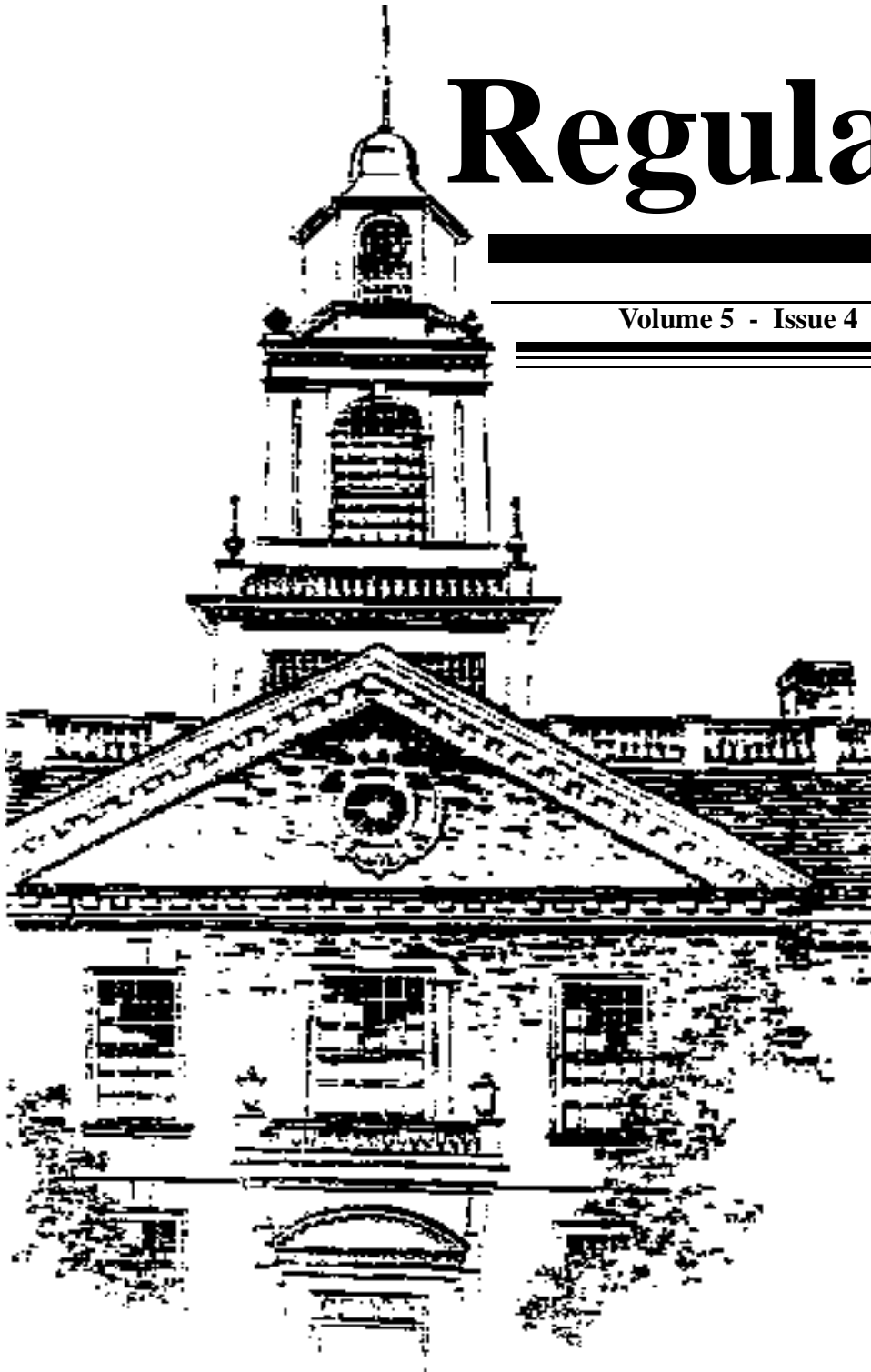

Delaware Register of Regulations



Issue Date: October 1, 2001

Volume 5 - Issue 4

Pages 678 - 988

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Proposed

Final

Governor

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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 September 15, 2001.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

CITATION TO THE DELAWARE REGISTER

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

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

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

SUBSCRIPTION INFORMATION

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

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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

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

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

Except as provided in the preceding section,

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.

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Symbol Key

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

Proposed Regulations

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION**

BOARD OF ACCOUNTANCY

24 DE Admin. Code 100

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

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

A public hearing on the proposed Rules and Regulations originally scheduled for August 22, 2001 has been rescheduled and will be held on Wednesday, November 14, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Dana Spruill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments

at the public hearing should notify Dana Spruill at the above address by calling (302) 744-4505.

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

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

- 1.0 General Provisions
- 2.0 Professional Conduct
- 3.0 Use of Designations
- 4.0 Applications
- 5.0 Examination and Certificate Requirements
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1.0 General Provisions

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

Board.

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

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

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

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

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

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

2.0 Professional Conduct

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

3.0 Use of Designations

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

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

3.1.1.1 An individual who is registered with the Board and holds a certificate of certified public

accountant and a current permit to practice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.0 Applications

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

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

5.0 Examination and Certificate Requirements

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

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

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

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

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

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

5.1.4.2 The concentration in accounting must be completed at an accredited college or university and consist of at least 21 semester hours of accounting, auditing, and federal taxation, either as part of applicant's Associate, Baccalaureate or Master's Degree program or subsequent to the completion of the program. Each applicant must have completed courses in accounting (including introductory, intermediate, advanced, and cost accounting), auditing, and federal taxation as components of the 21 hour concentration in accounting. Courses must have been completed in all three areas (i.e. accounting, auditing, and federal taxation). Courses in other business subjects, such as banking, business law, computer science, economics, finance, insurance, management and marketing will not be accepted as

accounting courses for this purpose.

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

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

5.2.1 meets the character requirements of Section 5.1.1; and

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

6.0 Requirements for Permit to Practice Certified Public Accountancy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.0 Requirements for Permit to Practice Public Accountancy

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

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

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

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

Examination.

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

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

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

8.0 Reciprocity

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

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

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

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

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

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

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

9.0 Firm Permits to Practice

9.1 Definitions

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

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

9.1.2 The term "principal of a firm" is defined as

any individual who has an equity interest in the firm.

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

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

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

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

9.6 Each holder of or applicant for a firm permit to practice certified public accountancy or public accountancy shall notify the Board in writing within thirty (30) days after

its occurrence of: 1) any change in the identities of principals who work regularly within this State; 2) any change in the number or location of offices within this State; 3) any change in the identity of the persons supervising such offices; and 4) any issuance, denial, revocation or suspension of a permit issued by any other State to the firm or to any principal or employee regulated by the Board.

9.27 Certified public accounting and public accounting firms practicing as corporations organized pursuant to Delaware law must be organized as ~~professional corporations ("P.C.") or professional associations ("P.A.")~~ in compliance with The Professional Service Corporation Act, 8 Del.C. § ~~67+~~ 601, et. seq.

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

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

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

10.0 Continuing Education

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

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

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

10.3.1 If the initial permit was issued less than one year prior to the renewal date, there shall be no continuing

education requirement for that period.

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

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

10.5 Qualified Programs.

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

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

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

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

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

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

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

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

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

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

10.5.3.4 University or college courses:

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

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

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

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

10.5.4 Correspondence and Individual Study Programs: Formal correspondence or other individual study programs which provide evidence of satisfactory completion will qualify, with the amount of credit to be determined by

the Board. The Board will not approve any program of learning that does not offer sufficient evidence that the work has actually been accomplished. The maximum credit toward meeting the continuing professional education requirement with formal correspondence or other individual study programs shall not exceed 30% of the total requirement.

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

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

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

10.6 Control and Reporting

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

10.6.1.1 school, firm or organization conducting course;

10.6.1.2 location of course;

10.6.1.3 title of course or description of content;

10.6.1.4 dates attended; and

10.6.1.5 hours claimed.

10.6.2 The Board may verify information submitted by applicants by requesting submission of the documentation to be retained by the applicant and/or sponsor and may revoke permits for which deficiencies exist. If a Continuing Professional Education Statement submitted by an applicant for permit renewal is not approved, or if upon verification, revocation is being considered, the applicant will be notified and may be granted a period of time in which to correct the deficiencies. Any license revocation or denial of application for license renewal will proceed in accordance with the provisions of the Administrative Procedures Act, 29

Del.C. §10101, et. seq.

