:

a. Prevent erosion of the waste and cover,

b. Prevent the collection of standing water, and

c. Minimize surface water runoff onto and into the waste.

2. Design requirements

a. The surface water management system shall be designed to control, at a minimum, the runoff from the discharge of a 2-hour, 10-year storm.

b. The system shall be designed to include:

(1) Detention basins to provide temporary storage of the expected runoff from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent runoff generated within the active cells from moving off site of the lined areas.

3. Channeling of runoff

a. Runoff from the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Runoff from closed cells will be directed to the detention basins or other approved sedimentation control systems.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

G. GROUND WATER MONITORING AND CORRECTIVE ACTION

1. General provision

Owners or operators of all industrial landfill facilities shall maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

3. Ground water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport:

Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted

without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control.

b. Sample constituents

(1) The parameters to be analyzed shall depend upon the characteristics of the waste and shall be specified by the Department.

(2) Test methods used to determine the parameters of Section 6.G.3.b(1) shall be those described in "Test Methods for Evaluating Solid Waste, Physical/ Chemical Methods", EPA Publication Number SW-846, [Third Edition (November 1986), as amended by Updates I (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995), III (dated December 1996), and IIIA (dated April 1998)], or other tests approved in writing by the Department.

c. The Department may observe**,** and may request advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

4. Reporting

a. All ground water**,** leachate, and gas monitoring shall be conducted on a schedule to be determined by the Department and the results submitted within 60 days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

(1) Tabulation of all leachate flow and quality and ground water quality data from current and preceding years,

(2) Graphical presentation of leachate flow and quality and ground water quality data from current and preceding years as required in the operating permit,

(3) Maps showing ground water flow patterns at each time of ground water sampling,

(4) A discussion of the ground water monitoring results, and

(5) Recommendations for future monitoring.

5. Assessment of Corrective Measures

a. An assessment (reassessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, geophysical surveys and/or other measures);

(2) Reassessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);

(3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases; and

(c) Reduce, minimize or prevent the offsite migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives; and

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

6. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable) further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards (i.e. does not represent a significant threat to human health or the environment).

7. Implementation of Corrective Action

a. Based on the schedule established under Section 6.G.5.b. for initiation and remediation of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment

(such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 6.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 6.G.3 and approved by the Department.

H. CAPPING SYSTEM

1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas (if applicable), promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the postclosure care period.

b. The capping system shall be in place 180 days following final waste disposal activity.

c. The capping system shall extend beyond the edge of the lined area.

2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least six (6) inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. An impermeable layer, consisting of at least:

(1) A 30 mil geomembrane underlain by a geotextile, or

(2) 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec or depth of equivalent material having a hydraulic conductivity less than 1×10^{-7} cm/sec, such depth to be determined based on the hydraulic conductivity of 24 inches of clay at a hydraulic conductivity of 1×10^{-7} cm/sec.

Alternative materials may be used for the impermeable layer with prior written approval of the Department.

c. A final cover consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth, and

(2) Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote runoff;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

1. General

a. Industrial landfills shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground water.

b. Industrial landfills shall be maintained and operated to conform with the approved Plan of Operation.

2. Details of operation and maintenance

a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

b. Cover

Approved cover material shall be applied at a frequency and thickness specified by the Department.

c. Control of nuisances and hazards

Odor: The operation of the landfill shall not result in odors associated with solid waste being detected off site.

Litter: The scattering of refuse and windblown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

Dust, fires: The landfill shall be operated in a manner which eliminates, to the extent possible, dust problems and fires.

d. Access

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry pursuant to 7 **Del.C.** 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

e. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

f. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.

h. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing industrial landfill until the end of the postclosure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, cover, capping system, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 6, Subsections C, D, E, F, G, and H,

b. Monitoring, testing, or analytical data where required by Section 6, Subsections D, E, F, G, and H,

c. Volume and/or weight of wastes received

d. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

The volume or tonnage of solid waste landfilled at the facility,

The estimated remaining capacity of the facility, in both tonnage and years,

Leachate quantity and quality data as required in Section 6.D.4, and in the Solid Waste permit,

Gas monitoring data as required in Section 6.E.3, and in the Solid Waste permit,

An updated estimate of the cost of closure and postclosure care for the facility, as required in Section 6.J.3.d,

Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year,

All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine-readable media in a format mutually acceptable to the Department and the permittee. With approval of the Department, reports submitted on machine-readable media may be substituted for paper reports.

5. Prohibitions

a. The owner or operator of an industrial landfill shall not knowingly accept for disposal any hazardous waste.

~~a~~b. Open burning of any solid waste is prohibited within the active portion of the landfill.

~~b~~c. Scavenging is prohibited on any landfill site.

~~c~~d. No wastes other than those specified in the permit may be disposed of at the facility.

J. CLOSURE

1. General

The owner or operator of an industrial landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the postclosure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new industrial landfill must submit a conceptual closure plan for the facility at the time of initial (i.e., construction) permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

c. If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 6.J.1, it will modify the solid waste permit to allow closure to take place.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the postclosure care period of the facility.

3. Closure plan contents

The closure plan for an industrial landfill or cell must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 6.J.1.

b. A description of the capping system required under Section 6.H. This shall include a description of the system design, the type of cover to be used, and a discussion of how the capping system will achieve the objectives of Section 6.J.1.

c. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all nonlandfilled wastes located on site (e.g., wastes from landfill runoff collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of postclosure monitoring and maintenance throughout the postclosure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 6.I.4.-

e. A plan for postclosure care of the facility sufficient to ensure that the standards described in Section J.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the postclosure period.

(3) A description of the planned uses of the property during the postclosure period.

f. A plan for control and/or recovery of landfill gases, if appropriate.

A topographical map of the site showing the proposed post-closure elevation with reference to mean sea level.

A closure construction quality assurance plan.

4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 6.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all nonlandfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure of the landfill or landfill cell is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material

specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations. The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the solid waste permit, the closure plan, and all applicable regulations; or

Determine that the site is not in compliance with the solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance and corrective actions (if required).

K. POSTCLOSURE CARE

1. General

a. The owner or operator of an industrial landfill must continue postclosure care for 30 years after the completion of closure.

b. At any time during the postclosure care period the Department may remove one or more of the postclosure care requirements described in Section 6, Subsection K.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the postclosure care period, the Department may reduce the length of the postclosure care period or terminate postclosure care if it determines that such care is no longer necessary.

d. Prior to the time that the postclosure care period is due to expire, the Department may extend the postclosure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the postclosure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

2. Minimum postclosure care requirements

Postclosure care shall be in accordance with the post-closure permit and shall consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing runon and runoff from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 6.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control system in accordance with Section 6.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 6.F.

3. Prohibitions

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill which will disturb the integrity of the capping system, liner, containment system, or monitoring systems.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended postclosure use of the site.

4. Postclosure land use

The owner or operator shall implement the postclosure land use plan approved by the Department.

5. Notice in Deed to Property

a. The owner of the property on which an industrial landfill is located must record a notation on the deed to the facility property, or some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property:

(1) The land has been used as a solid waste disposal site, and

(2) The use of land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

SECTION 7: TRANSPORTERS

A. GENERAL PROVISIONS (applicable to all persons transporting solid waste in Delaware)

1. No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations. Refer to Section 4 of these Regulations, PERMIT REQUIREMENTS AND ADMINISTRATIVE PROCEDURES.

2. Any vehicle used to transport solid waste shall be so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, in accordance with 21 **Del.C.** 4371

3. The transporter will be responsible for all costs of cleaning up a discharge of solid waste from the vehicle.

4. Compliance with these regulations does not release a transporter from the obligation of complying with any other applicable laws, regulations or ordinances.

Additional waste transporter regulations may apply to transporters of special wastes, e.g. infectious waste. Refer to Section 11 of these Regulations, SPECIAL WASTES MANAGEMENT.

5. Each vehicle used to transport solid waste and required to have a transporter's permit must carry a copy of the permit in the vehicle. The permit must be presented upon request to any law enforcement officer or any representative of the Department.

~~6. Applications to renew an existing solid waste transporter permit must be received 90 days prior to the expiration date of the current permit. Refer to Section 4.A.6 of these Regulations, PERMITTING.~~

~~7~~6. A written request to transfer a permit must be received 90 days prior to the date of the proposed transfer. For permit transfer procedures, refer to Section 4.A.8 of these Regulations, PERMITTING.

7. Permitted solid waste transporters shall not use agents or subcontractors who do not hold permits for transporting solid waste.

B. PROVISIONS APPLICABLE TO TRANSPORTERS (EXCEPT FOR TRANSPORTERS OF ONLY DRY WASTE) REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

1. Applicability

Section 7.B applies to all transportation activities in Delaware except the following:

a. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

b. Transportation of household waste generated in a Delaware residence and transported by the generator of the household waste.

c. On-site transportation of solid waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the solid waste will not at any time leave the site).

d. Transportation of solid waste in a vehicle having a gross vehicle weight less than or equal of 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste or waste containing asbestos.) For information concerning infectious waste vehicle requirements, refer to Section 11 of these Regulations SPECIAL WASTES MANAGEMENT, Part 1, - Infectious Waste.

e. Transportation of dry waste only (this activity is subject to the provisions of Subsection 7.C).

f. Transportation of solid waste generated on a farm in Delaware and transported by the generator of the waste (this exclusion shall not apply to the transportation of infectious waste, petroleum-hydrocarbon contaminated soils, or waste containing asbestos).

2. Instruction and Training

All drivers of solid waste transportation vehicles, and all of the transporter's employees who may handle solid waste subject to these regulations, shall receive instruction in how to perform transportation duties in a way that ensures compliance with all applicable regulations and requirements. The instruction shall include, but not necessarily be limited to, the following:

a. Knowledge of current DOT Motor Carrier Safety Regulations.

b. Safe vehicle operations to avoid creating hazards to human health, safety, welfare, or the environment.

c. Knowledge of proper handling procedures for the type of solid waste being transported.

d. Familiarity with the approved accidental discharge containment plan.

e. Familiarity with the conditions of the solid waste transporter's permit.

It shall be the responsibility of the transporter to ensure that all drivers and other employees that may handle solid waste receive instruction as described above as frequently as necessary to maintain a level of knowledge that will ensure safe operation of the vehicle during transportation of the solid waste and proper management of an accidental discharge. A description of the driver training program shall be included with the permit application.

3. Vehicle Requirements

a. All vehicles used in the transportation of solid waste shall be operated and maintained so as to be in compliance with all state and federal regulations and not present a hazard to human health or the environment through unsafe vehicle conditions. The permittee is responsible for the operation and maintenance of all vehicles including leased vehicles operated under his/her permit.

b. All vehicles must carry safety and emergency equipment in accordance with applicable DOT regulations to ensure protection of the public and the environment.

c. All vehicles must carry spill containment materials appropriate to the type of solid waste being transported.

d. Each vehicle engaged in the transportation of solid waste must be fully enclosed or covered to prevent the discharge or release of solid waste to the environment.

e. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

f. The transporters' permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

Proof of Financial Responsibility

4. Proof of financial responsibility for sudden and accidental discharges shall be maintained by the transporter. This financial responsibility may be established by any one or a combination of the following:

a. Automobile liability insurance

(1) For-hire carriers in interstate commerce shall at all times maintain insurance coverage that is in compliance with 49 CFR Part 387 and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(2) Transporters who transport bulk liquid or bulk gaseous industrial waste, shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $750,000 with MCS-90 endorsement and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(3) Transporters who transport infectious waste in interstate commerce shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $1,000,000 with MCS-90 endorsement. Transporters who transport infectious waste in intrastate commerce shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $750,000 with MCS-90 endorsement. Infectious waste transporters shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(4) All other carriers shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $350,000 and shall submit a Certificate of Insurance demonstrating compliance with this regulation.

b. Self insurance equal to or exceeding the above automobile liability insurance limits, and approved by the Department.

c. Other proof of financial responsibility approved by the Department.

5. Management of Accidental Discharges

a. All applicants for a permit to transport solid waste shall submit to the Department a plan for the prevention, control, and cleanup of accidental discharges of the solid waste. No permit will be issued to a transporter until such a plan has been submitted to and approved by the Department.

b. A copy of the plan shall be maintained in each vehicle engaged in the transportation of solid waste.

c. All accidental discharges of solid waste from a vehicle shall be immediately and completely remediated. If the solid waste cannot be immediately and completely remediated, or if it has the potential to cause damage to the environment or to public health, the discharge shall be immediately reported to the Department. (Accidental discharges of infectious waste are regulated under Section 11, Part 1)

d. The transporter will be responsible for all costs of remediating a discharge of solid waste from the vehicle.

6. Recordkeeping

The following records must be retained by the transporter for at least three years:

a. The solid waste transporter's permit.

b. Documentation of the training provided to drivers.

c. Insurance documents sufficient to demonstrate compliance with Section 7.B.4 of these regulations.

d. Records of spills or releases of solid waste that exceed five (5) pounds or one (1) cubic foot that occur during the transportation of solid waste in Delaware, and descriptions of the remedial actions taken.

e. The transporter's annual report required under Section 7.B.7.

7. Reporting and Documentation

a. Each transporter that picks up and/or deposits solid waste in Delaware shall submit an annual report on a form provided by the Department, summarizing information from the preceding calendar year. This report shall be submitted to the Department by April 1 of the year following the year covered by the report. The information contained in the report shall include, but not be limited to, the following:

(1) Types and weights of solid waste transported in, into, or out of the state.

(2) Actual amounts of solid waste by weight and type delivered to each destination when transported to or from facilities equipped with truck scales. Amounts may be estimated only when truck scales are not available during the waste transportation process.

b. Any vehicle transporting solid waste through Delaware shall carry documentation indicating the state in which the solid waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

~~8. Sub-leases and sub-contractors~~

~~Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions:~~

~~a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.~~

~~b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.~~

~~c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.~~

~~d. Subcontractors shall carry a copy of the transporter permit that they are authorized to transport under, and a copy of the completed subcontractor form as prescribed by the Department, in the vehicle and must present proof to any law enforcement officer or representative of the Department upon request.~~

~~e. Transporters with denied Delaware Solid Waste Transporter Permits may not be listed as a subcontractor or sub-lease for a period of one year after their denial date.~~

C. PROVISIONS APPLICABLE TO TRANSPORTERS OF ONLY DRY WASTE REQUIRED TO HAVE A SOLID WASTE TRANSPORTERS PERMIT

1. General

No transporter granted a permit to transport only dry waste under the requirements of this Subsection (7.C.) shall transport any solid waste other than dry waste, as defined in these Regulations, without meeting the additional requirements for transporting such other solid waste contained in these Regulations.

2. Applicability

The remainder of this Subsection (7.C) applies to all transportation activities involving only dry waste in Delaware except the following:

a. Transportation of dry waste by a solid waste transporter permittee having a permit issued under Subsection 7.B of these Regulations.

b. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

c. Transportation of dry waste generated in a Delaware residence and transported by the generator of the dry waste.

d. On-site transportation of dry waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the dry waste will not at any time leave the site).

e. Transportation of dry waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste or of waste containing asbestos.) For information concerning infectious waste vehicle requirements, refer to Section 11 of these Regulations, SPECIAL WASTES MANAGEMENT, Part 1 – Infectious Waste.

3. Vehicle Requirements

a. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

b. The transporter's permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

4. Proof of Financial Responsibility

Proof of financial responsibility for sudden and accidental discharges shall be maintained by the transporter. This financial responsibility may be established by any one or a combination of the following:

a. Automobile liability insurance

(1) For-hire carriers in interstate commerce shall at all times maintain insurance coverage that is in compliance with 49 CFR Part 387 and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(2) Transporters who transport bulk liquid or bulk gaseous industrial waste, shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $750,000 with MCS-90 endorsement and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(3) Transporters who transport infectious waste in interstate commerce shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $1,000,000 with MCS-90 endorsement. Transporters who transport infectious waste in intrastate commerce shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $750,000 with MCS-90 endorsement. Infectious waste transporters shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(4) All other carriers shall at all times maintain commercial automobile liability insurance with a combined single limit of at least $350,000 and shall submit a Certificate of Insurance demonstrating compliance with this regulation.

b. Self insurance equal to or exceeding the above automobile liability insurance limits, and approved by the Department.

c. Other proof of financial responsibility approved by the Department.

5. Recordkeeping

The following records must be retained by the transporter for at least three years:

a. The dry waste transporter's permit.

b. The transporter's Annual Report required under Section 7.C.5.

6. Reporting and Documentation

a. Each transporter that picks up and/or deposits dry waste in Delaware shall submit an annual report on a form provided by the Department, summarizing information from the preceding calendar year. This report shall be submitted to the Department by April 1 of the following year covered by the report. The information contained in the report shall include, but not be limited to, the following:

(1) The weights of dry waste transported in, into, or out of the state during the year.

(2) Actual amounts of solid waste by weight and type delivered to each destination when transported to or from facilities equipped with truck scales. Amounts may be estimated only when truck scales are not available during the waste transportation process.

b. Any vehicle transporting dry waste through Delaware shall carry documentation indicating the state in which the dry waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

~~7. Sub-lease and sub-contractors~~

~~Sub-leased and sub-contracted vehicles may be included in a transporter permit, under the following conditions:~~

~~a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.~~

~~b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.~~

~~c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.~~

~~d. Subcontractors shall carry a copy of the transporter permit that they are authorized to transport under, and a copy of the completed subcontractor form as prescribed by the Department, and must present proof to any law enforcement officer or representative of the Department upon request.~~

~~e. Transporters with denied Delaware Solid Waste Transporter Permits may not be listed as a subcontractor or sub-lease for a period of one year after their denial date.~~

SECTION 8: RESERVED

SECTION 9: RESOURCE RECOVERY FACILITIES

A. APPLICABILITY

This section applies to:

1. Materials recovery facilities, and
2. Thermal recovery facilities.

B. SITING

1. Resource recovery facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. No new resource recovery facility shall be located in an area such that solid waste would at any time be handled:

a. Within the 100 year flood plain.

b. Within any state or federal wetland.

c. Within 1000 feet of any state or federal wildlife refuge, wildlife area, or park.

d. So as to be in conflict with any locally adopted land use plan or zoning requirement.

In addition, any facility that processes municipal solid waste shall not be located within 10,000 feet of any airport currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by pistontype aircraft, unless a waiver is granted by the Federal Aviation Administration.

C. DESIGN AND CONSTRUCTION

1. Applicants wishing to construct and operate resource recovery facilities will be encouraged to design the facilities so that they are capable of removing and recycling those materials for which recycling is currently technically and economically feasible. The design should allow for future alteration or upgrading to accomplish removal of additional materials as recycling of these materials becomes feasible.

2. The plans and specifications for a proposed resource recovery facility shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the Solid Waste Management Facility permit application.

3. Construction and installation activities for new facilities shall be carried out in accordance with a thirdparty quality assurance plan approved by the Department. Expansions or alterations of existing facilities shall be carried out in accordance with an approved third-party quality assurance plan if deemed necessary by the Department.

4. Minimum design requirements

a. All new resource recovery facilities shall be designed to include the following features, as a minimum:

(1) A setback area with appropriate screening.

(2) A means to detect explosion potential and

equipment designed to minimize the impact of explosion (if the solid waste to be handled and the equipment to be used have the potential of causing explosion).

(3) A means for maintaining quality control of recovered materials.

(4) Storage capacity for a minimum of three days of storage (at maximum anticipated loading rates) of incoming solid waste, facility process solid waste residues and effluents, and recovered materials. The storage areas must be within enclosed structures if deemed necessary by the Department.

(5) Tipping floors, sorting pads, and solid waste storage areas constructed of material capable of withstanding heavy vehicle usage and of reducing and controlling runoff.

(6) A completely enclosed unloading area, if deemed necessary by the Department.

(7) Adequate floor drains graded to facilitate washdown and to prevent standing water. Drains shall discharge to a sanitary sewer system, holding tank, or appropriate treatment facility.

(8) Surface water and erosion controls.

(9) An auxiliary power system sized to enable emergency shut down of the facility to occur without causing irreparable damage to the equipment.

(10) Control mechanisms to minimize and contain accidental spillage of reagents, lubricants, or other liquids used as well as residues generated.

(11) A fire detection and protection system capable of detecting, controlling, and extinguishing any fires that may occur as a result of facility operation.

(12) A fence or other security system that will prevent access to the site by unauthorized persons.

(13) A means for weighing or measuring all incoming solid waste, all recyclable materials recovered from the waste, and all residues generated at the facility.

D. OPERATION AND MAINTENANCE STANDARDS

1. All new and existing resource recovery facilities shall comply with this section.

General

a. Facilities shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. All facilities shall be operated and maintained to conform with the approved Plan of Operation submitted at the time of permit application and approved by the Department.

2. Details of operation and maintenance

a. Unloading of solid waste

Unloading of solid waste shall take place only at clearly marked unloading areas.

b. Storage and handling

(1) External storage of solid waste containing garbage is prohibited. No solid waste shall be stored in such a manner that the storage area or the solid waste becomes a nuisance or endangers human health or the environment.

(2) All solid waste passing through the facility must ultimately be recycled or be disposed of at a solid waste facility authorized to accept that type of solid waste.

(3) Solid waste delivered to the facility shall be processed within the time limit specified by the Department.

(4) Nonputrescible recyclable materials may be stored for up to 30 days. The storage period may be increased, with written approval of the Department, if all of the following conditions are met:

(a) there is a demonstrated need to do so (e.g., a market agreement with terms of receipt based on greater than 30 day intervals or volumes that may take longer than 30 days to acquire);

(b) there is sufficient Department approved storage area;

(c) an inventory methodology is used to ensure that the recyclables do not remain on the site for longer than the specified time period; and

(d) the inventory methodology is provided to and approved by the Department before storage begins.

c. Control of nuisances and hazards

Litter: The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site.

Air Pollution: The operation of the facility shall comply with 7 **Del.C.** Ch. 60, and with the Regulations Governing the Control of Air Pollution.

Vectors: The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

Fire: Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

d. Access

Access roads to the point of solid waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons

authorized to deliver solid waste to the site. This section shall not be construed to limit right of pursuant to 7 **Del.C.** 6024.

e. Personnel

Sufficient types and numbers of trained personnel shall be available at the site to insure capability for operation in accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with the requirements and operational procedures of the facility and is experienced in matters of solid waste management.

All thermal recovery facilities shall be operated under the direct supervision of an individual who has successfully completed a training course on use of the specific equipment installed at the facility.

f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All solid waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

All processing equipment shall be operated by persons thoroughly trained in the proper operation of the equipment and shall be maintained in good working order.

h. Disposal of process residues and of solid waste that cannot be processed by the facility

(1) Unless specified otherwise in writing by the Department, all residues generated by the operation of a facility shall, within three days of generation, be disposed of, used, or treated in a manner that is consistent with state and federal regulations.

(2) Unless specified otherwise in writing by the Department, all solid waste that is delivered to the facility but that cannot be processed at the facility shall, within three days of receipt, be removed from the facility for disposal, use, or treatment in a manner that is consistent with state and federal regulations.

3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. Types and weight or volume of solid waste received.

b. Weight or volume of each material recycled or marketed.

c. A record of the commercial solid waste haulers (company name, address, and telephone number) using the facility, and the type and weight or volume of solid waste delivered by each hauler to the facility each day.

d. Process monitoring data.

e. Characterization testing of recyclable materials.

f. Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.

g. Characterization testing of process residues to determine the quality for possible marketing or BTU value.

h. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

i. Documentation of training provided to employees.

j. Fire and safety inspections.

k. Major equipment maintenance.

l. Any additional records specified by the Department.

4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form prescribed by the Department and shall describe and summarize all solid waste processing, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

(1) Types and weight or volume of solid waste received.

(2) Weight or volume of each material recycled or marketed, and identification of the markets.

(3) Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.

(4) A complete list of commercial haulers that delivered solid waste to the facility during the year.

(5) A discussion of the feasibility of recycling materials that are currently being received at the facility but are not being recycled.

(6) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.

(7) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

(8) Results of characterization testing of recyclable materials and process residues.

(9) Any additional information specified by the Department.

b. The permittee shall immediately notify the Department if any of the following occurs:

(1) A shut down that results in solid waste

being diverted from the facility.

(2) A fire.

(3) A spill or nonpermitted release.

E. CLOSURE

1. General

When a resource recovery facility ceases accepting solid waste, all of the solid waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

2. Required submittals; notification

a. An owner or operator of a resource recovery facility must submit a conceptual closure plan at the time of initial application for a Solid Waste Management Facility Permit.

b. At least 180 days prior to the projected date when solid waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section ~~4.D.1.b~~ 4.D.3. Closure activities shall not commence until the Department has:

given public notice regarding the closure activity and the opportunity for a public hearing as provided in 7 **Del.C.** Ch. 60,

approved in writing an updated closure plan and closure schedule**.**

For additional information on the public notice procedure see section 4.A.2 of these regulations.

c. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

3. Closure plan contents

The closure plan for a resource recovery facility must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the facility, including provisions that will be made for the proper disposal of all solid waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 9.D.4.

c. A description of the planned postclosure use of the property.

4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within one year after the date on which the Department issued the approved closure plan and closure schedule.

c. When closure is completed, the owner or operator must submit to the Department certification by a Professional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan.

d. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

e. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

SECTION 10: TRANSFER STATIONS

A. GENERAL PROVISIONS

1. Applicability

a. This section applies to all solid waste transfer stations in Delaware. Additional requirements may apply to transfer stations handling special solid wastes, such as infectious waste.

b. Compliance with these regulations does not release the owner or operator of a transfer station from the obligation of complying with any other applicable laws, regulations, or ordinances.

2. Exclusions

The following types of facilities are not considered to be transfer stations:

a. Facilities that accept only source separated materials for the purpose of recycling those materials.

b. Facilitles permitted as ~~M~~materials recovery facilities.

c. Small load collection areas located at permitted landfill sites.

d. Individual dumpsters used for waste generated on site (e.g., at shopping centers, apartment complexes or commercial establishments).

e. Compaction equipment being used exclusively for solid waste generated on site (e.g., in office or apartment complexes, industrial facilities, or shopping centers).

f. Temporary debris collection and reduction sites established by Delaware Emergency Management Authority (DEMA) as the result of a natural or man-made disaster event. The exclusion shall apply provided the sites are established in accordance with the applicable DEMA Debris Management Plan, and meet the substantive requirements of this section. The exclusion shall last no longer than ninety (90) days from the start of accumulation of wastes at the temporary debris collection and reduction site. A written record shall be required to document accumulation of debris at each site.

B. SITING

1. Transfer stations shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Transfer stations shall be located adjacent to access

roads capable of withstanding anticipated load limits.

3. No new transfer station shall be located in an area such that solid waste would at any time be handled:

a. Within the 100-year flood plain.

b. Within any state or federal wetland.

c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

C. DESIGN

1. General

The plans and specifications for a proposed transfer station shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the transfer station permit application.

2. Minimum design requirements

All transfer stations shall be designed to include at least the following:

a. A leachate collection and disposal system as described in Section 10.D.

b. A means for weighing or measuring all solid waste handled at the facility.

c. Tipping and loading areas contained within structures capable of preventing the development of nuisance conditions (e.g., odors, litter, dust, rodents, insects) if these areas will be within 300 feet of a commercial, institutional, or residential structure that is designed for human occupancy and that is in existence at the time of initial permit application. If tipping and loading areas will not be within 300 feet of a structure designed for human occupancy, the permittee shall evaluate the impact to the surrounding area of handling the solid waste in a nonenclosed facility. In addition, the permittee shall evaluate the need for exhaust systems in enclosed areas and shall install such systems if necessary for the protection of human health.

d. A means to prevent vehicles from backing into the pit while unloading.

e. Onsite roads designed to accommodate projected traffic flow in a safe and efficient manner.

f. Separate access for passenger vehicles, if both commercial and passenger vehicles are using the facility.

g. A fence or other security system that will prevent access to the site by unauthorized persons.

D. LEACHATE COLLECTION AND DISPOSAL

1. All transfer stations shall be designed and constructed to include a leachate collection and disposal system that will prevent leachate (including wastewater generated during normal operation such as washout and cleaning of equipment, trucks, and floors) from contaminating the soil, surface water, or ground water.

2. The leachate collection and disposal system must be approved in advance by the Department and shall consist of one, or a combination, of the following:

a. Tipping, loading, and unloading areas constructed of impervious material and equipped with drains connected to either:

(1) a sanitary sewer system, or

(2) a corrosionresistant holding tank.

If the tipping, loading, and unloading areas are not enclosed, the piping and drains to the sewer system or holding tank shall be sized to handle, at a minimum, the runoff that would result from a 2-hour 10-year storm.

b. Containers and compaction units constructed of durable impervious material and equipped with covers that will minimize the entrance of precipitation.

Alternate designs may be used with prior written approval of the Department if the applicant can show that they will prevent leachate from contaminating the soil, surface water, and ground water.

E. OPERATION AND MAINTENANCE STANDARDS

1. General

a. Transfer stations shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. Transfer stations shall be maintained and operated to conform with the Plan of Operation submitted at the time of permit application and approved by the Department.

2. Details of operation and maintenance

a. Storage of solid waste

Solid waste shall not remain at the transfer station for more than 72 hours without the written approval of the Department. Any solid waste that is to be kept at the site overnight shall be stored in an impervious enclosed structure.

b. Disposition of solid waste leaving the facility

All solid waste accepted at the transfer station must, upon leaving the transfer station, be delivered to a processing or disposal facility authorized by the Department (or by the appropriate environmental agency, if outside of Delaware) to accept that type of waste.

c. Control of nuisances and hazards

Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site if accumulations of litter along the approach roads are clearly the result of the operation of the transfer station.

Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

Air Pollution

The operation of the transfer station shall comply with 7 **Del.C.** Ch. 60 and the Regulations Governing the Control of Air Pollution.

Fire

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

d. Access

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry pursuant to 7 **Del.C.** 6024.

e. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. A record of the solid waste commercial haulers (company name, address, and telephone number) using the facility and the type and weight or volume of solid waste delivered by each hauler to the transfer station each day.

b. A record of the type and weight or volume of solid waste delivered from the transfer station to its final destination each day.

c. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

d. Fire and safety inspections.

e. Major equipment maintenance.

f. Destination of the solid waste.

4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The due date for this annual report will be specified in the facility's permit. The report shall be on a form acceptable to the Department and shall describe and summarize all environmental monitoring and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

(1) Type and weight or volume of waste received.

(2) A complete list of commercial haulers that hauled waste to or from the facility during the year covered by the report.

(3) Destination of the solid waste and the type and weight or volume of waste delivered to the destination.

(4) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.

(5) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

(6) An updated estimate of the cost of closing the facility.

(7) Any additional information specified by the Department.

b. The owner or operator shall notify the Department immediately if either of the following occurs:

(1) A fire that requires the services of a fire protection agency.

(2) A spill or uncontrolled release that may endanger human health or the environment.

5. Prohibitions

a. No liquids, other than those used to disinfect, to suppress dust, or to absorb or cover odors from the solid waste, shall be added to the solid waste.

b. Open burning is prohibited on any transfer station site.

c. Scavenging is prohibited at any transfer station.

F. CESSATION AND CLOSURE

1. General

When a transfer station ceases accepting solid waste, all of the waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

2. Required submittals; notification

a. An owner or operator of a new transfer station must submit a conceptual closure plan at the time of initial permit application. Any person desiring to close a transfer station shall, at least 90 days before the date on which the facility will stop accepting waste, submit the following to the

Department:

(1) Written notification of intent to close

(2) Updated closure plan, and

(3) Closure schedule.

b. At least ~~60~~ 90 days prior to the date when waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section ~~4.E.1.b~~ 10.F.2.a. Closure activities shall not commence until the Department has:

(1) certified in writing that the closure plan and schedule are complete in accordance with the requirements of these regulations;

(2) given public notice regarding the closure activity and the opportunity for a public hearing as provided in 7 **Del.C.** Ch. 60, approved in writing an updated closure plan and closure schedule.-

(3) For additional information on the public notice procedure see section 4.A.2 of these regulations.

(4) if a hearing has been requested, considered any comments received concerning the closure plan;

(5) modified the permit to allow closure to take place.

For additional information on the public notice procedure see section 4.A.2 of these regulations.

c. A copy of the approved closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

3. Closure plan contents

The closure plan for a transfer station must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the transfer station, including provisions that will be made for the proper disposal of all waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 10.E.4.a (6).

c. A plan for postclosure care of the facility if such care would be necessary to protect human health and the environment.

d. A description of the planned postclosure use of the property.

(e) A copy of the approved closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan and the modified permit.

b. Closure must be complete within six months after the date on which the Department issued the approved closure plan and closure schedule.

c. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

d. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

SECTION 11: SPECIAL WASTES MANAGEMENT

PART 1 Infectious Waste

A. GENERAL PROVISIONS

1. All generators of infectious waste shall obtain an Infectious Waste Identification Number ~~by registering with the Department~~ for each site or location that generates infectious waste. When more than one person (i.e., physicians with separate medical practices) is located in the same building, each individual business entity shall be considered a separate generator for purpose of these regulations. Registration shall be submitted on a form provided by the Department.

2. No person shall engage in the construction, operation, material alteration, or closure of a facility to be used in the treatment, storage, or disposal of infectious wastes, unless specifically exempted from the regulations within Section 2.C., without first having obtained the proper permits from the Department.

3. All infectious waste must be packaged in accordance with these regulations.

B. SITING

1. Infectious waste treatment facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Infectious waste treatment facilities shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new infectious waste treatment facility shall be located in an area such that solid waste would at any time be handled:

a. Within the 100 year flood plain.

b. Within any state or federal wetland.

c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

C. DEFINITIONS

In addition to the definitions in Section 3 of these regulations, ~~T~~the following definitions are specific to the management of infectious waste as used in this part. ~~For general definitions relating to other types of solid waste and~~

~~the management of solid waste, refer to Section 3 of these regulations.~~

"**6-LOG REDUCTION**" means a 6 decade reduction or a millionth (.000001) survival probability in a microbial population, i.e., a 99.9999% reduction.

"**ATCC**" means American Type Culture Collection.

"**AUTOCLAVE TAPE**" means tape that demonstrates an evidentiary visible physical change when subjected to temperatures that will provide evidence of sterilization of materials during treatment in an autoclave or similar device.

"**CFU**" means colony-forming unit.

"**CHALLENGE LOADS**" means an infectious waste load that has been constructed by composition (i.e., organic content, moisture content, or other physical or chemical composition).

"**CLASS 4 ETIOLOGIC AGENT**" means a pathogenic agent that is extremely hazardous to laboratory personnel or that may cause serious epidemic disease. Class 4 etiologic agents include the following viral agents:

- Alastrim, Smallpox, Monkey pox, and Whitepox (when used for transmission or animal inoculation experiments).
- Hemorrhagic fever agents (including Crimean hemorrhagic fever (Congo), Junin, and Machupo viruses, and others not yet defined).
- Herpesvirus simiae (Monkey B virus)
- Lassa virus
- Marburg virus
- Tick-borne encephalitis virus complex (including Absettarov, Hanzalova, HYPR, Kumlinge, Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever and Central European encephalitis viruses)
- Venezuelan equine encephalitis virus (epidemic strains, when used for transmission or animal inoculation experiments)
- Yellow fever virus (wild, when used for transmission or animal inoculation experiments)

"**CONTAINER**" means any portable enclosure in which a material is stored, managed or transported.

"**CONTAMINATION**" means the degradation of naturally occurring water, air or soil quality either directly or indirectly as a result of the transfer of diseased organisms, blood or other matter that may contain disease organisms from one material or object to another.

"**ETIOLOGIC AGENTS**": see "INFECTIOUS SUBSTANCE"

"**GENERATOR**" means ~~hospital, in or out patient clinics, laboratories, medical offices, dental offices, nursing homes, and inpatient residential facilities serving persons with diseases which may be transmitted through contact with infectious waste as well as veterinary facilities and research laboratories operating within the State of Delaware.~~ any person whose act or process produces infectious waste as defined in these regulations, or whose act first causes an infectious waste to become subject to regulation. The universe of infectious waste generators includes, but is not limited to, hospitals, physicians' offices, dental offices, veterinary practices, funeral homes, research or medical laboratories, and nursing homes.

"**INCINERATOR**" means any enclosed device used to destroy waste material by using controlled flame combustion.

"**INDICATOR MICROORGANISM SPORES**" means those microorganism spores listed in Appendix A, Table B of Section 11, Part 1.

"**INFECTIOUS SUBSTANCE**" (formerly called "ETIOLOGIC AGENTS") means a viable microorganism, or its toxin, which causes or may cause disease in humans or animals, and includes any agent that causes or may cause severe, disabling, or fatal disease. The terms *infectious substance* and *etiologic agent* are synonymous.

"**INFECTIOUS WASTE**" means those solid wastes which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. Types of solid wastes designated as infectious include but are not necessarily limited to the following:

1. **Biological wastes:**

a. **Biological liquid wastes** means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids including liquid wastes from renal dialysis.

b. **Pathological wastes** means all human tissues and anatomical remains, including human fetal remains, which emanate from surgery, obstetrical procedures, autopsy, and laboratory procedures.

c. **Cultures and stocks of etiologic agents and associated biological wastes** means, but is not limited to, specimen cultures, cultures and stocks of infectious substances, and wastes from production of biologicals and serums.

d. **Laboratory wastes** means those wastes which have come in contact with pathogenic organisms or blood or body fluids. Such wastes include, but are not limited to, disposable materials, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures which have not been sterilized or rendered noninfectious; or laboratory wastes, including cultures of infectious substances, which pose a substantial threat to health due to their volume and virulence.

e. **Animal tissue, bedding and other waste** from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or

other waste may act as a vehicle of transmission to humans.

f. **Human dialysis waste materials** including blood lines and dialysate membranes.