10.7 Evidence of Completion- Retention

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

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

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

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

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

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

11.0 Additional Provisions Concerning Examinations

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

11.2 Applications to sit for the May or November Uniform Certified Public Accountant examination ("CPA examination") shall be submitted in completed form to the

Board's designated agent by the dates determined by the Board's designated agent.

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

11.4 Rules for Examination.

11.4.1 Examinations shall be in writing.

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

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

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

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

11.5 Passing Grade on the Uniform CPA Examination

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

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

11.6 Conditional Status for Subjects passed in this State

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

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

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

11.6.1.3 To pass the examination via conditional status, an applicant must pass the remaining subjects within 5 consecutive examinations following the attainment of conditional status. The conditional period may

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

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

11.7 Transfer of Credit for Subjects Passed in Another Jurisdiction

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

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

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

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

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

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

12.0 Excepted Practices; Working Papers

12.1. Excepted Practices: The offering or rendering of data processing services by mechanical or electronic means is not prohibited by 24 Del.C. §115. However, the exception applies only to the processing of accounting data as furnished by the client and does not include the classification or verification of such accounting data or the analysis of the resulting financial statement by other than mechanical or electronic equipment not prohibited by this Section. The rendering of advice or assistance in regard to accounting

controls, systems and procedures is exempt only as it pertains to the specific equipment or data processing service being offered. The exemption does not cover study and/or advice regarding accounting controls, systems and procedures in general. Persons, partnerships or corporations offering or performing data processing services or services connected with mechanical or electronic equipment are subject to all provisions of 24 Del.C. Chapter 1.

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

13.0 Hearings

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

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

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

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

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

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

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

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

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

13.2. General procedure

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

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

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

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

14.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

14.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

14.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

14.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to

a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

14.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

14.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

14.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of

Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

14.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

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

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

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

14.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the

treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

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

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

DIVISION OF PROFESSIONAL REGULATION**REAL ESTATE COMMISSION****24 DE Admin. Code 2900****Statutory Authority: 24 Delaware Code,
Section 2905(a)(1), (24 Del.C. §2905(a)(1))**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2905(a)(1), the Delaware Real Estate Commission proposes to revise its Rules and Regulations. The proposed amendments revise several sections of the rules and regulations. Substantive changes are proposed to the rules and regulations regarding advertising and the maintenance of offices that reflect further revisions resulting from a public hearing regarding proposed revisions held on August 9, 2001 and originally published in the June 1, 2001 Register of Regulations. Other proposed revisions include deleting the class size limit in real estate courses, deleting Rule 4.1.3 relating to qualifications for licensure of non-residents, and increasing the period of required retention of documents demonstrating compliance with the continuing education requirement for license renewal.

A public hearing will be held on the proposed Rules and Regulations on Thursday, November 8, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make

comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

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

Real Estate Commission

Statutory Authority: 24 Del.C. 2905

- 1.0 Introduction
- 2.0 Requirements for Obtaining a Salesperson's License
- 3.0 Requirements for Obtaining a Real Estate Broker's License
- 4.0 Reciprocal Licenses
- 5.0 Escrow Accounts
- 6.0 Transfer of Broker or Salesperson
- 7.0 Business Transactions and Practices
- 8.0 Renewal of Licenses
- 9.0 Availability of Rules and Regulations
- 10.0 Disclosure
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- 12.0 Inducements
- 13.0 Necessity of License
- 14.0 Out of State Land Sales Applications
- 15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Introduction

1.1 Authority

1.1.1 Pursuant to 24 Del.C. §2905, the Delaware Real Estate Commission is authorized and empowered and hereby adopts the rules and regulations contained herein.

1.1.2 The Commission reserves the right to make any amendments, modifications or additions hereto, that, in its discretion are necessary or desirable.

1.1.3 The Commission reserves the right to grant exceptions to the requirements of the rules and regulations contained herein upon a showing of good cause by the party requesting such exception, provided such exception is not inconsistent with the requirements of 24 Del.C. Ch. 29.

1.2 Applicability

1.2.1 The rules and regulations contained herein, and any amendments, modifications or additions hereto are applicable to all persons presently licensed as real estate brokers or real estate salespersons, and to all persons who apply for such licenses.

1.3 Responsibility

1.3.1 It is the responsibility of the employing broker to insure that the rules and regulations of the Commission are complied with by licensees. Every broker is responsible for making certain that all of his or her sales agents are currently licensed, and that their agents make timely application for license renewal. A broker's failure to

meet that responsibility may result in a civil fine against the broker of up to \$ 1,000.00 per agent.

1.3.2 Each office location shall be under the direction of a broker of record, who shall provide complete and adequate supervision of that office. A broker serving as broker of record for more than one office location within the State shall apply for and obtain an additional license in his name at each branch office. The application for such additional license shall state the location of the branch office and the name of a real estate broker or salesperson licensed in this State who shall be in charge of managing the branch office on a full time basis.

A broker shall not serve as broker of record unless said broker has been actively engaged in the practice of real estate, either as a licensed salesperson or a licensed broker, for the preceding three (3) years.

Where an unforeseen event, such as a resignation or termination from employment, death, emergency, illness, call to military service or training, or a sanction imposed by the Commission causes or necessitates the removal of the sole licensed broker in an office, arrangements may be made with the Commission for another broker to serve as broker of record for said office on a temporary basis.

The employment of a sales manager, administrative manager, trainer, or other similar administrator shall not relieve the broker of record of the responsibilities contained and defined herein.

1.1.3 The failure of any licensee to comply with the Real Estate Licensing Act and the rules and regulations of the Commission may result in disciplinary action in the form of a reprimand, civil penalty, suspension or revocation of the broker's and/or salesperson's license.

2.0 Requirements for Obtaining a Salesperson's License

The Commission shall consider any applicant who has successfully completed the following:

2.1 Course

2.1.1 The Commission shall consider any applicant who has successfully completed an accredited course in Real Estate Practice.

2.1.2 ~~Effective May 1, 1978, all real estate courses shall be limited to thirty five (35) students in each class. This applies to both day and night courses.~~ All other regulations regarding real estate courses are issued under the "Guidelines for Fulfilling the Delaware Real Estate Education Requirements". ~~The Commission reserves the right to grant exception to this limitation.~~

2.2 Examination

2.2.1 Within twelve (12) months of completing an accredited course, the applicant must make application to the Commission by submitting a score report showing successful completion of the examination required by the Commission. The applicant must forward all necessary documentation to the Commission to be considered for

licensure.

2.2.2 An applicant may sit for the examination a maximum of three (3) times after successful completion of an approved course in real estate practice. If an applicant fails to pass the examination after three (3) attempts at such, the applicant shall be required to retake and successfully complete an approved course in real estate practice before being permitted to sit for the examination again.

2.3 Ability to conduct business

2.3.1 The Commission reserves the right to ~~reject deny licensure to an applicant based on upon a determination that the applicant is not competent to transact business of a real estate salesperson his or her inability to transact real estate business in a competent manner or if it determines that the applicant lacks a reputation for honesty, truthfulness and fair dealings.~~

2.3.2 The minimum age at which a salesperson's license can be issued is eighteen (18).

2.4 Fees

The Commission shall not consider an application for a salesperson's license unless such application is submitted with evidence of payment of the following fees:

2.4.1 Salesperson's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

3.0 Requirements for Obtaining a Real Estate Broker's License

The Commission shall consider the application of any person for a broker's license upon completion of the following:

3.1 Course

3.1.1 The Commission shall consider the application of any person for a license after said applicant has successfully completed an accredited course.

3.1.2 Effective May 1, 1978, all courses shall be limited to thirty-five (35) students in each class.

3.2 Experience

3.2.1 A salesperson must hold an active license in the real estate profession for five (5) continuous years immediately preceding application for a broker's license. If the licensee fails to renew his or her license by the expiration date but then makes an application for reinstatement within sixty (60) days of the expiration of the license and the Commission otherwise approves the application for reinstatement, the five-years' continuity will not be broken.

See 4 DE Reg. 846 (11/01/00)

3.2.2 The applicant shall submit to the Commission a list of at least thirty (30) sales or other qualified transactions, showing dates, location, purchaser's name and seller's name. These sales must have been made by the applicant within the previous five (5) years through the general brokerage business and not as a representative of a builder, developer, and/or subdivider. Transactions

involving time-shares, leases, or property management are not qualified transactions for purposes of obtaining a real estate broker's license. The Commission reserves the right to waive any of the above requirements, upon evidence that the applicant possesses sufficient experience in the real estate business or demonstrates collateral experience to the Commission.

3.2.3 The list of thirty (30) sales or other qualified transactions and/or the variety of the licensee's experience must be approved by the Commission.