2. **Sharps** means any discarded article that may cause puncture or cuts. Such wastes include, but are not limited to, needles, intravenous (IV) tubing with needles attached, scalpel blades, glassware and syringes that have been removed from their original sterile containers. For the purpose of these regulations, only sharps from human or animal health care facilities, human or animal research facilities or human or animal pharmaceutical manufacturing facilities shall be regulated as sharps.

3. **Discarded Biologicals** means serums and vaccines produced by pharmaceutical companies for human or veterinary use. These products may be discarded because of a bad manufacturing lot (i.e., offspecification material that does not pass quality control or that is recalled), outdating or removal of the product from the market or other reasons. Because of the possible presence of infectious substances in these products, the discarded material constitutes infectious waste.

4. **Isolation Wastes** means discarded materials contaminated with blood, excretions, exudates and/or secretions from humans who are isolated to protect others from highly communicable diseases (those diseases identified as caused by Class 4 etiologic agents).

5. **Other infectious wastes** means any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any infectious waste.

"**LARGE INCINERATOR**" means an incinerator which has a capacity of greater than 1000 pounds per hour.

"**LARGE QUANTITY GENERATOR"** means generators of infectious waste who generate 50 pounds or more of infectious waste per month.

"**LOG KILL**" (L) means the difference between the logarithms of viable test microorganisms or indicator microorganism spores before and after treatment.

"**MANIFEST**" means a tracking document designed to record the movement of solid waste from the generator through its trip with a transporter to an approved offsite treatment or disposal facility.

"**NONINFECTIOUS**" means a state in which potentially harmful microorganisms are absent, free of pathogens.

"**RED BAG**" means an impermeable, 3-mil polyethylene bag or equivalent, red in color, for the collection, storage, and transport of infectious or regulated medical waste, which meets the following minimum performance requirements:

1. Appearance: opaque, red. Each bag must carry the words "INFECTIOUS WASTE" or "REGULATED MEDICAL WASTE" or "BIOHAZARD" in one-inch (minimum) letters and carry the Biological Hazard Symbol.

2. Dart Impact, F_{50}: 100 grams minimum.

3. Elmendorf Tear: 380 grams minimum (any direction).

4. Heavy metals: 100 ppm maximum combined total.

"**REGULATED MEDICAL WASTE**" means "INFECTIOUS WASTE".

"**SHIPMENT**" means that waste which is conveyed by a transporter between a generator and a designated facility or a subsequent transporter.

"**SMALL INCINERATOR**" means an incinerator which has a capacity equal to or less than 1000 pounds per hour.

"**SMALL QUANTITY GENERATOR**" means ~~a private practice physician, dentist, veterinarian and any other generator of infectious waste in which three or fewer professionals are in the practice and generates less than 50 pounds per month; or a generator who can demonstrate that their facility generates less than 50 pounds per month of infectious waste~~ generators of infectious waste who generate less than 50 pounds of infectious waste per month.

"**STORAGE AREA**" means an area designated for the holding of waste for a temporary period, at the end of which time the waste is treated, disposed of, or stored elsewhere.

"**TEST MICROORGANISMS**" means those microorganisms listed in Appendix A, Table B of Section 11, Part 1.

D. EXEMPTIONS

1. The following solid wastes are not to be managed as infectious wastes:

1. Soiled diapers and feminine hygiene items produced by a person not known to have an infectious disease;

2. Wastes contaminated only with organisms which are not pathogenic to humans, and which are managed in accordance with all applicable regulations of the U.S. Department of Agriculture and the Delaware Department of Agriculture and Consumer Services and all other regulations governing this type of waste stream;

3. Food wastes which are pathogenic to humans only through direct ingestion;

4. Any infectious waste contaminated by, coincinerated with, or mixed with hazardous, radioactive or toxic waste becomes a hazardous, radioactive or toxic waste and shall then be managed under the appropriate regulations governing those waste types (7 **Del.C.** Ch. 63, 7 **Del.C.** Ch. 80 and any applicable federal regulations);

5. Waste consisting of human anatomical remains, including human fetal remains, managed by a licensed funeral director;

6. Bed linen, instruments, equipment and other reusable items are not wastes until they are discarded. This part and these regulations apply only to wastes. The regulations do not include the sterilization for disinfection of

items that are reused for their original purpose. Therefore, the method of sterilization or disinfection of items prior to reuse is not limited. When reusable items are no longer serviceable and are discarded, they become wastes and subject to these regulations at that time and must be sterilized by steam, incinerated, or otherwise rendered noninfectious;

7. Waste generated by Delaware households;

8. Ash from incineration of infectious waste once the incineration process has been completed;

9. Residues from treatment and destruction processes of infectious waste once the waste has been both treated and destroyed;

10. Samples of infectious waste transported off-site by EPA or State-designated enforcement personnel for enforcement purposes are excepted from the requirements of this part during the enforcement proceeding; and

11. Biological liquid wastes which are directly discharged into a permitted wastewater treatment system.

12. Generators of infectious waste who produce less than 50 pounds per month are considered to be Small Quantity Generators.

2. It is the responsibility of the Small Quantity Generator to arrange for proper waste disposal. A Small Quantity Generator shall contract the services of a permitted transporter of infectious waste, or render the waste non-infectious and non-recognizable using a process or equipment approved by the Department, prior to disposal.

3. Requirements to submit manifest tracking documents shall apply to either the Small Quantity Generator or the transporter contracted by the generator for disposal of the infectious waste.

4. Small Quantity Generators are exempt from the storage time requirements in Section H.5.c of this part as long as not more than 50 pounds of infectious waste are stored and so long as storage is protective of human health and the environment.

5. Small Quantity Generators are exempt from the requirement to file an annual report to the Department. However, they are responsible for maintaining records of infectious waste disposal for a period of at least three years. Documentation shall include:

a. A description of how the waste was rendered non-infectious and non-recognizable, and

b. Copies of receipts or manifests for wastes managed by a permitted transporter of infectious waste.

F. PERMIT REQUIREMENTS

1. All application requirements found in Section 4.A.2 through 4.A.11 shall be performed unless specifically exempted within this part of the regulations.

2. Any person required to have a permit for activities that will occur in the management of infectious waste shall apply for a permit in accordance with Section 4.F. of these regulations and the appropriate sections of the Delaware Regulations Governing the Control of Air Pollution. No activity shall occur prior to receipt of all permits required by the Department.

3. A new or revised operation plan for treatment, storage and/or disposal of infectious waste shall be submitted to the Department whenever there is an increase of more than 15 percent over a three calendar month average in the maximum quantity of infectious waste receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

G. PROHIBITIONS

Infectious waste may not be disposed at a sanitary landfill unless the waste has been rendered noninfectious and nonrecognizable. (In the case of extracted teeth, sterilization followed by landfilling would be acceptable).

Compactors, grinders or similar devices may not be used by a generator to reduce the volume of infectious waste until after the waste has been rendered noninfectious, or unless the device is part of an approved treatment process which renders the waste noninfectious.

Infectious wastes shall not be sent to a recycling facility.

Waste consisting of human anatomical remains, including human fetal remains, may not be disposed of at sanitary landfills. The remains must be incinerated, cremated or interred in accordance with 24 **Del.C.** Ch. 31.

Transchutes shall not be used to transfer infectious waste between locations where it is contained.

H. PACKAGING, LABELING, AND STORAGE REQUIREMENTS

1. Responsibility for packaging and labeling.

The generator of infectious waste shall not submit for transport, storage, treatment or disposal any waste which is not packaged in accord with this part. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part. Contractors or other agents may provide services to the generator, including packaging and labeling of infectious waste; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the infectious waste as required by these regulations.

2. Packaging Requirements

All infectious waste shall be packaged as follows:

a. Infectious wastes, other than sharps:

(1) Waste shall be contained in two (one bag inside the other) RED BAGS. The bags shall be individually tied or sealed. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part.

(2) All bags containing infectious waste shall be red in color. Waste contained in red bags shall be considered infectious waste and managed as infectious waste.

(3) Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

(4) In addition to the plastic bag containers described in this section, all infectious wastes must be enclosed in a double-walled corrugated fiberboard box or equivalent rigid container before it is transported beyond the site of generation.

b. Sharps

Sharps shall be contained in leakproof, rigid, punctureresistant containers that are tightly lidded. As soon as the first sharp is placed in an empty container, the container shall be labeled with the word "SHARPS", and the Biological Hazard Symbol.

3. Labeling requirements.

All infectious waste shall be labeled immediately after packaging. A label shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the labels, and the labels shall be at least three inches by five inches in size.

a. The following information shall be included on label one:

(1) The name, address and business telephone number of the generator,

(2) "Infectious" or "Regulated Medical Waste" in large print,

(3) "Pathological Waste," if pathological waste is included in the contents, and

(4) The name, address and business telephone number of the hauler or other persons to whose control the infectious waste will be transferred.

b. The following shall be included on label two: the Biological Hazard Symbol. The label shall be not less than three by five inches.

4. Infectious substances

All infectious substances that are transported must be packaged as described in 49 CFR 173.196, October 1, 1996, Edition, even when that transport is wholly within the boundaries of the State.

5. Storage of infectious waste

a. Infectious waste shall be contained in a manner that:

(1) Affords protection from vectors, rain and wind,

(2) Prevents the spread of infectious agents,

(3) Does not provide a breeding place or food source for insects or rodents, and

(4) Prevents the leakage of waste from the storage bag or container.

b. Infectious waste shall be placed in separate containers from other waste at the point of origin in the producing facility.

c. Infectious waste may not be stored at the waste producing facility for more than the following periods of time:

(1) Up to fourteen days at room temperature (18 to 28 degrees Celsius, 65 to 82 degrees Fahrenheit) or up to 45 days in a refrigerator (2 to 7 degrees Celsius, 36 to 44 degrees Fahrenheit) for all types of infectious waste, so long as it does not produce conditions that are offensive or harmful to facility personnel or the public welfare.

(2) Ninety days in a freezer (20 to 18 degrees Celsius, 4 to 1 degrees Fahrenheit) not used for food or patient related items.

Exemption. Sharps which are disposed in a container specifically designed for sharps and which is sealed so as to prevent leaks when it is full, are exempt from the time limit on storage.

A container used for the storage of infectious waste may not be reused unless one of the following applies:

(1) It has been decontaminated utilizing a Department-approved decontamination procedure; or

(2) The surface of the container has been protected from direct contact with infectious waste.

e. Reusable containers for infectious waste shall be thoroughly washed and decontaminated by a method approved by the Department of Health and Social Services or the Department each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste. Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

(1) All parts of the container shall come in contact with hot water of at least 82 degrees C (180 degrees F) for a minimum of 15 seconds.

(2) All parts of the container shall come in contact with chemical sanitizer by rinsing with or immersion in one of the following for a minimum of 3 minutes:

(a) Hypochlorite solution (500 ppm available chlorine),

(b) Phenolic solution (500 ppm active agent),

(c) Iodophor solution (100 ppm available iodine), or

(d) Quaternary ammonium solution (400 ppm active agent).

(3) Reusable pails, drums, dumpsters or bins used for containment of infectious waste shall not be used for containment of waste to be disposed of as noninfectious waste or for other purposes except after being decontaminated by procedures as described in this

paragraph.

f. Containment of infectious waste shall be in an area separate from other wastes. Areas used for the containment of infectious waste shall be secured so as to deny access to unauthorized persons and shall be marked with prominent warning signs and the biohazard symbol on, or adjacent to, the exterior of entry doors, gates or lids. Wording of warning signs shall be in English, "CAUTION - INFECTIOUS WASTE STORAGE AREA - UNAUTHORIZED PERSONS KEEP OUT". Warning signs shall be readily legible during daylight from a distance of at least 25 feet.

I. MANAGEMENT OF SPILLS

Spill containment and cleanup kit. All infectious waste management facilities are required to keep a small containment and cleanup kit within one hundred feet of any area where infectious wastes are managed. The facility shall maintain and implement a plan that provides the means of decontamination of any person having had bodily contact with infectious waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.

J. CLOSURE REQUIREMENT

When a facility that has been used for infectious waste management is to cease operations involving infectious wastes, it shall be thoroughly cleaned and disinfected. All waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected. (Note: Due to the variability in the type of infectious waste facilities, the Department will specify individual closure requirements in the permit issued to the facility.)

K. METHODS OF TREATMENT AND DISPOSAL

All treatment of infectious waste must utilize a method that will render the waste noninfectious.

All pathological waste must be incinerated, cremated or interred in accordance with **24 Del. C., Chapter 31**. Other disposal methods are not acceptable for this type of waste. This requirement does not prohibit the disposal of certain specified wastes in a permitted wastewater treatment system (see Section D.11 of this part).

L. RECORDKEEPING AND REPORTING REQUIREMENTS

All waste management or treatment facilities that manage infectious waste shall maintain, for a period of three years, the following records and assure that they are accurate and current:

1. A list containing the names of all individuals responsible for the management of infection control for the facility, their address, their phone numbers and the periods covering their assignment of this duty.

2. The date, persons involved and short description of events in each spill of infectious wastes.

3. A notebook or file containing the policies and procedures of the facilities for dealing with infectious wastes.

4. A log of all special training received by persons involved in the management of infectious waste.

5. A log of infectious waste generated at the site or received from offsite, including the amount, the date of generation, receipt dates, and the date of shipment.

6. Anyone that sterilizes or incinerates infectious waste shall maintain a log indicating the method of monitoring the waste as well as a verification that it has been rendered noninfectious.

7. The operator of a facility that incinerates infectious waste shall submit to the Department, at least annually during the life of the facility, a chemical analysis of composite samples of the ash residue. Parameters that are to be monitored will be specified in the permit.

8. Each generator of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to, the following:

a. A description of infectious waste generated and transported off site for treatment and disposal;

b. The total weight of infectious waste generated and transported off site for treatment and disposal;

c. The names and addresses of persons engaged by the generator to transport infectious waste off site;

d. The names and locations of the infectious waste management facilities with which the generator contracted for the treatment and/or disposal of infectious waste.

9. Each transporter of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department by April 1 of the year following the year covered by the report. The information contained in the report shall include, but not be limited to the following:

a. A description of infectious waste transported off site for treatment and disposal;

b. The total weight of infectious waste transported off site for treatment and disposal;

c. The names and addresses of generators contracting with the transporter to transport infectious waste off site.

The names and locations of the infectious waste management facilities where the transporter deposited

the infectious waste for treatment and /or disposal.

M. EVIDENCE OF EFFECTIVENESS OF TREATMENT

1. Treatment of infectious waste must be conducted in a manner which:

a. Eliminates the infectious potential of the waste. A treatment process eliminates the infectious potential of infectious waste if the owner or operator of a treatment unit demonstrates that an Initial Efficacy Test and Periodic Verification Test(s) have been completed successfully.

(1) Successful completion of an Initial Efficacy Test is demonstrated by a 6-log reduction/kill of test microorganisms. For a thermal unit that maintains the integrity of container, a 6-log kill of indicator microorganism spores may be used as an alternative test.

(2) Successful completion of a Periodic Verification Test is demonstrated by:

(a) a 6-log kill of test microorganisms or indicator microorganism spores as provided in Subsection 11, Part 1, L.1.a; or

(b) a minimum 3-log kill of indicator microorganism spores that have been correlated with a 6-log kill of test microorganism; or

(c) an alternate method submitted to and approved by the Department.

b. Disposes treatment residues in accordance with these regulations.

c. Provides for quality assurance programs that must include, at a minimum, a written plan that:

(1) Designates responsibility to personnel.

(2) Describes parameters that must be monitored to insure effectiveness of the treatment process.

(3) Identifies monitoring devices.

(4) Ensures that monitoring devices are operating properly.

(5) Establishes appropriate ranges for operating parameters.

(6) Identifies person(s) who shall collect and organize data for inclusion in operating records.

(7) Identifies person(s) who shall evaluate any discrepancies or problems.

(8) Identifies person(s) who shall propose actions to correct problems identified, and

(9) Identifies person(s) who shall assess actions taken and document improvement.

d. Provides for periodic biological testing, where appropriate, that demonstrates proper treatment of the waste.

e. Provides for assurances that clearly demonstrate that infectious waste has been properly treated; and

f. Is in compliance with all federal, state and local laws and regulations pertaining to environmental protection.

2. Initial Efficacy Test

a. The manufacturer, owner, or operator of a treatment unit shall conduct an Initial Efficacy Test, pursuant to Appendix A of this Section, for each model prior to its operation. If significant mechanical changes are made to a treatment unit, the Initial Efficacy Test must be repeated. The treatment units are considered to be the same model if they:

(1) Are manufactured by same company,

(2) Have the same company name, and

(3) Have no significant mechanical changes.

b. The Initial Efficacy Test shall be conducted using option 1, 2 or 3 as described in Appendix A of this Section, using the challenge loads listed in Table C of Appendix A, or by an equivalent procedure that meets the requirements of the Initial Efficacy Test and has been approved by the Department. If any of the challenge loads fails the Initial Efficacy Test, the operating conditions must be revised and the Initial Efficacy Test must be repeated for all challenge loads. The Initial Efficacy Test must also meet the requirements of this Section.

c. Composition of challenge loads

(1) For treatment units designed to treat all types of infectious wastes, all three types of challenge loads must be used in conducting the Initial Efficacy Test. The three (3) types of challenge loads represent infectious waste with a high moisture content, low moisture content and high organic content. The quantity of each challenge load must equal 100% of the maximum capacity of the treatment unit.

Each challenge load must consist of a minimum 5% (by weight) of each of the following categories: blood/broth cultures, fibers, metals, sharps, plastics, pathological waste, glass, non-woven fibers, and bottles of liquids. Table C of Appendix A contains the moisture and organic content requirements that must be met in each type of challenge load.

(2) For treatment units designed to treat select categories of infectious waste (e.g., sharps treatment unit), modification in the composition of the challenge load(s) may be used if approved by the Department in writing.

d. The Initial Efficacy Test must be conducted under the same operating conditions under which the treatment unit operates on a day-to-day basis. The feed rate for the treatment unit must remain constant throughout the Initial Efficacy Test. This feed rate must never be exceeded during the operation of the treatment unit.

e. The Initial Efficacy Test must be performed so that:

Each container of the test microorganisms and/or indicator microorganism spores is placed in the load to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container(s) of test microorganisms and/or indicator microorganism spores within a sharps container that must in turn be

deposited in a plastic biohazard bag that is then located centrally within the challenge loads.

Test microorganisms and/or indicator microorganisms must be cultured and enumerated in accordance with instructions provided by the supplier of micro-organisms and Standard Methods for the Examination of Water and Wastewater.

f. A Document of Initial Efficacy Test must be retained in the treatment facility, and made available during normal business hours for inspection and photocopying by an authorized representative of the Department. The Document of Initial Efficacy Test must include at the minimum:

(1) A detailed description of the test procedures used, including all test data generated, with descriptions of data handling, and interpretation of final test results.

(2) A detailed description and verification of the operating parameters (e.g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

3. Periodic Verification Test(s)

a. The effectiveness of the treatment unit shall be verified by conducting Periodic Verification Test(s) which must be carried out in accordance with this Subsection.

b. Periodic Verification Test(s) must be conducted quarterly or more frequently if required by the permit or recommended by the manufacturer.

c. The manufacturer, owner, or operator of a treatment unit must perform Periodic Verification Test(s) that satisfy at least one (1) of the following:

Passing the Initial Efficacy Test by using option 1, 2 or 3 of appendix A of this part (whichever is applicable). The three challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator micro-organisms must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1). For example, an autoclave may use option 3 (e.g., demonstrate at a minimum the destruction of one million *Bacillus stearothermophilus* spores) to meet the Periodic Verification Test requirement. In the case of an incinerator a stainless steel pipe with threaded ends and removable caps lined with ceramic insulation may be used to contain a glass culture vial with a *Bacillus subtilis* spores strip. The pipe with the spore strips may be placed in the load of infectious waste for the Periodic Verification Test. After the treatment, the pipe with the spore strips may be recovered and the spores may be cultured to assess whether, at a minimum, one million spores have been destroyed to meet the Periodic Verification Test(s) requirement.

(2) Correlating the log kill (L) of the test microorganisms in the Initial Efficacy Test to an equivalent log kill (T) of indicator microorganism spores in accordance with Appendix B. The equivalent log kill (T) of indicator microorganism spores must be used for all subsequent Periodic Verification Tests. The correlation must be done with three challenge loads identified in Table C of Appendix A (See Subsection 11, Part 1, L.3.d below for further requirements).

(3) Submitting to and obtaining written approval by the Department for a procedure that is equivalent to Subsection 11, Part 1, L.3.c.(1) and (2). Examples of alternatives include, but are not limited to, use of another indicator microorganism, or measurement of disinfectant concentrations in the treated residue. For incinerators only, an example of an alternative is visually inspecting the ash from each load of treated infectious waste to ensure that all infectious waste within the load is completely combusted. The approval of an alternative by the Department may require more frequent testing and/or monitoring of the treatment unit.

d. If correlation is being used for the Periodic Verification Test, (i.e., the correlation of log kill (L) of the test microorganisms with equivalent log kill (T) of the indicator microorganism spores) the following procedures apply:

(1) At a minimum, an initial population of one million indicator microorganism spores per gram of waste solids in each challenge load must be used.

(2) The fraction of surviving indicator microorganism spores that correlates to a log kill (L) of six (6) for each test microorganism must be used for future Periodic Verification Test(s). [For example, if a log kill (L) of four (4) for the indicator microorganism spores per gram of waste solids is achieved during this demonstration, then a population of 10,000 of indicator microorganism spores must be used in future Periodic Verification Test(s).] Challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganism spores must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1).

(3) An equivalent log kill (T) of at least three (3) for the indicator microorganism spores must be achieved to ensure that all test microorganisms are destroyed.

(4) Test microorganisms and/or indicator microorganism spores must be cultured and enumerated in accordance with instructions provided by the supplier of the microorganisms and Standard Methods for the Examination of Water and Wastewater.

The Periodic Verification Test and Initial Efficacy Test may be run concurrently to verify the

correlation.

e. If a load of infectious waste fails a Periodic Verification Test, the Periodic Verification Test(s) must be repeated. The operator shall implement the quality assurance program and contact the manufacturer. If applicable, identify and correct the exact problem(s) until the unit can eliminate the infectious potential of the infectious waste. If the operating parameters are altered another Initial Efficacy Test must be performed to demonstrate the effectiveness of the unit and, if applicable, another Periodic Verification Test correlation, pursuant to Subsection 11, Part 1, L.3.c must be repeated. Loads of infectious waste that were processed prior to receiving the results showing a failure of Periodic Verification Test are considered treated. A second Periodic Verification Test must be run immediately after the first Periodic Verification Test indicates failure. The second Periodic Verification Test is to determine whether or not the treatment unit is eliminating the infectious potential of the waste. After the second Periodic Verification Test shows a failure of the treatment unit, any waste processed after the first detection of failure is considered infectious waste and must be managed accordingly.

f. Results of the Periodic Verification Test(s) must be received, verified and made available for inspection by the Department within 2 weeks of when the test was conducted. When a Periodic Verification Test is used to confirm the failure of a treatment unit, the results of the Periodic Verification Test(s) must be made available in accordance with the requirements of subsection h below.

g. A Document of Correlating Periodic Verification Demonstration must be prepared by and retained for at least three (3) years at the treatment facility during normal business hours for inspection by the Department. The Document of Periodic Verification Demonstration must include, at a minimum:

(1) A detailed description of the test procedures used and the correlation between the log kill (L) of the test microorganisms and the equivalent log kill (T) of the indicator microorganism spores. An evaluation of the test results must include all test data generated, a description of data handling, and a presentation and interpretation of test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

h. Records of Periodic Verification Test(s) must be prepared and retained for at least three (3) years at the treatment facility, and made available at the treatment facility during normal business hours for inspection by the Department. These records will include, at the minimum:

(1) The date(s) on which the Periodic Verification Test(s) were performed.

(2) Operating parameters (e.g., temperature, pressure, retention times, chemical concentrations, irradiation dose and feed rates).

(3) Test protocols.

(4) Evaluation of test results.

(5) The name(s), date, signature(s) and title(s) of Person(s) conducting the Periodic Verification Test(s).

Periodic Verification Test(s) must be conducted under the same operating conditions under which the treatment unit operates on day-to-day basis. The feed rate for the treatment unit is the maximum feed rate at which the unit operates on day-to-day basis. The feed rate must remain constant throughout the Periodic Verification Test(s). This feed rate must never be exceeded during the operation of the treatment unit.

N. TRANSPORTATION

All transporters of infectious waste must be in compliance with all applicable federal and state regulations and codes. No person shall transport solid waste, including infectious waste, without first having obtained a permit from the Department, unless specifically exempted by these Regulations. Refer to Section 7 of these Regulations.

O. TRANSPORTERS.

1. Temperature Control and Storage Period

The transporter must deliver infectious waste to a disposal facility within 15 days from collection from the generation facility.

a. Infectious waste shall be transported in a manner that:

(1) Affords protection from vectors, rain and wind,

(2) Prevents the spread of infectious agents,

(3) Does not provide a breeding place or food source for vectors, and

(4) Prevents leakage of waste from the storage bags or other containers.

b. Infectious waste shall be transported to offsite processing or disposal facilities in a manner consistent with these regulations.

c. Motor Vehicles for transporting infectious waste shall be noncompaction type vehicles.

Surfaces of vehicles that have been in direct physical contact with infectious waste, because of a leak in a container or because of some other reason, shall be decontaminated as soon as possible after unloading.

Surfaces of vehicles that have not been in direct physical contact with infectious waste shall be decontaminated weekly.

2. Packaging, Labeling and Placards

a. No person shall transport or receive for transport any infectious waste that is not packaged and labeled in accord with these regulations.

b. Any vehicle holding infectious waste in transport shall have a warning sign in bold letters, a minimum of 4 inches in height and in a color that contrasts the color of the vehicle, that indicates the cargo is infectious waste.

c. Vehicle access door labeling:

(1) Transporters in interstate commerce must comply with one of the following labeling options:

(a) The access doors to the cargo area of the vehicle must meet the requirement for intrastate transporters of infectious waste, as described in Section N.2.c.(2) of this part; or

The access doors to the cargo area of the vehicle must comply with the labeling requirements of the state of origin of the infectious waste or the labeling requirements of the state of destination of the infectious waste. Examples of the labeling must be submitted to and approved by the Department prior to transport of the infectious waste through Delaware.

(2) Transporters in intrastate commerce: The access doors to the cargo area of the vehicle must bear a sign with the words INFECTIOUS WASTE in bold, four inch letters. Such sign must be easily readable from a distance of 25 feet. The access doors to the cargo area of the vehicle must additionally bear a sign with the universal biological hazard symbol with minimum symbol dimension of six inches, and with the word BIOHAZARD in bold letters at least one inch in height. The symbol must be easily recognizable from a distance of 25 feet.

3. Management of Spills of Infectious Waste

Spill containment and cleanup kit.

a. All infectious waste transportation vehicles are required to keep within the vehicle the containment and cleanup kit specified in the permit. The vehicle shall be equipped with a written plan, approved by the Department, that provides the means of decontamination of a release of infectious waste while transporting the waste to the treatment or disposal site or while handling the waste at the site. The driver shall be trained by the employer to implement this plan.

b. As required in 7 **Del.C.** Ch. 60, the Department is to be notified immediately of all spills.

4. Loading and Unloading

Persons manually loading or unloading containers of infectious waste on or from transport vehicles shall wear protective gloves or clothing, as appropriate.

P. STERILIZATION

1. Application

The requirements of this part apply to all persons that steam sterilize infectious waste.

2. Performance Standards

All persons that steam sterilize infectious waste shall maintain the following level of operational performance at all times:

a. Operational temperature and detention.

Whenever infectious wastes are treated in a steam sterilizer, all the waste shall be subjected to a temperature of not less than 250 degrees Fahrenheit for 90 minutes at 15 pounds per square inch of gauge pressure or not less than 272 degrees Fahrenheit for 45 minutes at 27 pounds per square inch of gauge pressure. Other combinations of operational temperatures, pressure and time may be used if the installed equipment has been proved to achieve a reliable and complete kill of all microorganisms in waste at capacity. Complete and thorough testing shall be fully documented, including tests of the capacity of kill B. stearothermophilus.

b. Operational controls and records.

(1) Each package of waste to be steam sterilized shall have autoclave tape attached that will indicate if the sterilization temperature has been reached and waste will not be considered satisfactorily sterilized if the indicator fails to indicate that the temperature was reached during the process.

(2) Steam sterilization units shall be evaluated for effectiveness with spores of B. stearothermophilus no less than once every 40 hours of operation or once per month, whichever is more often.

(3) A log shall be kept at each sterilization unit that is complete for the proceeding three-year period. The log shall record the date, time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, operator of each usage; the type and approximate amount of waste treated; the post-sterilization reading of the temperature sensitive tape; the dates and results of calibration; and the results of effectiveness testing with B. stearothermophilus.

(4) Infectious waste shall not be compacted or subjected to violent mechanical stress before sterilization; however, after it is fully sterilized it may be compacted in a closed container.

3. Compliance with Other Parts of these Regulations

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and must comply with those regulations. Spills or the opening in an emergency of any infectious waste package, shall comply with the regulations pertaining to spills.

4. OffSite Operations

Any person who operates offsite facilities for the

sterilization of infectious waste shall operate those facilities in compliance with a plan approved by the Department. The plan shall address in detail practices, procedures and precautions in the unloading, preparation and sterilizer loading of the waste.

Q. MANIFEST REQUIREMENTS

1. A generator of infectious waste shall complete a manifest before shipping, or causing the shipment of, infectious waste off site. The manifest shall consist of a multicopy form provided by the Department or equivalent approved in writing by the Department.

2. No person shall accept custody of infectious waste unless the waste is packaged in accordance with the requirements of Section H of this part and is accompanied by a properly completed manifest which complies with the requirements of Section P of this part. Upon accepting custody of infectious waste, the transporter shall sign and date the manifest. After the manifest has been signed and dated by both the generator and the transporter, the generator shall retain one copy of the form. The transporter shall keep the remaining four copies until the waste is delivered to the infectious waste facility.

3. The operator of an infectious waste management facility may accept custody of infectious waste only if the waste is accompanied by a manifest which complies with the requirements of Section P of this part. Upon accepting the waste, the operator of the infectious waste management facility shall sign and date the manifest, give one copy to the transporter, and keep the remaining three copies. The operator shall:

a. Sign and date the remaining three copies of the manifest certifying that the waste will be treated and/or handled in accordance with all applicable regulations and facility permits.

When multiple consignments are received and disposed as a batch, a cover letter with a list of manifest numbers, date received, date rendered non-infectious, certification of disposal, signature and date may be substituted for individual certification on each manifest. The cover letter must be mailed to the State with manifests attached. The generator copy of these manifests may use a date and signature stamp in lieu of original signature.

b. Send one copy of the manifest to the generator no later than fifteen calendar days from the date on which the waste was treated or disposed of;

c. Send one copy of the manifest to the Department; and

d. Keep the remaining copy.

4. Any generator of infectious waste who does not receive a copy of the manifest signed by the operator of the infectious waste management facility within fifteen calendar days of the date of shipment shall immediately contact the transporter and the facility to determine the status of the shipment. If, within twenty days of the date of shipment, the generator still has not received a signed copy of the manifest from the infectious waste management facility, the generator shall notify the Department in writing. The notification shall include a legible copy of the manifest as signed by the generator and transporter, a description of the efforts made by the generator to locate the shipment, and the results of those efforts.

5. Copies of the manifest shall be retained by all parties for at least three years.

a. The manufacturer, owner, or operator of an infectious waste treatment unit must carry out an Initial Efficacy Test by using Option 1, 2, or, 3 below, as appropriate for the type of unit, or other procedures, if approved in advance by the Department.

1. Option 1

This option consists of two (2) Phases:

a. Phase 1: Determining the dilution of each test microorganism from the treatment unit for each challenge load (Types A through C) identified in Table C of this Appendix.

(1) Prepare and sterilize by autoclaving two (2) challenge loads of Type A as identified in Table C. Reserve one challenge load for Phase 2.

(2) Process each test microorganism in separate runs through the treatment unit. Prior to each run, determine the number of viable test microorganisms in each container, in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(3) Process each challenge load within thirty (30) minutes after introducing the container of test microorganism into the treatment unit. The container of test microorganisms and the challenge loads must be processed together without the physical and/or chemical agents designed to kill the test microorganisms. For example, in treatment units that use chemical disinfectant(s), an equal volume of liquid (e.g., sterile saline solution (0.9%, volume/volume), phosphate buffer solution, or tap water) must be substituted in place of the chemical disinfectant(s).

(4) Obtain at least five (5) representative grab samples from the processed residue of each challenge load in accordance with Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846). The number of viable test microorganisms in each grab sample must be determined in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(5) Calculate the effect of dilution for the treatment unit as follows:

$SA = \text{Log } N_0A - \text{LogN1A: where Log N1A } ^3 6$

where: SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge

load Type A.

N_0A is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit for challenge load Type A.

N1A is the number of viable test microorganisms (CFU/gram of waste solids) remaining in the processed residue for challenge load Type A.

If Log N1A is less than 6, then the number of viable test microorganisms introduced into the treatment unit must be increased and steps (1) through (6) in Phase 1 must be repeated until LogN1A is ³ 6. N_0A is the inoculum size for challenge load Type A in Phase 2 below.

(6) Repeat steps (1) through (5) in Phase 1 for challenge loads of infectious waste for Type B and C identified in Table C of this Appendix to determine the effect of dilution (SB and SC respectively).

b. Phase 2: Determining the log kill of each test microorganism in each challenge load (Type A through C) identified in Table C of this Appendix.

(1) Using the inoculum size (N_0A) determined in Phase 1 above, repeat Phase 1 steps (1) through (5) under the same operating parameters, except that the physical and/or chemical agents designed to kill the test microorganisms must be used.

(2) Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after the treatment from the log of the viable cells introduced into the treatment unit as inoculum, as follows:

LA = Log N_0A - SA - Log N2A ³ 6

where: LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

N_0A is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum for challenge load Type A as determined in Phase 1 above.

SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A in Phase 1 above.

N2A is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

(3) Repeat steps (1) and (2) in Phase 2 for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

2. Option 2:

a. Place one microbiological indicator assay containing one of the test microorganisms at numbers greater than one million in a sealed container that remains intact during the treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s). The vial(s) must contain the test microorganisms.

b. Place the container of test microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

LA = Log N_0 - Log N2A³ 6

where: LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

N_0 is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

N2A is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

3. Option 3:

a. Place one microbiological indicator assay containing at least one million spores of one of the indicator microorganisms listed in Table B of this Appendix, in a sealed container that remains intact during treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s).

b. Place the container of the indicator microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

LA = Log N_0 - Log N2A³6

where: LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in challenge load Type A.

N_0 is the number of viable indicator microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

N2A is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC, respectively).

APPENDIX A: TABLES

TABLE A: Test Microorganisms

a. Staphylococcus aureus (ATCC 6538)
b. Pseudomonas aeruginosa (ATCC 15442)
c. Candida albicans (ATCC 18804)
d. Trichophyton mentagrophytes (ATCC 9533)
e. MS-2 Bacteriophage (ATCC 15597-B1)
f. Mycobacterium smegmatis (ATCC 14468)

TABLE B: Indicator Microorganisms

a. Bacillus subtilis (ATCC 19659)
b. Bacillus stearothermophilus (ATCC 7953)
c. Bacillus pumilus (ATCC 27142)

TABLE C: Challenge Loads

This Table identifies the three types of challenge loads of infectious waste that must be used as a part of Initial Efficacy Test and Periodic Verification Test(s).

COMPOSITION OF CHALLENGE LOADS % (w/w)

Type	A	B	C
Moisture	£5	³50	-----
Organic	----	----	³70

Sec. 11, Part 1, App. B SPECIAL WASTES MANAGEMENT

APPENDIX B

Correlating Periodic Verification Procedures

1. Use a certified microbiological indicator assay containing the test microorganisms and indicator microorganism spores.

2. Place the test microorganisms and indicator microorganism spores into sealed containers that remain intact during treatment.

3. Place a container of the test microorganisms and indicator microorganism spores in each challenge load (as described in Appendix A, Table C) to simulate the worst case scenario (i.e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container of test microorganisms and indicator microorganism spores within a sharp container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the treatment unit.

4. Determine the effectiveness of the treatment unit by calculating the log kill (L) of the test microorganisms in accordance with Option 2 of Appendix A. The equivalent kill (T) of the indicator microorganism spores is calculated by subtracting the log of viable cells after treatment from the log of viable cells introduced into the treatment unit as inoculum as follows:

TA = Log N_0 - Log N2A³ 3

where: TA is the equivalent log kill of the viable indicator microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

N_0 is the number of viable indicator microorganism spores (CFU/gram of waste solids) introduced into the treatment unit as the inoculum (³6).

N2A is the number of viable indicator microorganisms (CFU/gram of waste solids) remaining after treatment in challenge load Type A.

5. Repeat steps 1 through 4 for challenge loads Types B and C identified in Table C of Appendix A to determine the correlation between the log kill of the test microorganisms and equivalent kill of the indicator microorganism spores (LB and LC, respectively).

SECTION 11: SPECIAL WASTES MANAGEMENT

Part 2 - Municipal Solid Waste Ash

A. GENERAL PROVISIONS

1. Municipal solid waste (MSW) ash is considered a hazardous waste, as defined in the Delaware Regulations Governing Hazardous Waste (DRGHW), unless the generator of the ash can demonstrate that the ash is not a hazardous waste. In order to make such a demonstration, the owner or operator of the generating facility must show that the ash does not exhibit the Toxicity Characteristic (TC) as described in DRGHW, §261.24. Any person desiring to make such a demonstration shall develop and implement a sampling and analysis plan designed to provide reliable information on the chemical properties of the ash. The plan shall be submitted to the Solid and Hazardous Waste Management Branch as a part of the facility's application for a Solid Waste Facility permit. The facility will not be permitted to operate until the Department has approved the plan.

2. The sampling and analysis plan shall include the following:

a. A detailed description of the sampling protocol (how and where samples will be collected, how many samples will be collected, how samples will be composited, how samples will be handled and stored, etc.)

b. A description of the analyses that will be performed on the samples.

c. A description of the procedures that will be used to ensure the quality of the sampling and analysis data.

3. The owner or operator of a facility in Delaware desiring to process MSW ash generated in another state must

first receive written approval from the Department to accept MSW ash from that generator. To receive such an approval a person must:

a. Demonstrate, to the Department's satisfaction, that the ash does not exceed the levels specified in the TC; and

b. Develop, and receive Department approval of, a plan for sampling and analysis of the incoming MSW ash.

B. SAMPLING

1. This subsection describes the minimum amount of sampling that the Department deems appropriate for MSW ash generated by facilities that meet the following two assumptions:

a. The waste feed prior to incineration is not segregated by type of generator, and

b. The ash generated is not separated by size during storage or disposal.

If either of these two assumptions is not valid, then a facility-specific sampling and analysis program shall be designed by knowledgeable personnel and shall be implemented after receiving Department approval.

2. The sampling strategy shall be sufficient to enable the facility owner or operator to assess the properties of the ash and to ascertain its variability over time.

3. The sampling strategy shall provide for reassessment of the ash at least quarterly, in accordance with a Department-approved schedule. In determining how often to recharacterize the ash, the generator shall consider all facility-specific and external factors that could cause the ash properties to vary. These factors include:

a. Changes in the composition of the waste (e.g., new types of industries moving into the area, institution of recycling programs in the collection area, seasonal changes affecting population or waste composition).

b. Changes in plant design (e.g., addition of dry scrubber, addition of quench tank).

c. Significant changes in plant operating conditions (e.g., increase in combustion time or temperature, change in lime utilization rate).

4. The sampling strategy shall include the following steps:

a. Determine the most convenient location for sampling. In situations where the sampling can be conducted either from transport vehicles or from the waste conveyance device, the Department recommends sampling from the transport vehicle (i.e. dump truck, barge).

b. Construct a sampling device (trough, bucket, shovel, thief, etc.) to be used to gather a grab sample of the entire depth of the hopper, pile, or truck load, or the entire width of the belt conveyor, drag chain flight, or vibrating conveyor. ASTM standards for sampling unconsolidated waste materials from trucks may be used for guidance if the ash is to be sampled from trucks.

c. If a conveyor is to be the sample location, collect the entire width of the conveyor at a fixed point each hour for eight (8) hours. If trucks are to be sampled, randomly select eight trucks to sample during the eight-hour period. In certain situations, where fewer than eight truckloads are generated, a different schedule may be necessary (e.g., less than one truck per hour). Composite all samples for the period into an eight-hour composite. Containerize, label, and set aside for further processing.

d. Collect a second eight-hour composite during the course of the work day. The second composite should be collected during a different shift from the first composite.

e. For an initial waste characterization, collect samples each day for a minimum of one week's operation (i.e., fourteen composite samples).

C. ANALYSIS

1. Each composite sample shall be tested, using Method 1311 [Toxicity Characteristic Leaching Procedure (TCLP)], and the results analyzed, to determine whether the ash passes or fails the TC as defined in the DRGHW, §261.24.

2. All testing shall be performed following the specific procedures described in "Test Methods for Evaluating Solid Waste" (SW-846).

3. The testing shall be performed by an independent laboratory.

4. In lieu of TCLP, testing for total concentration of constituents (i.e., the contaminants listed in DRGHW, §261.24, Table 1) may be performed. If no constituent is present at a concentration exceeding the TC regulatory limit, the waste may be considered non-hazardous. However, if the concentration of any constituent exceeds the TC regulatory limit, TCLP must be performed to determine whether the waste is hazardous.

5. If it has been demonstrated that none of the organic constituents listed in DRGHW, §261.24, Table 1, is present in the ash at a detectable level, the ash need not be routinely tested for the organics.

D. QUALITY ASSURANCE AND QUALITY CONTROL

The sampling and analysis plan shall include:

1. A detailed description of the steps that will be taken to ensure quality control, and

2. A provision for appointing a knowledgeable person to oversee the sampling and analysis program to ensure that all procedures are followed.

E. DATA EVALUATION

The following approach shall be used in evaluating the data to determine whether the ash passes or fails the TC (see SW-846, Chapter Nine, Tables 9-1 and 9-2 for statistical formulas to use in making the calculations):

1. Determine the mean TC concentration (x) of the fourteen eight-hour composite samples for each regulated analyte (equation 2a of Table 9-1).

2. Determine the standard deviation(s) of the data employed to calculate the mean (i.e., the individual composite results) (equation 3a and 4 of Table 9-1).

3. Determine the upper bound of the 90 percent (one-sided) confidence interval for the mean for each analyte (equation 6 of Table 9-1).

If the upper bound of the interval is below the applicable regulatory threshold for all analytes listed in DRGHW, §261.24, then the waste passes the TC. If the upper bound of the interval is above the applicable regulatory threshold for any analyte listed in DRGHW, §261.24, then the waste fails the TC.

SECTION 12: SEVERABILITY

If any provision of these regulations, or the application of any provision of these regulations to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these regulations, shall not be affected thereby.

DEPARTMENT OF STATE

DIVISION OF HISTORICAL AND CULTURAL AFFAIRS

Statutory Authority: 30 Delaware Code, Section 1815(b), (30 **Del.C.** §1815(b))

NOTICE

Title: Amendments to Regulations Governing the Historic Preservation Tax Credit.

Brief Synopsis:

Chapter 18 Subchapter II of Title 30 containing the Historic Preservation Tax Credit Act was enacted by the General Assembly in 2001 and amended in 2002. Final program regulations were adopted in July, 2002 (6 DE Reg. 108 (7/1/02). Chapter 18 Subchapter II of Title 30 was amended again in 2003 to provide credits for a resident curator program. The purpose of these proposed amendments to the regulations is to implement the code revisions of 2003. The proposed amendments modify sections of the regulations (§1.0, §3.3, §3.16, §3.16.2, §3.17, §8.0) as they may apply to the resident curator program. The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property.

Statutory Basis or Legal Authority to Act:

Title 30 **Delaware Code** Chapter 18 Subchapter II Section 1815(b), (as amended)

Other Regulations that may be Affected by the Proposal:

The State Bank Commissioner and the Division of Revenue will adopt regulations or issue guidelines for tax elements of the Historic Preservation Tax Credit Act.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider input from any person in writing on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, 21 The Green, Ste. B, Dover, DE 19901. The final date to submit written comments is June 1, 2004. Anyone wishing to obtain a copy of the proposed amendments to the Rules and Regulations should notify Daniel R. Griffith at the above address or call 302-739-5685. This notice will be published in two newspapers of general circulation.

Prepared by:
Daniel R. Griffith, Director
302-739-5685
April 10, 2004

Proposed Amendments to the Regulations Governing the Historic Preservation Tax Credit Act:

1.0 Scope

A person or business entity that owns and rehabilitates a certified historic property may receive a credit against personal Delaware State income tax or bank franchise tax liabilities according to procedures and criteria established in these regulations and those that may be promulgated by the Division of Revenue or the State Bank Commissioner. Any person eligible for credits under this Chapter may transfer, sell or assign any or all unused credits, except a person engaged in a resident curator relationship.

See 6 DE Reg. 108 (7/1/02)

2.0 Statutory Authority

These regulations are created pursuant to Chapter 18, Subchapter II of Title 30 Delaware Code (as amended) which authorizes the Division of Historical and Cultural Affairs to promulgate regulations for implementation of the provisions of this subchapter (except tax-related procedures) including, but not limited to, setting of fees and development

of standards for the rehabilitation of eligible historic properties. The subchapter further authorizes the Division of Historical and Cultural Affairs to promulgate the application and forms governing participation in the certification program.

See 6 DE Reg. 108 (7/1/02)

3.0 Definitions

3.1 **"Act"** means Chapter 18, Subchapter II of Title 30 Delaware Code, as amended.

3.2 **"Application"** means the Delaware Historic Preservation Tax Credit application that shall consist of three parts, as follows: the Request for Certification of Historic Property (Part 1); the Request for Certification of Rehabilitation (Part 2); and the Request for Certification of Completion (Part 3).

3.3 **"Certified historic property"** or **"qualified property"** shall mean a property located within the State of Delaware that is:

3.3.1 individually listed in the National Register of Historic Places; or

3.3.2 located in a historic district listed in the National Register of Historic Places, and certified by the United States Secretary of the Interior as contributing to the historic significance of that district; or

3.3.3 individually designated as a historic property by local ordinance and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register of Historic Places; or

3.3.4 located in a historic district set apart or registered by a local government, certified by the Delaware State Historic Preservation Office as contributing to the historic significance of such area, and certified by the Delaware State Historic Preservation Office as meeting the criteria for inclusion in the National Register.

3.4 **"Certification of Completion"**, **"Completion Certificate"** or **"Certificate"** shall mean the certificate issued by the Delaware State Historic Preservation Officer attesting that certified rehabilitation has been completed and that the documentation of qualified expenditures and project plans that would be required in order to qualify for tax credits under Section 47 of the Internal Revenue Code (whether or not such project would be eligible for such federal tax credit) has been obtained.

3.5 **"Certified rehabilitation"** shall mean that rehabilitation of a certified historic structure that has been certified by the Delaware State Historic Preservation Officer as a substantial rehabilitation, and is in conformance with the Standards of the Secretary of the Interior for Rehabilitation (36 CRF, part 67) or such other standards as the Delaware State Historic Preservation Office shall from time to time adopt.

3.6 **"Credit award"** shall mean the amount of qualified expenditures as determined by the State Office as part of the Part 2 approval multiplied by the appropriate amount as determined in Section 1813 of Chapter 18, Subchapter II of Title 30 Delaware Code, (as amended).

3.7 **"Delaware State Historic Preservation Officer"** shall mean the person designated and appointed in accordance with 16 USC Sec. 470a(b)(1)(a), as amended.

3.8 **"Federal tax credit"** shall mean the Federal Rehabilitation Tax Credit as defined in the United States Tax Code, Title 26, Subtitle A, Chapter 1, Subchapter A, Part IV, Subpart E, Section 47.

3.9 **"Fiscal Year"** shall mean the State's fiscal year.

3.10 **"National Register of Historic Places"** or **"National Register"** shall mean the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture that the United States Secretary of the Interior is authorized to expand and maintain pursuant to Section 101(a)(1) of the National Historic Preservation Act of 1966, as amended.

3.11 **"Office"** or **"State Office"** shall mean the Delaware State Historic Preservation Office.

3.12 **"Owner-occupied historic property"** shall mean any certified historic property, or any portion thereof, which is owned by a taxpayer and is being used, or within a reasonable period will be used, by such taxpayer as the taxpayer's principal residence. "Reasonable period" shall mean within six months of the issuance of the Certification of Completion. The State Office, in its sole discretion, may offer one extension, not to exceed three months, for cause. Such property may consist of part of a multiple dwelling or multiple purpose building or series of buildings, including a cooperative or condominium. If only a portion of a building is used as the principal residence, only those qualified expenditures that are properly allocable to such portion shall be eligible under this subchapter.

3.13 **"Person"** shall include any individual; any form of company or corporation which is lawful within the State of Delaware (including limited liability companies and S corporations), whether or not for profit; any form of partnership which is lawful within the State of Delaware (including limited liability partnerships), whether or not for profit; any trust or estate, and any lawful joint venture. "Person" shall also include any governmental entity, pass-through entity, or person under a lease contract for five years or longer.

3.14 **"Property"** shall mean real estate, and shall include any building or structure, including multiple-unit structures.

3.15 **"Qualified expenditure"** shall mean any amount properly expended by a person for the certified rehabilitation of a certified historic property, but shall not include:

3.15.1 acquisition of real property, or acquiring an interest in real property;

3.15.2 any addition to an existing structure, except where the combined square footage of all additions is twenty percent or less than the total square footage of the historic portion of the property; and each such addition is approved by the Delaware State Historic Preservation Officer, pursuant to federal guidelines, as:

3.15.2.1 preserving the character-defining features of the certified historic property,

3.15.2.2 adequately differentiating the new construction from the existing structure, and

3.15.2.3 complying with requirements regarding safety and accessibility in a manner reasonably designed to minimize any adverse impact on the certified historic property;

3.15.3 paving or landscaping costs which exceed ten percent (10%) of the total qualified expenditures;

3.15.4 sales and marketing costs; or

3.15.5 expenditures not properly charged to a capital account, including, in the case of owner occupied property, expenditures that would not properly be charged to a capital account where the owner using such property is a trade or business.

3.16 "Resident Curator" shall mean a person who has entered into a contractual agreement with the owner of a qualified property in which the person agrees to pay for full restoration of the owner's qualifying property in exchange for a life tenancy in the property without remunerative compensation to the owner for the life tenancy.

3.16~~6~~7 **"Substantial rehabilitation"** or **"full restoration"** shall mean rehabilitation of a certified historic property for which the qualified expenditures, during the twenty-four month period selected by the taxpayer and ending with or within the taxable year, exceed:

3.16~~6~~7.1 for income-producing property, and non-income producing property other than owner-occupied historic property, the current standard required by Section 47(c)(I)(C) of the Internal Revenue Code; and

3.16~~6~~7.2 for owner-occupied historic property or property under contract with a resident curator, five thousand dollars ($5,000).

3.17~~8~~ "Taxpayer" shall include any 'person' as defined in this section, and shall include any individual or corporation taxable under Title 5, or taxable under either Chapter 11 or Chapter 19 of Title 30

See 6 DE Reg. 108 (7/1/02)

4.0 Procedures for Certification of Historic Property

4.1 A taxpayer may request that a property in a National Register listed or locally designated historic district be certified by the Delaware State Historic Preservation Officer as a certified historic property by filing the Part 1 application with the State Office. The Part 1 application shall be filed on standard forms available from the State Office. An incomplete application will not be processed until all required application information has been received. The State Office will notify the taxpayer of the additional information needed to undertake or complete the review.

4.2 The Delaware State Historic Preservation Officer shall determine whether the property for which a complete Part 1 application is received meets the definition of certified historic property and shall notify the taxpayer of the decision.

4.3 Taxpayers of properties individually listed in the National Register do not need to submit a Part 1 application. The name of the historic property and its date of listing in the National Register must be provided in the Part 2 application.

See 6 DE Reg. 108 (7/1/02)

5.0 Procedures for Certification of Rehabilitation

5.1 A taxpayer may request a determination by the Delaware State Historic Preservation Officer that a proposed substantial rehabilitation plan meets the criteria for certification by filing a Part 2 application with the State Office. The Part 2 application shall be filed on standard forms available from the State Office.

5.2 A taxpayer must submit Part 1 of the application prior to, or with, Part 2. Part 2 of the application will not be processed until an adequately documented and approved Part 1 application, where required as outlined in Section 4.0 of these regulations, is on file.

5.3 An incomplete application will not be processed until all required application information has been received. Where adequate documentation is not provided, the State Office will notify the taxpayer of the additional information needed to undertake or complete review.

5.4 The Delaware State Historic Preservation Officer shall determine whether the proposed substantial rehabilitation for which a complete application is received under Section 5.1 of this regulation meets the definition of a certified rehabilitation and shall send the taxpayer notice of the determination and of the credit award. The State Office may require modifications to the plan in order to meet the definition of a certified rehabilitation.

5.5 The Part 2 application must provide cost estimates of qualified expenditures prepared by a licensed architect, engineer, or contractor or a certified construction cost estimator for the proposed rehabilitation. This information will be used to determine the credit award for approved Part 2 applications.

5.6 The amount of tax credit applied against the qualified expenditures in accordance with Section 1813 of Title 30 Delaware Code (as amended) shall represent the "credit award."

5.7 Credits will be awarded in chronological order based upon the date and time on which each application receives Part 2 approval from the State Office.

5.8 In the alternative, the Delaware State Historic Preservation Officer may certify a rehabilitation plan and

issue a Part 2 approval to any taxpayer who has obtained a Part 1 and Part 2 certification from the federal government pursuant to 36 CFR 67, where applicable. Under this provision, taxpayers must file the State of Delaware Part 2 cover form containing the information required under section 5.5 of these regulations.

5.9 All taxpayers must begin construction on the approved Part 2 plan within one year of receiving the Part 2 approval. Taxpayers, having received Part 2 approval, must notify the State Office in writing of the start date of the rehabilitation work. If construction on the rehabilitation plan is not substantially commenced and is being diligently pursued within this time period, the taxpayer will forfeit the awarded credits, and the credits awarded to such taxpayer will become available for award to other taxpayers. Substantially commenced and diligently pursued means that at a minimum twenty-five percent (25%) of the estimated rehabilitation costs must have been expended. The State Office reserves the right to obtain documentation from the applicant supporting the expenditure.

5.10 The project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work is consistent with the approved Part 2 plan or the project has substantially commenced and is being diligently pursued.

See 6 DE Reg. 108 (7/1/02)

6.0 Procedures for Certification of Completion

6.1 Upon completion of a certified rehabilitation, the taxpayer must submit a Part 3 application, with required documentation, to the Delaware State Historic Preservation Office. The completed project may be inspected by the Delaware State Historic Preservation Officer or his/her designated representative to determine if the work meets the definition of a certified rehabilitation.

6.2 Upon approval by the State Office that the completed rehabilitation meets the definition of a certified rehabilitation, the State Office shall submit the documentation to the Division of Revenue or the State Bank Commissioner, as appropriate, and request a determination of the value of the tax credit.

6.3 Upon receipt of the certification of the value of the tax credit associated with the Certificate of Completion by the Division of Revenue or the State Bank Commissioner, the Delaware State Historic Preservation Officer shall issue a Certificate of Completion to the taxpayer.

6.4 In no event shall the credit claimed by a taxpayer exceed the approved Part 2 credit award.

See 6 DE Reg. 108 (7/1/02)

7.0 Fees for Processing Rehabilitation Certification Request

7.1 The fee for review of rehabilitation work for projects where the qualified expenditures are over $100,000 is $250 for each separate application. The fee from a single taxpayer for multiple projects submitted at the same time shall not exceed $2,500. Final action will not be taken on any application until the appropriate remittance is received. No fee will be charged for rehabilitation projects where the qualified expenditures are under $100,000.

7.2 The fee, where applicable, must be submitted with the Part 3 application. All checks shall be made payable to the State of Delaware.

See 6 DE Reg. 108 (7/1/02)

8.0 Resident Curator Program

8.1 Curatorship property is subject to periodic inspection by the State Office during the tax years in which the credit is applicable.

8.2 Improvements to curatorship property must be completed within five years from the date of execution of the contract between the owner and the resident curator.

8.3 Curatorship property may not be used for commercial purposes.

~~8~~9.0 Administrative Review

~~8~~9.1 A taxpayer whose application has been disapproved by the Delaware State Historic Preservation Officer under these regulations may file a written request for review with the Secretary of State or the Secretary's designee within 60 days after the notice of disapproval is sent.

~~8~~9.2 The Secretary of State or the Secretary's designee shall review the request within 60 days after receipt of the request. If the Secretary of State or the Secretary's designee determines that the application filed meets the standards set forth in these regulations the application shall be considered approved. If the Secretary of State or Secretary's designee determines that the application filed does not meet the standards set forth in these regulations, the application shall be disapproved. The Secretary of State or Secretary's designee shall promptly notify the taxpayer of the Secretary's determination.

~~8~~9.3 A taxpayer whose application has been disapproved by the Secretary of State may appeal that action in accordance with the Administrative Procedures Act, 29 **Del.C.** §10101 et. seq.

~~8~~9.4 An appellant who has exhausted all administrative remedies shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

See 6 DE Reg. 108 (7/1/02)

HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code, Section 4616 (6 **Del.C.** §4616)

NOTICE

The State Human Relations Commission in accordance with 6 **Del.C**. §4616 has proposed changes to rules and regulations relating to fair housing. The proposed rules clarify the procedures and the role of the Division of Human Relations in the administrative investigation and conciliation of complaints filed under the Delaware Fair Hosing Act. Other rules added are similar to the federal regulations applicable to the federal Fair Housing Act. For example, if there is no answer is filed in response to a formal charge of discrimination by the Division, the factual allegations are deemed admitted. Regulations have been added that apply to housing for older persons.

A public hearing will be held on the proposed changes on June 10, 2004 at 7:30 p.m. at Delaware State University, MBNA Building, Second Floor, Room 2004, Route 13, Dover, DE . The Commission will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing to Sheryl Paquette, Division of Human Relations, 805 River Road, Dover DE 19901. In addition to publication in the Register of Regulations, copies of the proposed regulations can be obtained Sheryl Paquett, Division of Human Relations by calling her at (302)739-4567. Notice of the hearing and the nature of the proposal are also published in two Delaware newspapers of general circulation.

Proposed Regulations
1502 Fair Housing Regulations

Introduction

Pursuant to the authority granted to the Human Relations Commission under Title 6, Chapter 46, Section 4616 of the Delaware Fair Housing Act, and in accordance with the applicable requirements of The Administrative Procedures Act, the Human Relations Commission has adopted these rules and regulations to carry out the Delaware Fair Housing Act (The Act).

These regulations shall govern individual cases over which the Human Relations Commission and the ~~Office~~ Division of Human Relations have jurisdiction pursuant to Chapter 46, Title 6 of the Delaware Code.

These procedural regulations are intended to carry out the Delaware Fair Housing Act prohibiting unlawful discrimination in housing, and to enable the Commission to achieve equal or greater protection, thereby allowing eligibility for certain Federal funding necessary to carry out this function as a substantially equivalent agency.

~~These new Regulations shall apply to Fair Housing causes of action occurring under the Delaware Fair Housing Act on or after September 1, 1992.~~

These rules and regulations are specific to the processing of complaints of unlawful housing discrimination under the Delaware Fair Housing Act. The Commission believes these rules and regulations are necessary to ensure the appropriate administration of the Fair Housing Act and in order that the commission will be regarded as a substantially equivalent agency.

1.0 Definitions

1.1 The following terms used in these regulations shall have the same definition as defined in the Delaware Fair Housing Act, Section 4602:

Age
Aggrieved persons
Chairperson
Commission
Complainant
Conciliation
Conciliation Agreement
Court
Covered Multifamily Dwellings
Discriminatory Housing Practice
Dwelling
Familial Status
Family
Handicap or Disability
Housing For Older Persons
Marital Status
Panel
Panel Chair
Person
Residential Real Estate - Related Transaction
Respondent
To Rent
To Sell or sale
Special Administration Fund

1.2 As used in these Rules and Regulations, the following terms are defined:

"Act" means The Delaware Fair Housing Act as amended from time to time, Chapter 46, Title 6 of the Delaware Code.

"Commissioner" means a person duly serving as a member of the Commission.

"Charging Party" means the same as "Complainant" (including in some instances the Commission).

"Creed" means any system of beliefs guiding or directing a person's behavior and actions including, but not limited to, an organized religion, sect, or philosophical society.

"Director" means the administrator and head of the

Office of Human Relations or person duly authorized to act as such.

"National Origin" means the native country of an individual or his ancestor(s).

"Office" means any one of the places of business of the Office of Human Relations.

"Party" means the Complainant(s) or Respondent(s).

"Religion" means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination or other group of people.

"Sex" means the basis of being male or female.

~~**"Staff"** means a person employed by the Office of Human Relations of the State of Delaware.~~

"Verified" means that the person signing the complaint or answer has sworn or affirmed that the statements of facts in the document are true.

2.0 ~~Commencement of Proceedings~~ Filing a Complaint ~~(Formerly Rules 1, 2, 3, 4, 5 and 6)~~

2.1 Any aggrieved person or the Commission itself may file a written complaint. Minors may be represented by a parent or guardian ~~or responsible adult~~ for the purpose of bringing an action.

2.2 The Commission may initiate an investigation regarding compliance with applicable law whether or not a complaint is filed. Such investigations may be initiated by written statement showing justification signed by the Commission Chair or such person as may be authorized by the Commission in accordance with applicable provisions of law. To the extent practicable, procedures in these Regulations shall apply to Commission-initiated investigations.

2.3 A complaint shall be filed at any one of the places of business of the ~~Office~~ Division of Human Relations.

2.4 Complaints ~~made~~ filed with the Commission through ~~its Offices~~ The Division of Human Relations shall be in writing and deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or ~~Office~~ the Division of Human Relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.

2.5 Form of Complaint

2.5.1 All complaints ~~may~~ should be filed on a Complaint Form provided by the Office.

2.5.2 All complaints shall include the following data:

2.5.2.1 Full name and address of Complainant(s).

2.5.2.2 Full name and address of Respondent (s), if known, identifying whether each Respondent is an individual, partnership, corporation, etc.

2.5.2.3 The alleged discriminatory housing practice(s). --A concise statement of the facts thereof.

2.5.2.4 The date (s) of the alleged discriminatory practice (s) and whether the practice(s) is/are of a continuing nature together with the duration of such continuing practice(s).

2.5.2.5 The signature of Complainant or his/her attorney ~~at law, or his/her representative authorized by written certification,~~ or, in the case of a minor, a parent or guardian.~~, guardian, or responsible adult on behalf of such minor, unless otherwise required by law.~~ Such signature shall be notarized as a verified complaint. The ~~Office~~ Division of Human Relations shall provide such notarial service without charge for persons coming into the office.

2.6 Complainants and Respondents must keep the ~~Office~~ Division of Human Relations informed of their current addresses and telephone numbers.

3.0 Answer to Complaint ~~of Respondent Role (Formerly Rule 7)~~

~~A copy of~~ Aany written answer of Respondent shall be verified and filed with the Commission within 20 days of receiving the complaint with proof of service showing a copy has been served on the Complainant.

4.0 ~~Initiating Action on~~ Investigation of the Complaint ~~(Formerly Rules 8, 9, 10 and 11)~~

4.1 Investigation of complaints shall be conducted by ~~Staff~~ the Division and commenced within 30 days after filing the complaint, and may include: interviews, questionnaires, fact finding conferences, search of records, ~~the conduct of~~ tests, identification of witnesses, development of statistics, other studies of alleged practices and patterns, or other work to gather relevant evidence. ~~Such work shall be subject to the approval of the Director.~~

4.2 Within thirty (30) days after a complaint is filed, staff shall prepare questionnaires to be answered by the parties. Questions may be suggested by. the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to staff within 10 business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionaires.

4.3 ~~Staff shall~~ The Division may schedule an informal fact-finding conference to be held with the Complainant and Respondent within thirty (30) days of the date the complaint is filed, unless it is impractical to do so.

4.4 Investigation of a complaint shall proceed ~~with all possible dispatch~~ according to the time limits set forth in the Act, to aid conciliation, to determine if reasonable cause exists to issue a charge and to prepare the case for hearing or Court.

4.5 At the end of each investigation, the ~~Commission~~ Division shall prepare a final investigative report containing that information set forth in Section 4610 (b)(5) of The Act.

5.0 Conciliation and Agreement ~~(Formerly Rules 12, 13, 14 and 15)~~

5.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement opportunity prior to the onset of the investigation ~~offer~~; the Complainant shall be advised of the opportunity ~~so notified~~ when a complaint is filed and the Respondent when a complaint is served.

5.2 Conciliation shall be initiated upon request of Complainant or Respondent or recommendation of the Division ~~Staff~~ or the Panel assigned to the case. Statements made in the course of conciliation can be disclosed only as provided under the Act.

5.3 An employee of the Division may serve as conciliator. A Commissioner, who is not assigned to the hearing Panel ~~other than one of the Commissioners later appointed as members of the hearing panel,~~ may~~, in the discretion of the Chairperson~~ be appointed by the Chairperson to serve as conciliator. ~~, or a staff person may serve as conciliator.~~

5.4 Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the parties. The following may be included:

5.4.1 binding arbitration to resolve the dispute; payment of damages;

5.4.2 compensation or other monetary relief;

5.4.3 payments made to the Special Administration Fund of the Human Relations Commission under Chapter 30, Title 31 of the Delaware Code;

5.4.4 monitoring of future activities;

5.4.5 affirmative action measures; ~~and/or other means to ensure future compliance, such as the implementation of Rental Guidelines in housing cases;~~

5.4.6 closing or terminating the case; and

5.4.7 any other relief agreed upon by the parties that will further the purposes of the Act.

5.5 A conciliation agreement shall become effective when signed by all parties~~, the Panel Chair if a Panel has been appointed,~~ and the Commission Chair or his or her designee.

5.6 Written and executed copies of such agreements shall be given to all parties. ~~and notice thereof promptly sent to the Panel if a Panel has been appointed.~~ Conciliation agreements shall be ~~made public~~ publicly available unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purposes of the Act.

5.7 ~~Failure to comply with~~ Conciliation Agreements shall be ~~pursued~~ enforced according to the Act.

~~**6.0 Charge (Formerly Rules 16 and 17)**~~

~~6.1 Except in the case of complaints initiated by the Commission, the Director of the Office of Human Relations or a staff person designated by the Director shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory choosing practice has occurred or is about to occur and issue a change or dismiss the complaint pursuant to Section 4610(f).~~

~~6.2 Although the time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or dismissal, under Section 4612(c), staff may still make efforts to settle the case before a final order is issued.~~

~~**7.0 Case Closing Prior to Hearing**~~ **6.0 Administrative Closure ~~(Formerly Rules 18, 19, and 20)~~**

~~7.1~~ 6.1 A case ~~shall be considered to have been closed or~~ can be voluntarily terminated upon withdrawal of complaint by Complainant in writing ~~with or without prejudice prior to answer~~ prior to a response by the Respondent. ~~Such withdrawal shall be in writing.~~ However, after ~~answer~~ a response is filed by Respondent, a complaint may be withdrawn ~~with or without prejudice~~ only with he consent of the Respondent or with approval by the Chairperson or his or her designee ~~to preserve the public interest~~.

~~7.2~~ 6.2 A case may be closed by the Division for lack of activity in the case for more than ~~one (1) year~~ ninety (90) days, failure of Complainant to cooperate, or loss of contact with the Complainant. Application shall be made in writing ~~by Staff to Panel or if no Panel has been appointed then~~ to the Director or Chairperson, stating the reason for the proposed closing.

~~7.3 A case may be closed for failure of Complainant to cooperate upon application of Staff to the Panel or if no Panel has been appointed, then to the Director or Chairperson.~~

~~7.4 A case may be closed for loss of contact with the Complainants where all reasonable efforts to locate same have been exhausted, upon written application by the Panel or by the Staff to the Panel, or if no Panel has been appointed, then to the Director or Chairperson.~~

~~7.5~~ 6.3 All notices of case closing shall be served on all parties at the last addresses they provided to the Division and shall include a statement of the option to re-file the complaint as provided under the Act within the applicable statute of limitations. ~~of the right to appeal, to have the case reopened for good cause shown to the Panel, or if no Panel has been appointed, then to the Director or Chairperson.~~

7.0 Charge and Answer

7.1 Except in the case of complaints initiated by the Commission, the Director or his or her designee shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and issue a charge on behalf of the aggrieved person or dismiss the complaint pursuant to Section 4610(f).

7.2 The time for conciliation specified by Section

4610(b)(1) of the Act ends with the filing of a charge or a dismissal under Section 4610(f)(1)(2). Any subsequent settlement negotiations are conducted between the Respondent, or his or her attorney, and the Deputy Attorney general assigned to represent the Division.

7.3 The charge shall consist of a short and plain statement of the facts that support a finding of reasonable cause by the Division and shall be served on the Respondent and the aggrieved person. The charge shall be based on the final investigative report and need not be limited to the facts alleged in the complaint.

7.4 An aggrieved person may intervene as a party in the proceeding with written notice to the Division and the Respondent.

7.5 Within 20 days after service of the charge, a Respondent shall file an answer with the Division.

7.6 Failure to file an answer to the charge shall be deemed an admission by the Respondent of all matters of fact recited therein and may result in the entry of a default decision by the Commission.

7.7 Any party may elect in writing to proceed for judicial determination rather that the administrative hearing before the Commission by notifying the Division within 20 days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The subsequent proceeding are subject to the rules of the Court.

8.0 Appointment of Panel ~~(Formerly Rule 21 and 22)~~

8.1 In the absence of an election to proceed with judicial determination ~~in a Civil Action~~ pursuant to Section 4612 of the Act, the Commission Chair or designee shall promptly appoint a panel of three (3) Commissioners, one of whom shall be designated as the Panel Chair.

8.2 The Panel shall have all the powers of the Commission with respect to matters before it.

9.0 Expedited Discovery after a Charge is Filed ~~(Formerly Rules 23, 24, 25, 26 and 27)~~

9.1 ~~Staff shall cause interrogatories and/or requests for production of documents to be issued and depositions to be taken upon request of any party~~; After a charge is filed by the Division, parties may obtain discovery by depositions, written interrogatories, production of documents or things, and requests for admission. The expense of such discovery shall be borne by the party requesting the discovery.

9.2 Pursuant to the Fair Housing Act, Sections 4612(d) and (e), discovery in ~~A~~ administrative proceedings shall be conducted as expeditiously as possible consistent with the need of all parties to obtain relevant evidence and the statutory requirement that a hearing be scheduled within 120 days following the issuance of the charge unless impracticable.

9.3 The parties shall try to agree on procedures for discovery. Where the parties cannot agree, disputes shall be presented in writing ~~to staff,~~ and the dispute shall be resolved by written decision of a Commissioner, appointed by the Chairperson, who will not be assigned to the hearing Panel~~, or to the Director, who shall resolve the dispute according to the intent of the Fair Housing Act and fairness to both parties. The person making the decision shall make a written record of the decision and the reasons therefor.~~

9.4 Discovery need not be formal. ~~made with the customary formalities of Superior Court or the Court of Chancery~~. For example, the parties need not have a professional stenographer for transcription of depositions, so long as a record is made in some fashion such as an audio or video tape. ~~by a professional or non-professional. Each party~~ Parties shall be entitled to a copy of the record, in whatever form, at their own expense.

~~9.5 Any party may serve on any other party a request to produce and permit the party making the request, or someone acting on that party's behalf to inspect and copy or photograph, any designated documents or photographs which constitute or contain evidence relating to any matter which is relevant to the subject matter involved in the pending hearing and not otherwise privileged and which are in the possession, custody or control of the party upon whom the request is served. Nevertheless, requests for production shall not be unduly burdensome upon the parties.~~

~~9.6 Production of documents shall be made to the requesting party within twenty (20) days after a written request is served upon the party, with a copy filed with the Commission. If the parties cannot agree as to production of documents, the party submitting the request may request the Commission to resolve the dispute according to Rule 9.1 (Formerly Rule 23).~~

~~9.7 Each party shall be provided with copies of the other parties responses to staff questionnaires. If an interrogatory was not covered by the staff questionnaire, any party may request staff to supplement the questionnaire with additional questions. Disputes as to this shall be resolved according to section 9.1 (Formerly Rule 23).~~

10.0 Pre-hearing Production ~~(Formerly Rules 28 & 29)~~

10.1 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the Commission ~~Office~~ at the office of the Division where the complaint was filed and to all parties at least ten (10) business days prior to the hearing. The hearing panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) business days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit.

10.1.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has

not been delivered to the Commission and to an adverse party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the ~~locus~~ location involved in a case. ~~in the presence of the parties and/or their attorneys or outside the presence of the parties or their attorneys~~.

10.1.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under Section 4612(i) or until all relevant proceedings have been concluded, whichever is later. When such time has passed, the exhibits shall be returned to their ~~proper~~ owner or destroyed.

10.2 A written list of witnesses a party intends to call during a Panel Hearing, must be delivered to the Commission and all parties at least ten (10) ~~twenty-one (21)~~ days prior to the hearing.

10.2.1 The Commission Panel may refuse to receive into evidence any testimony of a witness ~~which~~ who has not been named on the witness list.

10.2.2 A party requesting that a witness be subpoenaed to appear shall provide the address where service can be made as required under Rule 11.5. A witness is required to appear only if a subpoena has been issued.

11.0 Hearings ~~(Formerly Rules 30, 31, 32, 33, 34 & 35)~~

11.1 The purpose of a hearing is to receive evidence, determine facts, and, after deliberation, render an adjudication in accordance with applicable law.

11.2 ~~The date, time, place and subject matter to be heard shall be included in the notice of hearing sent to all parties, the Panel and the Attorney General's representative, as well as such other information as is required by the Administrative Procedures Act.~~ Notice of the hearing shall be sent to the parties pursuant to the Administrative Procedures Act.

11.3 No fewer than three Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel member ~~for any reason whatsoever~~, the Commission Chair or his or her designee shall be empowered to make a substitution without notice to the parties, provided the hearing has not yet begun.

11.4 The hearing shall be held in the ~~C~~ county in which the discriminatory housing practice is alleged to have occurred or is ~~to be~~ about to occur.

11.5 A subpoena shall be issued upon written request by any party to a proceeding~~, the Staff,~~ or the Panel. Such request shall be submitted by a party within a reasonable time in advance of the hearing or deposition. Witnesses and documents requested must be clearly described in writing and include addresses for service. The consequence of failure to request a subpoena in timely fashion shall be at the discretion of the Panel.

11.5.1 Subpoenas may be served by the Division or a person ~~Staff, a Commissioner, or by any other person who is not a party and is not less than~~ 18 years of age or older who is not a Respondent or aggrieved person in the proceeding. A return of service of each subpoena shall be promptly filed at the appropriate Office.

11.5.2 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order is punishable by the Court as contempt.

11.6 The hearing shall be conducted by the ~~Commission~~ Panel Chair in a setting designed to put the parties at ease. ~~The parties~~ Individuals may be represented by counsel. A corporate entity must be represented by an attorney admitted to practice in Delaware. Every hearing shall be recorded by electronic instrument or court reporter.