3.3 Examination

3.3.1 Within twelve (12) months of completing an accredited course, the applicant must submit a score report showing successful completion of the examination required by the Commission and submit all necessary documentation including the credit report required by ~~Paragraph E of this rule~~ Rule 3.5.1 to the Commission to be considered for licensure.

3.4 Ability to conduct business

3.4.1 The Commission reserves the right to ~~reject deny licensure to an applicant based upon a determination tha the applicant is not competent to transact the business of a real estate broker, including a determination that on his or her ability to transact real estate business in a competent manner or if it determines that the applicant lacks experience. , a reputation for honesty, truthfulness and fair dealings.~~

3.4.2 The minimum age at which a person can be issued a broker's license is twenty-three (23).

3.5 Credit Report

3.5.1 Each applicant shall submit a credit report from an approved credit reporting agency, which report shall be made directly to the Commission.

3.6 Fees

The Commission shall not consider an application for a broker's license unless such application is submitted with evidence of payment of the following fees:

3.6.1 Broker's application fee established by the Division of Professional Regulation pursuant to 29 Del.C. §8807(d).

4.0 Reciprocal Licenses

4.1 Requirements

4.1.1 A non-resident of this State who is duly licensed as a broker in another state and who is actually engaged in the business of real estate in the other state may be issued a nonresident broker's license under 24 Del.C. §2909(a).

4.1.2 A non- resident salesperson who is duly licensed as a salesperson in another state and who is actually engaged in the business of real estate in the other state may be issued a non-resident salesperson's license provided such non-resident salesperson is employed by a broker holding a broker's license issued by the Commission.

~~4.1.3 The Commission, at its discretion, may issue a non-resident broker's or salesperson's license without the course and examination required by Rules 2.2 or 3.3 provided the non-resident broker or salesperson passed an equivalent course and examination in his/her resident state and provided that such other state extends the same privilege to Delaware real estate licensees.~~

5.0 Escrow Accounts

5.1 All moneys received by a broker as agent for his principal in a real estate transaction shall be deposited within three (3) banking days after a contract of sale or lease has been signed by both parties, in a separate escrow account so designated, and remain there until settlement or termination of the transaction at which time the broker shall make a full accounting thereof to his or her principal.

5.2 All moneys received by a salesperson in connection with a real estate transaction shall be immediately delivered to the appropriate broker. A licensee shall not accept, as a good faith or earnest money deposit in connection with a real estate transaction, a photocopy, facsimile, or other copy of a personal check or draft, nor shall a licensee accept as a good faith or earnest money deposit a check or draft that is postdated.

See 4 DE Reg. 457 (9/1/00)

5.3 A broker shall not co-mingle money or any other property entrusted to him with his money or property, except that a broker may maintain up to \$100.00 of his/her own funds in the escrow account to cover bank service charges and to maintain the minimum balance necessary to avoid the account being closed.

5.4 A broker shall maintain in his office a complete record of all moneys received or escrowed on real estate transactions, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The records shall clearly show the amount of the broker's personal funds in escrow at all times.

5.5 An escrow account must be opened by the broker in a bank with an office located in Delaware in order to receive, maintain or renew a valid license.

5.6 The Commission may summarily suspend the license of any broker who fails to comply with 5.4, who fails to promptly account for any funds held in escrow, or who fails to produce all records, books, and accounts of such funds upon demand. The suspension shall continue until such time as the licensee appears for a hearing and furnishes evidence of compliance with the Rules and Regulations of the Commission.

5.7 Interest accruing on money held in escrow belongs to the owner of the funds unless otherwise stated in the contract of sale or lease.

6.0 Transfer of Broker or Salesperson

6.1 All licensees who transfer to another office, or brokers who open their own offices, but who were associated previously with another broker or company, must present a completed transfer form to the Commission signed by the individual broker or company with whom they were formerly associated, before the broker's or salesperson's license will be transferred. In addition all brokers who are non-resident licensees must also provide a current certificate of licensure.

6.2 The Commission reserves the right to waive this requirement upon a determination of good cause.

6.3 All brokers of record who move the physical location of their office shall notify the Commission in writing at least 30 days, or as soon as practical, prior to such move by filing a new office application.

7.0 Business Transactions and Practices

7.1 Written Listing Agreements

7.1.1 Listing Agreements for the rental, sale, lease or exchange of real property, whether exclusive, co-exclusive or open shall be in writing and shall be signed by the seller or owner.

7.2 Copy of agreements

7.2.1 Every party to a listing agreement, agreement of purchase and sale, or lease shall be furnished with an executed copy of such contract or contracts. It shall be the responsibility of the licensee to deliver an executed copy of the agreements to the principals within a reasonable length of time after execution.

7.3 Advertising

~~7.3.1 Any licensee who advertises, on signs, newspapers or any other media, property personally owned and/or property in which a licensee has any ownership interest, and said property is not listed with a broker, must include in the advertisement that he/she is the owner of said property and that he/she is a real estate licensee. Any licensee who advertises in newspapers, the Internet, or any other media, real property personally owned or real property in which the licensee has any ownership interest must include in the advertisement that he or she is the owner of said property, and that he or she is a real estate licensee. This subsection does not apply to signs.~~

~~7.3.2 Any licensee who advertises in newspapers or any other media, property personally owned and/or property in which the licensee has any ownership interest, and said property is listed with a broker, must include in the advertisement the name of the broker under whom he/she is licensed, that he/she is the owner of said property, and that he/she is a real estate licensee. This subsection does not apply to signs. Any licensee who advertises on signs, newspapers, the Internet, or any other media an offer to purchase real property must include in the advertisement that he or she is a real estate licensee.~~

7.3.3 Any licensee who advertises, by signs, or in

newspapers, the Internet, or any other media, any real property for sale, lease, exchange, or transfer that is listed with a broker must include in legible print in the advertisement the complete business name that has been registered with the Commission, and office phone number of the broker registered by the broker of record with the Commission for that office location, of record under whom the licensee is licensed. Nothing contained herein shall preclude the listing of additional phone numbers. All such advertising shall also contain language or abbreviations that clearly identify each phone number listed; examples include, but are not limited to: "Office"; "Home"; "Res."; "Car"; and "Cell".

7.3.4 All advertisements for personal promotion of licensees must include the complete business name that has been registered with the Commission, and office phone number of the company registered by the broker of record with the Commission for that office location, under whom the licensee is licensed.

7.4 Separate Office

7.4.1 Each licensed broker who is a resident of this State shall maintain an office in this State approved by the Commission in which to transact real estate business. Applicants for broker's licenses and those presently licensed must maintain separate offices in which to conduct the real estate business. No licensee shall transact real estate business at any office location unless an office application has been filed with and approved by the Commission. Nothing contained herein, however, shall preclude said persons from sharing facilities approved by the Commission with such other businesses as insurance, banking, or others that the Commission shall deem compatible.

7.4.2 If a broker maintains more than one place of business within the State, the broker shall apply for and obtain approval by the Commission for each office location.

~~7.4.2~~ 7.4.3 Any Where the office is located in a private home must be approved by the Commission and have, said office must have a separate entrance and must be approved by the Commission. The broker must place a permanent sign indicating the name under which the office is licensed registered with the Commission in a conspicuous location.

7.5 Compensation

7.5.1 Licensees shall not accept compensation from more than one party to a transaction, even if permitted by law, without timely disclosure to all parties to the transaction.

7.5.2 When acting as agent, a licensee shall not accept any commission, rebate, or profit on expenditures made for his principal-owner without the principal's knowledge and informed consent.

7.6 Duty to Cooperate

7.6.1 Brokers and salespersons shall cooperate with all other brokers and salespersons involved in a transaction except when cooperation is not in the client's best

interest. The obligation to cooperate does not include the obligation to share commissions or to otherwise compensate another broker or salesperson.

8.0 Renewal of Licenses

8.1 Renewal Required by Expiration Date on License

8.1.1 In order to qualify for license renewal as a real estate salesperson or broker in Delaware, a licensee shall have completed 15 hours of continuing education within the two year period immediately preceding the renewal. The broker of record for the licensee seeking renewal shall certify to the Commission, on a form supplied by the Commission, that the licensee has complied with the necessary continuing education requirements. This certification form shall be submitted by the licensee together with his/her renewal application and renewal fee. The broker of record shall retain for a period of ~~one (1) year~~ two (2) years, the documents supporting his/her certification that the licensee has complied with the continuing education requirement. A licensee who has not paid the fees and/or met the requirements for the renewal of his or her license by the expiration date shown thereon, shall not list, sell, lease or negotiate for others after such date.