11.6.1 All parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The purpose of opening statements shall be to clarify the positions of the parties and the issues being presented for determination. ~~Testimony shall be under oath or affirmation administered by the Panel Chair or a notary public.~~

11.6.2 All ~~information and facts available~~ evidence shall be presented ~~in~~ by sworn testimony and exhibits ~~documentary evidence presented~~ at the hearing. ~~Staff shall be required to attend the hearing in order to assist in the proceedings, or, where appropriate, to be a witness.~~ The Panel Chair shall have full authority to control the procedure of a hearing, including, but not limited to the authority to call and examine witnesses, admit or exclude evidence, and rule upon all motions and objections subject to the following:

11.6.2.1 Formal rules of evidence need not be strictly followed.

11.6.2.2 ~~The right of cross e~~ Examination shall be preserved and may be conducted by ~~the parties, or a duly authorized~~ a party who represents himself or herself, an attorney admitted to practice in Delaware who represents a party, ~~attorney-at-law~~ or the Commission Panel.

~~11.6.2.3 Testimony from any other person may be allowed at the discretion of the Commission Panel.~~

11.6.2.3 Witnesses may be sequestered at the discretion of the Commission Panel~~, upon the request of the party(s)~~.

11.6.2.4 Evidence on behalf of the Complainant should ordinarily be introduced first, to be followed by the Respondent, then allowing rebuttal, if any.

11.6.2.5 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all parties.

11.6.2.6 Following presentation of the evidence an opportunity shall be given to each party to make a closing statement.

11.6.2.7 The Panel may re-call the parties for further testimony if it is unable to reach a decision.

11.7 A written transcript shall be prepared, if and as required, on the written request of any party to the matter, provided that such party pays for the cost of preparing the transcript. ~~Staff~~ The Division shall coordinate this process under State contract. ~~Such recordings and transcripts shall be preserved with the official file record of a case.~~

12.0 Decision and Orders ~~(Formerly Rules 36, 37 & 38)~~

12.1 Deliberations of the Panel are non-public. The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date and so advise the parties. Decisions shall be by majority vote of the Panel. ~~The Attorney General's representative may be invited to be present while the Panel reaches a decision.~~

12.2 A copy of the Final Order shall be delivered by hand or mailed by Certified Mail, Return Receipt Requested, or ~~Hand Delivery~~ or by regular first class mail to the parties' last known address. In addition each party shall be notified of the right to seek reconsideration by the Panel.

12.3 Any party within ten (10) ~~five (5)~~ business days after mailing of the Final order may apply to the Panel for reconsideration briefly and distinctly stating the grounds therefor. Such application for reconsider must show service on the opposing party.

Within ten (10) ~~five (5)~~ business days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. ~~Any such application or answer should be submitted in five (5) copies~~. The Panel shall promptly convene ~~in person or by teleconference~~ to consider such motion for reconsideration. The filing of such application shall ~~not~~ extend the time for judicial review under Section 4612(i).

13.0 Recovery of Attorney's Fees, Costs, and Expenses

13.1 Any party seeking to recover attorney's fees, costs, and expenses shall file a motion and affidavit detailing the time spent and fees incurred no later than the close of any hearing held before the Panel.

13.2 A motion filed by a Respondent shall state with particularity the improper purpose that would permit recovery of attorney's fees, costs, and expenses as provided pursuant to 6 **Del. C.** Section 4615.

~~13.0~~ 14.0 Miscellaneous Provision ~~(Formerly Rules 39, 40, 41, 42, 43 & 44)~~

~~13.1~~ 14.1 Time.

14.1.1~~13.1.1~~ In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or Sunday, or other legal holiday, or other day on which the ~~office~~ Division of Human Relations is closed, in which event the period shall run until the end of the next day on which the ~~Office~~ Division is open. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware.

14.1.2~~13.1.2~~ When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Commission ~~or Director~~ for cause shown may at any time in its discretion

14.1.2.1~~13.1.2.1~~ with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or

14.1.2.2~~13.1.2.2~~ upon motion made after the expiration of specified period permit the act to be done where the failure to act was the result of excusable neglect.

14.1.3 ~~13.1.3~~ Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.

14.2~~13.2~~ Service. Unless otherwise specifically required by the Act~~s~~ or these regulations, service of complaints, answers, other pleadings, charges, motions, requests or notices shall be made according to this rule.

14.2.1~~13.2.1~~ For the initial complaint and any pleading which brings in a new party, service shall be sufficient if made according to Superior Court Civil Rule 4(f), Rule 4(h) for service under Title 10, Section 3104, or by certified mail, return receipt requested with the return receipt card signed by (1) the person to be served, (2) a person living with or working in the office of the person to be served, or (3) an agent authorized by appointment or by law to receive service of process.

14.2.2~~13.2.2~~ Once jurisdiction over a party has been established, service may be by certified mail, return receipt requested, or by hand delivery or mail pursuant to Superior Court Civil Rule 5(b), as then in effect, or by some other means of notice generally recognized in the community with some confirmation of the notice having been sent such as by regular first class mail to the parties' last known address as evidenced by a certificate of mailing, by an express mail service with a receipt showing the notice was delivered to the express mail company, or by telecopier or fax with confirmation of transmission from the sender's machine.

14.3 ~~13.3~~ These regulations shall be liberally construed to accomplish the purpose of the applicable laws.

14.4~~13.4~~ These regulations shall be reviewed periodically by the Commission or its designee and the Director of the ~~Office~~ Division of Human Relations. Any recommendations for change shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.

14.5~~13.5~~ The Administrative Procedures Act (Chapter 101 of Title 29) shall provide the method by which these regulations may be amended.

14.6~~13.6~~ Copies of these regulations shall be available during regular office hours at the ~~office~~ Division of Human Relations or, upon request, by mail. ~~A fee established by appropriate authority may be charged.~~ A copy of the rules and regulations is also available at : http://www.state.de.us/research/AdminCode/General/Frame.htm

15.0 Regulations related to Housing for Older Persons.

15.1 Housing for persons age 62 or older.

15.1.1 Housing that is designated for persons age 62 or older must be solely occupied by persons age 62 or older.

15.1.2 No person under age 62 may move into a unit designated for persons age 62 or older even if it is also occupied by a person who is qualified by age. For example, if a person age 65 who lives in a unit designated for persons age 62 or older marries a person age 60, the person age 60 does not qualify to live in the unit.

15.1.3 Units occupied by persons under age 62 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.1.4 Units occupied by persons under age 62 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 62 or older.

15.2 Housing for persons age 55 or older.

15.2.1 Housing qualifies under this section as long as at least 80% of the units are occupied by at least one person age 55 or older.

15.2.1.1 In computing whether the 80% occupancy test is met, unoccupied units are not included in the calculation.

15.2.1.2 Units occupied by persons under age 55, who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.3 Units occupied by persons under age 55 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 55 or older.

15.2.1.4 A unit that is temporarily vacant is deemed to be occupied by a person 55 or older if, within the preceding 12 months, the unit was occupied by a person 55 or older who intends to periodically return.

15.2.1.5 Owners or managers must maintain records demonstrating that at least 80% of the units are occupied by at least one person age 55 or older. These records shall include biennial surveys made to confirm the ages of occupants by reliable documentation, such as drivers' licenses, passports, etc. Surveys shall be made available to the Division for inspection if a complaint of discrimination is filed.

15.2.2 To qualify under this section, a facility or community must publish and adhere to policies and procedures that demonstrate the intent of the owner to maintain housing for persons age 55 or older. The publication must be available for inspection at the management office during regular business hours.

15.2.3 To qualify under this section, a facility or community must have significant facilities and services designed to meet the physical or social needs of older persons. These can include periodic seminars, clubs, social activities, field trips, transportation, a local bus stop, homemaker or health services, maintenance, clubhouse, exercise equipment, recreation area, newsletters, etc. The Division will maintain a list of suggestions available for the convenience of providers of housing for persons 55 or older. The list is not all-inclusive.

15.3 Provisions under the Act regarding familial status and age are not applicable to qualified housing for older persons.

15.4 A child under 18 years of age may be a temporary resident in a unit of housing for older persons if the child's parent, guardian, or person acting as a parent, with whom the child just resided, is unable to care for the child by reason of death, serious injury or serious illness.

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 AGRICULTURE

HARNESS RACING COMMISSION

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

ORDER

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on February 25, 2004, the Commission makes the following findings and conclusions:

Summary Of Evidence

1. The Commission posted public notice of the proposed amendments in the January 1**,** 2004 Register of Regulations and for two consecutive weeks in the Delaware Capital Review and Delaware State News. The proposed amendments to the Commission's Rules are as follows:

1) Amend Rule 3.1.1.14 to provide for the appointment of a Bleeder Medication Veterinarian, and delete the current reference to Lasix Veterinarian;

2) Amend Rule 3.13 to change the name of the Rule to "Commission Veterinarian." Amend Rules 3.13.1, 3.13.2, 3.13.2.3, 3.13.2.6, 3.13.2.8, and 3.13.3 to refer to "Commission Veterinarian" instead of the current reference to "State Veterinarian";

3) Amend Rule 3.14 to change the name of the Rule to "Bleeder Medication Veterinarian." Amend Rule 3.14.1 to refer to "Bleeder Medication Veterinarian" instead of the current reference to "Lasix Veterinarian." Amend Rule 3.14.1.1 to refer to "Commission Veterinarian" instead of the current reference to "State Veterinarian." Amend Rule 3.14.1.6 to provide that the duties of the Bleeder Medication Veterinarian include administration of furosemide (salix) and aminocaproic acid in accord with Commission Rule 8.3.5. Amend Rule 3.14.2 to change the wording to "Commission Veterinarian" from the current reference to "State Veterinarian";

4) Amend Rule 6.3.3.13 to provide that postrace samples can be taken from claimed horses. Further amend Rule 6.3.3.13 to provide that a claimant has the right to void a claim if a postrace blood sample from a horse exhibits a positive response to the EPO antibody test;

5) Amend Rule 8.3.5 to change the title of the Rule to delete the reference to "Lasix" and substitute the words "(Salix) and Aminocaproic Acid (Amicar)";

6) Amend Rule 8.3.5.1 to provide that furosemide (salix) or furosemide with aminocaproic acid may be administered to a horse on the grounds of the association, and provide, that said administration may only be permitted after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate collection of a urine sample;

7) Amend Rule 8.3.5.2 to provide that furosemide or furosemide with aminocaproic acid shall be administered intravenously by the Bleeder Medication Veterinarian unless otherwise determined by that veterinarian. Further amend

Rule 8.3.5.2 to provide that permission for an intramuscular administration must be given by the Presiding Judge or designee;

8) Amend Rule 8.3.5.3 to provide that Aminocaproic Acid shall be administered by the Bleeder Medication Veterinarian to horses on the Bleeder Medication List of not more than 7.5 grams and not less than 2.5 grams intravenously, and that Furosemide shall also only be administered to horses on the Bleeder List by the Bleeder Medication Veterinarian. Further amend Rule 8.3.5.3 by deleting Rule 8.3.5.3.1, and renumbering the remaining parts of the Rule;

9) Amend Rule 8.3.5.4 to provide the time for horses to be present in assigned stalls in the paddock for Aminocaproic Acid treatment. Further amend Rule 8.3.5.4 to change the word "Lasix" to "Furosemide";

10) Amend Rule 8.3.5.5 to provide that payment is to be made to the Bleeder Medication Veterinarian for administration of medication;

11) Amend Rule 8.3.5.6 to delete the word "lasix";

12) Amend Rule 8.3.5.7 to provide that a horse may be disqualified for failing to declare or report the use of aminocaproic acid, and may be disqualified for the absence of bleeder medication after declaring the use of bleeder medication; and further amend Rule 8.3.5.7.1 to delete the word "Lasix" and insert the word "Furosemide"; and further amend Rule 8.3.5.7.1.2 and 8.3.5.7.2 to correct renumbering of Rules and to make a grammatical change in the wording of the specific gravity level;

13) Amend Rule 8.3.5.8 to provide that the Bleeder Medication Veterinarian is responsible for written certifications of administrations of Aminocaproic Acid or Furosemide or Furosemide with Aminocaproic Acid;

14) Amend Rule 8.3.5.9 to delete the reference in Rule 8.3.5.9.1 to "Commission Veterinarian" and insert "Bleeder Medication Veterinarian"; further amend Rules 8.3.5.9.1.2 and 8.3.5.9.2 to delete the reference to "Lasix veterinarian"; further amend Rule 8.3.5.9.3 to add that Furosemide or Furosemide with Aminocaproic Acid if applicable must be administered to horses on the Bleeder List. Amend Rule 8.3.5.9.6 to provide the procedure to discontinue the use of Aminocaproic Acid in a horse. Amend Rule 8.3.5.9.7 to delete the word "Lasix" and add "Furosemide and Aminocaproic Acid" in reference to program symbols to indicate whether a horse from another jurisdiction did not race with Furosemide or Furosemide with Aminocaproic Acid in its last start. Amend Rule 8.3.5.9.8 to delete the word "Lasix" and add "Furosemide or Furosemide with Aminocaproic Acid" and to renumber rule sections referenced in the rule.

2. The Commission held a public hearing on February 25, 2004. At the public hearing, the Commission received sworn testimony from Charles B. Lockhart, Vice-President of Dover Downs, Salvatore DiMario, Executive Director of DSOA, James Boese, General Manager of Harrington Raceway, and Dr. Jay Baldwin, Bleeder Medication Veterinarian.

3. Charles Lockhart asked whether, under the proposed amendment to Rule 6.3.3.13, a horseman could request a blood sample alone and not a urine sample, and who would pay for the test. Mr. Lockhart did not believe the rule as drafted addressed the issue of payment. Currently, the track pays for drug testing costs. Mr. Lockhart stated that horsemen should be responsible for the testing, not the track. He further questioned how a claim would be voided and a horse returned if a horse tested positive for EPO. Mr. Lockhart also inquired how long an individual has to return the horse. Mr. Lockhart also stated that permitting Amicar would be liberalizing the medication rules which was not in the best interest of the industry. He did not believe the Commission should endorse the change to the Amicar rule.

4. Salvatore DiMario, stated that the proposed Amicar rule changes were the product of a working committee and that everyone had input. Dr. Peters, the Commission Veterinarian, was a member of the group and had input on the proposed rule changes. On the proposed amendment to Rule 6.3.3.13, Mr. DiMario supported the amendment and believed the Commission should adopt it even if not complete. He stated that the EPO rule should be used because when a horse with EPO crashes, it is rendered unable to race for months. Mr. DiMario stated that he is unsure of what to expect with regard to testing. The cost of the test is about $110 which should be the responsibility of the racetrack. Mr. DiMario believed the Commission should get a breakdown of the cost and study the issue before changing the rule on payment.

5. Jim Boese stated that Harrington Raceway objects to having to pay for a test that should be paid for by the claimant.

6. Dr. Baldwin stated that Amicar is not a performance-enhancing drug but rather is a medication used to help prevent pulmonary hemorrhage and bleeding.

Findings Of Fact And Conclusions

7. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules. The Commission received no written comments on the proposed amendments.

8. The comments at the public hearing were split in regard to the Commission's proposed Amicar rules and EPO claiming rule. With regard to the proposed Amicar rule changes, the public testimony indicated that a working committee was formed to study the issue of Amicar as a race day medication. The working committee consisted at least in part of of Salvatore DiMario, Charles Lockhart, Dr. Peters, and John Wayne, Administrator of Racing. This

committee submitted a detailed proposal, which involved proposed amendments to Rule 3.1, 3.13, 3.13.2, 3.13.3, 3.14, 8.3.5. Some of the proposed changes to these rules are stylistic changes involving revised titles and terminology. The difference of opinion centers on the proposed changes to Rule 8.3.5 which provides the rule for administration of Amicar on race day. The Commission finds based on the testimony of Dr. Baldwin that Amicar is not a performance-enhancing drug. The Commission further finds based on Dr. Baldwin's testimony that the proposed Amicar rule would be beneficial to prevent pulmonary hemorrhage and bleeding in horses. The Commission also finds based on the testimony of Mr. DiMario that the rule would be beneficial to horsemen. The Commission also notes that the Thoroughbred Racing Commission has adopted a similar rule, Thoroughbred Commission Rule 15.01.2, in the November 1, 2002 Register of Regulations (Vol. 6, Issue 5). The Commission concludes from the evidence that the proposed amendments to permit the use of Amicar as a race day medication are necessary for the effective regulation of harness racing in the public interest under 3 *Del. C.* §10005. The Commission also concludes that the Amicar rule amendments are consistent with the general purpose of the Commission's Veterinary Practices, Equine Health & Medication Rules, Rule 8.1, "to protect the integrity of horse racing, to ensure the health and welfare of racehorses and to safeguard the interests of the public and the participants in racing." The Commission concludes that the proposed amendments to Rules 3.1, 3.13, and 8.3.5 should be adopted as proposed.

9. The public comments were also divided on whether the Commission should adopt the proposed amendment to Rule 6.3.3.13. The amendment to Rule 6.3.3.13 would permit a person claiming a horse to request a post-race test on the claimed horse to test for the presence of prohibited substances and to test for a positive response to the erythropoietin (EPO) antibody test. The comments from Mr. DiMario were in favor of the rule amendment. Both Mr. Lockhart and Mr. Boese opposed the rule amendment if the racetracks were going to have to pay for the cost of the testing. The Commission does find that the use of EPO is extremely dangerous to the horses as detailed in the testimony of Mr. DiMario. The rule as proposed would permit a person who has claimed a horse to void that claim in the event there was proof that a horse had exhibited a positive response to the EPO antibody test. The Commission concludes that the proposed rule would be a useful step in attempting to discourage the use of EPO in harness racing. The Commission notes that both New York and Ontario have already adopted a similar rule in 2003. New York Racing Commission Rule 4109.7; Ontario Racing Commission Rule 6.48.6.

10. The Commission does recognize that there was discussion about what party would be responsible for the payment of the testing requested by a claimant. The Commission notes that the proposed amendment to Rule 6.3.3.13 does not change the language of the rule regarding the right of a claimant to request a test on a claimed horse. It was not the intent of the proposed rule to change the existing practice and the proposed rule does not amend that language in the Rule. While there was some uncertainty on this issue at the public hearing, the Commission does not believe this issue should prevent the adoption of a necessary rule. The Commission does note that Rule 6.3.3.13 provides that the claimant may request testing "in accordance with these rules." Under Rule 8.4.1.2, the judges do have the authority to order random or extra testing on any horse on the association grounds. Furthermore, under Rule 3.2.2.5, the judges have the authority to interpret the Commission Rules and decide all questions of racing not specifically covered by the rules. There is statutory authority, 3 **Del.C.** §10029(g), requiring the racetracks to reimburse the Commission for the costs of Commission ordered testing but this section does not specifically apply to testing due to a request of a claimant. The Commission does find under Rule 3.2.2.5 that the judges do have the authority to require the claimant to bear the cost of testing that he or she requests pursuant to Rule 6.3.3.13.

11. The Commission finds that the proposed amendments to the Rules are necessary for the agency to achieve its statutory duty to effectively regulate harness racing in the public interest under 3 **Del.C.** §10005.

12. The Commission does conclude that a minor technical and non-substantive revision to Rule 3.14.1 as proposed is necessary. Rule 3.14.1.1 is amended to delete the phrase “State Veterinarian” and insert the correct term “Commission Veterinarian.” The original submission by the Commission proposed this change which appears to have not been published in the proposed Regulations in the Register of Regulations. In any event, the Commission finds this is a non-substantive amendment under 29 **Del.C.** §10113(b)(4).

13. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on May 1, 2004. A copy of the enacted Rule amendments is attached as Exhibit #1 to this Order.

IT IS SO ORDERED this 16th day of March, 2004.

Beth Steele, Chair
Robert Everett, Commissioner
Mary Ann Lambertson, Commissioner
George Staats, Commissioner
Kenny Williamson, Commissioner

3.0 Officials

3.1 General Provisions

3.1.1 Racing Officials

Officials at a race meeting may include the following, as determined by the Commission:

3.1.1.1 State Steward;

3.1.1.2 Board of judges;

3.1.1.3 racing secretary;

3.1.1.4 paddock judge;

3.1.1.5 horse identifier and equipment checker;

3.1.1.6 clerk of the course;

3.1.1.7 official starter;

3.1.1.8 official charter;

3.1.1.9 official timer;

3.1.1.10 photo finish technician;

3.1.1.11 patrol judge;

3.1.1.12 program director;

3.1.1.13 **[~~State~~ Commission]** veterinarian;

3.1.1.14 ~~LASIX~~ Bleeder Medication veterinarian;

3.1.1.15 Investigator; and

3.1.1.16 Administrator of Racing

3.1.1.17 any other person designated by the Commission.

3.1.2 Eligibility

To qualify as a racing official the appointee must be licensed by the Commission after a determination that he/she:

3.1.2.1 is of good moral character and reputation;

3.1.2.2 is experienced in and/or knowledgeable of harness racing;

3.1.2.3 is familiar with the duties to which he/she is appointed and with the Commission's rules and regulations;

3.1.2.4 possesses the mental and physical capacity to perform his/her duties; and

3.1.2.5 is not under suspension or ejection by the U.S.T.A., the C.T.A. or any racing jurisdiction.

3.1.3 Approval and Licensing

The Commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing.

3.1.4 Prohibited Practices

Racing officials and their assistants shall not engage in any of the following activities while serving in an official capacity at a race meeting:

3.1.4.1 participate in the sale or purchase, or own any horse racing at the meeting;

3.1.4.2 sell or solicit horse insurance on any horse racing at the meeting;

3.1.4.3 be licensed in any other capacity without permission of the Commission;

3.1.4.4 wager on the outcome of any live or simulcast race;

3.1.4.5 refuse to take a breath analyzer test or submit to a blood or urine sample when directed by the Commission or its designee; or

3.1.4.6 perform their official duties on any day during which any horse entered in any live race at the association grounds is owned or trained, in whole or in part, directly or indirectly, or is driven by any parent, child or sibling of such official, or participate in the draw for any such race; provided, however, that a parent, child or sibling of an official acting solely as a groom for such a horse shall not be deemed to pose a conflict of interest for the official; provided further, that should any such conflict described above arise, the official will immediately notify the State Steward; and provided, further, that should repeated such conflicts interfere with the official's performance of his/her normal duties, or with any other official's performance of his/her official duties, then the Commission shall appoint another person to replace the official with the familial conflict.

3.1.5 Report of Violations

Racing officials and their assistants shall report immediately to the State Steward or judges every observed violation of these rules and of the laws of this jurisdiction governing racing.

3.1.6 Complaints Against Officials

Any formal complaint against a racing official other than a judge shall be made to the State Steward or Presiding Judge in writing and signed by the complainant. All such complaints shall be reported to the Commission by the State Steward or Presiding Judge, as appropriate, together with a report of the action taken or the recommendation of the State Steward or Presiding Judge. Formal complaints against the State Steward or any judge shall be made in writing to the Commission and signed by the complainant.

3.1.7 Appointment

3.1.7.1 A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the Commission. No person shall be appointed to or hold any such office or position who holds any official relation to any person, association, or corporation engaged in or conducting harness racing within this State. No Commissioner, racing official, steward, or judge whose duty is to insure that the rules and regulations of the Commission are complied with shall bet on the outcome of any race regulated by the Commission or have any financial or pecuniary interest in the outcome of any race regulated by the Commission. All employees appointed under 3 **Del.C.** §10007(a-c) shall serve at the pleasure of the Commission and are to be paid a reasonable compensation.

3.1.7.2 The Commission shall appoint or approve the State Steward and judges at each harness race meeting. The Commission may appoint such officials on an annual basis. In addition to any minimum qualifications

promulgated by the Commission, all applicants for the position of Steward must be certified by a national organization approved by the Commission. An applicant for the position of steward or race judge must also have been previously employed as a steward, patrol judge, clerk of scales or other racing official at a harness racing meeting for a period of not less than forty-five days during three of the last five years, or have at least five years of experience as a licensed driver who has also served not less than one year as a licensed racing official at a harness racing meeting or have ten years of experience as a licensed harness racing trainer who has served not less than one year as a licensed racing official at a harness racing meeting.

3.1.7.3 The Commission may appoint such officers, clerks, stenographers, inspectors, racing officials, veterinarians, and such other employees as it deems necessary, consistent with the purposes of 3 **Del.C.** Chapter 100.

3.1.8 Appointment of Substitute State Steward/ Judge

Should any State Steward or any judge be absent at race time, the State Steward, or, in his/her absence the remaining judge(s) shall appoint a deputy for the State Steward or judge(s). If a deputy State Steward or judge is appointed, the Commission shall be notified immediately by the State Steward or remaining judges.

3.2 State Steward/Judges

3.2.1 General Authority

3.2.1.1 The State Steward and judges for each meeting shall be responsible to the Commission for the conduct of the race meeting in accordance with the laws of this jurisdiction and these rules.

3.2.1.2 The State Steward and judges shall enforce these rules and the racing laws of the State of Delaware.

3.2.1.3 The State Steward's authority includes supervision of all racing officials, licensed personnel, other persons responsible for the conduct of racing and patrons, as necessary to ensure compliance with these rules.

3.2.1.4 The State Steward and Presiding Judge shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

3.2.1.5 The State Steward and judges have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules.

3.2.1.6 The State Steward shall be a representative of the Commission at all race meetings which the Commission may direct such State Steward to attend. The State Steward shall be the senior officer at such meetings and, subject to the control and direction of the Commission, shall have general supervision over the racing officials, medication program and drug-testing officials, and all other employees and appointees of the Commission employed at such race meet or meetings. The State Steward shall, subject to the general control of the Commission, monitor the conduct of the racing and the pari-mutuel department, and supervise the testing of horses and drivers. The State Steward at all times shall have access to all parts of the association grounds, including the racecourse, physical plant and grounds. Upon instruction from the Commission, the State Steward shall conduct hearings and investigations, and report his findings to the Commission. The State Steward shall act for the Commission in all matters requiring its attention, to receive from all persons having knowledge thereof information required by the Commission and to perform all other duties for the compliance of the rules and regulations of the Commission and the laws of the State of Delaware.

3.2.2 Period of Authority

The State Steward's and judges' period of authority shall commence five (5) business days prior to the beginning of each race meeting and shall terminate with completion of their official business pertaining to the meeting.

3.2.3 Disciplinary Action

3.2.3.1 The State Steward and judges shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

3.2.3.2 The State Steward and judges shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

3.2.3.3 The State Steward and judges may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

3.2.3.4 The State Steward and judges may at any time inspect license documents, registration papers and other documents related to racing.

3.2.3.5 The State Steward and judges have the power to administer oaths and examine witnesses.

3.2.3.6 The State Steward and judges may consult with the **[~~State~~ Commission]** Veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

3.2.3.7 The State Steward and judges may impose, but are not limited to, any of the following penalties on a licensee for a violation of these rules:

3.2.3.7.1 issue a reprimand;

3.2.3.7.2 assess a fine;

3.2.3.7.3 require forfeiture or redistribution of purse or award, when specified by applicable rules;

3.2.3.7.4 place a licensee on probation;

3.2.3.7.5 suspend a license or racing privileges;

3.2.3.7.6 revoke a license;

3.2.3.7.7 exclude from grounds under the jurisdiction of the Commission; or

3.2.3.7.8 any relief deemed appropriate.

3.2.3.8 The State Steward and judges may take any appropriate actions against any horse for a violation or attempted violation of these rules.

3.2.3.9 The State Steward and judges may suspend a license; or they may impose a fine in accordance with these Rules for each violation; or they may suspend and fine; or they may order that a person be ineligible for licensing.

3.2.3.10 A State Steward's or judges' ruling shall not prevent the Commission from imposing a more or less severe penalty.

3.2.3.11 The State Steward or judges may refer any matter to the Commission and may include recommendations for disposition. The absence of a State Steward's or judges' referral shall not preclude Commission action in any matter.

3.2.3.12 Purses, prizes, awards, and trophies shall be redistributed if the State Steward or judges or Commission order a change in the official order of finish.

3.2.3.13 All fines imposed by the State Steward or judges shall be paid to the Commission within ten (10) days after the ruling is issued, unless otherwise ordered.

3.2.4 Protests, Objections and Complaints

The State Steward or judges shall investigate promptly and render a decision in every protest made to them. They shall maintain a record of all protests. The State Steward or judges shall file daily with the Commission a copy of each protest, objection or complaint and any related ruling. All protests must be in writing and lodged with the State Steward or judges not later than forty-eight (48) hours after the race in question.

3.2.5 Judges' Presence

A board of judges shall be present in the judges' stand during the contesting of each race.

3.2.6 Order of Finish for Pari-Mutuel Wagering

3.2.6.1 The judges shall determine the official order of finish for each race in accordance with the rules of the race (see Rule 7.0).

3.2.6.2 The decision of the judges as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the contesting of the race, shall be final for purposes of distribution of the pari-mutuel wagering pool.

3.2.7 Cancel Wagering

The State Steward or judges have the authority to cancel wagering and order refunds where applicable on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

3.2.8 Steward's List

3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.

3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the Steward's List the reason and the date of removal if the horse has been removed.

3.2.8.3 All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for seven (7) days from the date of the scratched race. Entries will be accepted during this seven (7) day period for a race to be contested after the seventh day.

3.2.8.3.1 Veterinarians may put a horse on the Steward’s List for sickness or lameness for more than seven (7) if necessary. In that instance, the horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

3.2.8.4 No Presiding Judge or other official at a fair meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed therefrom for the reason that he/she is dangerous or an unmanageable horse. Such meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed therefrom.

3.2.8.5 No horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.

3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the judges, before being allowed to start.

3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.

3.2.8.8 The judges may put any horse on the Steward's List for being noncompetitive or unfit to race at the meeting.

3.2.8.9 The judges may place a horse on the

Steward's List when there exists a question as to the exact identification, ownership or management of said horse.

3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.

3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

3.2.9 List of Nerved Horses

The judges shall maintain a list of nerved horses which are on association grounds and shall make the list available for inspection by other licensees participating in the race meeting.

3.3 Racing Secretary

3.3.1 General Authority

The racing secretary is responsible for setting the conditions for each race of the race meeting, regulating the nomination of entries and determining the amounts of purses and to whom they are due. The racing secretary shall check and verify the eligibility of all horses entered.

3.3.2 Eligibility Certificates

The racing secretary is responsible for receiving and safeguarding the eligibility certificates of all horses competing at the track or stabled on association grounds.

3.3.3 Race Information

The racing secretary shall be familiar with the age, class and competitive ability of all horses racing at the meeting.

3.3.4 Classifications

The racing secretary shall classify horses in accordance with these rules and list horses in the categories in which they qualify.

3.3.5 Listing of Horses

The racing secretary shall:

3.3.5.1 examine all entry forms and declarations to verify information as set forth therein; and

3.3.5.2 select the horses to start and the also eligible horses from the declarations in accordance with these rules.

3.3.5.3 provide the listing of horses in the daily program.

3.3.6 Nominations and Declarations

The racing secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

3.3.7 Conditions

The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the Commission and be posted in the racing secretary's office.

3.3.8 Posting of Entries

Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in his/her office and make the list available to the media.

3.3.9 Stakes and Entrance Money Records

The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid not later than one hour prior to post time, regardless of whether the horse actually starts.

3.3.10 Winnings

3.3.10.1 For the purpose of establishing conditions, winnings shall be considered to include all monies and prizes won up to the time of the start of a race.

3.3.10.2 Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

3.3.11 Cancellation of a Race

In case of unfavorable weather or other unavoidable cause, associations, upon notifying of the State Steward may postpone or cancel races.

3.4 Paddock Judge

3.4.1 General Authority

Under the direction and supervision of the Presiding Judge, the Paddock Judge shall have complete charge of all paddock activities, including but not limited to:

3.4.1.1 Ensuring that all horses entered in a heat or dash are on the racetrack at the time designated by the Presiding Judge to be formed in a parade line; that such horses are attended by their drivers unless specifically excused by the Paddock Judge; that all horses in heat or race parade from the paddock upon the track and before the grandstand not later than five (5) minutes before Post Time; and that drivers not engage in conversation during the post parade. A horse failing to parade without being excused by the Paddock Judge may be scratched from the race or its driver or trainer may be penalized;

3.4.1.2 Supervising the Identifier and Equipment Checker;

3.4.1.3 Supervising the paddock gate operators;

3.4.1.4 Ensuring that all horses are in the paddock at the time prescribed by the Presiding Judge, but in any event not less than one hour but not more than two hours prior to post time of the race in which the horse is to compete. Except for warm-up trips, no horse shall leave the paddock until called to the post;

3.4.1.5 Maintaining a proper check-in and check-out of horses and drivers. No driver, trainer, owner-trainer or groom once admitted to the paddock or receiving barn shall leave the same other than to warm up said horse until such race, or races, for which he was admitted is

contested; provided, however, that in the event of an emergency, trainers or grooms may leave the paddock but only with the permission of the Paddock Judge, in which case the Paddock Judge shall maintain a written record thereof, which shall be delivered to the Presiding Judge. No person except an owner who has another horse racing in a later race, or an official, shall return to the paddock until all races of that program have been completed;

3.4.1.6 Directing the activities of the paddock blacksmith;

3.4.1.7 Ensuring that only properly authorized persons are permitted in the paddock, to wit:

3.4.1.7.1 Owners of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.2 Trainers of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.3 Drivers of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.4 Grooms of horses competing on the date of the race and whose horses are in the paddock;

3.4.1.7.5 Officials whose duties require their presence in the paddock or receiving barn; and

3.4.1.7.6 Such other persons as are authorized by the Commission; Provided, that no more than two members of a registered stable, other than the driver, shall be entitled to admission to the paddock on any racing day, except by permission of the Presiding or Paddock Judge, or written approval by the Commission;

3.4.1.7.7 Notifying the Presiding Judge of any change in racing equipment or shoes before the race;

3.4.1.7.8 Inspecting and supervising the maintenance of all emergency equipment kept in the paddock;

3.4.1.7.9 Notifying the judges of the reason for any horse returning to the paddock after having entered the track for the post parade and before the start of the race;

3.4.1.7.10 Supervising and maintaining the cleanliness of the paddock; and

3.4.1.7.11 Supervising the conduct of all persons in the paddock.

3.4.2 Report to the Presiding Judge

The Paddock Judge shall:

3.4.2.1 Immediately notify the Presiding Judge of anything that could in any way change, delay or otherwise affect the racing program; and

3.4.2.2 Report to the Presiding Judge any observed cruelty to a horse; and

3.4.2.3 Any other violations of these rules.

3.5 Horse Identifier & Equipment Checker

3.5.1 General Authority

The Horse Identifier & Equipment Checker shall be present for each race. The duties of the Identifier & Equipment Checker are:

3.5.1.1 Maintain a listing of all equipment worn, including shoes, and the tattoo or freeze brand number for each horse racing at the meeting;

3.5.1.2 Each time a horse races, identify the horse by checking the lip tattoo or freeze brand; and

3.5.1.3 Compare the type and condition of equipment actually being used by each horse for each race with the approved equipment listed; and

3.5.2 Report Violations

The Horse Identifier & Equipment Checker shall report to the Paddock Judge immediately any discrepancies or faulty equipment discovered by the investigations specified in this Rule, which findings are to be reported immediately to the Presiding Judge. The Presiding Judge's ruling in these matters is final.

3.6 Clerk of the Course

3.6.1 General Authority

The clerk of the course shall be responsible for keeping and verifying the judges' book and eligibility certificates provided by the U.S.T.A./C.T.A. and recording therein all required information and:

3.6.1.1 names and addresses of owners;

3.6.1.2 the standard symbols for medications, where applicable;

3.6.1.3 notations of placings, disqualifications and claimed horses;

3.6.1.4 notations of scratched or ruled out horses;

3.6.1.5 returning the eligibility certificate to the horse's owner or the owner's representative after the race, when requested;

3.6.1.6 notifying owners and drivers of penalties assessed by the officials;

3.6.1.7 assisting in drawing post positions, if requested; and

3.6.1.8 maintaining the Steward's List.

3.7 Official Starter

3.7.1 General Authority

3.7.1.1 The starter is responsible to provide a fair start for each race.

3.7.1.2 The starter shall be an employee or contractor of the association.

3.7.1.3 An assistant starter may be employed or contracted if deemed necessary by the association.

3.7.1.4 The starter shall ensure that the starter, the starter's assistant(s) and driver are cognizant of and capable of performing all required emergency procedures.

3.7.2 Report Violations

The official starter shall report violations of these rules occurring at the start of a race to the judges.

3.7.3 Disciplinary Action

The official starter shall have authority to

assess fines and to suspend the license of drivers for any violation of these rules from the formation of the parade until the word "Go" is given.

3.7.4 Starter's List

The official starter or the starter's assistant shall school horses as may be necessary and shall prepare a list of horses not qualified to start, which shall be delivered to the judges and entered on the Steward's List. The Steward's List shall be posted in the racing secretary's office with the list of horses not qualified to start.

3.8 Official Charter

3.8.1 General Authority

The official charter is responsible for providing a complete and accurate chart of each race. An accurate chart shall include the following:

3.8.1.1 horse's name;

3.8.1.2 driver's name;

3.8.1.3 date and place of the race;

3.8.1.4 track size, if other than a half-mile track;

3.8.1.5 track condition and temperature;

3.8.1.6 type of race (trot or pace);

3.8.1.7 classification of race;

3.8.1.8 distance;

3.8.1.9 fractional times of the leading horse, including the race time;

3.8.1.10 post position, position at the 1/4-mile, the 1/2-mile and the 3/4-mile poles and at the head of the stretch with lengths behind the leader and finish position with lengths behind the winner;

3.8.1.11 official order of finish;

3.8.1.12 individual time of each horse;

3.8.1.13 closing dollar odds (with favorite designated by an asterisk);

3.8.1.14 the standard symbols for breaks, park outs free legged pacers, and hobbled trotters where applicable;

3.8.1.15 the standard symbols for medications, where applicable;

3.8.1.16 in claiming races, the price for which the horse is entered to be claimed less allowances for age and sex;

3.8.1.17 names of the horses placed first, second and third by the State Steward and judges; and

3.8.1.18 notations of placings, disqualifications and claimed horses.

3.9 Official Timer

3.9.1 General Authority

The official timer shall accurately record the time elapsed between the start and finish of each race.

3.9.2 Timing Procedure

The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

3.9.3 Timing Races

3.9.3.1 In every race, the time of each heat shall be accurately recorded by two timers or an approved electrical timing device, in which case, there shall be one timer.

3.9.3.2 Times of heats shall be recorded in minutes, seconds and fifths of a second.

3.9.3.3 Immediately following each heat, the elapsed time of the heat shall be publicly announced and/or posted on the totalisator board.

3.9.3.4 No unofficial timing shall be announced, posted or entered into the official record.

3.9.4 Error in Reported Time

3.9.4.1 In circumstances involving an error in timing, no time shall be announced, posted or recorded for that heat.

3.9.4.2 In any case of alleged error regarding a horse's official time, the time in question shall not be changed to favor the horse or its owner, except upon the sworn statement of the judges and official timers who officiated in the race.

3.10 Photo Finish Technician

3.11 Patrol Judge

3.11.1 General Authority

The Patrol Judge(s), when utilized, is responsible for observing the race and reporting information concerning the race to the judges. If the track's video replay system is deemed adequate by the Commission, use of patrol judges is optional.

3.12 Program Director

3.12.1 General Authority

The program director is responsible for furnishing the public complete and accurate past performance information.

3.13 ~~State~~ Commission Veterinarian

3.13.1 General Authority

The ~~State~~ Commission Veterinarian shall:

3.13.1.1 be appointed by the Commission;

3.13.1.2 be a graduate veterinarian and be licensed to practice in the State of Delaware;

3.13.1.3 recommend to the judges any horse deemed unsafe to be raced, or a horse that it would be inhumane to allow to race;

3.13.1.4 place horses on the Veterinarian's List, when necessary, and remove horses from the Veterinarian's List;

3.13.1.5 place horses on the Bleeder List and remove horses from the Bleeder List;

3.13.1.6 maintain a continuing health and racing soundness record of each horse given a racing soundness inspection;

3.13.1.7 supervise the taking of all specimens for testing according to procedures approved by the Commission;

3.13.1.8 provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion or contamination;

3.13.1.9 report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;

3.13.1.10 maintain all required records of postmortem examinations performed on horses which have died on association grounds;

3.13.1.11 refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;

3.13.1.12 refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the Commission;

3.13.1.13 review and make recommendations regarding Commission license applications of practicing veterinarians;

3.13.1.14 cooperate with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

3.13.1.15 periodically review all horse papers under the jurisdiction of the Commission to ensure that all required test and health certificates are current and properly filed in accordance with these rules; and

3.13.1.16 be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of the horse to so act.

3.13.2 Racing Responsibilities

With respect to the conduct of each race, and each race meeting authorized by the Commission, the ~~State~~ Commission Veterinarian shall:

3.13.2.1 be available to the racing secretary and/or State Steward or Presiding Judge prior to scratch time each racing day at a time designated by the State Steward or Presiding Judge, to inspect any horses and report on their condition as may be requested by the State Steward or by the judges;

3.13.2.2 inspect any horse when there is a question as to the physical condition of such horse;

3.13.2.3 recommend scratching a horse to the judges if, in the opinion of the ~~State~~ Commission Veterinarian, the horse is physically incapable of exerting its best effort to win;

3.13.2.4 inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report such horse together with his/her opinion as to the cause of the distress to the judges;

3.13.2.5 refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;

3.13.2.6 refuse employment or payment, directly or indirectly, from any owner or trainer of a horse racing or intending to race in the State of Delaware while employed as the ~~State~~ Commission Veterinarian;

3.13.2.7 conduct soundness inspections on horses participating in races at the meeting;

3.13.2.8 place horses on or remove them from the ~~State~~ Commission Veterinarian's List.

3.13.3 ~~State~~ Commission Veterinarian's List

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

3.14 ~~Lasix~~ Bleeder Medication Veterinarian

3.14.1 General Authority

The ~~Lasix~~ Bleeder Medication veterinarian shall:

3.14.1.1 Be subject to the supervision of the **[~~State Veterinarian~~ Commission Veterinarian]**;

3.14.1.2 Be a graduate veterinarian and be licensed to practice in the State of Delaware;

3.14.1.3 Report to the State Lasix stall at least one- half hour before the first Lasix horse is due for Lasix injection (i.e., four and one-half hours before post time);

3.14.1.4 Record the name of the horse and the time that the Lasix is administered, and denote "IV" or "IM", as appropriate;

3.14.1.5 Report to the Paddock Judge any horse that fails to show, or is late to the State Lasix stall;

3.14.1.6 Administer ~~Lasix~~ Furosemide (Salix) to each horse on the Bleeder list, and administer Aminiocaproic Acid in accordance with Rule ~~8.3.6~~ 8.3.5 of these Rules;

3.14.1.7 Collect fees for each injection at the time of administration; credit shall not be given at any time;

3.14.1.8 Turn in the list of horses and times of administration to the Paddock Judge prior to leaving each race day; and

3.14.1.9 Report any unusual findings to the Paddock Judge without delay.

3.14.2 Bleeder List

The ~~Lasix~~ Bleeder Medication Lasix veterinarian cannot place horses on the Bleeder List; the ~~State~~ Commission Veterinarian is the only person authorized to place horses on the Bleeder List.

3.15 Investigator

3.15.1 The Commission may appoint a racing inspector or investigator for each harness racing meet. Such racing inspector shall perform all duties prescribed by the Commission consistent with the purposes of this chapter. Such racing inspector shall have full and free access to the books, records, and papers pertaining to the pari-mutuel

system of wagering and to the enclosure or space where the pari-mutuel system is conducted at any harness racing meeting to which he shall be assigned for the purpose of ascertaining whether the holder of such permit is operating in compliance with the Commission's rules and regulations. The racing inspector shall investigate whether such rules and regulations promulgated by the commission are being violated at such harness race track or enclosure by any licensee, patron, or other person. Upon discovering any such violation, the racing inspector shall immediately report his or her findings in writing and under oath to the Commission or its designee as it may deem fitting and proper. The racing inspector shall devote his full time to the duties of his office and shall not hold any other position or employment, except for performance of similar duties for the Thoroughbred Racing Commission.

3.15.2 Subject to the approval of the Commission, and under the direction of the Administrator of Racing, the Investigator may be delegated one or more of the following responsibilities:

3.15.2.1 Supervising the licensing function of the Commission, including performing background checks and fingerprinting applicants for licensure, and facilitating the Commission's participation in a uniform, multi-jurisdictional, reciprocal licensing scheme;

3.15.2.2 Consulting with track security and with law enforcement agencies both within and outside of Delaware;

3.15.2.3 Supervising the human and equine drug-testing programs provided for in these Rules;

3.15.2.4 Conducting vehicle and stall searches;

3.15.2.5 Intelligence gathering and dissemination;

3.15.2.6 Responding to patron complaints regarding the integrity of racing; and

3.15.2.7 Where appropriate, presenting complaints to the Commission for disposition, including complaints seeking disciplinary action against licensees of the Commission.

3.16 Administrator of Racing

The Commission may employ an Administrator of Racing who shall perform all duties prescribed by the Commission consistent with the purposes of this rule. The Administrator of Racing shall devote his full time to the duties of the office and shall not hold any other office or employment, except that he can perform the same duties as Administrator of Racing for the Thoroughbred Racing Commission. The Administrator of Racing shall be the representative for the Commission at all meetings of the Commission and shall keep a complete record of its proceedings and preserve, at its general office, all books, maps, documents, and papers entrusted to its care. He shall be the executive officer of the Commission and shall be responsible for keeping all Commission records and carrying out the rules and orders of the Commission. The Commission may appoint the Administrator of Racing to act as a hearing officer to hear appeals from administrative decisions of the steward or racing judges.

3.17 Any Other Person Designated by the Commission

The Commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in Rule 3.1.1 of this chapter.

See 1 DE Reg. 504 (11/01/97))
See 2 DE Reg. 1240 (01/01/99)
See 2 DE Reg. 1764 (04/01/99)
See 4 DE Reg 336 (8/1/00)
See 5 DE Reg. 832 (10/1/01)

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

6.1.2 Added 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, on a half mile racetrack there shall be no trailing horses. On a bigger 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 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, or if a blood sample exhibits a positive response to the erythropoietin (EPO) antibody test. 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.

6.4.4 Nominations, 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.

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 her 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.

See 1 DE Reg. 503 (1/1/97)
See 2 DE Reg.1241 (1/1/99)
See 2 DE Reg. 1765 (4/1/99)
See 3 DE Reg. 432 (9/1/99)
See 3 DE Reg 1520 (5/1/00)
See 4 DE Reg. 1123 (1/1/01)
See 4 DE Reg 1652 (4/1/01)
See 5 DE Reg. 1691 (3/1/02)
See 6 DE Reg. 862 (1/1/03)

8.0 Veterinary Practices, Equine Health Medication

8.1 General Provisions

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

8.2 Veterinary Practices

8.2.1 Veterinarians Under Authority of Commission Veterinarian

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

8.2.2 Treatment Restrictions

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

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

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

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

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

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

8.3 Medications and Foreign Substances

Foreign substances shall mean all substances, except those which exist naturally in the untreated horse at normal physiological concentration, and shall include all narcotics, stimulants, depressants or other drugs or medications of any type. Except as specifically permitted by these rules, no foreign substance shall be carried in the body of the horse at the time of the running of the race. Upon a finding of a violation of these medication and prohibited substances rules, the State Steward or other designee of the

Commission shall consider the classification level of the violation as listed at the time of the violation by the Uniform Classification Guidelines of Foreign Substances as promulgated by the Association of Racing Commissioners International and shall consider all other relevant available evidence including but not limited to: i) whether the violation created a risk of injury to the horse or driver; ii) whether the violation undermined or corrupted the integrity of the sport of harness racing; iii) whether the violation misled the wagering public and those desiring to claim the horse as to the condition and ability of the horse; iv) whether the violation permitted the trainer or licensee to alter the performance of the horse or permitted the trainer or licensee to gain an advantage over other horses entered in the race; v) the amount of the purse involved in the race in which the violation occurred. The State Steward may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

8.3.1 Uniform Classification Guidelines

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

8.3.1.1 Class 1

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

8.3.1.2 Class 2

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

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

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

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/ hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

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

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not

have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

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

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

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

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

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

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

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

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

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

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

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

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

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

8.3.2.7 Any person whose license is reinstated after a prior violation involving class 1 or class 2

drugs and who commits a subsequent violation within five years of the prior violation, shall absent extraordinary circumstances, be subject to a minimum revocation of license for five years, and a minimum fine in the amount of the purse money of the race in which the infraction occurred, along with any other penalty just and reasonable under the circumstances.

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

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

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

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

8.3.3.1.2 the maximum permissible urine or blood concentration of the drug or medication does not exceed the limit established in 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.

8.3.4 Medical Labeling

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

8.3.4.2 Any drug or medication which is used

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

8.3.4.2.1 the name of the product;

8.3.4.2.2 the name, address and telephone number of the veterinarian prescribing or dispensing the product;

8.3.4.2.3 the name of each patient (horse) for whom the product is intended/prescribed;

8.3.4.2.4 the dose, dosage, duration of treatment and expiration date of the prescribed/dispensed product; and

8.3.4.2.5 the name of the person (trainer) to whom the product was dispensed.

8.3.5 Furosemide ~~(Lasix)~~ (Salix) and Aminiocaproic Acid (Amicar)

8.3.5.1 General

Furosemide ~~(Lasix)~~ (Salix) and Aminiocaproic Acid (Amicar) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. ~~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)~~ or Furosemide with Aminiocaproic Acid shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List or to facilitate the collection of a post-race urine sample.

8.3.5.2 Method of Administration

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

8.3.5.3 Dosage

~~Lasix~~ Aminocaproic Acid shall be administered to a horse on the Bleeder List only by the licensed Bleeder Medication Veterinarian, who will administer not more than 7.5 grams or less than 2.5 grams intravenously. Furosemide shall be administered to horses on the Bleeder List only by ~~a~~ the licensed ~~practicing~~ Bleeder Medication Veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 ~~If 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~~ Commission Veterinarian grants permission for a dosage greater than 500 milligrams, and (2) after the administration of such greater dosage, the horse remains in a detention area under the supervision of a Commission representative until it races; and

8.3.5.3.~~3~~2 The dosage administered may not vary by more than 250 milligrams from race to race without the permission of the Commission Veterinarian.

8.3.5.4 Timing of Administration

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

8.3.5.5 Veterinary Charges

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

8.3.5.6 Restrictions

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

8.3.5.7 Post-Race Quantification

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

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

and the bleeder Medication Veterinarian

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

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.~~2~~ 1.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of ~~1.010 or lower~~ less than 1.01, and provided that the dosage of furosemide was not administered intramuscularly as provided in ~~8.3.5.3.2~~ 8.3.5.2 or exceeded 500 milligrams as provided in 8.3.5.3.~~2~~ 1, then a penalty shall be imposed as follows:

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

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

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

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

8.3.5.8 Reports

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

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the ~~State Steward~~ Judges ~~at least~~ within one (1) hour of the last scheduled race for that day ~~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~~ Bleeder Medication Veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

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

8.3.5.9.1.1.1 during a race;

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

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

8.3.5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the Commission Veterinarian ~~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~~ furosemide or Furosemide with Aminocaproic Acid, if applicable must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

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

8.3.5.9.4.1 1st time - 10 days;

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

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

8.3.5.9.4.4 4th time - barred for life.

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

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

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

8.3.5.9.8 Any horse on the Bleeder List which races without ~~Lasix~~ Furosemide or Furosemide with Aminocaproic Acid in any jurisdiction which permits the use of ~~Lasix~~ Furosemide or Furosemide with Aminocaproic Acid 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~~ 8.3.5.9.1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of ~~8.3.6.4~~ 8.3.5.9.4 above.

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

8.3.5.10 Medication Program Entries

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

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses 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. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a $1,000 fine and up to a fifty day suspension.

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

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

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

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

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

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

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

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and 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.

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

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

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

8.4.2 Sample Collection

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

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

8.4.3 Procedure for Taking Specimens

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

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

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

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

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

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

8.4.3.3.1 The owner;

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

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

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

8.4.3.4.2 Blood 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.

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

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

8.5.4 The trainer is responsible for:

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

8.5.4.2 using the services of those veterinarians licensed by the Commission to attend horses

that are on association grounds;

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

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

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

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

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

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

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

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

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

8.5.5.9 maintaining a knowledge of the medication record and status;

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

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

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

8.5.5.13 ensuring proper bandages, equipment and shoes;

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

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

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

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

8.6 Physical Inspection of Horses

8.6.1 Veterinarian's List

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

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

8.6.2 Postmortem Examination

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

8.6.2.2 The Commission may conduct a postmortem examination of any horse that expires while housed on association grounds or at recognized training facilities within this jurisdiction. Trainers and owners shall be required to comply with such action as a condition of licensure.

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

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

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

8.7 Prohibited Practices

8.7.1 The following conduct shall be prohibited for all licensees:

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

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

See 1 DE Reg. 505 (11/01/97)
See 1 DE Reg. 923 (1/1/98)
See 3 DE Reg 1520 (5/1/00)
See 4 DE Reg. 6 (7/1/00)
See 4 DE Reg 336 (8/1/00)
See 5 DE Reg. 832 (10/1/01)
See 5 DE Reg. 1691 (3/1/02)
See 6 DE Reg. 862 (1/1/03)

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 issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on March 23, 2004, the Commission makes the following findings and conclusions:

Summary Of Evidence

1. The Commission posted public notice of the proposed amendments in the February 1, 2004 Register of Regulations and for two consecutive weeks in the Delaware Capital Review and Delaware State News. The proposed amendments to the Commission's Rules are as follows: 1)amend Rule 13.12 to allow for post-race tests from horses in claiming races and to allow a claimant to request a post-race test on a claimed horse, with the right to void the claim if the test is positive for a prohibited substance, illegal medication or EPO antibody test; 2)enact Rule 15.1.3.1.13 to provide that a horse that tests positive for EPO antibodies may be declared unfit to race, and may not resume racing until the owner or trainer submits a negative test for EPO antibodies.

2. The Commission held a public hearing on March 23, 2004. At the public hearing, the Commission received sworn testimony from Dr. Maylin of Cornell University.

3. Dr. Maylin testified that he is the Director of the Cornell University equine drug testing laboratory, which does all the testing for the New York Racing Association (NYRA). Dr. Maylin testified that Erythropoietin (EPO) is a major problem in horse racing. EPO is a hormone produced by the kidney when oxygen levels are low which stimulates red blood cell production and enhances athletic performance. EPO has been used for at least ten years in horses. EPO causes severe anemia and death in horses and has been classified as a banned substance at many racetracks across the country. Dr. Maylin explained that the EPO gene has been cloned and produced Epogen-Amgen, Procrit-Ortho, and Eprex-Cilog Ag. Dr. Maylin stated that almost all of the research work involving EPO deals with antibody characterization. The EPO antibody is not specific. When EPO is given to a horse, it only stays in the horse's system for a short period of time. A vial of EPO is not a single entity and is hard to identify; it is an array , not a single compound. Conventional analytical techniques cannot be used to identify EPO because it has a large molecular weight which circulates at low concentration. New York has used an antibody-antigen reaction test. Animals react to an injected foreign protein to produce antibodies against them. With EPO, there usually must be at least three shots to cause an antibody response. The antibodies can stay with a horse for three to four months. In New York, the Racing Commissions have decided to treat the horse with EPO as unfit to race and placed on either the vet's list or the steward's list. The trainer has been taken out of the equation. The New York Commissions, before enacting a rule, tested 37,000 horses and 403 had significant antibody test results. Since enactment of a formal rule, New York has taken 8,000 samples and had only four positive tests for EPO. The EPO Rules in New York, along with the antibody testing, have been successful in eliminating EPO. New York has worked closely with Ontario in taking steps to address the EPO problem. Under the New York rules, a horse that tests for a high EPO antibody level is placed on the steward's list until there is proof of a negative EPO test. Dr. Maylin uses an ELISA formula for the EPO antibody test with a cutoff value. A tier of 1:800 has been demonstrated to only identify horses that have been administered EPO or D-EPO. Dr. Maylin opined that the antibody test is a highly specific test and is an effective means for regulating EPO use. Dr. Maylin indicated that EPO can stay in a horse's system for a long period of time. Dr. Maylin did recommend testing of claimed horses.

4. In response to questions, Dr. Maylin stated that the antibody test tests for a level that is ten times higher than the normal level of antibodies in order to call a positive. Dr. Maylin was confidant that the antibody test could distinguish between normal level of antibodies and an administered

level of EPO. Dr. Maylin stated that a horse must be given multiple doses of EPO in order to start producing the red blood cells. Once antibodies are present, even a tiny dose of EPO will increase antibody production. Dr. Maylin testified that EPO use can cause a horse to become severely anemic and "crash" and cause that horse to be unfit to ever race again. The New York testing has found the use of EPO to be higher in standardbred horses. Dr. Maylin stated that standardbred horses are more tolerant of drugs while thoroughbreds tend to be more delicate.

Findings Of Fact And Conclusions

5. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules. The Commission received no written comments on the proposed amendments.

6. The Commission finds that the testimony of Dr. Maylin supports adoption of the proposed amendments to the Commission's Rules. Dr. Maylin's testimony demonstrates that EPO is harmful and extremely dangerous to horses and its use can cause severe anemia and death. The use of EPO in horses can also cause a horse to "crash" once the horse is taken off of EPO and can make the horse unfit to ever race again. The Commission finds that the testing method described by Dr. Maylin is a reliable, accepted testing method currently in use in both New York and Ontario. The antibody testing method is an accurate method to detect horses with high antibody levels from EPO use and these horses can be distinguished from horses with antibodies at a normal level.

7. The Commission finds that the New York Racing Commissions have achieved exceptional results in reducing or eliminating the use of EPO in racing. The Commission notes that its proposed rules are closely modeled after the New York rules. New York Racing Commission Rules 4043.6 and 4038.18. The Commission also finds that testing of a claimed horse for EPO should be permitted by a claimant, at the expense of the claimant.

8. The Commission concludes that the proposed rules are necessary to effectively regulate and prohibit the use of EPO in thoroughbred racing. The Commission concludes that the proposed rules are necessary to protect the safety of the participants and horses and to ensure the integrity of racing. The Commission concludes that the proposed amendments to Commission Rules 13.12 and 15.1.3.1.13 should be adopted so that this agency can achieve its duty to effectively regulate thoroughbred racing under 3 **Del.C.** §10103.

9. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on May 1, 2004.

IT IS SO ORDERED this 26th day of March, 2004.

Bernard Daney, Chairman
Duncan Patterson, Commissioner
H. James Decker, Commissioner
Edward Stegmeier, Commissioner
Carolyn Wilson. Commissioner

13.0 Claiming Races

13.1 Owners Entitled:

13.1.1 In claiming races, any horse is subject to claim for its entered price by any Owner in good standing, who has horses stabled on the Licensee's grounds, and who has started a horse at the race meeting at which the claim is made.

13.1.2 An Owner may claim out of the race in which he first starts a horse. Owners shipping in from other stable areas who have a horse claimed shall be allowed one claim to replace the horse lost via claiming.

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

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

13.1.4.1 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.

13.1.4.2 Securing an Owner or authorized racing interest license by the 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.

13.1.4.3 Naming a Trainer licensed by the Commission who will represent him once said claim is made.

13.2 Claim by Agent:

13.2.1 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.

13.3 Claiming Own Horse Prohibited:

13.3.1 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.

13.4 Limits on claims:

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

13.5 Twenty Day Prohibition -- Sale of Claimed Horse:

13.5.1 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 calendar day following the claim. This provision shall not apply to starter handicaps, allowance and starter allowance races.

13.6 Thirty Day Prohibition -- Sale of Claimed Horse:

13.6.1 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

13.7 Form of Claim:

13.7.1 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.

13.8 Procedure for Claim:

13.8.1 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

13.9 Stewards' Duties:

13.9.1 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:

13.10.1 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:

13.11.1 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:

13.12.1 Claims are irrevocable except as otherwise provided for in these Rules. 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.

13.12.2 A post-race 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 sample is collected. Any claimed horse not otherwise selected for testing by the stewards 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, an illegal level of a permitted medication, or if a blood sample exhibits a positive response to the Erythropoietin (EPO)

antibody test.

13.13 Prohibited Practices:

13.13.1 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.

13.14 Invalidation of Claim:

13.14.1 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:

13.15.1 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:

13.16.1 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. Should a stable at a meeting be eliminated by sale or removal from the grounds, the right to claim is void. After claiming a horse under the conditions of this Rule, the Owner shall be required to reinstate his eligibility to claim pursuant to these Rules before being eligible to make another claim.

See 6 DE Reg. 1205 (3/1/03)

13.17 Claim Embraces Horse's Prior Engagements:

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

13.18 Caveat Emptor:

13.18.1 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: Repealed

See 1 DE Reg. 713 (12/1/97)
See 2 DE Reg. 373 (9/1/98)
See 2 DE Reg. 2043 (5/1/99)
See 5 DE Reg. 849 (10/1/01)
See 5 DE Reg. 1710 (3/1/02)
See 6 DE Reg. 1205 (3/1/03)
See 7 DE Reg. 316 (9/1/03)

15.0 Medication; Testing Procedures

15.1 Prohibition and Control of Medication:

15.1.1 It shall be the intent of these Rules to protect the integrity of horse racing, to guard the health of the horse and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs and medications or substances foreign to the natural horse. In this context:

15.1.1.1 No horse participating in a race shall carry in its body any substance foreign to the natural horse, except as hereinafter provided.

15.1.1.2 No foreign substance shall be administered to a horse (entered to race) by injection, oral administration, rectal infusion or suppository, or by inhalation within twenty-four (24) hours prior to the scheduled post time for the first race, except as hereinafter provided.

15.1.1.3 No person other than a veterinarian shall have in his possession any equipment for hypodermic injection, any substance for hypodermic administration or any foreign substance which can be administered internally to a horse by any route, except for an existing condition as prescribed by a veterinarian.

15.1.1.4 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within a race track enclosure, any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any Federal law or law of this State without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him.

15.1.1.5 Notwithstanding the provisions of Rule 15.1.1.3 above, any person may have in his possession within any race track enclosure, any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the Stewards: (1) of his possession of such device; (2) of the size of such device; and (3) of the chemical substance to be administered by such device and has obtained written permission for possession and use from the Stewards.

15.1.2 Definitions:

The following terms and words used in these Rules are defined as:

15.1.2.1 Hypodermic Injection shall mean any injection into or under the skin or mucous, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection and

intraocular (intraconjunctival) injection.

15.1.2.2 Foreign Substances shall mean all substances except those which exist naturally in the untreated horse at normal physiological concentration, and shall also include substances foreign to a horse at levels that cause interference with testing procedures.

15.1.2.3 Veterinarian shall mean a veterinary practitioner authorized to practice at the race track.

15.1.2.4 Horse includes all horses registered for racing under the jurisdiction of the Commission and for the purposes of these Rules shall mean stallion, colt, gelding, ridgling, filly or mare.

15.1.2.5 Chemist shall mean the Commission's chemist.

15.1.2.6 Test Sample shall mean any body substance including, but not limited to, blood or urine taken from a horse under the supervision of the Commission's Veterinarian and in such manner as prescribed by the Commission for the purpose of analysis.

15.1.2.7 Race Day shall mean the 24-hour period prior to the scheduled post time for the first race.

15.1.3 Foreign Substances:

15.1.3.1 No horse participating in a race shall carry in its body any foreign substance except as provided in Rule 15.1.3.1.3:

15.1.3.1.1 A finding by the chemist that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the Trainer and agents responsible for the care or custody of the horse has/have been negligent in the handling or care of the horse.

15.1.3.1.2 A finding by the chemist of a foreign substance or an approved substance used in violation of Rule 15.1 in any test sample of a horse participating in a race shall result in the horse being disqualified from purse money or other awards, except for purposes of pari-mutuel wagering which shall in no way be affected.

15.1.3.1.3 A foreign substance of accepted therapeutic value may be administered as prescribed by a Veterinarian when test levels and guidelines for its use have been established by the Veterinary-Chemist Advisory Committee of the National Association of State Racing Commissioners and approved by the Commission. Aminocaproic acid may be present in a horse's body while it is participating in a race, subject to all the provisions of these Rules.

15.1.3.1.4 The only approved non-steroidal anti-inflammatory drug (NSAID) that may be present in a horse's body while it is participating in a race is phenylbutazone/oxyphenobutazone in the level stated in 15.1.3.1.5 or 15.1.3.1.6. The presence of any other NSAID at any test level is forbidden.

Revised: 1/6/92.

15.1.3.1.5 The test level of phenylbutazone under this Rule shall not be in excess of two point five (2.5) micrograms (mcg) per milliliter (ml) of plasma without penalties in the following format:

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-$250.00 fine
2.6 to 4.9	Second Offense within 365 days $500.00 fine
2.6 to 4.9	Third Offense within 365 days $500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.6 The test level for oxphenobutazone under this Rule shall not be in excess of two (2) micrograms (mcg) per milliliter (ml) of plasma.

Micrograms per milliliter	Penalties
0 to 2.5	No action
2.6 to 4.9	First Offense-$250.00 fine
2.6 to 4.9	Second Offense within 365 days $500.00 fine
2.6 to 4.9	Third Offense within 365 days $500.00 fine and/or Suspension and/or Loss of Purse
5.0 and Over	Fine, Suspension, Loss of Purse

15.1.3.1.7 No bleeder medication otherwise permissible under this Rule may be administered to a horse within one hour of the scheduled post time of the horse's race. The administration of salix to a horse on race day will be governed by Rule 15.2.

15.1.3.1.8 If a horse is to receive one or more bleeder medications, aminocaproic acid and/or salix, the trainer shall declare said use at the time of entry.

15.1.3.1.9 A veterinarian administering bleeder medications shall report the administration of such medications on the same form that is used to report the administration of salix.

15.1.3.1.10 The race program shall denote what medication(s) have been administered to a horse in the race and the past performance lines in the program, if any, shall denote any medications administered to said horse in those races.

15.1.3.1.11 Any horse running on permissible bleeder medication under these Rules shall remain on the medication for a period of not less than sixty (60) days before being permitted to race without the permissible bleeder medication.

15.1.3.1.12 The detection of permissible bleeder medications (salix and/or aminocaproic acid) in a horse following the running of a race which was not declared or reported to the Stewards, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian. Conversely, the absence of bleeder medication following the running of a race in which was declared and reported by a trainer and/or veterinarian, may result in the disqualification of the horse and other disciplinary action imposed upon the trainer and administering veterinarian.

15.1.3.1.13 Erythropietin (EPO)

A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the Stewards. The Stewards shall notify the owner and trainer of the positive test result for Erythropietin antibodies. The Stewards shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 5.32, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

Notwithstanding any inconsistent provision of these Rules, a horse shall not be subject to disqualification from the race and from any share of the purse in the race and the trainer of the horse shall not be subject to application of trainer's responsibility based on the finding by the laboratory that the antibody of Erythropoietin was present in the sample taken from that horse.

*** Please Note: As the rest of the Regulations were not amended, they are not being published.**

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 122(e) (14 **Del.C.** §122(e))
14 DE Admin. Code 106

Regulatory Implementing Order

1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (terminology and school bus types are described in the National Standards for School Transportation 1995)

I. Summary Of The Evidence And Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to re-authorize regulation 1101 Standards for School Bus Chassis and Bodies Placed in Production After March 1, 1998 (terminology and school bus types are described in the National Standards for School Transportation 1995). The five year review cycle requires that it must be acted on again. The regulation is still needed until the buses placed in production after March 1, 1998, that are referenced in the standards, are no longer operating in the school system.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on February 23, 2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

II. Findings of Facts

The Secretary finds that it is appropriate to re-authorize this regulation in order provide standards for school buses that are still in use.

III. Decision to Re-authorize the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to re-authorize the regulation. Therefore, pursuant to 14 **Del.C**. Ch. 29, the regulation attached hereto as *Exhibit "B"* is hereby re-authorized. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby re-authorized shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation re-authorized hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §1101 in the *Administrative Code of Regulations* for the Department

of Education.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 15, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED the 15th day of April 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

Approved this 15th day of April 2004

State Board of Education
Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire
Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

***Please note that no changes were made to the regulation as originally proposed and published in the March 2004 issue of the Register at page 1123 (7 DE Reg. 1123). Therefore, the final regulation is not being republished. Please refer to the March 2004 issue of the Register or contact the Department of Education.**

Regulatory Implementing Order

1105 School Transportation

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend regulation 1105 School Transportation in order to add "Emergency Days as forgiven by the Department of Education with the consent of the State Board of Education" to section 13.6 items, 13.6.1 through 13.6.4 and to clarify the language. This section addresses reimbursement contracts and allowances for school districts and contractors. Section 13.6 has been corrected to reflect that the Department of Education with the consent of the State Board of Education forgives the emergency days.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on February 23, 2004, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council on Exceptional Citizens and the State Council for Persons with Disabilities but they did not address the amendments being considered and in addition the concerns that were expressed about the regulation largely reflect the statutory provisions.

II. Findings of Facts

The Secretary finds that it is appropriate to amend this regulation in order to add "Emergency Days as forgiven by the Department of Education" to section 13.6 items, 13.6.1 through 13.6.4 and to clarify the language.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C**. Ch.29, the regulation attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of the regulation amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** §1105 in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch. 29 on April 15, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED the 15th day of April 2004.

DEPARTMENT OF EDUCATION
Valerie A. Woodruff, Secretary of Education

Approved this 15th day of April, 2004

State Board of Education
Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Richard M. Farmer, Jr.
Mary B. Graham, Esquire

Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

1105 School Transportation

1.0 Responsibilities of Local Superintendents:

Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district's school transportation program.

1.7 Assume prime responsibility for student conduct.

2.0 Conditions for School Bus Contractors

School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks. District transportation supervisors may restrict a driver from operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

3.0 Responsibilities of School Bus Drivers

Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state or school district.

3.2.9 Complete required training programs satisfactorily.

3.2.10 Refrain from using profane or indecent language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pickup and drop-off students at designated stops.

3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to the school principal or designated official.

3.2.15 Notify the district transportation supervisor of any school bus accident.

3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

4.0 Qualifications and Responsibilities of School Bus Aides

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year.

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level~~.~~ and meet the same requirements (pre-licensing) specified for school bus drivers in the **Delaware Code.**

4.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers.

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

4.2.1 Assist in loading and unloading of students, including lift operation.

4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release

restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at all times.

4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.

4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior according to established procedure.

4.2.8 Assist the driver in keeping the interior of the bus clean.

4.2.9 Assist students with disabilities with personal needs associated with their disabilities.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school personnel and parents.

4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

5.0 Student Conduct on School Buses:

School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.

5.4 Keep a safe distance from the bus while it is in motion.

5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

6.0 Procedures for Operating Buses:

Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

See 3 DE Reg. 942 (1/1/00)

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line

designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required.

6.16 A school bus shall not be used for hauling anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

7.0 Accident Reports:

All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

See 3 DE Reg. 942 (1/1/00)

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is complete. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

- Disposition of any litigation.
- Disposition of any summonses.
- Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.
- Amount of property damage other than to vehicles involved.
- Any corrective actions taken against the school bus driver, e.g., training, suspension, or dismissal.
- A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

8.0 Transportation Benefits:

Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be

assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or caregiver as described in 14 **Del.C.** §202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create additional expense to the State.

8.5.3 The limitation pertaining to "same bus and route" indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Students otherwise ineligible to ride a bus may ride if a physician certifies that a student is unable or should not walk from home to school and return.

9.0 Bus Capacities:

Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child. A mixture of the criteria will be used to plan loads when pupils come from both of the above groups. Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

10.0 Loading and Unloading:

Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/ unloading operations.

11.0 Unique Hazards:

Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of concern.

11.2.5 List any actions to resolve the problem

taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

12.0 Contingency Plans:

Each school district shall have contingency plans for inclement weather, accidents, bomb threats, hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies. The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

13.0 Reimbursements for School Bus Ownership and or Contracts:

School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly at the end of the month. The total contract shall be paid in ten (10) installments, with the first payment at the end of September.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re-assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district-owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 ~~Reimbursement~~ Contract allowances for buses when there are Emergency Days (forgiven by the Department of Education **[with the consent of the State Board of Education]**), Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors and school districts shall be paid the normal rate of pay as provided for in their contract, less the allowance for ~~operation including~~ fuel, ~~oil, tires, and~~ maintenance and administration. Driver (including layover allowance) and aide allowances shall be paid.

13.6.2 ~~Contractors~~ School bus contractors and school districts with buses assigned to midday kindergarten or vocational-technical trips shall be ~~reimbursed for the amount of the driver's allowance plus the administrative allowance~~ paid the normal rate of pay as provided for in their contract, less the allowance for fuel.

13.6.3 ~~School districts operating district-owned, leased, or lease-purchase buses shall be reimbursed based on the formula for district reimbursement, less the allowance for operation which includes fuel, oil, tires, and maintenance.~~ The additional mileage allowance for contractor and school district buses will not include fuel and maintenance allowances.

~~13.6.4 Districts with buses assigned to midday~~

~~kindergarten or vocational-technical trips shall be reimbursed for the amount of the driver's allowance plus the administrative allowance.~~

13.6.~~5~~ 4 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses.

Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap, tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

15.0 Transportation Allowances for Individuals:

Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage traveled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be approved by the Department of Education.

16.0 Cost Records:

Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

17.0 Bus Replacement Schedules:

The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced (it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

18.0 School Bus Inspections:

The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

19.0 Transportation for Students with Disabilities:

Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation

reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/programs for children with disabilities.

See 3 DE Reg. 1548 (5/1/00)

20.0 Transportation for Alternative Programs:

Costs for transportation shall be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with and submit their transportation plans to the Education Associate for School Transportation at the Department of Education.

21.0 Drugs and Alcohol Testing

21.1 Content:

21.1.1 Pursuant to 14 **Del.C.** §2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

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

"**Alcohol**" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular exercising weight alcohols, including methyl or isopropyl alcohol.

"**CDL**" means a commercial drivers license issued pursuant to 21 **Del.C.** Chapter 26.

"Department"means the Delaware Department of Education.

"**DOT**" means the United States Department of Transportation.

"**Drug**"means the controlled substances for which tests are required under the provisions of 49 U.S.C. 49 §31306 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

"**Employer**" means school bus contractors or school districts and charter schools when they directly employ school bus drivers..

"**Negative result**" means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

"**Positive result**" means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. §31306, 49 CFR Part 382 and 49 CFR Part 40.

21.3 Federal Regulations: Employers shall comply with the drug and alcohol testing regulations

issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

21.4 Drug and Alcohol testing program requirements:

21.4.1 The employer shall:

21.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator Medical Review Officer (C/TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

21.4.2 The Department shall:

21.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

21.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

21.5 Pre-employment Testing

21.5.1 School bus drivers with no CDL and aides with no prior experience must have a negative pre-employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

21.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

21.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

21.6 Random Testing

21.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.6.6 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and Department.

21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.7.3 Notification of positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM). The proposed changes amends the policy of the Relative Caregivers' (Non-Parent) Transitional Resource Program as it relates to time limitations. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Regulation

DSSM 6103 is being amended to permit non-parent caregivers more time to access this service; specifically, changing the timeframe from 90 to 180 days.

Summary Of Comments Received With Agency Response

DSS thanks the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) for their endorsement of the proposed revision to expand the scope of eligible caretakers who are eligible for support services.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the March 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the policy of the Relative Caregivers' (Non-Parent) Transitional Resource Program is adopted and shall be final effective May 10, 2004.

Vincent P. Meconi, Secretary, DHSS, 4/13/04

DSS FINAL ORDER REGULATION #04-11

REVISIONS:

6103 Eligibility

Applicants must meet the following eight criteria to receive assistance from the Relative Caregivers' (Non-Parent) Transitional Resource Program:

1. Relationship-The child is living with a relative within the 5th degree of relationship (DSSM 3004).
2. Age-The child is less than 18 years of age.
3. Residence-Applicants must reside in Delaware to be eligible for benefits. Persons including the homeless (those with no fixed address or not living in a permanent dwelling) who currently live in Delaware and plan to stay, regardless of the length of time they have been here, meet the residency requirement.
4. Time Limitation-The child has been living in caregiver('s) home less than or equal to ~~90~~ 180 days.
5. Income - The income of the caregiver cannot exceed 200% of the Federal Poverty Level based on the household size. The caregiver's household includes the caregiver and his/her children. The income of the child moving in with the caregiver and any siblings (or half-siblings) who also reside in the home is not counted.
6. Resources-Eligibility will be determined without regard to the child or caregiver('s) resources.
7. Citizenship-The child is a citizen or lawfully admitted alien.
8. Need-The child's need is for one or more of the covered services.