8.2 Delinquency Fee

8.2.1 If a licensee fails to renew his or her license prior to the expiration date shown thereon, he or she shall be required to pay the full license fee and an additional delinquency fee equal to one half of the license fee. If a licensee fails to renew his or her license within 60 days of the expiration date shown thereon, the license shall be cancelled.

8.2.2 Failure to receive notice of renewal by a licensee shall not constitute a reason for reinstatement.

8.3 Reinstatement of License

8.3.1 A cancelled license shall be reinstated only after the licensee pays the necessary fees, including the delinquency fee, and passes any examinations required by the Commission. If the licensee fails to apply for renewal within 6 months of the cancellation date, the licensee shall be required to take the state portion of the examination. If the licensee fails to apply for renewal before the next renewal period commences (two years), the licensee shall be required to pass both the state and the national portions of the examination.

8.3.2 No person whose license has been revoked will be considered for the issuance of a new license for a period of at least two (2) years from the date of the revocation of the license. Such person shall then fulfill the following requirements: he or she shall attend and pass the real estate course for salespersons; take and pass the Commission's examination for salespersons; and any other criteria established by the Commission. Nothing above shall be construed to allow anyone to take the course for the purpose of licensing until after the waiting period of two (2)

years. Nothing contained herein shall require the Commission to issue a new license upon completion of the above mentioned requirements, as the Commission retains the right to deny any such application.

9.0 Availability of Rules and Regulations

9.1 Fee Charge for Primers

9.1.1 Since licensees are required to conform to the Commission's Rules and Regulations and the Laws of the State of Delaware, these Rules and Regulations shall be made available to licensees without charge. However, in order to help defray the cost of printing, students in the real estate courses and other interested parties may be required to pay such fee as stipulated by the Division of Professional Regulation for the booklet or printed material.

10.0 Disclosure

10.1 A licensee who is the owner, the prospective purchaser, lessor or lessee or who has any personal interest in a transaction, must disclose his or her status as a licensee to all persons with whom he or she is transacting such business, prior to the execution of any agreements and shall include on the agreement such status.

10.2 Any licensee advertising real estate for sale stating in such advertisement, "If we cannot sell your home, we will buy your home", or words to that effect, shall disclose in the original listing contract at the time he or she obtains the signature on the listing contract, the price he will pay for the property if no sales contract is executed during the term of the listing. Said licensee shall have no more than sixty (60) days to purchase and settle for the subject property upon expiration of the original listing or any extension thereof.

10.3 A licensee who has direct contact with a potential purchaser or seller shall disclose in writing whom he/she represents in any real estate negotiation or transaction. The disclosure as to whom the licensee represents should be made at the 1st substantive contact to each party to the negotiation or transaction. In all cases such disclosure must be made prior to the presentation of an offer to purchase. A written confirmation of disclosure shall also be included in the contract for the real estate transaction.

10.3.1 The written confirmation of disclosure in the contract shall be worded as follows:

10.3.1.1 With respect to agent for seller: "This broker, any cooperating broker, and any salesperson working with either, are representing the seller's interest and have fiduciary responsibilities to the seller, but are obligated to treat all parties with honesty. The broker, any cooperating broker, and any salesperson working with either, without breaching the fiduciary responsibilities to the seller, may, among other services, provide a potential purchaser with information about the attributes of properties and available financing, show properties, and assist in preparing an offer to purchase. The broker, any cooperating broker, and any

salesperson working with either, also have the duty to respond accurately and honestly to a potential purchaser's questions and disclose material facts about properties, submit promptly all offers to purchase and offer properties without unlawful discrimination."

10.3.1.2 With respect to agent for buyer: "This broker, and any salesperson working for this broker, is representing the buyer's interests and has fiduciary responsibilities to the buyer, but is obligated to treat all parties with honesty. The broker, and any salesperson working for the broker, without breaching the fiduciary responsibilities to the buyer, may, among other services, provide a seller with information about the transaction. The broker, and any salesperson working for the broker, also has the duty to respond accurately and honestly to a seller's questions and disclose material facts about the transaction, submit promptly all offers to purchase through proper procedures, and serve without unlawful discrimination."

10.3.1.3 In the case of a transaction involving a lease in excess of 120 days, substitute the term "lessor" for the term "seller", substitute the term "lessee" for the terms "buyer" and "purchaser", and substitute the term "lease" for "purchase" as they appear above.

10.4 If a property is the subject of an agreement of sale but being left on the market for backup offers, or is the subject of an agreement of sale which contains a right of first refusal clause, the existence of such agreement must be disclosed by the listing broker to any individual who makes an appointment to see such property at the time such appointment is made.

11.0 Hearings

11.1 When a complaint is filed with the Commission against a licensee, the status of the broker of record in that office shall not change.

11.2 There shall be a maximum of one (1) postponement for each side allowed on any hearing which has been scheduled by the Commission. If any of the parties are absent from a scheduled hearing, the Commission reserves the right to act based upon the evidence presented.

12.0 Inducements

12.1 Real Estate licensees cannot use commissions or income received from commissions as rebates or compensation paid to or given to Non-licensed Persons, partnerships or corporations as inducements to do or secure business, or as a finder's fee.

12.2 This Rule does not prohibit a real estate broker or salesperson from giving a rebate or discount or any other thing of value directly to the purchaser or seller of real estate. The real estate broker or salesperson, however, must be licensed as a resident or non-resident licensee by the Commission under the laws of the State of Delaware.

12.3 A real estate broker or salesperson has an

affirmative obligation to make timely disclosure, in writing, to his or her principal of any rebate or discount that may be made to the buyer.

13.0 Necessity of License

13.1 For any property listed with a broker for sale, lease or exchange, only a licensee shall be permitted to host or staff an open house or otherwise show a listed property. That licensee may be assisted by non-licensed persons provided a licensee is on site. This subsection shall not prohibit a seller from showing their own house.

13.2 For new construction, subdivision, or development listed with a broker for sale, lease or exchange, a licensee shall always be on site when the site is open to the general public, except where a builder and/or developer has hired a non-licensed person who is under the direct supervision of said builder and/or developer for the purpose of staffing said project.

14.0 Out of State Land Sales Applications

14.1 All applications for registration of an out of state land sale must include the following:

14.1.1 A completed license application on the form provided by the Commission.

14.1.2 A \$100 filing fee made payable to the State of Delaware.

14.1.3 A valid Business License issued by the State of Delaware, Division of Revenue.

14.1.4 A signed Appointment and Agreement designating the Delaware Secretary of State as the applicant's registered agent for service of process. The form of Appointment and Agreement shall be provided by the Commission. In the case of an applicant which is a Delaware corporation, the Commission may, in lieu of the foregoing Appointment and Agreement, accept a current certificate of good standing from the Delaware Secretary of State and a letter identifying the applicant's registered agent in the State of Delaware.

14.1.5 The name and address of the applicant's resident broker in Delaware and a completed Consent of Broker form provided by the Commission. Designation of a resident broker is required for all registrations regardless of whether sales will occur in Delaware.

14.1.6 A bond on the form provided by the Commission in an amount equal to ten (10) times the amount of the required deposit.

14.1.7 Copies of any agreements or contracts to be utilized in transactions completed pursuant to the registration.

14.2 Each registration of an out of state land sale must be renewed on an annual basis. Each application for renewal must include the items identified in sub-sections 14.1.2 through 14.1.4 of Rule 14.0 above and a statement indicating whether there are any material changes to

information provided in the initial registration. Material changes may include, but are not limited to, the change of the applicant's resident broker in Delaware; any changes to the partners, officers and directors' disclosure form included with the initial application; and any changes in the condition of title.

14.3 If, subsequent to the approval of an out of state land sales registration, the applicant adds any new lots or units or the like to the development, then the applicant must, within thirty days, amend its registration to include this material change. A new registration statement is not required, and the amount of the bond will remain the same.

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the

chairperson of the participating Board.

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

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

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment

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

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

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

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

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

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

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

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

**DIVISION OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION
REAL ESTATE COMMISSION EDUCATION
COMMITTEE**

24 DE Admin. Code 2925
Statutory Authority: 24 Delaware Code,
Section 2905(a)(1), 2911(b)
(24 Del.C. §2905(a)(1), §2911(b))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Education Requirements. The proposed amendments insert a new guideline relating to student requests for approval of an educational activity.