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to the Food Stamp Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2004 Delaware Register of Regulations,

requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Changes

- Excludes educational income (financial assistance) for food stamp purposes.
- Removes the reference to PAN (Program of Assistance Nutrition) income which is no longer counted for food stamp purposes per federal rules.

Citations

- Farm Bill Section 4102 (Simplified Definition of Income) allows a State the option to exclude certain types of income that are not counted under the State's Temporary Assistance for Needy Families (TANF) cash assistance or Medicaid programs. Under this provision, States are allowed to exclude: educational assistance not counted under Medicaid; State complementary assistance not counted under section 1931 of Medicaid; and any type of income not counted under section 1931 of Medicaid or TANF.
- The Food and Nutrition Service (FNS) issued Administrative Notice 04-2003: Guidance on the Treatment of Nutritional Assistance Program (NAP) Benefit. Under the new guidance, States will no longer count NAP benefits from Puerto Rico when determining eligibility and benefits.

Summary Of Comments Received With Agency Response

DSS thanks the State Council for Persons with Disabilities (SCPD) for the following endorsement: SCPD endorses the concept of the amendments since they provide an incentive to attend school and facilitates Food Stamp eligibility for persons who receive financial aid to attend school. This supports implementation of the Ticket-to-Work program and TANF.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the March 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program is adopted and shall be final effective May 10, 2004.

Vincent P. Meconi, Secretary, DHSS, 4/13/04

DSS FINAL ORDER REGULATIONS #04-12

REVISIONS:

9056 Earned Income

[273.9(b)(1)]
Earned income includes:

1. All wages and salaries for services performed as an employee, including money withheld from an employee's earnings to pay certain expenses such as child care or medical expenses as a vendor payment to a third party, and

2. The gross income from a self-employment enterprise, including the total gain from the sale of any capital goods or equipment related to the business, excluding the costs of doing business as provided in DSSM 9074. Consider ownership of rental property a self- employment enterprise; however, income derived from the rental property will be considered earned income only if a member of the household is actively engaged in the management of the property at least an average of 20 hours a week. Payments from a roomer/boarder, except foster care boarders, or roomer only will also be considered self-employment income and need not meet the 20-hour rule.

3. Training allowances from vocational and rehabilitative programs recognized by Federal, State, or local governments, to the extent that they are not reimbursements. Training allowances under WIA, other than earnings as specified in #5 of this Section are excluded from consideration as income.

4. Payments under Title I (VISTA, etc.) of the Domestic Volunteer Service Act of 1973 (P.L. 93-113).

5. Earnings to individuals who are participating in on-the-job training programs under Section 204(b)(1)(C) or section 264(c)(1)(A) of the Workforce Investment Act (WIA). This provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment. Earnings include monies paid under WIA and monies paid by the employer.

~~6. Educational assistance which has a work requirement (such as work study, assistantship or fellowship with a work requirement) in excess of the amount excluded under DSSM 9059.~~

9057 Unearned Income

[273.9(b)(2)]
Unearned income includes, but is not limited to:

1. Assistance payments from Federal or federally aided public assistance programs, such as Supplemental

Security Income (SSI) or Delaware's Temporary Assistance To Needy Families Program (TANF), Refugee Cash Assistance (RCA), General Assistance (GA) programs or other assistance programs based on need.

2. Annuities, pensions, retirement, veteran's benefits, disability benefits, workman's compensation, unemployment compensation, social security, strike benefits, foster care payments for children or for adults who are considered members of the household, gross income minus the cost of doing business derived from rental property in which a household member is not actively engaged in the management of the property at least 20 hours a week.

3. Support or alimony payment made directly to the household from non-household members.

4. ~~Scholarships, education grants, deferred payment loans for educational benefits, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amount excluded.~~ Payments from Government-sponsored programs, dividends, interest, royalties, and all other direct money payments from any source which can be construed to be a gain or benefit.

A lottery winner that receives a set amount each year will have those winnings counted as unearned income. The income shall be averaged over a 12-month period of time.

For example, a household receives $24,000 each November from a lottery win. The $24,000 is averaged over a 12-month period and $2,000 counted on a monthly basis.

Earned Income Tax Credit (EITC) payments are not to be treated as income. [See DSSM 9059 (H)].

~~6.~~ 5. Monies which are withdrawn or dividends which are or could be received by a household from trust funds considered to be excludable resources under DSSM 9049 (8). Such trust withdrawals will be considered income in the month received, unless otherwise exempt under the provisions of DSSM 9059. Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered as income in the month they become available to the household unless otherwise exempt under the provisions of DSSM 9059 .

~~7.~~ 6. For a household containing a sponsored alien, the income of the sponsor and the sponsor’s spouse must be deemed in accordance with DSSM 9081.2.

~~8.~~ 7. The earned or unearned income of an individual disqualified from the household for intentional Program violation, in accordance with DSSM 2023 will continue to be attributed in their entirety, to the remaining household members. However, the earned or unearned income of individuals disqualified from households for failing to comply with the requirement to provide an SSN in accordance with DSSM 9012 , or for being an ineligible alien in accordance with DSSM 9007 , will continue to be counted as income, less a prorata share for the individual.

Procedures for calculating a prorata share are described in DSSM 9076 .

~~9. PAN income - Puerto Rico gives cash instead of food stamp coupons. The income counts as unearned income when households apply for food stamps and received PAN funds from Puerto Rico in the same month. PAN means Programa De Asistencia Nutricional.~~

~~10.~~ 8. State and local energy assistance is counted as income. Delaware does not have state or local energy assistance programs.

9059 Income Exclusions

[273.9(c)]
Only the following items will be excluded from household income and no other income will be excluded:

A. Any gain or benefit which is not in the form of money payable directly to the household.

This includes in-kind benefits and certain vendor payments. In-kind benefits are those for which no monetary payment is made on behalf of the household and includes meals, clothing, housing, or produce from a garden. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household.

Payments made to a third party on behalf of the household are included or excluded as income as follows:

1. Department of Housing and Urban Development (HUD) vendor payments. Rent or mortgage payments made to landlords or mortgages by HUD are excluded.

~~2. Educational assistance vendor payments. Educational assistance provided to a third party on behalf of the household for living expenses shall be treated the same as educational assistance directly to the household.~~

~~3.~~ 2. Vendor payments that are reimbursements. Reimbursements made in the form of vendor payments are excluded on the same basis as reimbursements paid directly to the household as described in DSSM 9059 E .

~~4.~~ 3. Other third party payments. Other third party payments shall be handled as follows: Moneys legally obligated and otherwise payable to the household which are diverted by the provider of the payment to a third party for a household expense shall be counted as income and not excluded. If the person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. The following are examples of third party payments:

a) A friend or relative uses his or her own money to pay the household's rent directly to the landlord. This vendor payment shall be excluded.

b) A household member earns wages.

However, the wages are garnished or diverted by the employer and paid to a third party for a household expense, such as rent. This vendor payment is counted as income. However, if the employer pays a household's rent directly to the landlord in addition to paying the household its regular wages, the rent payment shall be excluded from income. Similarly, if the employer provides housing to an employee in addition to wages, the value of the housing shall not be counted as income.

c) A household receives court-ordered monthly support payments in the amount of $400. Later, $200 is diverted by the provider and paid directly to a creditor for a household expense. The payment is counted as income.

Money deducted or diverted from a court-ordered support or alimony payment to a third party for a household's expense shall be included as income because the payment is taken from money that is owed to the household. However, payments specified by a court order or other legally binding agreement to go directly to a third party rather than the household are excluded from income because they are not otherwise payable to the household.

Examples of court-ordered payments:

a) A court awards support payments in the amount of $400 a month and in addition orders $200 to be paid directly to a bank for repayment of a loan. The $400 payment is counted as income and the $200 payment is excluded from income.

b) A civil service retiree is entitled to a retirement payment of $800 a month. However, $400 is diverted to his ex-wife by court order for child support. This is similar to a wage garnishment. Since the retirement benefits are legally obligated and otherwise payable to the retiree's household, the $800 is budgeted for food stamp purposes.

Support payments not required by a court order or other legally binding agreement (including payments in excess of the amount specified in a court order or written agreement) which are paid to a third party on the household's behalf shall be excluded from income.

~~5.~~ 4. Payments made by the Division or by another government agency to a child care institution to provide day care for a household member are also excluded as vendor payments.

~~6.~~ 5. All or part of a public assistance grant which would normally be provided in a money payment but which is diverted to a protective payee will be considered income to the household.

~~7.~~ 6. Emergency Assistance payments will be excluded if they are made directly to a third party for a household expense. This rule applies even if the household has the option of receiving a direct cash payment.

~~8.~~ 7. Under some pay/benefit plans, an employee may choose to have the employer withhold from the employee's earnings money to pay certain expenses such as child care and medical expenses as a vendor payment to a third party when the expenses are incurred. The amount is counted as earned income when withheld because the money is legally obligated and otherwise payable to the employee at that time.

~~9.~~ 8. Some companies make credits available to employees to use to buy health insurance, annual leave, sick leave or life insurance. The employee cannot elect to receive a cash payment and loses the credits if not used. The amount shows up on the pay stub when used. These flexible benefits are not counted as income because they are not legally obligated and otherwise payable to the employee as earnings.

Some companies give employees "points" as incentive to arrive to work on time, work so many weeks without taking leave, etc. These points have a monetary value that appears on the pay stub and the points are subject to taxes. The employee can only redeem the points for commodities or goods from a catalog provided by the employer; they cannot convert the points to cash. These points are excluded from income because the funds are not otherwise payable to the household.

B. Any income in the certification period which is received too infrequently or irregularly to be reasonably anticipated, but not in excess of $30 a quarter.

C. ~~Educational assistance, including grants, scholarships, fellowships, work-study, educational loans on which payment is deferred, veterans' educational benefits and the like~~ Grants, Loans and Scholarships - Do not count educational financial assistance received from school grants, scholarships, vocational rehabilitation payments, Job Training Partnership Act payments, educational loans, and other loans that are expected to be repaid as income. Exclude any other financial assistance received that is intended for books, tuition, or other self-sufficiency expenses.

~~To be excluded, the educational assistance listed above must be:~~

~~A. Awarded to a household member enrolled at a:~~

~~1. Recognized institution of post-secondary education,*~~

~~2. School for the handicapped,~~

~~3. Vocational education program,~~

~~4. Vocational or technical school, or~~

~~5. Program that provides for obtaining a secondary school diploma or the equivalent;~~

~~* Means any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance for that State. The institution must be authorized to provide an educational program beyond secondary education or provides a program of training to prepare students for gainful~~

~~employment, including correspondence schools at that level.~~

~~B. Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:~~

~~1. Tuition,~~

~~2. Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved,~~

~~3. Books,~~

~~4. Supplies,~~

~~5. Transportation,~~

~~6. Miscellaneous personal expenses, other than the normal living expenses of room and board, of the student incidental to attending a school, institution, or program,~~

~~7. Dependent care (amounts excluded cannot be excluded under the income dependent care deduction under DSSM 9060), and~~

~~8. Origination fees and insurance premiums on educational loans.~~

~~Exclusions based on use for the allowable expenses listed above must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expenses are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income first when possible, and the remainder, if any, shall be excluded from earned educational income.~~

~~An individual's total educational income exclusions cannot exceed that individual's total educational income received.~~

~~D. All loans, including loans from private individuals as well as commercial institutions,~~ , other than ~~educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded according to DSSM 9059 C . A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.~~

9063.3 Income Averaging

[273.10(c)(3)]

Income may be averaged when the household has fluctuating income. When averaging income, use the household's anticipation of monthly income fluctuations over the certification period. Averages are recalculated at recertification and when changes in income are reported.

Conversion of income received weekly or biweekly according to DSSM 9063.2 is not averaging income.

Households which, by contract or by self-employment, derive their annual income in a period of time shorter than one (1) year will have that income averaged over a 12-month period, provided the income from the contract is not received on an hourly or piecework basis. These households may include school employees, share croppers, farmers and other self-employed households. However, these provisions do not apply to migrant or seasonal farm workers. The procedures for averaging self-employed income are described in DSSM 9075 . Contract income which is not the household's annual income and is not paid on an hourly or piecework basis shall be prorated over the period the income is intended to cover.

For food stamp purposes, a contract employee is one that has an agreement with an employer to work a certain length of time or perform a specific job. It may be either a written contract or an implied contract. Acceptable verification would be a statement from the employer or a written document, such as a copy of the contract or agreement, that shows the terms of employment.

The following shows an example of contract and hourly work:

A teacher's aid works 10 months of the year for $9.16 per hour and 6 hours per day. She does not sign a "contract" but it is implied that she will be "rehired" for the following school year. She will be considered a contract employee whose income must be annualized.

An employee who is paid hourly is one that is paid based on the number of hours he works when there is no established work schedule such as a handyman who does odd jobs around the school.

~~Earned and unearned educational income, after allowable exclusions, shall be averaged over the period which it is intended to cover. Income shall be counted either in the month it is received, or in the month the household anticipates receiving it or receiving the first installment payment, although it is still prorated over the period it is intended to cover.~~

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings:

Delaware Health and Social Services (“Department”) / Division of Social Services initiated proceedings to amend

the Division of Social Services Manual (DSSM). The proposed changes amends the policy of the Food Stamp Program as it relates to Electronic Benefit Transfer (EBT). The Department's proceedings to amend its regulations were initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 Delaware Code Section 10115 in the March 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by March 31, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

Summary Of Proposed Regulations

1. The proposed regulation reflects the change from coupons to Electronic Benefit Transfer (EBT) in regards to the replacement of benefits policy.

2. Replacement of food stamp benefits issued via EBT is restricted to:

- Food purchased with benefits and destroyed in a disaster or misfortune;
- Unauthorized access to benefits after the client has reported a lost or stolen EBT card to e-Funds; and
- Unauthorized access to benefits due to agency or vendor error.

3. DSS will not replace food stamp benefits withdrawn from an EBT account:

- Before the client reports the EBT card lost or stolen to the e-Funds Customer Support Unit; or
- Due to misuse by an authorized representative.

Citations

7 CFR §274.6, Replacement Issuances to Households
7 CFR §274.12, EBT Issuance System Approval Standards

Summary Of Comments Received With Agency Response

The State Council for Persons with Disabilities (SCPD) provided the following observations summarized below:

First, it is unclear if the "affidavit for replacement" discussed in §9079.4 applies only to unauthorized use as defined in §9079.2 or also applies to food within the purview of §9079.3. The last sentence in §9079.2 requires submission of the affidavit for unauthorized use. There is no corollary provision in §9079.3, implying that the affidavit is not required for lost food. However, the location of §9079.4 (following both §§ 9079.2 and 9079.3) implies that the affidavit applies to losses under both sections. DSS should clarify whether the affidavit applies to both §§ 9079.2 and 9079.3 or only to §9079.2.

Agency Response: Affidavit for replacement applies to both unauthorized use and household misfortune. The affidavit actually has a check block for each type of replacement. For clarification, the paragraph at the end of 9079.2 is added to the end of the paragraph at 9079.3.

Second, the reference to "unauthorized use" in §§9079.1 and 9079.2 is too narrow. For example, §9079.2 contemplates replacement based on "loss" or "theft". If a beneficiary loses the card, or it is mutilated (e.g. by pet or washer or dryer heat), SCPD assumes DSS enjoys some discretion to replace it. The current coupon-based regulations authorized replacement of "mutilated" coupons. However, the narrow heading of "unauthorized use" does not cover such situations.

Agency Response: "Unauthorized Use" is narrow because DSS can only replace benefits when the loss occurred: 1) after a report of a lost or stolen EBT card is made to the e-Funds Customer Support number at 1-800-526-9099; or 2) because of DSS local office card/PIN issuance error; or 3) because of an unlawful or other erroneous action on the part of DSS or the EBT contractor.

Also, there are no more mutilated coupons. The benefits are in an account. If the client's card is mutilated by going through the washer or being chewed up by a dog, the benefits are still in the account. There is no loss of benefits. The household just gets a replacement card – not a replacement of benefits.

Third, the regulations contemplate return of the affidavit for replacement within a short time frame. Since a Notary would be required to endorse the affidavit, this could prove a hardship for persons who are home bound (e.g. due to disability). Other hardships for individuals with disabilities include possible cost associated with Notaries and readily accessible Notaries (e.g. due to transportation issues). DSS may wish to consider how such a beneficiary would comply. Perhaps DSS could include a "deferral for cause" provision or other alternate means for compliance.

Agency Response: The ten day time frame for returning an affidavit is a federal requirement. For food stamp affidavits, DSS does not require a Notary to endorse it. The household just signs the affidavit themselves. Affidavits can be mailed to the client or the household can come into the office to sign.

Fourth, the Division may wish to consider expanding the conditions in which food is destroyed based on "misfortune" to include "dispossession of the premises through eviction".

Agency Response: Household misfortune can include

any number of conditions. DSS policy does not list them all. DSS will replace food loss due to eviction of home if the household was not allowed to take their food with them. For example, when the residents of an Elsmere apartment complex were immediately evicted due to mold in the basements, DSS replaced the destroyed food. When DSS staff have questions about a household misfortune they contact the policy unit to determine if the request for replacement is allowed.

Additional comments were received from Roger Waters, DSS Hearing Officer. His suggested changes are intended to make the language of the rules simpler and easier to understand. As a result of the suggestions, DSS made non-substantive grammatical and clarifying language changes throughout the regulation indicated by [bracketed bold type].

Findings Of Fact:

The Department finds that the proposed changes as set forth in the March 2004 Register of Regulations should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Food Stamp Program regarding Electronic Benefit Transfer (EBT) is adopted and shall be final effective May 10, 2004.

Vincent P. Meconi, Secretary, DHSS, 4/13/04

DSS FINAL ORDER REGULATION #04-10

REVISIONS:

~~9079.1 Replacing Coupons~~

~~We will 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.~~

~~We will not provide a replacement issuance to a household when:~~

- ~~The coupons are lost, stolen, or misplaced after receipt;~~
- ~~The coupons are totally destroyed after receipt in other than a disaster or misfortune;~~
- ~~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.~~

~~9079.2 Replacement Restrictions~~

~~Provide a replacement issuance only if a household timely reports a loss orally or in writing and signs a Form 324 (affidavit) if the original benefit (coupons) has not been returned to DSS at the time of the request for replacement. A report is considered timely if it is made within the following timeframes:~~

~~For Monthly Benefits:~~

~~•· From the mailing date until the end of the month~~

~~Example: May's monthly benefit is mailed on 5/6. The household has until 5/31 to report non-receipt. If the report is made on 5/31, the household has until 6/10 to sign an affidavit in the office or return a signed affidavit to DSS.~~

~~For Daily Benefits (Initial, Expedited, Supplemental, Restoration, or Replacement):~~

- ~~For benefits issued from the 1st of the month through the 20th of the month, until the end of the month.~~

~~Example: Benefit is mailed on 4/10. The household has until 4/30 to report non-receipt. If the report is made on 4/30, the household has until 5/10 to sign an affidavit in the office or return a signed affidavit to DSS.~~

- ~~For benefits issued from the 21st through the 30/31st of the month, until the end of the next month.~~

~~Example: Benefit is mailed on 9/25. The household has until 10/31 to report non-receipt. If the report is made on 10/31, the household has until 11/10 to sign an affidavit in the office or return a signed affidavit to DSS.~~

~~Limit the number of replacement issuances a household may receive as follows:~~

- ~~Limit replacement issuances to a total of two (2) countable replacements in six (6) months for:~~
- ~~coupons not received in, or stolen from the mail.~~

~~Limit replacement issuances per household to two (2)~~

countable replacements in six (6) months for coupons reported as destroyed in a household misfortune. This limit is in addition to the above limits.

Do not limit the number of replacements for coupons which were improperly manufactured or mutilated or food purchased with food stamp benefits which was destroyed in a household misfortune.

A replacement issuance is not considered a countable replacement if:

- The original or replacement benefit is returned or otherwise recouped by the Division, or
- The replacement is being issued due to an Agency issuance error.

Provide replacement issuances in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits which are to be replaced up to their full value.

9079.3 Household Statement of Non-Receipt (Affidavits)

Prior to issuing a replacement, obtain from a household member a signed statement attesting to the household's loss (Form 324). Do not require an affidavit if:

- The reason for the replacement is that the coupons were improperly manufactured, or mutilated; or
- The original issuance has already been returned.

The affidavit may be mailed to DSS if the household member is unable to come into the office because of age, disability, or distance from the office and is unable to appoint an authorized representative.

If the affidavit is not received by DSS within ten (10) days of the date of the report, do not issue a replacement. If the tenth day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, consider the statement timely received.

Retain a copy of the affidavit in the case record.

9079.4 Time Limits for Making Replacements

Provide replacement issuances to households within ten (10) days after report of non-delivery or loss, or within two (2) working days of receiving the signed household statement required in DSSM 9079.3 , whichever date is later. Delay replacement of mutilated coupons until a determination of the value of the coupons can be made in accordance with DSSM 9079.6 .

If the household has already been issued the maximum allowable number of countable replacements, delay subsequent replacements until DMS has verified that the original issuance was returned. Due to the time it takes for benefits to return, it may not be known at the time of the replacement request whether prior replacements are countable replacements, and, therefore, whether the household has reached its limit. In such cases, restore the allotment when DMS verifies that the limit on countable replacements has not been reached.

After a household has been issued the maximum allowable number of countable replacements, continue to allow the household to sign affidavits (Form 324) for subsequent replacements. However, the replacements will not be issued until DMS verifies that the original issuance was returned.

For example, a client received replacement coupons for the months of January and March. In June, the client reports non-receipt of June's coupons.

- Client signs an affidavit.
- Staff sends affidavit to DMS Payments Office.
- DMS investigates the replacement request.
- DMS replaces the coupons in August only after verifying the original benefit had returned.

Deny or delay replacement issuances in cases in which available documentation indicates that the household's request for replacement appears to be fraudulent.

Inform the household of its right to a fair hearing to contest the denial or delay of a replacement issuance. Do not make replacement while the denial or delay is being appealed.

9079.5 Replacing Issuances Lost in the Mail or Stolen Prior to Receipt by the Household

1) Determine if the coupons were:
   - Validly issued,
   - Actually mailed and if sufficient time has elapsed for delivery, or
   - If it was returned in the mail.

2) Determine, to the extent possible, the validity of the request for a replacement. This includes determining whether the original benefit has been returned to DMS.

3) Issue a replacement if the household is eligible.

4) Take other action, such as correcting the address in DCIS, as warranted.

9079.6 Replacing Issuances After Receipt by the Household

Upon receiving a request for replacement of an issuance reported as destroyed after receipt by the household, determine if the benefit was validly issued. Comply with all applicable provisions in DSSM 9079.2 - 9079.4, as well as following procedures for each type of replacement.

1) Prior to replacing destroyed coupons, or destroyed food that was purchased with food stamp benefits, determine that the destruction occurred in a household misfortune or disaster, such as, but not limited to, a fire or flood. Verify such occurrences through a collateral contact, documentation from a community agency including, but not limited to, the fire department or the Red Cross, or a home visit. Provide replacements of coupons, and/or food in the

~~actual amount of the loss, but not exceeding one month's allotment, unless the issuance includes restored benefits, which are to be replaced at full value.~~

~~2) Households cannot receive a replacement for coupons lost or stolen after receipt.~~

~~3. Provide replacements for improperly manufactured or mutilated coupons as follows:~~

~~Replace coupons received by a household and subsequently mutilated or found to be improperly manufactured in the amount of the loss to the household. Replace mutilated coupons when three- fifths of a coupon is presented by the household. Examine the improperly manufactured or mutilated coupon to determine the validity of the claim and the amount of coupons to be replaced.~~

~~If the value of the improperly manufactured or mutilated coupons can be determined, replace the unusable coupons in a dollar-for-dollar exchange. If the value of the improperly manufactured or mutilated coupons cannot be determined, cancel the coupons by writing "cancelled" across the face of the coupons. Request that DMS forward the coupons to FNS for a determination of the value by the U.S. Bureau of Engraving and Printing.~~

~~To replace these improperly manufactured or mutilated coupons, send the coupons and a completed Form FNS-135 (Affidavit of Return or Exchange of Food Coupons) to DMS Payments Office.~~

~~9079.7 Delivery of Coupons~~

~~After the first report of non-receipt of a mailed benefit, or when circumstances exist that indicate that the household may not receive its coupons through the mail, benefits must be sent to the over-the-counter issuance sites.~~

~~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 adverse actions under §5304 and there is no jurisdiction for a fair hearing over these requirements.~~

9079.1 Replacing Food Benefits Issued [~~via~~ by] Electronic Benefit Transfer (EBT)

Food stamp benefits issued **[~~via~~ by]** EBT can only be replaced under two conditions:

- Unauthorized use of the account based on the conditions listed below; and
- Food purchased with food stamp benefits that was destroyed in a household misfortune or disaster.

The primary payee (cardholder) **[~~has the sole responsibility~~ is responsible]** for the security and safeguarding of the EBT card and PIN, including the careful selection of authorized representatives.

9079.2 Unauthorized use of the account.

The **[~~issuance of~~ reason DSS issues]** food stamp benefits **[~~via~~ by]** EBT is **[~~designed~~]** to minimize the loss and theft of client benefits. **[~~DSS will rarely be liable for replacement benefits due to loss of benefits from an EBT account.~~]**

DSS will replace benefits issued **[~~via~~ by]** EBT due to the unauthorized use of the account only if the loss occurred:

[1.] after **[~~the client reports the~~ a report of a lost or stolen]** EBT card **[~~lost or stolen~~ is made]** to the e-Funds Customer Support number at 1-800-526-9099;

[2.] because of DSS local office card/PIN issuance error; or

[3.] because of an unlawful or other erroneous action on the part of DSS or the EBT contractor.

DSS will not replace food stamp benefits withdrawn from an EBT account before **[~~the client reports the EBT card lost or stolen~~ a report of a lost or stolen EBT card is made]** to the e-Funds Customer Support Unit.

DSS will replace food stamp benefits withdrawn from an EBT account after **[~~the client reports the EBT card lost or stolen~~ a report of a lost or stolen EBT card is made]** to the e-Funds Customer Support Unit. Before **[~~issuing the replacement~~ a replacement is issued, DSS will verify~~,~~]** the time/date of the report to e-funds and the time/date of the loss of benefits **[~~must be verified~~]**.

DSS will not replace EBT issued benefits that were misused by an authorized representative.

A household member, or authorized representative, must sign and return to the food stamp office **[~~the~~ an]** Affidavit for Replacement of EBT Food Benefits**[. The affidavit will attest ~~attesting~~]** to the loss **[and must be made]** within ten days of the report of the loss. **[~~Failure to~~ If the household does not]** sign and return the affidavit within ten days of the report of the loss **[~~may result in a denial of the replacement request~~ DSS will deny the request for replacement of benefits]**.

9079.3 Food [~~purchased with food stamp benefits that was~~ destroyed after it was purchased with food stamp benefits].

[~~We may issue replacement of~~ DSS will replace] food benefits **[used]** for food **[that was]** destroyed in a household misfortune or disaster.

The household may be entitled to a replacement of the actual value of the loss **[~~which cannot exceed the allotment issued for one month~~ not to exceed the amount of the household's monthly allotment at the time of the loss].**

The household must report the household misfortune or disaster **[to DSS]** within ten days of the loss.

DSS **[~~must~~ will]** verify the **[fact of the]** household's misfortune or disaster. Disasters can include fire, floods, or hurricanes. Household misfortunes can include a breakdown in the refrigerator or freezer or the loss of electricity causing

food to spoil.

[~~Verification of~~ In verifying] a household's misfortune or disaster **[~~can include~~ DSS will accept]** statements from community agencies, the Red Cross, fire departments, home visits, or other acceptable collateral contact.

There is no limit on the number of times a household may receive replacement of food destroyed in a household misfortune or disaster.

If a household is eligible for emergency benefits under a disaster program, the household cannot receive both the emergency benefits and replacement benefits for the same time period.

Replacements of destroyed food cannot be used to offset food stamp overpayment claims.

[A household member, or authorized representative, must sign and return to the food stamp office an Affidavit for Replacement of EBT Food Benefits. The affidavit will attest to the loss and must be made within ten days of the report of the loss. If the household does not sign and return the affidavit within ten days of the report of the loss DSS will deny the request for replacement of benefits.]

9079.4 Affidavit for Replacement of EBT Food Benefits

A household member, or authorized representative, must sign **[~~the~~ an]** Affidavit for Replacement of EBT Food Benefits attesting to the loss **[and submit the affidavit to DSS]** within ten days of the report of the loss.

The household will not receive a replacement if the affidavit is not received by DSS within ten days of the report of the loss.

If the tenth day falls on a weekend or holiday, DSS will consider the affidavit as received timely if **[it is]** received on the next business day.

DSS will provide replacement benefits within ten days of the reported loss or within two working days of receiving the affidavit, whichever is later.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

REGISTER NOTICE

1. Title Of The Regulations:

DNREC Freedom of Information Act Regulations

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

These regulations were originally promulgated in February, 2001. In 2002, numbering changes were made to 29 **Del.C.** §10002 pursuant to laws passed by the General Assembly. These FOIA regulations make reference to some of the sections of the Delaware Code that have been changed, requiring a change in citations contained in the regulations. Only the citations have changed in this regulation. No other substantive changes have been made.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

Renumbering changes brought about by changes in the Delaware Code is allowable by action of the State Registrar of Regulations as an administrative matter under 29 **Del.C.** §1134. No further public notice, public hearing or other administrative actions are warranted or required. Publication of these corrected regulations is at the request of DNREC in order to completely and accurately inform the public concerning regulatory changes.

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

N/A

6. Notice Of Public Comment:

This is an administrative matter. No public comment is required.

7. Prepared By:

Phil Cherry, DNREC Registrar of Regulations 739-4403
3/23/04

Freedom of Information Act ("FOIA") Regulation
Promulgated Pursuant to 29 Del. C. Chapter 100
Effective Date: February 12, 2001
Amended with Numbering Changes: March 5, 2004

1.0 Purpose

The purpose of this regulation is to prescribe procedures relating to the inspection and copying of public records retained by the Department of Natural Resources and Environmental Control ("the Department") pursuant to 29 **Del.C.** Ch. 100, the Freedom of Information Act ("FOIA"). It is the Department's goal in establishing this regulation to maximize the amount of information available to the public, establish a reasonable fee structure for copying public records, and to streamline procedures used to disseminate this information.

This regulation applies to the Department in dealing with requests from the public for information as set forth in the Freedom of Information Act. This regulation does not apply to the Department in its normal course of business

with Federal, State, or local agencies, nor to private parties (corporate or individual) with whom the Department is conducting business (permit, contractual agreement, licenses, etc.), provided the public records are germane to the business being conducted. Requests made pursuant to the Hazardous Waste Disclosure Regulation ("HWDR") shall remain independent of this regulation in order to maintain EPA authorization for the Hazardous Waste program.

A new and integral part of the FOIA regulation is a procedure outlined to address the confidential treatment of information submitted to the Department. It is important to understand that this confidentiality procedure is a necessary part of the FOIA regulation in that any information submitted to the Department is subject to public review unless deemed to be confidential by the Secretary in accordance with the criteria and procedures established in this regulation.

It is the intent of the Department, as well as the State of Delaware, that public business be performed in an open and public manner so that the citizens will have the opportunity to be advised of the performance of Department officials and of their decisions. In accordance with Delaware's FOIA laws, the public has the right to "reasonable access" to public records. FOIA provides that it shall be the responsibility of the public body to establish rules and regulations regarding access to public records as well as fees charged for copying of such records. All requests for information made pursuant to FOIA, shall be processed in the manner prescribed below.

2.0 Definitions

"Requestor" shall mean any individual, organization or business that submits a request for information under the Delaware Freedom of Information Act.

"Confidential information" means information determined by the Secretary to constitute a trade secret, or commercial or financial information which is of a confidential nature.

"Department" means the Department of Natural Resources & Environmental Control.

"Responsible Official" means:

For a Corporation: A President, Vice-President, Secretary, or Treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

For a Partnership or Sole Proprietorship: A general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

For a Municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official including a successor in interest to one of these persons if the Department is notified in writing of the substitution of the party.

"Secretary" means the Secretary of the Department of Natural Resources & Environmental Control or the Secretary's designee.

"Trade Secret" means a formula, pattern, device or compilation of information which may be used to obtain competitive advantage over others.

3.0 Availability of Records

3.1 Access

3.1.1 The Department will provide reasonable access and facilities for reviewing public records during regular business hours.

3.1.2 The Department shall make all requested records available for review by requestor unless such records or portions of records are determined by the Secretary to be confidential in accordance with Section 6 of this regulation or otherwise exempted from disclosure as records deemed non-public pursuant to 29 **Del.C. [~~§10002(g)~~ §10002(d)]**.

3.1.3 The Department reserves the right to deny any request in part or in full which does not comply with the Form of Request procedures pursuant to Section 4.1 of this regulation and/or the provisions of the Freedom of Information Act, as amended.

3.2 Department Records Review

3.2.1 Prior to disclosure, records will be reviewed to insure that those records or portions of records deemed non-public are removed.

3.2.2 Upon request, the Department will provide a log of records which may have been deemed non-public. The log will include the following information:

3.2.2.1 The document's author,

3.2.2.2 The addressee,

3.2.2.3 The date of the document,

3.2.2.4 The title of the document or a brief explanation of the document's contents, and

3.2.2.5 The statutory exemption.

3.2.3 The types of records deemed non-public are as contained in 29 **Del.C. [~~§10002(g)~~ §10002(d)]**.

3.2.4 Departmental regulations, brochures, pamphlets, informational bulletins, and other such information are not subject to this regulation.

4.0 Record Request and Response Procedures

4.1 Form of Request

4.1.1 Requests for access to records shall be made in writing and shall adequately describe the records sought in sufficient detail to enable the Department to locate the records with reasonable effort. The Department shall

make every reasonable effort to assist the requestor in identifying the record being sought. The request may be denied in part or in full and returned to the requestor for the following reasons:

4.1.1.1 The request does not adequately describe the records;

4.1.1.2 The request requires the Department to perform research or to assemble information that has not been compiled; or

4.1.1.3 Reasons set forth in Section 3.1.c. or as addressed in other areas of this regulation not specified here.

4.2 Department Response to Requests

4.2.1 The Department shall make every reasonable effort to determine within twenty (20) business days after the receipt of a request whether it can fulfill the request. The actual disclosure of records shall follow promptly thereafter.

4.2.2 If the Department denies a request in whole or in part, the Department shall indicate to the requestor the reasons for the denial.

4.3 Reproduction of Records

4.3.1 The copying of any requested public records may be performed by Department personnel and may be provided to the requestor as follows:

4.3.1.1 If 25 pages or less are requested to be copied, the Department may, if time and personnel are available, make the copies at the time of the review. If personnel are not available, the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.

4.3.1.2 If over 25 pages are requested to be copied the Department may arrange to copy and mail the records to the requestor. In the alternative, the requestor may elect to pick up copies during regular business hours and submit payment at that time.

4.3.1.3 If over 250 pages are requested to be copied, the requestor may be required to bring in both copier and personnel to make the desired copies.

4.3.1.4 Fragmentation of requests, in order to circumvent the 250 page limit, shall not be allowed.

4.3.1.5 The Department shall have discretion based on circumstances involved to make decisions regarding copying.

5.0 Fees

5.1 Administrative Fees:

5.1.1 Charges for administrative fees include:

5.1.1.1 Staff time associated with processing FOIA requests;

5.1.1.2 Locating and reviewing files;

5.1.1.3 Monitoring file reviews;

5.1.1.4 Generating computer records (electronic or print-outs); and

Preparing logs of records deemed non-public.

5.1.2 Calculation of Administrative Charges: Administrative charges will be calculated as follows:

5.1.2.1 Administrative charges will be billed to the requestor per quarter hour. These charges will be billed at the current, hourly paygrade rate (pro-rated for quarter hour increments) of the personnel performing the service. Administrative charges will be in addition to any copying charges.

5.1.2.2 Appointment Rescheduling/ Cancellation – Requestors that do not reschedule or cancel appointments to view files at least one full business day in advance of the appointment may be subject to the administrative charges incurred by the Department in preparing the requested records. The Department will prepare an itemized invoice of these charges and mail to the requestor for payment.

5.2 Photocopying Fees - The following are charges for photocopies of public records made by Department personnel:

5.2.1 Standard Sized, Black and White Copies

The charge for copying standard sized, black and white public records shall be $0.10 per printed page (i.e. single-sided copies are $0.10 and double-sided copies are $0.20). This charge applies to copies on the following standard paper sizes:

5.2.1.1 8.5" x 11";

5.2.1.2 8.5" x 14"; and

5.2.1.3 11" x 17"

5.2.2 Oversized Copies/Printouts

The charge for copying oversized public records (including, but not limited to: blueprints, engineering drawings, GIS print-outs, and maps) shall be as follows:

5.2.2.1 24" x 26"- $2.00 each;

5.2.2.2 24" x 36" - $3.00 each;

5.2.2.3 30" x 42" - $5.00 each; and

5.2.2.4 all copies larger than 30" x 42" shall be calculated at the rate of $0.60 per square foot.

5.2.3 Color Copies/Printouts

The charge for color copies or color printouts shall be as follows:

5.2.3.1 8.5" x 11" - $1.00 per page;

5.2.3.2 8.5" x 14" - $1.50 per page;

5.2.3.3 11" x 17" - $2.00 per page; and

5.2.3.4 all color copies larger than 11" x 17" (including, but not limited to: blueprints, engineering drawings, photographic imagery, GIS print-outs, and maps) shall be calculated at the rate of $2.50 per square foot.

5.2.4 Microfilm and/or Microfiche Printouts

Microfilm and/or microfiche printouts, made by Department personnel on standard sized paper, will be calculated at $0.15 per printed page.

5.2.5 Electronically Generated Records

Charges for copying records maintained in an electronic format will be calculated by the material costs involved in generating the copies (including, but not limited to: magnetic tape, diskette, or compact disc costs) and administrative costs.

5.2.5.1 In the event that requests for records maintained in an electronic format can be electronically mailed to the requestor, only the administrative charges in preparing the electronic records will be charged.

5.2.6 Other Copying Fees

The Department, at its discretion, may arrange to have records copied by an outside contractor if the Department does not have the resources or equipment to copy such records. In this instance, the requestor will be liable for payment of these costs.

5.3 Exemptions

5.3.1 The administrative charge shall be waived for individuals making a FOIA request to the Department who are not deriving income or other forms of compensation from the use of the information obtained through the FOIA request. To qualify for this exemption, individuals must provide a signed affidavit accompanying the FOIA request, stating that they are not deriving income or other forms of compensation from the use of information obtained through FOIA.

5.3.2 The administrative charge shall be waived for not-for-profit organizations working in the public interest on the condition that such organizations provide, along with their FOIA request, proof of tax-exempt status and a signed affidavit from an officer or the governing body of the organization which indicates that the requestor is authorized to request the information on behalf of the organization.

5.3.3 Individuals and not-for-profit organizations that qualify under 5.3.a or 5.3.b shall also be granted a waiver for copying fees of $25.00 or less. For those requests exceeding $25.00 in copying fees, charges will be assessed pursuant to Section 5.2 of this regulation.

5.4 Payment

5.4.1 Payment for copies and/or administrative charges will be due at the time copies are released to the requestor. The Department reserves the right to refuse to make copies for requestors who have outstanding balances.

5.4.2 The Department may require pre-payment of copying and administrative charges prior to mailing copies of requested records and/or in preparing logs of records deemed non-public.

5.4.3 Department personnel will maintain a receipt register and, upon request, provide the requestor with a receipt when payment is received.

6.0 Requests for Confidentiality

A person may request that certain records or portions of records submitted to the Department be held confidential. Certain information may be determined confidential if its disclosure could potentially cause substantial competitive harm to the person or business from whom the information was obtained.

The following section sets forth procedures and criteria by which the Department will determine confidentiality of records or portions of records.

6.1 Procedure

6.1.1 In order for the Department to make a determination that information submitted is of a confidential nature, and therefore to be afforded confidential status, a request must be made in writing to the Secretary at the time the record is submitted. The request shall provide substantiation for the allegation that the information should be treated as confidential. The request shall contain the following information:

6.1.1.1 The measures taken to guard against undesired disclosure of the information to others;

6.1.1.2 The extent to which the information has been disclosed to others, and the precautions taken in connection therewith;

6.1.1.3 Whether disclosure of the information would be likely to result in substantial harmful effects on their competitive position, and if so, what those harmful effects would be, why the effects should be viewed as substantial, and an explanation of how the disclosure would cause such harmful effects; and

6.1.1.4 Verification that significant effort or money has been expended in developing the information.

6.1.2 The following information shall be submitted:

6.1.2.1 Two public versions of the entire package of information that is submitted for determination, with alleged confidential information redacted (this version will be made available for public review). The public versions shall correspond page for page with the confidential versions, with the confidential portions having been redacted;

6.1.2.2 Two confidential versions of the entire package of information that is submitted for determination, that includes the alleged confidential information (this version will be used internally for technical review); and

6.1.2.3 Certification through a separate, notarized affidavit that the information is either trade secret, or commercial/financial information that is of a confidential nature. The affidavit will be signed by the Responsible Official.

6.1.3 The burden lies with the party asserting the claim of confidentiality. A unilateral assertion that a record is confidential is insufficient evidence to support the Secretary in making a determination of confidentiality pursuant to this privilege.

6.1.4 After a final determination of

confidentiality has been issued by the Secretary, any further submissions containing the same confidential information shall be deemed to be confidential based on the prior determination if the Department determines that:

6.1.4.1 The Responsible Official notified the Department in writing contemporaneously with the later submission that the later submission contains information previously determined to be confidential; and

6.1.4.2 The later submission identifies with particularity the prior confidentiality determination; and

6.1.4.3 The notice to the Department met the requirements of Section 6.1.b. above relating to submission of multiple and redacted copies, and included the required affidavit of the Responsible Official; and

6.1.4.4 The later representations of confidentiality are sufficient to meet the requirements for a confidentiality determination.

6.2 Criteria

6.2.1 The Secretary may determine that the information submitted is entitled to confidential treatment if all of the following criteria are met:

6.2.1.1 Reasonable measures to protect the confidentiality of the information and an intention to continue to take such measures have been satisfactorily shown;

6.2.1.2 The information is not, and has not been, reasonably obtainable by other persons (other than governmental bodies) by use of legitimate means (other than court enforced order) without prior consent;

6.2.1.3 No statute specifically requires disclosure of the information;

6.2.1.4 A satisfactory showing has been made that disclosure of the information is likely to cause substantial harm to their competitive position; and

6.2.1.5 Verification that significant effort or money has been expended in developing the information.

6.3 Final Determination

The Secretary will make a final determination as to whether the information shall be considered public or confidential based upon a review of the information submitted pursuant to this Section. The person making the confidentiality request will be notified in writing of the Secretary's determination.

6.3.1 If the Secretary determines that disclosure of the information would violate 29 **Del.C.** **[**~~§10002(g)(2)~~ §**10002(d)(2)]**, the information will be deemed confidential until such time as the basis for a determination of confidentiality changes. It is the responsibility of the person who requested that the information be given confidential status to notify the Department in writing of such changes.

6.3.2 If the Secretary finds that the information is not entitled to confidential treatment, the information will be considered public.

6.4 Defense of Secretary's Determination

6.4.1 Verification of Information

There will be instances in which the Secretary may be unable to verify the accuracy of the information submitted for determinations of confidentiality. The Secretary relies heavily upon the information furnished by the affected party in order to make a reasonable determination of confidentiality.

6.4.2 Information Determined Confidential

If the Secretary makes a confidentiality determination that certain information is entitled to confidential treatment, and the Department is sued by a requestor for disclosure of that information, the Department will:

6.4.2.1 Notify each affected party of the suit;

6.4.2.2 Call upon each affected party to furnish assistance where necessary in preparation of the Department's defense; and

6.4.2.3 Defend the final confidentiality determination, but expect the affected party to cooperate to the fullest extent possible in the defense.

DIVISION OF AIR AND WASTE MANAGEMENT

7 Delaware Code, Chapter 79 (7 **Del.C.** Ch. 79)

REGISTER NOTICE

1. Title Of The Regulations:

DNREC Chronic Violator Regulations

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

These regulations were originally promulgated in March, 2004. In July, 2003, during the adoption process for the regulations, numbering changes were made to 7 **Del.C.** 6013 pursuant to laws passed by the General Assembly. These Chronic Violator regulations make reference to some of the sections of the Delaware Code that have been changed, requiring a change in citations contained in the regulations. Only the citations have changed in this regulation. No other substantive changes have been made.

3. Possible Terms Of The Agency Action:

N/A

4. Statutory Basis Or Legal Authority To Act:

Renumbering changes brought about by changes in the Delaware Code is allowable by action of the State Registrar of Regulations as an administrative matter under 29 **Del.C.** §1134. No further public notice, public hearing or other administrative actions are warranted or required. Publication of these corrected regulations is at the request of

DNREC in order to completely and accurately inform the public concerning regulatory changes.

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

N/A

6. Notice Of Public Comment:

This is an administrative matter. No public comment is required.

7. Prepared By:

Phil Cherry, DNREC Registrar of Regulations 739-4403 3/23/04

Chronic Violator Regulation

1.0 Authority

1.1 These regulations are promulgated pursuant to the authority granted to the Secretary by 7 **Del.C.** Chapter 79.

2.0 Applicability

2.1. The Chronic Violator regulations are administered by the Department of Natural Resources and Environmental Control pursuant to 7 **Del.C.** Chapter 79.

2.2. These regulations apply to the following DNREC Regulatory Programs adopted under Title 7: Chapters 40, 60, 62, 63, 66, 70, 72, 74, 77, 78, and 91 and Title 16 Chapters 63 and 78:

2.2.1 Erosion and Sedimentation Control (7 **Del.C.** Chapter 40) Control of erosion of sedimentation at construction sites and other land disturbing activities.

2.2.2 Stormwater Management (7 **Del.C.** Chapter 60) -- Under the NPDES program for storm water from facilities and hard surfaces.

2.2.3 Solid Waste (7 **Del.C.** Chapter 60) -- Landfill permitting, transportation of solid waste, and illegal dumping of solid waste.

2.2.4 Water Discharges (7 **Del.C.** Chapter 60) -- NPDES program, all point source discharges into waters of the State.

2.2.5 Air Emissions (7 **Del.C.** Chapter 60) -- All point source emissions to air, including mobile and stationary sources.

2.2.6 Marinas (7 **Del.C.** Chapter 60) - All boat docking facilities, marinas, and vessel pumpout stations.

2.2.7 Scrap Tires (7 **Del.C.** Chapter 60) -- Storage requirements for scrap tires.

2.2.8 Beverage Containers (7 **Del.C.** Chapter 60) -- Bottle Bill, requires stores to take returnable containers and pay the refund.

2.2.9 Ocean Dumping (7 **Del.C.** Chapter 60) -- Prohibits the disposal of solid wastes in the ocean and other waters of the State.

2.2.10 Water Supply (7 **Del.C.** Chapter 60) - Permitting of water supply wells.

2.2.11 On-Site Wastewater (7 **Del.C.** Chapter 60) -- Permitting of on-site wastewater treatment systems.

2.2.12 Debris Pits (7 **Del.C.** Chapter 60) -- Remediation of debris disposal areas.

2.2.13 Labeling of Plastic Products (7 **Del.C.** Chapter 60) -- Requires that all plastic containers sold in Delaware contain the triangle enclosed code number of the type of plastic the container is made of.

2.2.14 Oil Pollution Liability (7 **Del.C.** Chapter 62) -- Prohibits the discharge of oil to the water or land.

2.2.15 Hazardous Waste (7 **Del.C.** Chapter 63) -- Regulates the generation, storage, transportation, treatment and disposal of hazardous waste.

2.2.16 Coastal Zone (7 **Del.C.** Chapter 70) -- Control of the location, extent, and type of industrial development in Delaware's coastal areas.

2.2.17 Underground Storage Tanks (7 **Del.C.** Chapter 74) -- Controls the storage of petroleum products in underground storage tanks.

2.2.18 Aboveground Storage Tanks (7 **Del.C.** Chapter 74A)-- Controls the storage of petroleum products and hazardous substances in aboveground storage tanks.

2.2.19 Extremely Hazardous Substances (7 **Del.C.** Chapter 77) -- Prevention of sudden releases of extremely hazardous substances and the generation of pressure waves and thermal exposures beyond the property boundaries of the facility where they occur and the catastrophic health consequences caused by short-term exposures to such accidental releases.

2.2.20 Pollution Prevention (7 **Del.C.** Chapter 78) -Establish a program to demonstrate and facilitate the potential for pollution prevention and waste minimization through technical assistance, education, and outreach.

2.2.21 Hazardous Substances Cleanup (7 **Del.C.** Chapter 91) -- State Superfund program.

2.2.22 Emergency Planning/Community Right-to-Know --(16 **Del.C.** Chapter 63) -- Requires the report of hazardous materials meeting specific threshold requirements stored at facilities for the purpose of emergency response and community right-to-know.

2.2.23 Asbestos (16 **Del.C.** Chapter 78) -- Regulates the practice of asbestos containment, removal, transportation, storage and disposal.

2.2.24 Wetlands (7 **Del.C.** Chapter 66) -- Protection of tidal wetlands.

2.2.25 Subaqueous Lands (7 **Del.C.** Chapter 72) -- Control of activities in state-owned subaqueous lands.

3.0 Definitions

The following definitions shall have the meaning ascribed for the purposes of enforcing Chapter 79 and this Regulation only:

3.1 **"Chronic Violator"** means a facility or regulated party that is unable to maintain compliance or has engaged in a pattern of willful neglect or disregard with respect to the State's environmental permits, laws, or regulations as administered by the Department.

3.2 **"Days"** means calendar days.

3.3 **"Facility"** means any site or structure regulated by the Department or subject to the provisions contained in the laws listed under Section 2.2 of this regulation.

3.4 **"Department"** means the Department of Natural Resources and Environmental Control.

3.5 **"Person"** means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation or authority), limited liability company, association, state, municipality, commission, political subdivision of a state or any interstate body.

3.6 **"Public Meeting"** means a forum to receive oral and written comments and other supporting materials from the public and the facility or regulated party as part of the administrative record.

3.7 **"Regulated Party"** means any person regulated by the Department or subject to the provisions contained in the laws listed under Section 2.2 of this regulation.

3.8 **"Secretary"** means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

4.0 Criteria

In determining if a facility or regulated party is a chronic violator, the Secretary shall apply the following criteria with respect to the State's environmental permits, laws or regulations as administered by the Department:

4.1 Inability to maintain compliance; or

4.2 Engaged in a pattern of willful neglect; or

4.3 Engaged in a pattern of disregard.

A facility or regulated party need only meet one of these criteria in order to be designated a chronic violator.

5.0 Initiation of Review

5.1 At the Secretary's discretion, he/she may initiate a review of any facility or regulated party at any time to determine if the facility is a chronic violator.

5.2 The Secretary shall review a facility or regulated party to determine if it is a chronic violator if one of the following conditions apply in a time frame not to exceed 5 years:

5.2.1 Three (3) or more of any combination of administrative orders, civil judicial actions, court orders, negotiated settlements, and criminal convictions (excluding convictions pursuant to 7 **Del.C.** ~~§6013(c)~~ §6013(h)) at the same facility regardless of owner; or

5.2.2 Three (3) or more of any combination of administrative orders, civil judicial actions, court orders, negotiated settlements, and criminal convictions (excluding convictions pursuant to 7 **Del.C.** ~~§6013(c)~~ §6013(h)) under the same Department regulatory program, as defined in Section B, against the same person at different locations.

6.0 Notification of Review

6.1 The Secretary shall issue a Notice of Chronic Violator Review to the facility or regulated party within ten (10) days of the Secretary's decision to conduct a review.

6.2 Within ten (10) days after the facility or regulated party has received the written notice, the Department shall publish a public notice stating that a review has commenced, identifying the facility or regulated party being reviewed, describing the reason why the review was initiated, and requesting public and facility or regulated party comments within sixty (60) days.

6.3 Any comments received by the Department shall be made available to the facility or regulated party and the public, within three (3) working days of receipt. A hard copy version of comments will be stored in the Department's facility file.

6.4 The Department shall issue a written notice of the status of the review to the facility or regulated party and to the public every six months from the date of the Public Notice. If, during said review, new violations come to the attention of the Department the Secretary may consider the new violations and allow a further comment period by the facility, regulated party, or the public.

7.0 Factors to be Considered When Conducting Review

The Secretary may consider any relevant factors when deciding whether a facility or regulated party meets one or more of the chronic violator criteria. In conducting his/her review, the Secretary shall consider all relevant and reliable information available or submitted to the Department from all sources. Factors that must be considered are:

7.1 The nature and extent of the harm caused or threatened.

7.2 The impact on the integrity of regulatory programs.

7.3 Duration of noncompliance.

7.4 Number of violations of a similar nature.

7.5 Total number of violations of all types.

7.6 Economic benefit attributable to violations.

7.7 Relationship/relevance of violations to activity for which permit is sought.

7.8 Whether any or all of the violations were willful or grossly negligent.

7.9 The extent of deviation from the permit, order or other requirement.

7.10 The demonstrated attitude of new owners/ managers (if ownership and/or management has changed at the facility).

7.11 Actions taken or not taken to prevent, mitigate or respond to harm caused or threatened by the violation.

7.12 Whether any or all of the violations were self-reported within 15 consecutive days after the date of discovery.

All of these factors need not apply in order for a facility or regulated party to be considered a chronic violator.

8.0 Violations to be Considered When Conducting Review

The Secretary may consider any violations when conducting his/her review. The types of violations that shall be considered by the Secretary shall include, but not be limited to:

8.1 Violations that cause or genuinely threaten harm to the environment or to public health or safety.

8.2 Violations resulting in criminal convictions.

8.3 Tampering with monitoring or sampling equipment or interfering with samples or analytical results.

8.4 Filing false reports or inaccurate or misleading information.

8.5 Failing to maintain or use required pollution control equipment, structures or practices.

8.6 Repeatedly failing to submit required reports of regulated activity such as Discharge Monitoring Reports.

8.7 Repeatedly conducting a regulated activity without a required permit or authorization.

9.0 Secretary's Determination

In making a determination, the Secretary shall consider all relevant and reliable information available or submitted to the Department from all sources. The Secretary shall consider the following when determining if a facility or regulated party meets one or more of the chronic violator criteria in Section 4.0:

9.1 Relevant factors per Section 7.0;

9.2 Violations per Section 8.0;

9.3 Public comments received per Section 6.0; and

9.4 Comments from the facility or regulated party per Section 6.0.

10.0 Notification of Determination

10.1. The Secretary shall issue a Notice of Chronic Violator Determination to the facility or regulated party once a determination has been made. The notice will describe in detail the basis for the Secretary's determination. If the facility or regulated party is determined to be a Chronic Violator, the notice will also describe the penalties, limits, requirements or restrictions being imposed in accordance with Section 11.0 and the requirements to be met in order to petition for removal of the Chronic Violator designation.

10.2 Once the facility or regulated party has received the Notice of Chronic Violator Determination, the Department shall publish, within ten (10) days, a public notice announcing the determination and describing the basis for the Secretary's determination, and information on how to obtain the full Determination document. If the facility or regulated party is determined to be a Chronic Violator, the Public Notice will also summarize the penalties, limits, requirements or restrictions being imposed.

10.3 Persons or facilities determined by the Secretary to be chronic violators shall be provided due process under 7 **Del.C.** § 6008 and § 6009.

11.0 Penalties and Requirements

11.1 The Secretary may impose limits, requirements or restrictions on a facility or regulated party determined to be a chronic violator by virtue of the exercise of his/her authority over such facility or regulated party through permitting provisions or enforcement actions. Such limits, requirements or restrictions may include, but not be limited to:

11.1.1 denying permit applications or modifying, suspending or revoking operating permits,

11.1.2 imposing a schedule of compliance;

11.1.3 requiring capital improvements and associated performance standards;

11.1.4 specifying the requirements for development and implementation of a system for managing environmental performance and compliance; or

11.1.5 instituting a requirement for the facility or regulated party to submit an annual environmental performance statement. Such a statement shall include, but not be limited to:

11.1.5.1 a description of the facility.

11.1.5.2 a listing of environmental permits held by the facility.

11.1.5.3 emissions and discharges from the facility.

11.1.5.4 disclosure of environmental violations of enforcement actions taken against the facility during the previous year.

11.1.5.5 a description of any pollution prevention or waste reduction activities undertaken at the facility during the previous year and the results of those activities.

11.1.5.6 plans to achieve compliance with all applicable laws, regulations or permits.

11.2 The Secretary may reject any permit application or revoke any permit upon a finding that the applicant has been determined by the Secretary to be a chronic violator.

11.3 Notwithstanding other applicable enforcement provisions contained in relevant sections of Chapters covered by 7 **Del.C.** § 7901(b), the Secretary is authorized to impose an administrative penalty of up to $10,000 per day for each violation against any person that is determined to be a chronic violator in accordance with the provisions of 7 **Del. C.** § 7904(a). The person's right to contest or appeal the assessment of a penalty authorized under this Section shall

be in accordance with the applicable provisions of the Delaware Code under which the violation and enforcement action is being taken.

12.0 Chronic Violator Delisting

12.1 Any person determined to be a Chronic Violator may petition the Secretary to have the Chronic Violator designation removed once it has met the limits, requirements, or restrictions of the Notice of Chronic Violator Determination. The petition must include the following information, as appropriate:

12.1.1 demonstration of compliance with the limits, requirements, or restrictions of the Notice of Chronic Violator Determination through an audit conducted by an independent third party if required by the Secretary;

12.1.2 description of actions taken to prevent violations of the kind that led to the notice; and

12.1.3 description of other violations that have occurred since the notice and how they were addressed.

12.2 Upon receipt of the petition, the Department shall issue a public notice announcing the petition and requesting public comments within 90 days.

12.3 Within 30 days of receipt of the petition, the Department will notify the facility or regulated party of the administrative completeness of the petition or its deficiencies.

12.4 Upon a meritorious request for a public meeting, as defined in Section C.6. of this Regulation, received within a reasonable time as stated in the Public Notice, the Secretary shall conduct a public meeting to review and receive additional comments on the petition.

12.5 The Department shall have 90 days from the date the petition is determined to be administratively complete to conduct applicable inspections of the facility and/or the regulated party's record to confirm the petition's statements.

12.6 The Secretary will then have an additional sixty (60) days to review the petition, the inspection reports, audit reports if required, and public comments and issue a decision to the facility or regulated party that the Chronic Violator Status has been withdrawn or will be continued.

12.7 When the petition is granted or denied, the Secretary will issue a letter to the facility or regulated party, and the Department will issue a public notice indicating the Chronic Violator's status.

DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

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

REGISTER NOTICE

Secretary's Order No.: 2004-A-0017

Date of Issuance: April 2, 2004
Effective Date of the Amendment: May 11, 2004

I. Background

On Thursday, October 23, 2003, a public hearing was held in the Priscilla Building Conference Room of DNREC in Dover to receive comment on AQM's proposed revision to Delaware's Regulation 30 (Title V State Operating Permit Program), Section 2, regarding the definition of a "major source" of air pollution. This amendment would change the definition of "major source" by removing the phrase "but only with respect to those air pollutants that have been regulated for that category" from the Regulation No. 30 (Title V) definition of major source, as it applies to these federal standards. This would require all fugitive emissions to be included in major source determinations for sources subject to federal New Source Performance Standards (NSPS) or the National Emissions Standards for Hazardous Air Pollutants Standards (NESHAPs), not just the pollutants regulated by the particular NSPS or NESHAP.

The Department believes this action to be necessary because the current definition is less stringent than the corresponding provisions of 40 CFR Part 70, which went into effect on November 27, 2001. This change will make this aspect of Regulation No. 30 consistent with the federal rule. Likely affected members of the public would be facilities currently not subject to Regulation No. 30 that are subject to NSPSs or NESHAPs and that emit fugitive emissions. These sources may become subject to the requirements of Regulation No. 30 as a result of this amendment.

No one from the public attended this public hearing, however, there were written comments received by the Department prior to the close of the public record regarding this proposed revision. Following the close of the record with respect to this matter, the Air Quality Management section prepared a detailed Response Document for the Hearing Officer dated December 3, 2003. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's

Report to the Secretary dated March 10, 2004, and that Report is expressly incorporated herein by reference.

II. Findings and Conclusions

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the proposed review to Regulation No. 30, Section 2, with respect to the definition of a "major source", and has given careful and serious consideration to the written comments provided by both Mid-Atlantic Environmental Law Center and the Delaware State Chamber Environmental Committee – Air Subcommittee - with respect to this issue.

III. Order

It is hereby ordered that AQM's proposed adoption of Regulation 30, Section 2, with respect to the Department's definition of "major source" be made, and that the proposed Regulation be promulgated in final form, in accordance with the customary and established rule-making procedure required by law.

IV. Reasons

The revision to Regulation 30, Section 2, will allow the State of Delaware's definition of "major source" consistent with the federal rule, and will ultimately assist the Department in furtherance of the policy and purposes of 7 **Del. C.**, Ch. 60.

John A. Hughes, Secretary

REGULATION NO. 30
TITLE V
STATE OPERATING PERMIT PROGRAM

Section 2. DEFINITIONS
xx/xx/03

* * *

Major source - means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in paragraph (1), (2), or (3) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(1) A m*ajor source* under section 112 (Hazardous Air Pollutants) of the *Act*, defined as:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year ("tpy") or more of any hazardous air pollutant which has been listed pursuant to section 112(b) (Hazardous Air Pollutants - List of Pollutants) of the *Act*, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule.

Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.

(2) A major stationary source of air pollutants, as defined in section 302 (Title III - General Definitions) of the *Act*, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the Administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) (Title III –General Definitions) of the *Act*, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydroflouric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;
(xvii) Fuel conversion plants;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or
(xxvii) All other stationary source categories regulated by a standard promulgated under section 111 (Standards of Performance for New Stationary Sources) or section 112 (Hazardous Air Pollutants) of the Act~~, but only with respect to those air pollutants that have been regulated for that category~~.

(3) A major stationary source as defined in Part D (Plan Requirements for Nonattainment Areas) of Title I (Air Pollution Prevention and Control) of the *Act*, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the Administrator has made a finding, under section 182(f) (1) (2) (Plan Submissions and Requirements -NO x Requirements) of the *Act*, that requirements under section 182(f) of the *Act* do not apply;

(ii) For ozone transport regions established pursuant to section 184 (Control of Interstate Ozone Air Pollution) of the *Act*, sources with the potential to emit 50 tpy or more of volatile organic compounds;

(iii) For carbon monoxide nonattainment areas:

(A) that are classified as "serious", and

(B) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide; and

(iv) For particulate matter (PM 10) nonattainment areas classified as "serious", sources with the potential to emit 70 tpy or more of PM 10.

(4) For purposes of this regulation, a research and development operation may be treated as a separate source from other stationary sources that are located on a contiguous or adjacent property and under common control only if that operation belongs to a different major group as described in the Standard Industrial Classification Manual, 1987.

DIVISION OF FISH AND WILDLIFE

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

Order No. 2004-F-0019

Summary Of Evidence And Information

Pursuant to due notice 7, issue 9 DE REG pages 1143-1145 (3/1/04), The Department of Natural Resources and Environmental Control proposes to amend Tidal Finfish Regulation Nos. 3511 and 3507 pertaining to summer flounder and black sea bass respectively. For summer flounder eight options were proposed to restrain the recreational harvest to conform to the harvest cap of 139,000 fish imposed on Delaware for the 2004 fishing season by the Atlantic States Marine Fisheries Commission's (ASMFC) regional fisheries management plan. The proposed regulation for black sea bass would adjust the current season closure to permit the fishery to remain open through the Labor Day weekend in order to provide anglers the opportunity to catch black sea bass during the holiday. The proposed adjusted closed season begins on September 8 and ends on September 21 and would last fourteen days. In addition the season will again close on December 1 and remain closed until the end of the calendar year.

The options presented for summer flounder and the changes associated with the black sea bass regulations are necessary for Delaware to remain in compliance with the Atlantic States Marine Fisheries Commission's fishery management plan provisions for these species and all of the options presented have been pre-judged to be in compliance with the mandatory provisions of this fishery management plan.

A public hearing was held on the proposed amendments to Regulations 3511 and 3507 on March 25, 2004. Comments were taken on the eight options for summer flounder and the proposed change in the season dates for black sea bass. Written testimony was received and included into the record.

Finding Of Fact

- There was no opposition to the proposed adjustment of the black sea bass closed season. One person spoke in support of the change and thanked the

Department for adjusting the season to accommodate the Labor Day weekend.

- Among the eight people who spoke on the record at the public hearing, seven supported summer flounder option 7 or status quo. The underling justification for their support of option 7 focused on concerns that by adding additional fish to the creel limit, the harvest cap could be exceeded thus requiring more stringent management measurers in 2005. The majority of the speakers were opposed to any closed season and they wanted to try to avoid an overage in 2004 that may require a closed season in 2005 as part of a more restrictive approach to restrain the recreational harvest of summer flounder.
- Two written comments were received for the record. One written comment endorsed option 7. Justification for this position was based on concerns that more fishing effort is anticipated in 2005 than occurred in 2004 because weather conditions are likely to be more favorable for fishing this year than last year. In addition, it was noted that restrictions on harvesting other species have increased, and this may in fact shift effort to summer flounder, especially in September, when the black sea bass and tautog fisheries will be closed. The respondent noted that any increase in effort could result in significantly higher catch estimates for summer flounder in 2004. The second comment supported a 16 inch minimum size, 3 fish creel and open season from May 15 to September 15.
- One of the seven speakers who endorsed option 7 also suggested that option 8 would be acceptable to him. In fact this individual indicated that he may consult with members of the Recreational Fishing Alliance and formulate written comments that would endorse either option 7 or 8.
- One person supported only option 8 and indicated that the risk should be minimal regarding any overage of the harvest cap that would be associated with an increase in the creel limit. This person also supported a mid-season closure of the fishery as a means of restraining the harvest.

Conclusions

I have reached the following conclusions:

- Delaware and the surrounding states are required to restrain the recreational harvest of summer flounder to a harvest cap level that is calculated individually for each state. This cap is predicated on state landings of recreationally caught summer flounder in 1998 and consequently all states have different caps. The individual state harvest cap is a compliance requirement in the ASMFC summer flounder FMP. In order to avoid any action by ASMFC, which under a worse case scenario could result in a Federal moratorium on fishing for summer flounder in Delaware, it will be necessary to require management measurers in 2004 that have in the past proven to restrain the harvest.
- Information presented at the public hearing by the Department indicates that in 2001 under a restrictive management program of 17.5 inch minimum size and 4 fish creel limit the estimated harvest was 143,000 fish. This estimated harvest exceeds the harvest cap in place for 2004 (139,000 fish) and consequently suggests that even these measures may not be restrictive enough to restrain the fishery in 2004 if fish are available in substantial numbers in Delaware waters and fishing effort increases.
- The overwhelming majority of people who attended the public hearing and commented on the record supported option 7 which is more restrictive than option 8 and theoretically should prove more effective in restraining the harvest.
- Delaware's minimum size limit for summer flounder should remain at 17.5 inches and the creel limit should remain at 4 fish for the 2004 fishing season.
- The current regulation for black sea bas should be amended to permit harvesting during the 2004 Labor Day weekend holiday. As such the closed season should occur between September 8 and September 22 and December 1 and December 31, 2004.

ORDER

It is hereby ordered this 5th day in April in the year 2004 that an amendment to Tidal Finfish Regulation No. 3507, copies of which are attached hereto, is adopted pursuant to 7 **Del.C.** § 903(e)(2)(a) and is supported by the Departments findings of evidence and testimony received. This Order shall become effective on May 11, 2004.

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

3507 Black Sea Bass Size Limit; Landing Permits; Qualifying Criteria; Seasons; Quotas (Formerly Tidal Finfish Reg. 23)

(Penalty Section 7 **Del.C.** 936(b)(2))

1.0 It shall be unlawful for any commercial person to have in possession any black sea bass (*Centropristis striata*) that measures less than eleven (11) inches, total length.

2.0 It shall be unlawful for any recreational person to have in possession any black sea bass that measures less than twelve (12) inches total length.

3.0 It shall be unlawful for any commercial fisherman to land, to sell, trade and or barter any black sea bass in Delaware unless authorized by a black sea bass landing permit issued by the Department. The black sea bass landing permit shall be presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel.

4.0 The black sea bass pot fishery and the black sea bass commercial hook and line fishery shall be considered separate black sea bass fisheries. The total pounds allocated to each fishery by the Department shall be as follows: 96 percent of the State's commercial quota, as determined by the ASMFC, for the pot fishery; 4 percent for the commercial hook and line fishery.

5.0 The Department may only issue a black sea bass landing permit for the pot fishery to a person who is the owner of a vessel permitted by the National Marine Fisheries Service in accordance with 50 **CFR** §§ 648.4 and who had applied for and secured from the Department a commercial food fishing license and has a reported landing history in either the federal or state reporting systems of landing by pot at least 10,000 pounds of black sea bass during the period 1994 through 2001. Those individuals that have landing history only in the federal data base must have possessed a state commercial food fishing license for at least one year during the time from 1994 through 2001.

6.0 The Department may only issue a black sea bass landing permit for the commercial hook and line fishery to a person who has applied for and secured from the Department a commercial food fishing license and a fishing equipment permit for hook and line and submitted landings reports in either the federal or state landing report systems for black sea bass harvested by hook and line during at least one year between 1994 and 2001.

7.0 Any overage of the State's commercial quota will be subtracted by the Atlantic States Marine Fisheries Commission from the next year's commercial quota.

Any overage of an individual's allocation will be subtracted from that individual's allocation the next year and distributed to those individuals in the appropriate fishery that did not exceed their quota.

8.0 Each participant in a black sea bass fishery shall be assigned a equal share of the total pounds of black sea bass allotted by the Department for that particular fishery. A share shall be determined by dividing the number of pre-registered participants in one of the two recognized fisheries into the total pounds of black sea bass allotted to the fishery by the Department. In order to pre-register an individual must indicate their intent in writing to participate in this fishery by 4:30 PM on a date no later than 15 days after this regulation is signed by the Secretary of the Department.

9.0 It shall be unlawful for a commercial food fisherman to transfer quota allocation shares of black sea bass to another commercial food fishermen.

10.0 Each commercial food fishermen participating in a black sea bass fishery shall report to the Department, via the interactive voice phone reporting system operated by the Department, each days landings in pounds at least one hour after packing out their harvest.

11.0 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.

12.0 It shall be unlawful for any recreational fisherman to take and reduce to possession or to land black sea bass during the periods beginning at 12:01 AM on September ~~2~~ 8, 200~~3~~4 and ending at midnight on September ~~15~~ 21, 200~~3~~4 and beginning at 12:01 AM on December 1, 200~~3~~4 and ending at midnight on December 31, 200~~3~~4.

See 1 DE Reg.1767 (5/1/98)
See 2 DE Reg 1900 (4/1/99)
See 3 DE Reg 1088 (2/1/00)
See 4 DE Reg 1665 (4/1/01)
See 4 DE Reg 1859 (5/1/01)
See 5 DE Reg 2142 (5/1/02)
See 6 DE Reg. 348 (9/1/02)
See 6 DE Reg. 1230 (3/1/03)

3511 Summer Flounder Size Limits; Possession Limits; (Formerly Tidal Finfish Reg. 4)

(Penalty Section 7 Del.C. 936(b)(2))

1.0 It shall be unlawful for any recreational fisherman to have in possession more than ~~four (4)~~ **[four (4)]** 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. **~~[(Note: creel limit to be determined in combination with seasonal closure and size limit.)]~~**

2.0 It shall be unlawful for any person, other than qualified persons as set forth in section 4.0 of this regulation, to possess any summer flounder that measure less than ~~seventeen and one-half (17.5)~~ **[seventeen and one half (17.5)]** inches between the tip of the snout and the furthest tip of the tail. **~~[(Note: size limit to be determined in combination with seasonal closure and creel limit.)]~~**

3.0 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)~~ **[seventeen and one half (17.5)]** 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. ~~[(Note: size limit to be determined in combination with seasonal closure and creel limit.)]~~

4.0 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 the 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:

4.1 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;

4.2 A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

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

4.4 A valid commercial food fishing license and a food fishing equipment permit for gill nets.

5.0 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.

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

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

~~[Note: Proposed options for seasonal closures associated with creel limits and minimum size limits to restrict the recreational summer flounder harvest in Delaware in 2004.]~~

~~[Opening Option~~	~~Final Day~~	~~Number of Day~~	~~Bag Open Days~~	~~Minimum Limit~~	~~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~~	~~01 Jan~~	~~31 Dec~~	~~365~~	~~4~~	~~17.5”~~
~~8~~	~~01 Jan~~	~~31 Dec~~	~~365~~	~~6~~	~~17.5”]~~

See 1 DE Reg 1767 (5/1/98)
See 2 DE Reg 1900 (4/1/99)
See 3 DE Reg 1088 (2/1/00)
See 4 DE Reg 1552 (3/1/01)
See 5 DE Reg 462 (8/1/01)
See 5 DE Reg. 2142 (5/1/02)
See 6 DE Reg. 1358 (4/1/03)

DIVISION OF FISH AND WILDLIFE

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

Order No. 2004-F-0020

Summary Of Evidence And Information

Pursuant to due notice 7, issue 9 DE REG 1144 – 1145 (3/1/04), The Department of Natural Resources and Environmental Control proposed amendments to oyster harvesting regulations to cover the harvest season and the harvestable amount of oysters. The amendments will permit the Department to set an annual quota for the direct market oyster fishery from the state owned natural beds and establish a season for the direct market oyster fishery.

A public hearing was held on March 23, 2004 to take comments on Shellfish Regulations 3768 Oyster Harvest Quota and 3772 Oyster Harvesting Seasons. Verbal comments were received at the hearing and no written comments were submitted for the record.

Finding Of Fact

- One person testified that they supported the Department’s authority to set an oyster quota and season annually. This person encouraged the Department to make these decisions as early in the calendar year as possible in order to facilitate business arrangements associated with marketing the oyster catches. In addition the suggested season and quota presented by the Department for 2004 was supported by this individual.
- One individual wanted the oyster season to overlap two calendar years in order to permit harvesting in all months that contain “R’s”. Based on this request

it would be necessary to formulate multi-year quotas during the quota setting process.

- One person was opposed to any harvesting during the spring prior to the spawning season. This person supported the Department's efforts to set an annual oyster quota and establish an annual oyster fishing season.
- The final person to testify supported the Department's objectives regarding setting annual oyster quotas and seasons because he wanted to see these issues addressed earlier in the calendar year in order to give harvesters more flexibility in planning their annual fishing program.