A public hearing will be held on the proposed Education Guidelines on Thursday, November 8, 2001 at 9:30 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

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

Real Estate Commission Education Committee
Statutory Authority: 24 Del.C. 2911(b)

- 1.0 Introduction
- 2.0 Objective
- 3.0 Administration
- 4.0 Education Committee
- 5.0 Course Approval
- 6.0 Program Criteria
- 7.0 Course Approval Process
- 8.0 Provider Responsibilities
- 9.0 Instructor Qualifications
- 10.0 Instructor Approval Process

**Guidelines for Fulfilling the Delaware Real Estate
Education Requirements**

1.0 Introduction -- Mandate for Continuing Education

- 1.1 24 Del.C. §2911(b) sets forth a requirement that

“...each Delaware Real Estate Certificate holder applying for renewal shall be required to successfully complete in the two year period prior to renewal, continuing education hours in an amount to be prescribed by the Rules and Regulations of the Commission. Each Delaware Real Estate Certificate holder at the time of certificate renewal shall be required to furnish to the Commission satisfactory evidence that they have successfully completed the required number of hours in approved courses.....”

1.2 The continuing education requirements apply to all licensees whether or not the certificate holder has been officially active or inactive during the two year period prior to expiration. The Delaware Real Estate Commission shall be informed of the completion of the continuing education requirement at the time of submission of the Real Estate Certificate Renewal Application. In the case of an inactive licensee proof of completion of the continuing education requirement will be due upon reactivation of the license. The number of continuing education credit hours required is established within the Rules and Regulations of the Commission. The number and content of mandated courses may vary at the discretion of the Commission. The current requirement for continuing education is included within these guidelines. Updates may be obtained from the offices of the Real Estate Commission or the Real Estate Education Committee.

2.0 Objective

Through education, the licensee shall be reasonably current in real estate knowledge and shall have improved ability to provide greater protection and service to the real estate consumer, thereby meeting the Delaware Real Estate Commission's primary objective of protection of the public.

3.0 Administration

The Delaware Real Estate Commission has the governing powers to approve or disapprove educational course offerings and instructor certification and reserves the right to suspend or revoke the privilege of conducting any educational course to any course provider(s) or instructor(s) who fail to adhere to the educational guidelines as established by the Commission.

4.0 Education Committee

4.1 The Commission may utilize the services of a committee, appointed by the Commission, to assist in the educational objectives of the Commission.

4.2 Committee Structure - The Committee shall be comprised of twelve (12) members, four (4) from each county. Three (3) members shall be public members and the remaining members shall hold a valid Delaware real estate license.

4.3 Committee Officers - (Chairperson and Vice-Chairperson) shall be elected from the Committee and shall

serve one year terms. Election of said officers will be held in January.

4.4 Term of Office

4.4.1 Each appointment shall be for four (4) full years. No person who has been appointed to the Committee shall again be appointed to the Committee until an interim period of at least one (1) year has passed since such person last served.

4.4.2 A majority of members (7) shall constitute a quorum; and no recommendation shall be effective without the affirmative vote of a majority of the quorum. Any member who fails to attend three (3) consecutive regular business meetings without a valid excuse, or who fails to attend at least half of all regular business meetings during any calendar year, shall automatically upon such occurrence be deemed to have resigned from office and a replacement shall be appointed by the Commission.

4.4.3 Committee members shall be appointed by the Commission. Applications for committee membership will be received by the Commission, via a letter of intent and a current resume 60 days prior to an anticipated vacancy. Committee members may be removed by the Commission for good cause. If an interim vacancy should occur, the Commission shall appoint a person to fill the position for a full four (4) year term commencing with the date of appointment.

4.5 Committee Responsibilities

4.5.1 It shall be the duty of the Education Committee to monitor the content and conduct of all pre-licensing courses for salesperson and broker as well as continuing education programs offered to fulfill the educational requirements for obtaining and maintaining licensure in the State of Delaware.

4.5.2 The Education Committee shall have the responsibility for reviewing all applications for pre-licensing and continuing education credit as well as certification of instructor applicants, to insure that all applications satisfy the requirements.

4.5.3 After this review, the Education Committee shall recommend that an application be approved or disapproved by the Commission. If approval is recommended with regard to continuing education, the Committee shall indicate the number of full credit hours for the course. In making its decisions, the Education Committee shall follow the provisions contained in these guidelines. Any recommendation for non-approval shall be accompanied by a specific reason. Only the Delaware Real Estate Commission shall have the power to approve or disapprove the application for a course offering or instructor certification.

4.5.4 The Education Committee shall undertake such other duties and responsibilities as the Commission shall direct from time to time.

4.5.5 Committee meeting times and places shall be

as necessary, but in all cases within two weeks prior to the next regularly scheduled meeting of the Commission. Committee meetings shall be conducted in accordance with the Administrative Procedures Act.

5.0 Course Approval

5.1 General Requirements - An educational activity to be approved as satisfying Delaware's real estate continuing education requirements must be an organized real estate related activity, offered under responsible sponsorship, facilitated by an instructor certified by the Commission.

5.2 Organization - The sponsoring organization must have a designated individual responsible for the administration and coordination of the education program. That designee shall be responsible to report to the Commission and/or the Committee for the proper conduct of each such program.

5.3 Facilities - The sponsoring organization must provide or arrange for appropriate educational facilities, and when necessary, library and reference materials and all instructional aids and equipment consistent with the content, format, and objective of each learning experience.

5.4 Performance - Attendance shall be used as the minimum requirement for satisfactory completion, in addition, alternative criteria for evaluating student performance may be established by the sponsoring organization or class instructor.

5.5 Maintenance and Availability of Records - An individual record of participation must be maintained by the sponsoring organization for a period of not less than three (3) years from the date of the activity and upon request made readily available as an official statement to each student of his or her participation. Information which must be included as part of this record is:

5.5.1 Name and address of the organization offering the course.

5.5.2 Name of course topic.

5.5.3 Title of the course

5.5.4 Name, resume and certificate number of the individual instructors.

5.5.5 Completion date of the course offering.

5.5.6 Number of hours of approved credit.

5.5.7 A detailed outline of the course.

5.5.8 A copy of the approval letter received from the Commission

5.5.9 A copy of the individual instructor(s) certification(s) letter(s) issued by the Commission.

5.5.10 A copy of the individual student evaluations on forms provided by the Commission.

5.5.11 A list of the individual students attending the course offering and their completion status, e.g., satisfactory or unsatisfactory.

5.6 Program Evaluation - Evaluation forms, approved by the Real Estate Commission shall be used to measure the

effectiveness of the program design, operation and effectiveness of the instructor(s). These forms must be returned to the Education Committee for review within fifteen (15) calendar days of completion of the program.

6.0 Program Criteria

6.1 Areas of Concentration for Acceptable Courses

6.1.1 Courses of instruction and seminars, to be considered eligible for continuing education credit approval must be in a definable real estate topic area. Courses that may be considered eligible must be in the following topic areas:

6.1.1.1 Federal, State or Local Legislative Issues (Legislative Update).

6.1.1.2 Fair Housing Law

6.1.1.3 Anti-Trust Law

6.1.1.4 Real Estate Ethics or Professional Standards

6.1.1.5 Agency Relationships and Responsibilities

6.1.1.6 Professional Enhancement for Practicing Licensees

6.1.2 Courses of instruction which Are Not acceptable for credit include, but are not limited to:

_ Any course given as part of a preparation for examination.

_ Offerings in mechanical office and business skills such as typing, business machines and computer operations.

_ Personal development and/or enrichment and motivational courses, speed reading memory improvement, and language report writing.

_ Correspondence courses and program learning courses not under the direct supervision of a certified instructor.

_ General training or education required of licensees to function in a representative capacity for an employing broker except if said training or education complies with the above stated topic areas, has been approved by the Commission and is taught by a certified instructor.

_ Meetings which are a normal part of in-house staff or licensee training, sales promotions or other meetings held in connection with the general business of the licensee and/or broker; any meetings that a licensee is required to attend as a condition of continued employment, whether imposed by rules of the employing broker or by a contractual agreement between broker and franchiser, does not qualify for continuing education credit. Work experience does not qualify for continuing education credit.

_ Non-educational activities of associations, trade organizations, and professional and occupational group membership or certification are not considered creditable continuing education activities. Examples of such activities

are, but not limited to:

_ membership or service in a professional, occupational or other society or organization;

_ attendance at annual, periodic or special meetings, conventions, conferences, rallies and retreats;

_ writing or presentation of articles or research papers;

_ a program or other type of organizational assignment;

_ self-directed reading or study. As a guiding principle "self-directed studies" and "individual scholarship" are not considered creditable educational activities.

7.0 Course Approval Process

7.1 An application for course approval (on forms approved by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, **at least sixty (60) days prior to the date that the course is to be held.** Failure to file within the appropriate time limit may cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed.

7.2 A course may be certified for a period of two (2) calendar years, provided the course is conducted by the sponsor or provider making application, the curriculum and course length remains exactly as approved, and certified instructors are utilized. The Education Committee may recommend a shorter or probationary approval where good cause for limited approval can be demonstrated. A sponsor who receives approval to conduct a certified course or activity, must notify the Commission in writing, of the intent to hold such activity, at least seven (7) days in advance of the start of the activity. Included in the letter of intent shall be the course approval number, date(s) and time(s) and location of the course, topic area, course name, instructor name(s) and instructor certification number(s). Courses can not be automatically renewed. Sponsors providers will need to reapply by the course expiration date and before conducting further courses. The Education Committee shall have the right to recommend to the Commission that a provider's privilege of conducting a certified course be revoked for the remainder of the approval period, if the Education Committee determines that the provider is not maintaining

7.3 An application for an individual student request for approval of an educational activity (on forms approved by the Commission), course outline, instructor resume of a

qualified instructor, and any other documentation that may be required, may be filed by the individual student with the Delaware Real Estate Commission, Real Estate Education Committee within twelve (12) months. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed shall not be considered to have been filed. The subject educational activity must comply with Section 6.0 herein and any other applicable Guidelines.

8.0 Provider Responsibilities

8.1 The organization receiving approval of a course or program accepts the responsibility to maintain a permanent record of the course activity for not less than three years from the date of the course offering. The permanent record shall include the documents as listed in "Maintenance and Availability of Records".

8.2 The sponsor or provider of all continuing education courses shall arrange for an on-site monitor in addition to the certified instructor for each activity. The monitor shall be responsible, at a minimum, for ensuring faithful and complete attendance by students, as well as facilities management. The monitor may be a student for educational credit for that course or activity.

8.3 The course sponsor or provider, will supply to the student at the completion of the course or program, a certificate of completion. This certificate must contain, but is not limited to, the following information:

- _ Student Name
- _ Sponsors Name
- _ Topic Area Name
- _ Course Title
- _ Date course was completed
- _ Number of Credit Hours
- _ Course Approval Number
- _ Instructor Name(s)
- _ Instructor Certificate Number(s)

8.4 The organization offering the course, shall, within fifteen (15) days after the completion of the activity, provide a list of participants, their real estate license numbers (if applicable) and a copy of each student's course and instructor evaluation form and an evaluation summary report form to the Commission's Office. The evaluation summary report form shall be signed by any instructors who participated in the delivery of the course thus indicating each has had the opportunity to review the evaluation result. Failure of the organization to provide this information may be grounds to suspend the approval of that course or educational activity, in the absence of a showing of good cause for that failure.

8.5 Where the provider is a prelicensing school, the administrator thereof is responsible to apply to the Delaware Department of Public Instruction for certification and to

maintain such certification. Proof of current certification must be attached to the application for course approval submitted to the Education Committee.

8.6 Prelicensing schools are to solicit the names of students interested in being contacted by recruiters by the second class meeting. Any students joining after the first class must be informed of the opportunity to be a part of the recruiting roster at the first class attended. Schools must supply the recruiting roster within seven (7) days of receiving a request from a broker.

8.7 Prelicensing schools will also furnish each student with current information regarding the prelicensing examination to include the "Real Estate Candidate Handbook" which is available to prelicensing schools through the testing service for this purpose.

8.8 Members of the Real Estate Commission or Education Committee And/or Their Official Representatives Shall Have the Right to Monitor Any Approved Course Without Notice.

9.0 Instructor Qualifications

9.1 It is the stated policy of the Delaware Real Estate Commission that qualified instructors must be directly involved in presenting any professional educational activity. Qualifications are determined by all or a combination of:

9.1.1 competence in the subject matter (may be evidenced by experience in which command of subject matter is recognized by the individual's peers, and/or by a formal education or training, and/or by demonstrated knowledge through publication in professional journals or appropriate media);

9.1.2 ability to transmit the educational content to the participants as determined by student evaluations and/or test results from previous instructional assignments;

9.1.3 understanding of the program objectives; and

9.1.4 knowledge and skill in the instructional methodology and learning processes to be employed.

9.2 The persons applying for instructor certification in teaching a real estate related topic must have five (5) years of full time experience in the trade, business, or profession that relates to the topic of instruction to be taught, and meet at least one (1) of the following sets of qualifications:

9.2.1 An approved instructor must meet two of the following criteria:

9.2.1.1 a Bachelor's degree

9.2.1.2 a Broker's Certificate

9.2.1.3 a professional designation such as, but not limited to; ALC (Accredited Land Consultant), CRS (Certified Residential Specialist), CCIM (Certified Commercial Investment Member) CPM (Certified Property Manager), CRB (Certified Residential Broker), CRE (Counselor Real Estate), MAI (Member Appraisal Institute), SIOR (Society Industrial Office Realtors) SRA (Senior Residential Appraiser), SRPA (Senior Real Property

Appraiser), but not including GRI (Graduate Realtor Institute);

9.2.2 Possession of a valid teaching credential or certificate issued in the State of Delaware (or any State with qualifications that are equal to, or that exceed the qualification standards of the State of Delaware), and/or five (5) years of teaching experience in an accredited public, private, or parochial school; and/or five (5) years teaching experience in an accredited junior college, college or university.

9.2.3 A fully designated senior member of the Real Estate Educators Association who has been issued the DREI (Designated Real Estate Instructor) designation.

9.3 The Commission may waive the above requirements contingent upon review of proof of collateral experience in related fields of real estate. The Commission reserves the right to exercise its discretion in denying an applicant who has had a disciplinary action taken against him/her.

9.4 In addition to the qualifications listed above, the Commission shall take into consideration evaluations from previous programs that the applicant has instructed. The Commission will also take into consideration recommendations or absence thereof of course providers, course coordinators, administrators and institutions that have employed the applicant.

9.5 The Education Committee may, at its discretion, subject to Commission approval, require a potential instructor to take a teaching methodology course (such as those given by colleges and universities) and/or a teaching methods seminar (such as currently given by the National Association of Realtors or Real Estate Educator's Association).

10.0 Instructor Approval Process

10.1 Applicants for instructor shall submit an application (on forms approved by the Commission), resume and any applicable fees to the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, DE 19904-2467, **at least sixty (60) days prior to the employment starting date.** Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the application. An application that is incomplete when filed shall not be considered to have been filed.

10.2 Upon approval, an instructor may be certified for a period of two (2) calendar years. An instructor may be certified in more than one subject or topic area, (e.g. pre-licensing math, pre-licensing law, fair housing, ethics, etc.). An instructor may only teach courses as preapproved by the Commission. Instructor certification can not be

automatically renewed. Instructors will need to reapply by the certification expiration date and before teaching any further courses or programs. Applications are available from the Commission office.

10.4 An Instructor may receive credit for continuing education hours towards the real estate license renewal requirement in the same amount of hours as approved for credit for the course/topic being taught. This is a one time credit per licensure period, regardless of the number of times that said course/topic is taught during said course or instructor certification period.

10.5 The Education Committee shall have the right to recommend to the Commission that a certified instructor lose the privilege of certification for the remainder of the certification period if the Education Committee determines that the instructor is not maintaining the standards and/or policies required in these guidelines.

10.6 It is the Stated Policy of the Delaware Real Estate Commission That at No Time During Periods of Instruction Shall Any Person Involved in Any Approved Real Estate Educational Activity, Use, or Attempt to Use, the Position of Instructor, Sponsor or Provider Etc., to Solicit Employees or Sales Representatives.

DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE
24 DE Admin. Code 3300
Statutory Authority: 24 Delaware Code,
Section 3306(a)(1) (24 **Del.C.** 3306(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3306 (a) (1), the Delaware State Board of Veterinary Medicine proposes to revise its rules and regulations. The proposed changes would be comprehensive revision of the current rules and regulations. The proposed revisions seek to redefine the role of support personnel, unprofessional conduct by a veterinarian, standards for veterinary premises and equipment, privileged communications between a veterinarian and a client, and requirements for continuing education. The proposed changes also affect other aspects of licensure including renewal and reinstatement of licenses. The proposed regulations serve to implement or clarify specific sections of 24 **Del.C.** Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, November 13, 2001 at 6:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in

care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

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

Board of Veterinary Medicine

Statutory Authority: 24 Del.C. 3306(a)(1)

- 1.0 Filing Date for Examinations
- 2.0 Qualification for Licensure by Examination as a Veterinarian
- 3.0 Character of Examination – National Board Examination and Clinical Competency Test
- 4.0 Licensure – Renewal
- 5.0 Licenses, Certifications and Registrations Display
- 6.0 Continuing Education
- 7.0 Reciprocity
- 8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Filing Date for Examinations

1.1 An applicant taking examinations in the State of Delaware must have the completed application filed with the Board office nine weeks before the announced date of the examination as established by the testing service.