Conclusions

Based on the verbal testimony received, I have reached the following conclusions:

- Language in proposed regulation 3772 (Oyster Harvest Season) needs to be changed in order to provide the Department with a process that is less cumbersome and time consuming than the current administrative procedures format that has been used in the past for setting the oyster harvest season. A more streamlined process, that does not require a formal annual public hearing, will enable the Department to either hold a public workshop or utilize the Shellfish Advisory Council meeting process to derive public input on an annual harvest season. As such, it is reasonable to expect that the Department could finalize arrangements for a harvest season in January or February, thus accommodating the requests of oyster industry members who testified at the public hearing.
- Language in proposed regulation 3768 (Oyster Harvest Quota) needs to be changed in order to provide the Department the flexibility to establish an annual quota based on conditions on the oyster beds early in the calendar year so that harvesters can formulate business marketing programs early in the year that will maximize economic return on their harvests. The changes proposed in this regulation will enable the Department to hold a public workshop or utilize the Shellfish Advisory Council process to provide input on an annual quota proposed by the Department. These approaches will not require a public hearing and consequently the time consuming administrative procedures process will be shortened. The proposed change to this regulation will address the concerns communicated by some members of the state's oyster fishery pertaining to timeliness in the Department's annual oyster quota setting process.

ORDER

It is hereby ordered, this _____ day of April, in the year 2004, that amendments to Shellfish Regulation Nos. 3768 and 3772, copies of which are attached hereto, are adopted pursuant to § 1902, 7 Del.C. and § 2106, 7 Del.C. and are supported by the Department's findings of fact from the evidence and testimony received. This order shall be effective May 10, 2004.

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

Final Amendments to Shellfish Regulation Pertaining To Oysters

3768 Oyster Harvest Quota

1.0 ~~The oyster harvest quota for the 2003 season is 11,640 bushels~~. The oyster harvest quota for the direct market fishery from the state owned natural beds will be established annually by the Department.

See 5 DE Reg. 2140 (5/1/02)
See 6 DE Reg. 1356 (4/1/03)

3772 Oyster Harvesting Seasons

1.0 ~~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 seasons beginning at sunrise on May 12, 2003 and ending at sunset on June 28, 2003 and beginning sunrise on September 1, 2003 and ending at sunset on December 31, 2003~~. It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds except during a season that will be established by the Department.

See 5 DE Reg. 2140 (5/1/02)
See 6 DE Reg. 1356 (4/1/03)

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Accountancy	Ms. Diane Marky	4/5/2007
Board of Cosmetology and Barbering	Ms. Veronica L. Hopkins	4/5/2007
	Ms. Jennifer R. Reed	4/5/2007
Board of Examiners for Nursing Home Administrators	Mr. Alonzo R. Kieffer	4/5/2007
Board of Examiners in Optometry	Ms. Ruth Banta	4/5/2007
Board of Massage and Bodywork	Ms. Barbara A. Uniatowski	4/5/2007
Board of Medical Practice	Galicano F. Inguito, Jr., M.D.	4/5/2007
	Francis A. Marro, M.D.	4/5/2007
	Roberto Villasenor, M.D.	4/5/2007
Board of Nursing	Mr. Robert G. Draine	4/5/2007
	Mr. James H. Green	4/5/2007
Board of Pharmacy	Mr. Angelo J. Chiari	7/1/2006
Community Involvement Advisory Council	The Honorable Bethany Hall-Long, Ph.D., R.N.	4/5/2007
	Ms. Pamela Meitner	4/5/2007
	Ms. La Vaida J. Owens-White	4/5/2007
	Mr. Harold L. Truxon	4/5/2007
Community Notification Working Group	Mr. James Apostolico	Pleasure of the Governor
	Lewis L. Atkinson, Ed.D.	Pleasure of the Governor
	Mr. William G. Bush, IV	Pleasure of the Governor
	Mr. Carl Danberg	Pleasure of the Governor
	Ms. Karen De Ramso	Pleasure of the Governor
	Ms. Janice Mink	Pleasure of the Governor
	Mr. Marc D. Richman	Pleasure of the Governor
Council on Housing	Mr. Christopher W. White	4/5/2007
Council on Transportation	Ms. Barbara Y. Washam	4/5/2007
Delaware Cancer Consortium	Mr. William Bowser	Pleasure of the Governor
	Christopher Frantz, M.D.	Pleasure of the Governor

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Cancer Consortium	Stephen S. Grubbs, M.D.	Pleasure of the Governor
	Patricia P. Hoge, Ph.D.	Pleasure of the Governor
	Ms. Meg. Maley	Pleasure of the Governor
	Julio Navarro, M.D.	Pleasure of the Governor
	Nicholas J. Petrelli, M.D.	Pleasure of the Governor
Delaware Commission for Women	Ms. Sharon M. McDowell	4/5/2007
	Ms. Marjorie D. Ressler	4/5/2007
Delaware Nursing Home Residents Quality Assurance Commission	Mr. Walter E. Ferris, Jr.	4/5/2007
Delaware State Arts Council	Mr. Steven Boyden	4/5/2007
Diamond State Port Corporation	Mr. Michael A. Begatto, Director, Board of Directors	3/18/2007
	Mr. Leonard W. Quill, Director, Board of Directors	3/18/2007
	Mr. Gerard L. Esposito, Board of Directors	3/18/2007
Governor's Council on Hispanic Affairs	Ms. Nancy Bastidas	4/5/2007
	Ms. Maria M. Matos	4/5/2007
	Jaime H. Rivera, Ph.D.	4/5/2007
Greater Wilmington Convention and Vistors Bureau	Mr. Ernest J. Camoirano	5/14/2004
	Ms. Laura Scanlan	1/28/2007
	Mr. David Z. Tuttleman	1/28/2007
	Mr. Ferdinand Wieland	1/28/2007
Interagency Coordinating Council	Mr. Dennis L. Rubino	4/5/2007
Interagency Council on Adult Literacy	Ms. Ruth Campbell	Pleasure of the Governor
	Ms. Carmen Knox	Pleasure of the Governor
	Ms. Anne E. C. Norman	Pleasure of the Governor
	Ms. Nancy J. Shields	Pleasure of the Governor
	Ms. Hazel J. Showell	Pleasure of the Governor
	Frances Tracy-Mumford, Ed.D.	Pleasure of the Governor
Judicial Nominating Commission	Mr. Grover Brown	4/5/2007

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Judicial Nominating Commission	Mr. Irwin G. Burton	4/5/2007
	Ms. Norma Lee Derrickson	4/5/2007
	Ms. Elizabeth McGeever	4/5/2007
Statewide Independent Living Council	Ms. Claire McDonough	2/17/2007
Statewide Labor Management Committee	Mr. Eugene A. Hanks	Pleasure of the Governor
	Mr. Thomas Ridgley	Pleasure of the Governor
Sussex County	Ms. Thelma Monroe, Clerk of the Peace	To serve a term to expire when a successor shall be duly qualified
Tax Appeals Board	Ms. Joanne M. Winters	3/18/2007
Tourism Advisory Board	Ms. Linda M. Graham	4/5/2007
	Mr. Leroy Klein	4/5/2007
	Mr. Xavier A. Teixido	3/23/2007

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

GENERAL NOTICE

Temporary Assistance to Needy Families (TANF) Caseload Reduction Credit Report

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Section 512, Delaware Health and Social Services/Division of Social Services (DHSS/DSS) initiated proceedings to provide information of public interest with respect to the TANF Caseload Reduction Credit Report for fiscal year 2004.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning this notice must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720-0906 by May 30, 2004.

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

Summary Of Provisions

Temporary Assistance to Needy Families (TANF) Caseload Reduction Credit Report

Section 407(b)(3) of the Social Security Act (the ACT) requires a reduction of the State's required participation rate for a fiscal year by the number of percentage points that the average monthly number of families receiving assistance in the State in the immediately preceding fiscal year is less than the average monthly number of families that received assistance in the State in fiscal year (FY) 1995.

The statute prohibits this reduction from including any caseload declines due to requirements of Federal law or due to differences in State eligibility criteria. This reduction in the participation rate is termed the *TANF Caseload Reduction Credit*.

To receive a caseload reduction credit, a State must complete Form ACF-202, the Caseload Reduction Report, in accordance with the regulations at 45 CFR 261.40 et seq. The FY 2004 report provides the information needed to calculate a caseload reduction credit (FY 2004 vs. FY 1995), and thus determine the participation standard the State must meet for the fiscal year. Form ACF-202 and Attachment 1 to Form ACF-202 are available upon request via mail or fax.

ACF-202 TANF Caseload Reduction Credit Report

- Part I - Implementation of All Eligibility Changes Made by the State Since FY 1995
- Part II - Application Denials and Case Closures, By Reason
- Part III - Description of the Methodology Used to Calculate the Caseload Reduction Estimates (Attachment 1 to Form ACF-202)
- Part IV- Certification

Delaware TANF Caseload Reduction Credit Report for FY 2004

Attachment 1 to Form ACF-202

Part III—Description of the Methodology Used to Calculate the Caseload Reduction Estimates

A. Actual Caseload Reduction and Adjustment for Excess MOE Funds

- Taking into account the pro rata reduction in the FY2003 caseload due to excess MOE spending, Delaware's average monthly TANF caseload declined by 37.3 percent between FY 1995 and FY 2003. This caseload reduction number includes child-only cases, as instructed in ACF guidance.

Delaware AFDC/TANF Caseload for FY 95 and FY 03	
FY 1995 monthly average caseload	10,775
FY 2002 monthly average caseload, actual (= 5,613 TANF + 112 SSP families)	5,735
FY 2003 monthly average caseload, adjusted for excess MOE spending	5,034
Caseload decline, FY1995 to FY 2003 (not including the effect of eligibility changes)	5,741
Sources: FY1995 and FY2003 TANF caseloads from ACF/OPRE; SSP caseload from DE DSS	

- The following table shows how the pro rata reduction for excess MOE was calculated.
  - Because Delaware served its two-parent caseload under a separate state program in FY 2003, and because the State met its all-family work participation rate requirement in FY 2003, the relevant spending floor is 75 percent of the basic MOE amount.
  - The pro rata reduction takes into account the

use of federal TANF funds. The pro rata reduction is calculated as the State excess MOE divided by the average cost per case, where cost is the sum of State and federal TANF funds.

– The end result is a pro rata reduction of 700cases. This number is subtracted above from the actual FY 2003 monthly average caseload to yield the adjusted FY2003 caseload of 5,741.

Pro Rata Reduction for Excess MOE			
(a)	DE FY1994 spending	$29,028,092	
(b)	MOE (75% of (a))	$21,771,069	
(c)	DE FY2003 MOE spending	$28,670,088	
(d)	Federal TANF block grant funds spent in FY2003	$27,814,701	
(e)	Total TANF spending for FY2003	$56,484,789	= (c) + (d)
(f)	Average spending per case	$9,850	= (e) / FY2003 caseload = (e)/ (5,613 TANF + 122 SSP)
(g)	Excess MOE for **FY2003**	$6,899,019	= (c) - (b)
(h)	Cases funded by excess MOE	700	= (g) / (f)

B. Changes Required by Federal Law

1. Parents/caretakers must work after 24 months of assistance or when job-ready

- The estimated impact of this federal policy on Delaware's caseload is 0, because the State's "work for your welfare" requirement effectively supplants the federal policy. The caseload impact of the State policy is described below in Section C.5.

2. Teen parents must live in adult-supervised settings to receive assistance

- The estimated impact of this federal policy since FY 1995 is 0, because the policy has been codified in the State manual for many years prior to FY 1995.

3. A State must deny assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in more than one State

- For fraudulently misrepresenting residence, Delaware removes the adult's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

4. A State must deny assistance for fugitive felons, probation violators, or parole violators

- For fugitive felons, probation violators, and parole violators, Delaware removes the adult's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

5. A State must deny assistance for certain individuals convicted of drug-related felonies

- For persons convicted of drug-related felonies, Delaware removes the person's needs from the grant, but allows children to receive assistance. Although the policy denies individuals rather than cases, it is possible that a case could be denied if removing an adult's needs reduces the payment standard for a case so that it is no longer greater than countable income. Delaware's automated TANF eligibility system is currently unable to identify such instances, if any exist.

6. Non-qualified aliens are ineligible for Federal TANF assistance

- The total number of cases denied as non-

qualified aliens since the federal policy took effect is 135. This includes denials in FY1998, FY1999, FY2000, FY2001 FY2002 and FY2003.

- The count of denied non-qualified aliens was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been denied as non-qualified aliens. See Section D for a description of this adjustment.

C. State-Implemented Changes

1. Fill-the-Gap Budgeting for Earnings

- The average monthly number of cases in FY2003 that were subject to fill-the-gap budgeting for earnings is 783. This number is based on a monthly query to the Delaware Client Information System (DCIS) on all open cases with earnings. Cases were counted as subject to fill-the-gap budgeting for earnings in a month only if earnings minus applicable disregards were above the payment standard for the relevant family size.

2. Increased Resource Limit

- The average monthly number of cases open in FY2003 because of the increased resource limits is 281. This number is based on a count of the number of cases open in a month whose assets—cash plus vehicle—were above the previous limits and below the current limit.
- Some cases were subject to both the increased resource limit and fill-the-gap budgeting for earnings. To avoid such double-counting, the number of cases open because of the increased resource limit—281—*excludes* cases that were also open due to fill-the-gap budgeting.

3. Sanctions for Noncompliance with Contract of Mutual Responsibility (CMR) Provisions

- The average monthly number of cases closed in FY2003 because of CMR sanctions is 617. This number is based on monthly cumulative counts of cases closed due to CMR sanctions for FY 1996 through September 2003.
- The CMR sanction is a graduated fiscal sanction. Sanctions for noncompliance are initially $50 and increase by $50 every month until there is compliance, or until the sanction amount exceeds the grant amount. Cases are counted as closed due to CMR sanctions only when the sanction amount exceeds the grant amount.
- The CMR count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been closed due to CMR sanctions. See Section D for a description of this adjustment.

4. Sanctions for Noncompliance with Employment and Training Requirements

- The average monthly number of cases closed in FY 2003 because of noncompliance with employment and training (E&T) requirements is 732.
- The sanction for noncompliance with E&T requirements is a 1/3 reduction of the grant amount for the first occurrence, a 2/3 reduction for the second occurrence, and permanent case closure for the third occurrence. Cases are counted as closed due to E&T sanctions only for the third occurrence.
- Because the E&T level 3 sanction is permanent, the number of cases closed due to E&T sanctions as of the beginning of FY2003 is a cumulative count of all cases closed prior to FY2003. To this number we add the average monthly number of cases closed due to E&T sanctions *during* FY2003.
- The E&T sanction count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been closed due to E&T sanctions. See Section D for a description of this adjustment.

5. Work for Your Welfare Requirement

- The average monthly number of cases closed in FY 2003 because of noncompliance with the "Work for Your Welfare" work requirement is 1,265.
- The workfare count was adjusted to account for the fact that some of these cases would have left TANF for other reasons (e.g., due to employment or marriage) before or during FY2003 if they had not been closed due to noncompliance with the workfare requirement. See Section D for a description of this

adjustment.

6. Time Limit

- Prior to January 2000, Delaware limited receipt of Temporary Assistance to Needy Families (TANF) –for families in the Time Limited Program–to 48 cumulative months, subject to compliance with Contract of Mutual Responsibility and Work for Your Welfare requirements.
- Effective January 1, 2000 the time limit for receipt of TANF cash benefits is 36 cumulative months. Individuals found eligible for TANF prior to January 1, 2000 will still have a 48 month time limit even if they reapply for benefits after January 1, 2000.
- Thirty one (31) cases reached the four-year time limit during FY 2003. Four (4) cases had reached the newer three-year time limit by the end of FY 2003.

D. Impacts of Eligibility Changes: Adjusting for Cases that Would Have Left TANF for Other Reasons

- As noted in ACF's guidance for submitting caseload reduction credit information, "a State may adjust its estimate of the impact of a change over time to account for likely caseload decline that would have occurred due to other factors, such as earnings, not associated with any eligibility change." A given cohort of TANF cases will leave TANF over time, even absent sanctions and time limits. Most research shows a monotonic decline over time in the rate of TANF receipt for a given cohort, even when recidivism is accounted for.
- We estimated the rate at which cases would have left over time in the absence of eligibility changes *using TANF receipt rates for the control group from the random assignment evaluation of the State's ABC program*. The control group is close to an ideal counterfactual because control group members were not subject to the eligibility changes. In addition, the control group receipt rates are measured taking into account recidivism.
- More specifically, we used TANF receipt rates for control group cases that were *ongoing* at the point of random assignment, because cases that are sanctioned off or reach the time limit are ongoing cases at the time they are sanctioned or reach the time limit. Using TANF receipt rates for ongoing control group cases is more conservative than using TANF receipt rates for all control group cases, because exit rates are lower for ongoing cases.
- The TANF receipt rates for ongoing control group cases show that:
  - On average over the first year since random assignment, 5.1 percent of cases left TANF;
  - On average over the two years since random assignment, 7.1 percent of cases left TANF;
  - On average over the three years since random assignment, 15.4 percent of cases left TANF;
  - On average over the four years since random assignment, 43.3 percent of cases left TANF;
  - On average over the five years since random assignment, 63.3 percent of cases left TANF;
  - On average over the six years since random assignment, 79.0 percent of cases left TANF; and
  - On average over the seven years since random assignment, 88.7 percent of cases left TANF.
- These net exit rates were applied to the counts of cases that closed due to eligibility changes to get the adjusted number of cases closed due to eligibility changes. For example, the average monthly number of cases closed due to CMR sanctions in FY1998 was 489. Using the control group net exit rates, we assume that 63.3 percent of these cases would have left for other reasons by the end of FY2003, so the adjusted number of cases closed due to CMR sanctions in FY 1998 was 179, which is 489*(1 - .633). A similar adjustment was made to cases closed due to sanctions during other years.
- This approach has two limitations. First, ongoing control group cases became subject to welfare reform policies on average during follow-up quarter 6 or 7. Even so, few or no control group cases would have reached the "work for your welfare" two-year time limit before another eight quarters, meaning follow-up quarters 14 or 15. The second limitation is that, at this point follow-up data are available only through quarter 10. Consequently, net exit rates were extrapolated for quarters 11 through 20, because the adjustment requires exit rates for five full years.

State _Delaware_____			Fiscal Year 2004
PART I – Implementation of All Eligibility Changes Made by the State Since FY 1995			
#	Eligibility Change	Implementation Date	Estimated Impact on Caseload Since Change (positive or negative impact)
Changes Required by Federal Law			
1	Parents/caretakers must work after 24 months of assistance	March 1997	0
2	Teen parents must live in adult-supervised settings	Prior to FY 1995	0
3	Deny assistance for 10 years for fraudulently misrepresenting residence to obtain assistance in more than one State	March 1997	0
4	Deny assistance for fugitive felons, probation violators, or parole violators	March 1997	0
5	Deny assistance for certain individuals convicted of drug-related felonies	March 1997	0
6	Deny assistance to non-qualified aliens	March 1997	-88
State-Implemented Changes			
Changes Related to Income and Resources			
1	Fill-the-gap budgeting for earnings	October 1995	+783
2	Increased resource limit	October 1995	+281
Changes Related to Categorical or Demographic Eligibility Factors			
	None.		
Changes Related to Behavioral Requirements			
3	Contract of Mutual Responsibility sanctions	October 1995	-617
4	Sanctions for noncompliance with employment and training requirements	October 1995	-732
Changes Due to Full-Family Sanctions			
Other Eligibility Changes			
5	Work for your welfare requirement	October 1995	-1,265
6	Time limit	October 1995	-62

Estimated Total Net Impact on the Caseload of All Eligibility Changes	-1,718
Total Prior Year Caseload	5,735
Estimated Caseload Reduction Credit	37.3 percent (includes adjustment for excess MOE)

State ___Delaware_____			Fiscal Year _2004_____	
PART II – Application Denials and Case Closures, By Reason				
	Fiscal Year 1995[1]		**Fiscal Year 2003**	
Reason for Application Denials	**Number**	**Percentage**	**Number**	**Percentage**
Failure to comply with procedural requirements	18	31.6	2,324	26.4
Income exceeds standards	15	26.3	3,702	42.0
Application withdrawn	14	24.6	0	0.0
No eligible child	0	0	1,619	18.4
Resources exceed limits	6	10.5	323	3.7
Not deprived of support or care	1	1.8	0	0.0
Ineligible alien	1	1.8	135	1.5
Other	2	3.5	712	8.1
[1] **Delaware's FY 1995 denial and closure numbers are based on the State's quality control sample**				
Total Application Denials	57	100.1	8,816	100.0

Reasons for Case Closures	**Number**	**Percentage**	**Number**	**Percentage**
Failure to comply with procedural requirements	60	46.5	1,393	15.3
Earnings exceed standard of need	29	22.5	1,293	14.2
Voluntary withdrawal/recipient initiative	16	12.4	2,585	28.4
No longer eligible child	10	7.8	3,001	33.0
Moved or cannot locate	8	6.2	764	8.4
No longer deprived of support or care	3	2.3	0	0.0
Support increased from person inside or outside home	0	0	5	0.0
Resources exceed limits	0	0	65	0.7
Other cash income	2	1.6	0	0.0
Failure to comply with JOBS program requirements	0	0	0	0.0
Other	1	0.8	3	0
Total Case Closures	129	100.1	9,108	100.0

State ___Delaware_____	Fiscal Year _2004_____
Part III – Description of the Methodology Used to Calculate the Caseload Reduction Estimates (attach supporting data to this form)	
See attachment.	

State __Delaware_____ Fiscal Year _2004_____

PART IV -- Certification

I certify that we have provided the public an appropriate opportunity to comment on the estimates and methodology used to complete this report and considered those comments in completing it. Further, I certify that this report incorporates all reductions in the caseload resulting from State eligibility changes and changes in Federal requirements since Fiscal Year 1995. (A summary of public comments is attached.)

_____
(signature)

_____
(name)

_____
(title)

DEPARTMENT OF ADMINISTRATIVE SERVICES

DIVISION OF PROFESSIONAL REGULATION

BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS AND PRIVATE SECURITY AGENCIES

Public Notice

Notice is hereby given that the Board of Examiners of Private Investigators and Private Security Agencies, in accordance with Del. Code Title 24 Chapter 13 proposes to amend Adopted Rule 5.0 – Uniform, Patches, Badges, Seals, Vehicular Markings. This amendment will clarify the use of unmarked vehicles. If you wish to view the complete Rule, contact Ms. Peggy Anderson at (302) 739-5991. Any persons wishing to present views may submit them in writing, by May 31, 2004, to Delaware State Police, Detective Licensing, P.O. Box 430, Dover, DE 19903. The Board will hold its quarterly meeting Thursday, July 29, 2004, 10:00am, at the Delaware State Police Headquarters Conference Room, 1441 North DuPont Highway in Dover, Delaware.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

The Harness Racing Commission proposes to enact a new rule, Rule 8.3.3.5-Erythropietin, to provide that a horse that tests positive for EPO antibodies may be declared unfit to race, and may not resume racing until the owner or trainer submits a negative test for EPO antibodies.

The Commission will accept written comments from May 1, 2004 until May 31, 2004. Written comments should be sent to John Wayne, Administrator of Racing, Department of Agriculture, 2320 S. DuPont Highway, Dover, De 19901. A public hearing will be held at Harrington Raceway, Harrington, DE on June 1, 2004 at 10:15 a.m.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, May 20, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE

GAMING CONTROL BOARD

NOTICE

The Delaware Gaming Control Board proposes to amend its Bingo Regulations pursuant to 28 **Del.C.** §1122(a) and 29 **Del.C.** §10115. The Board proposes to amend Bingo Regulation 2.3 to provide that all bingo applications, original and supplemental, shall be filed with the Board at least six weeks before the scheduled event. The Board will accept written comments from May 1, 2004 through May 30, 2004. The Board will hold a public hearing on the proposed rule amendments on June 3, 2004 at 12:00 p.m. at the Division of Professional Regulation, Cannon Building, Second Floor Conference Room, 861 Silver Lake Boulevard, Suite 203, Dover, DE. Written comments should be submitted to Sherry Clark, Division of Regulation, Cannon Building, Suite 203, 861 Silver Lake Boulevard, Dover, DE 19904

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE RESIDENTS PROTECTION

PUBLIC NOTICE

The Department of Health and Social Services (DHSS), Division of Long Term Care Residents Protection, has prepared proposed regulations to amend the current regulations pertaining to assisted living facilities. These proposed regulations redefine the terms “Incident” and “Reportable Incident,” and clarify requirements for assisted living facilities to report incidents. The proposed regulations also amend the current regulations by requiring emergency electrical generators in assisted living facilities. Additionally, the proposed regulations revise the prohibition barring an individual with a central line from an assisted living facility by creating an exception for subcutaneous venous ports.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Wednesday, June 2, 2004, 9:00 AM
Room 301, Main Building
Herman Holloway Campus
1901 North DuPont Highway
New Castle

Thursday, June 3, 2004, 10:00 AM

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

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

Written comments are also invited on these proposed regulations and should be sent to:

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

Written comments will be accepted until the conclusion of the June 3 public hearing.

DIVISION OF PUBLIC HEALTH

Nature of the Proceedings

Pursuant to 16 Delaware Code, Section 133, the Department of Health and Social Services is proposing "Cancer Treatment Program Regulations" that will establish medical insurance coverage for Delawareans for treatment of cancer. The program will serve Delawareans who are diagnosed with cancer, have no health insurance and meet certain financial eligibility criteria as established within these regulations.

Notice of Public Hearing

The Center of Health Information Management and Disease Prevention, Division of Public Health, Department of Health and Social Services will hold a public hearing to discuss the proposed Cancer Treatment Program Regulations. The public hearing will be held on May 21, 2004 at 9:30 a.m., in the Third Floor Conference Room of the Jesse Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following location:

The Center of Health Information Management and Disease Prevention
Jesse Cooper Building
Federal and Water Streets, Dover, Delaware
Telephone: (302) 744-4544

Anyone wishing to present his or her oral comments at this hearing should contact David Walton at (302) 744-4700 by May 20, 2004. Anyone wishing to submit written comments as a supplement to or in lieu of oral testimony should submit such comments by May 31, 2004 to:

David P. Walton, Hearing Officer
Division of Public Health
P.O. Box 637
Dover, Delaware 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 under the authority of Title 31 of the Delaware Code, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / Medicaid/ Medical Assistance Program is proposing to amend the policy of the Food Stamp Program in the Division of Social Services Manual (DSSM).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware 19720 by May 31, 2004.

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

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

REGISTER NOTICE

Title Of The Regulations:

Green Energy Fund Regulations

Brief Synopsis Of The Subject, Substance And Issues:

These regulations were originally proposed in the April 2004 issue of the Register, however, due to a scheduling problem, the hearing previously scheduled for April 27 has been postponed until Wednesday, May 12, 2004, beginning at 6:00 P.M. in the conference room of the Delaware Energy Office located at 146 South Governors Avenue, Dover, DE.

Notice Of Public Comment:

The rescheduled public hearing will be held Wednesday, May 12, 2004, beginning at 6:00 P.M. in the conference room of the Delaware Energy Office located at 146 South Governors Avenue, Dover, DE.

The proposed modification to the regulation may be inspected at the Department's Energy Office located at 146 South Governors Avenue, Dover, DE. The proposed modification was published in the April Issue of the Delaware Register of Regulations. For additional information or any appointments to inspect the proposed modification to the regulation, please contact Charlie Smisson in Dover at (302) 739-1530.

Interested parties may submit comments in writing on this proposed modification to Charlie Smisson and/or statements and testimony may be presented either orally or in writing at the public hearing. It is requested that those interested in presenting statements at the public hearing register in advance by mail and that written statements and comments be addressed to:

Charlie Smisson
DNREC – Delaware Energy Office
146 South Governors Avenue
Dover, DE 19901

DIVISION OF AIR AND WASTE MANAGEMENT
WASTE MANAGEMENT SECTION
REGISTER NOTICE

Title Of The Regulations:

Delaware *Regulations Governing Solid Waste* (DRGSW)

Brief Synopsis Of The Subject, Substance And Issues:

The Department of Natural Resources and Environmental Control (DNREC), Solid and Hazardous Waste Management Branch (SHWMB), is proposing to make changes to Delaware's *Regulations Governing Solid Waste*. To receive input from those potentially affected by the proposed changes, a workshop was conducted on November 12, 2003. After reviewing comments and input received at the workshop, the SHWMB is proposing the amendments to DRGSW:

Notice Of Public Comment:

A public hearing on the proposed amendments to DRGSW will be held on Tuesday, June 8, 2004, 6:00 p.m. to 9:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE. A downloadable version of the proposed amendments may be obtained by visiting DNREC's Division of Air and Waste Management Website at:

http://www.dnrec.state.de.us/dnrec2000/Divisions/AWM/hw/indexsw.htm and clicking on "Proposed Amendments to the Solid Waste Regulations." A hardcopy version may also be obtained by contacting the Solid and Hazardous Waste Management Branch at (302) 739-3689.

Prepared By:

Donald K. Short, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-3689

DEPARTMENT OF STATE
DIVISION OF HISTORICAL AND CULTURAL AFFAIRS
NOTICE

Title: Amendments to Regulations Governing the Historic Preservation Tax Credit.

Brief Synopsis:

Chapter 18 Subchapter II of Title 30 containing the Historic Preservation Tax Credit Act was enacted by the General Assembly in 2001 and amended in 2002. Final program regulations were adopted in July, 2002 (6 DE Reg. 108 (7/1/02). Chapter 18 Subchapter II of Title 30 was amended again in 2003 to provide credits for a resident curator program. The purpose of these proposed amendments to the regulations is to implement the code revisions of 2003. The proposed amendments modify sections of the regulations (§1.0, §3.3, §3.16, §3.16.2, §3.17, §8.0) as they may apply to the resident curator program. The Historic Preservation Tax Credit Act is designed to promote community revitalization and redevelopment through the rehabilitation of historic property by providing tax credits for expenditures made to rehabilitate any certified historic property.

Notice of Public Comment:

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101, the Division of Historical and Cultural Affairs proposes to amend rules and regulations pursuant to its authority under 30 **Del.C.** §1815(b). The Division will receive and consider input from any person in writing on the proposed Rules and Regulations. Any written comments should be submitted to the Division in care of Daniel R. Griffith, Director, Division of Historical and Cultural Affairs, 21 The Green, Ste. B, Dover, DE 19901. The final date to submit written comments is June 1, 2004. Anyone wishing to obtain a copy of the proposed amendments to the Rules and Regulations should notify Daniel R. Griffith at the

above address or call 302-739-5685. This notice will be published in two newspapers of general circulation.

Prepared by:
Daniel R. Griffith, Director
302-739-5685
April 10, 2004

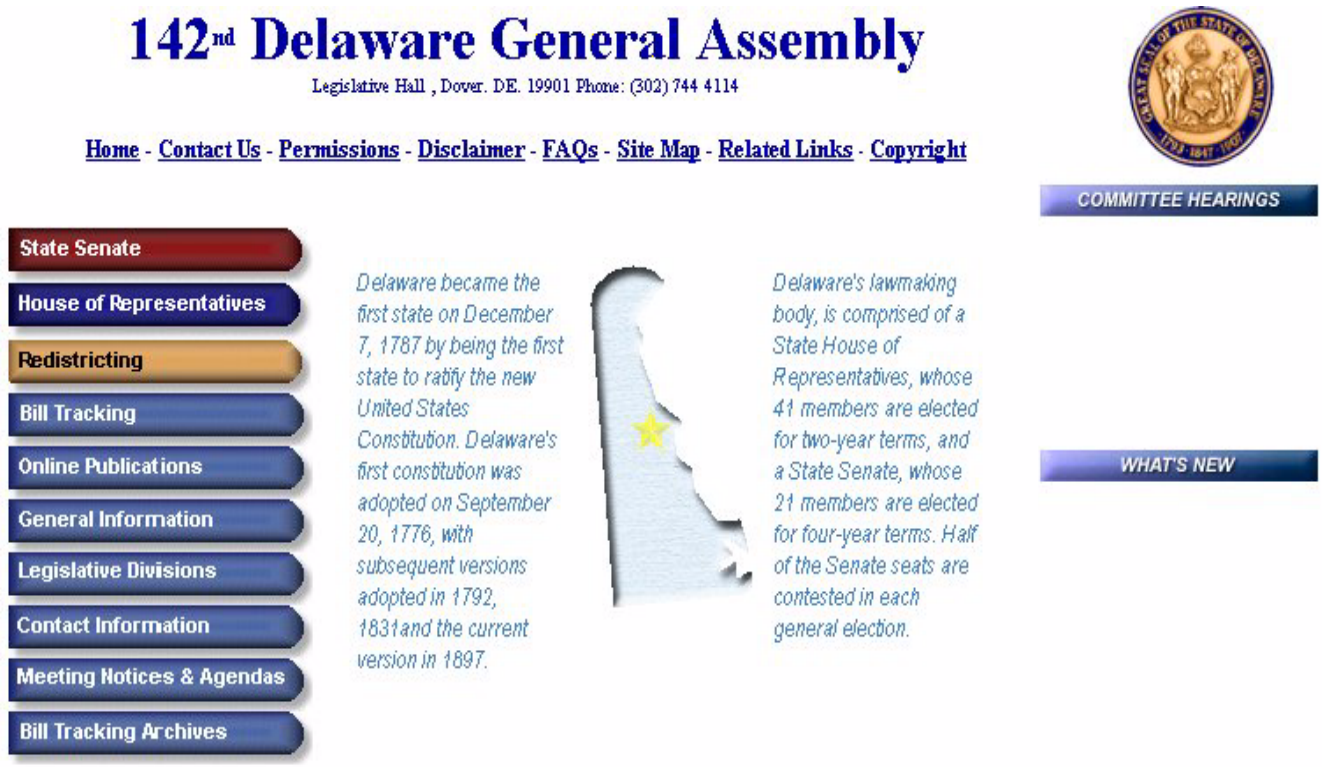
HUMAN RELATIONS COMMISSION

NOTICE

The State Human Relations Commission in accordance with 6 **Del.C**. §4616 has proposed changes to rules and regulations relating to fair housing. The proposed rules clarify the procedures and the role of the Division of Human Relations in the administrative investigation and conciliation of complaints filed under the Delaware Fair Hosing Act. Other rules added are similar to the federal regulations applicable to the federal Fair Housing Act. For example, if there is no answer is filed in response to a formal charge of discrimination by the Division, the factual allegations are deemed admitted. Regulations have been added that apply to housing for older persons.

A public hearing will be held on the proposed changes on June 10, 2004 at 7:30 p.m. at Delaware State University, MBNA Building, Second Floor, Room 2004, Route 13, Dover, DE . The Commission will receive and consider input from any person on the proposed Regulation. Written comment can be submitted at any time prior to the hearing to Sheryl Paquette, Division of Human Relations, 805 River Road, Dover DE 19901. In addition to publication in the Register of Regulations, copies of the proposed regulations can be obtained Sheryl Paquett, Division of Human Relations by calling her at (302)739-4567. Notice of the hearing and the nature of the proposal are also published in two Delaware newspapers of general circulation.

Visit The Delaware General Assembly On The Web!



The General Assembly Website features:

- Current legislative information
- Information on both the Senate and House of Representatives
- Access to the Delaware Code
- Access to the Delaware Register of Regulations
- Information on the legislative process
- Various reports and publications

The General Assembly Website is located at:

http://www.legis.state.de.us

LEGISLATIVE BILL SUBSCRIPTION SERVICES

Order Form (please print or type)

NAME _____ ADDRESS _____

ORGANIZATION _____ CITY _____ FAX _____

PHONE _____ STATE _____ ZIP _____ EMAIL _____

Please check the specific service(s) to which you wish to subscribe :

SERVICES	ANNUAL COST
One copy of all legislation introduced:	
_ Picked up by subscriber *	$110.00
_ Mailed daily via First Class postage	$850.00
One copy of all legislation signed by the Governor:	
_ Mailed via First Class postage	$215.00
One copy of House and Senate calendars:	
_ Picked up by subscriber *	$110.00
_ Mailed daily via First Class postage	$850.00
One copy of all Governor's Advisories:	
_ Mailed via First Class postage	$30.00
Daily Legislative Agendas and weekly Standing Committee Notices:	
_ Via Fax	$135.00

** Subscribers who choose to pick up their materials at Legislative Hall are requested to do so at least once a week, due to limited on-site file space. Thank you.*

If you have any questions about our subscription services, please contact the Division of Research by dialing, toll-free, **(800) 282-8545** (in state) or via E-Mail at **jeffrey.hague@state.de.us**. Please dial **(302) 744-4114** if you are calling from outside Delaware.

Please return this order form to the Division of Research at P.O. Box 1401, Legislative Hall, Dover, Delaware, 19903, or fax it to **(302) 739-3895** as soon as possible. (Don't forget to make a copy for your own files). You will be billed upon our receipt of your order. Your service(s) will begin, promptly, when payment is received and the General Assembly convenes. Thank you for using the Subscription Services of the Division of Research.

ACCESS THE DELAWARE CODE ON-LINE!

Online Delaware Code

- The Delaware Constitution
- Title 1 - General Provisions
- Title 2 - Transportation
- Title 3 - Agriculture
- Title 4 - Alcoholic Liquors
- Title 5 - Banking
- Title 6 - Commerce and Trade
- Title 7 - Conservation
- Title 8 - Corporations
- Title 9 - Counties
- Title 10 - Courts and Judicial Procedures
- Title 11 - Crimes and Criminal Procedure
- Title 12 - Decedents' Estates and Fiduciary Relations
- Title 13 - Domestic Relations
- Title 14 - Education
- Title 15 - Elections
- Title 16 - Health and Safety
- Title 17 - Highways
- Title 18 - Insurance Code
- Title 19 - Labor
- Title 20 - Military and Civil Defense
- Title 21 - Motor Vehicles
- Title 22 - Municipalities
- Title 23 - Navigation and Waters
- Title 24 - Professions and Occupations
- Title 25 - Property
- Title 26 - Public Utilities
- Title 27 - Religion
- Title 28 - Sports and Amusements
- Title 29 - State Government
- Title 30 - State Taxes
- Title 31 - Welfare

Find [ ] [in the section label] [search] [clear]

• Up-to-date version of the Code reflecting recent legislative enactments

• Comprehensive full text search capabilities.

Visit the Delaware Code On-Line at:

http://www.delcode.state.de.us/