1.2 The examination will be given at least once annually on the date(s) established by the testing service.

See 1 DE Reg. 1573 (4/1/98)

2.0 Qualification for Licensure by Examination as a Veterinarian

2.1 Applicant shall file the following documents:

2.1.1 Completed application form obtained from the Board office.

2.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

2.1.3 Letters of good standing from any other jurisdictions in which applicant is/or has been licensed.

2.1.4 Official National Board Examination (NBE) and Clinical Competency Test (CCT) scores.

2.1.5 Check or money order payable to the "State of Delaware" for the amount prescribed by the Division of Professional Regulation

See 1 DE Reg. 1573 (4/1/98)

2.2 Only completed applications will be accepted. In case of incomplete applications, omissions will be noted to the applicant. Any information provided to the Board is

subject to verification.

See 1 DE Reg. 1573 (4/1/98)

3.0 Character of Examination – National Board Examination and Clinical Competency Test

3.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the National Board Examination ("NBE") and the Clinical Competency Test ("CCT").

3.1.1 Passing scores for the NBE and CCT shall be the score as recommended by the National Board Examination Committee.

4.0 Licensure – Renewal

4.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the Division of Professional Regulation along with evidence of completion of continuing education requirements. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

4.2 All licensees must meet the continuing education requirements of a total of twenty-four (24) hours for two (2) years.

4.3 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the prescribed renewal fee.

5.0 Licenses, Certifications and Registrations Display

Each licensed veterinarian shall have posted or displayed at his/her office, in full view of clients, his/her Delaware license to practice veterinary medicine.

6.0 Continuing Education

6.1 Any veterinarian (active or inactive) licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

6.1.1 Twenty-four (24) hours of approved certified continuing education credits for the immediate two-year period preceding each biennial license renewal date.

6.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board.

6.2 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve

continuing education courses or sponsors on its own motion.

6.3 The following organizations are approved for formal continuing education activities:

6.3.1 AVMA

6.3.2 AVMA accredited schools

6.3.3 Federal/State/County Associations

6.3.4 Correspondence and In-House: Compendium on continuing education for the practicing veterinarian; Internet; NOAH; VIN. This may be used to satisfy ½ of the continuing education requirement.

6.3.5 Other forms of CE as long as a Veterinary Board Certified Diplomate or Veterinary Board Qualified Presenter presents the activity and the activity is approved by the Delaware Board of Veterinary Medicine. This may be used to satisfy ½ of the continuing education requirement.

6.3.6 University course work consisting of post-graduate credits, subject to Board approval.

6.4 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

6.5 The Board may at any time re-evaluate an accredited course or sponsor and withdraw its approval of a previously accredited continuing education course or sponsor.

See 1 DE Reg. 1573 (4/1/98)

7.0 Reciprocity

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in Section 2.0

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial

evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such

reports are made in good faith and without malice.—

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

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

8.6.5—Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.—

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

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

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

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

8.10—Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be

activated an immediate investigation and disciplinary proceedings as appropriate.—

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

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

- 1.0 Direct Supervision
- 2.0 Unprofessional Conduct
- 3.0 Privileged Communications
- 4.0 Veterinary Premises and Equipment
- 5.0 Qualification for Licensure by Examination as a Veterinarian
- 6.0 Character of Examination - North American Veterinary Licensing Examination (NAVLE)
- 7.0 Reciprocity
- 8.0 Licensure - Renewal
- 9.0 Continuing Education
- 10.0 Voluntary Treatment Option

1.0 DIRECT SUPERVISION (24 Del. C. § 3303(10))

1.1 Direct Supervision - refers to the oversight of any person performing support activities (support personnel) by a licensed Delaware veterinarian. Oversight includes control over the work schedule of the person performing support activities and any remuneration the person receives for performing such activities. Oversight does not include remuneration paid directly to support personnel by the public. The constant physical presence of the licensed veterinarian on the premises is not required, however, if the licensed veterinarian is accessible to support personnel by electronic means or has arranged for another supervising licensed veterinarian to be accessible by electronic means. All acts by support personnel not prohibited by Rule 1.2 which constitute the practice of veterinary medicine under 24 Del.C. §3302 (6) must be performed under direct supervision. Direct supervision of support personnel also includes:

1.1.1 The initial examination of the animal by the veterinarian prior to the delegation of work to be performed by support personnel. The veterinarian may, however, authorize support personnel to administer emergency measures prior to the initial examination.

1.1.2 The development of a treatment plan by the veterinarian that shall be referenced by support

personnel.

1.1.3 The authorization by the veterinarian of the work to be performed by support personnel.

1.2 At no time may support personnel perform the following activities (24 Del. C. § 3303(10)):

1.2.1 Diagnosing.

1.2.2 Prescribing.

1.2.3 Inducing Anesthesia.

1.2.4 Performing Surgery.

1.2.5 Administration of Rabies Vaccinations.

1.2.6 Operative dentistry and oral surgery.

1.2.7 Centesis of body structures (not to include venipuncture and cystocentesis) in other than emergency situations.

1.2.8 The placement of tubes into closed body structures, such as chest tubes, in other than emergency situations (not to include urinary or IV catheters).

1.2.9 Splinting or casting of broken bones in other than emergency situations.

1.2.10 Euthanasia.

1.2.11 Issue health certificates.

1.2.12 Perform brucellosis, equine infectious anemia and tuberculosis tests and other tests which are regulated by federal and state guidelines.

2.0 UNPROFESSIONAL CONDUCT (24 Del.C. §3313(a)(1))

2.1 Unprofessional conduct in the practice of veterinary medicine shall include, but not be limited to, the following:

2.1.1 Allowing support personnel to perform the acts forbidden under Section 1.2 of the Rules and Regulations.

2.1.2 Allowing support personnel to perform tasks without the required direct supervision as specified in Section 1.1 of the Rules & Regulations.

2.1.3 Representation of conflicting interests except by express consent of all concerned. A licensee represents conflicting interests if while employed by a buyer to inspect an animal for soundness he or she accepts a fee from the seller. Acceptance of a fee from both the buyer and the seller is prima facie evidence of fraud.

2.1.4 Use by a veterinarian of any certificate, college degree, license, or title to which he or she is not entitled.

2.1.5 Intentionally performing or prescribing treatment, which the veterinarian knows to be unnecessary, for financial gain.

2.1.6 Placement of professional knowledge, attainments, or services at the disposal of a lay body, organization or group for the purpose of encouraging unqualified groups or individuals to perform surgery upon animals or to otherwise practice veterinary medicine on animals that they do not own.

2.1.7 Destruction of patient records (including rabies records, radiographs and ultrasounds) before three years have elapsed.

2.1.8 Cruelty to animals. Cruelty to animals includes, but is not limited to, any definition of cruelty to animals under 11 Del.C. §1325.

2.1.8.1 Animal housing (such as cages, shelters, pens and runs) should be designed with maintaining the animal in a state of relative thermal neutrality, avoiding unnecessary physical restraint, and providing convenient access to appropriate food and water. If animals are group housed, they should be maintained in compatible groups without overcrowding.

2.1.8.2 Housing should be kept in good repair to prevent injury to the animal.

2.1.8.3 Failure to take precautions to prevent the spread of communicable diseases in housing animals.

2.1.9 Leaving an animal during the maintenance stage of anesthesia.

2.1.10 Improper labeling of prescription drugs. The package or label must contain:

2.1.10.1 Name, strength, and quantity of the drug;

2.1.10.2 Usage directions.

2.1.11 Failure to make childproof packaging available for prescription drugs upon the request of a client.

2.1.12 Misrepresenting continuing education hours to the Board.

2.1.13 Failure to obey a disciplinary order of the Board.

3.0 PRIVILEGED COMMUNICATIONS (24 Del.C. §3313(a)(7))

3.1 Privileged Communications. Veterinarians must protect the personal privacy of patients and clients by not willfully revealing privileged communications regarding the diagnosis and treatment of an animal. The following are not considered privileged communications:

3.1.1 The sharing of veterinary medical information regarding the diagnosis and treatment of an animal when required by law, subpoena, or court order or when it becomes necessary to protect the health and welfare of other individuals or animals.

3.1.2 The sharing of veterinary medical information between veterinarians or facilities for the purpose of diagnosis or treatment of animals.

3.1.3 The sharing of veterinary medical information between veterinarians and peace officers, humane society officers, or animal control officers who are acting to protect the welfare of individuals or animals.

4.0 VETERINARY PREMISES & EQUIPMENT (24 Del.C. §3313 (9))

4.1 The animal facility shall be kept clean. A

regular schedule of sanitary maintenance is necessary, including the elimination of wastes.

4.2 Animal rooms, corridors, storage areas, and other parts of the animal facility shall be washed, scrubbed, vacuumed, mopped, or swept as often as necessary, using appropriate detergents and disinfectants to keep them free of dirt, debris, and harmful contamination.

4.3 Animal cages, racks, and accessory equipment, such as feeders and water utensils, shall be washed and sanitized as often as necessary to keep them physically clean and free from contamination. In addition, cages should always be sanitized before new animals are placed in them. Sanitizing may be accomplished either by washing all soiled surfaces with a cleaning agent having an effective bactericidal action or with live steam or the equivalent thereof.

4.4 Cages or pens from which animal waste is removed by hosing or flushing shall be cleaned and suitably disinfected one or more times daily. Animals should be removed from cages during servicing in order to keep the animals dry.

4.5 If litter or bedding such as paper is used in animal cages or pens, it shall be changed as often as necessary to keep the animals clean.

4.6 Waste disposal must be carried out in accordance with good public health practice and federal and state regulations. Waste materials should be removed regularly and frequently so that storage of waste does not create a nuisance.

4.7 Biomedical waste such as culture plates, tubes, contaminated sponges, swabs, biologicals, needles, syringes, and blades, must be disposed of according to federal and state guidelines. Before disposing of blood soiled articles, they shall be placed in a leak-proof disposable container such as a plastic sack or a plastic-lined bag.

4.8 Proper refrigeration and sterilization equipment should be available.

4.9 Adequate safety precautions must be used in disposing animal carcasses and tissue specimens. An animal carcass shall be disposed of promptly according to federal and state law and regulations. If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed. Livestock shall be disposed of by any acceptable agricultural method.

4.10 The elimination or effective control of vermin shall be mandatory.

5.0 QUALIFICATION FOR LICENSURE BY EXAMINATION AS A VETERINARIAN (24 Del.C. §3307)

5.1 The applicant shall file the following documents:

5.1.1 Completed application form obtained from

the Board office. The application fee shall be set by the Division of Professional Regulation. The check for the application fee should be made payable to the State of Delaware.

5.1.2 Official transcript from an AVMA approved veterinary college or university or its equivalent (Educational Commission for Foreign Veterinary Graduates).

5.1.3 Letters of good standing from any other jurisdictions in which the applicant is/or has been licensed.

5.1.4 North American Veterinary Licensing Examination (NAVLE) score or both the official National Board Examination (NBE) and Clinical Competency Test (CCT) scores, unless the applicant meets the statutory exemptions in 24 Del. C. § 3303.

5.1.5 Check or money order for the amount established by the Division of Professional Regulation. The license fee shall be set by the Division of Professional Regulation. Fees should be made payable to the "State of Delaware."

5.2 Only completed application forms will be accepted. In the case of incomplete application forms, omissions will be noted to the applicant. Any information provided to the Board is subject to verification.

5.3 Applications for any licensure submitted by final year veterinary students enrolled in an AVMA accredited university for the purpose of taking the NAVLE exam will be considered complete only upon proof of the applicant's graduation. Such applicants must demonstrate probability of graduation and will not be considered for any licensure until proof of graduation is submitted to the Board.

6.0 CHARACTER OF EXAMINATION - NORTH AMERICAN VETERINARY LICENSING EXAMINATION (NAVLE) (24 Del.C. §3306)

6.1 Examination for licensure to practice veterinary medicine in the State of Delaware shall consist of the North American Veterinary Licensing Examination (NAVLE) after November 2000 or its successor.

6.1.1 The passing score for the NAVLE shall be the score as recommended by the National Board of Veterinary Medical Examiners or its successor.

7.0 RECIPROCITY (24 Del.C. §3309)

Applications for licensure by reciprocity shall be the same application used for licensure by examination and be subject to the same application requirements set forth in 24 Del.C. §3309.

8.0 LICENSURE - RENEWAL (24 Del.C. §3311)

8.1 All licenses are renewed biennially (every 2 years). A licensee may have his/her license renewed by submitting a renewal application to the Board by the renewal date and upon payment of the renewal fee prescribed by the

Division of Professional Regulation along with evidence of completion of continuing education requirements. Continuing education requirements for renewal are specified in Section 9.0. The failure of the Board to give, or the failure of the licensee to receive, notice of the expiration date of a license shall not prevent the license from becoming invalid after its expiration date.

8.2 Any licensee who fails to renew his/her license by the renewal date may still renew his/her license during the one (1) year period immediately following the renewal date provided the licensee pay a late fee established by the Division of Professional Regulation in addition to the established renewal fee and submitting the continuing education requirements for renewal as specified in Section 9.0.

9.0 CONTINUING EDUCATION (24 Del.C. §3311(b))

9.1 Any veterinarian actively licensed to practice in the State of Delaware shall meet the following continuing education requirements to the satisfaction of the Board.

9.1.1 Twenty-four (24) hours of approved certified continuing education credits must be completed for the immediate two year period preceding each biennial license renewal date.

9.1.2 The number of credit hours shall be submitted to the Board with each biennial license renewal application on the proper reporting form supplied by the Board. The continuing education credit hours shall be submitted to the Board no later than 60 days prior to the biennial license renewal date. The Board may audit the continuing education credit hours submitted by a licensee.

9.1.3 A veterinarian may apply to the Board in writing for an extension of the period of time needed to complete the continuing education requirement for good cause such as illness, extended absence from the country, or unique personal hardship which is not the result of professional negligence.

9.2 Continuing Education Requirements for Reinstatement of Lapsed Licence

9.2.1 Any veterinarian whose license to practice in the State of Delaware has lapsed and who has applied for reinstatement shall meet the following continuing education requirements to the satisfaction of the Board.

9.2.1.1 Lapse of 12 to 24 months. Twenty-four (24) hours of continuing education credits must be completed. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for reinstatement.

9.2.1.2 Lapse of over 24 months. Thirty-six (36) hours of continuing education credits must be completed. The 36 hours of continuing education credits must have been completed within 4 years prior to the request for reinstatement.

9.3 Continuing Education Requirements for

Reinstatement of Inactive License

9.3.1 Twenty-four (24) hours of continuing education credits must be submitted for licensees on the inactive roster who wish to remove their license from inactive status. The 24 hours of continuing education credits must have been completed within 2 years prior to the request for removal from inactive status.

9.4 The Board may approve continuing education courses or sponsors upon written application on Board supplied forms. In addition, the Board may approve continuing education courses or sponsors on its own motion.

9.5 The following organizations are approved for formal continuing education activities.

9.5.1 AVMA.

9.5.2 AVMA accredited schools.

9.5.3 Federal/State/County Veterinary Associations & USDA.

9.5.4 Compendium on Continuing Education for the Practicing Veterinarian; NOAH; VIN.

9.5.5 Registry of Approved Continuing Education (RACE) courses.

9.6 Accreditation by the Board of continuing education courses will be based upon program content. Continuing education courses shall be directed toward improvement, advancement, and extension of professional skill and knowledge relating to the practice of veterinary medicine.

9.6.1 University course work, subject to Board approval.

9.6.2 Veterinary course work completed prior to graduation may be approved for continuing education credit for the first renewal period after graduation provided the course work was completed no more that 2 1/2 years before the renewal date.

9.6.3 Government Agencies.

9.6.4 Other forms of CE as long as and the activity is approved by the Board.

9.7 The Board may at any time re-evaluate an accredited course or sponsor and withdraw future approval of a previously accredited continuing education course or sponsor.

10.0 VOLUNTARY TREATMENT OPTION

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the

individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating

Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

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

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

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

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF MASSAGE & BODYWORK

24 DE Admin. Code 5300
Statutory Authority: 24 Delaware Code,
Section 5306(1) (24 Del.C. 5306(1))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Sections 5306(1) and 5306(7), the Delaware Board of Massage and Bodywork proposes to revise its Rules and Regulations. The proposed revisions seek to clarify Rule 6.3.2, popularly known as "the 25% Rule." The proposed revisions will assist licensees in understanding that the application of this continuing education rule results in a limitation of the total number of continuing education hours that are permissible in specified areas and methods during a licensure period.

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

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

- 1.0 Definitions
- 2.0 Filing of Application for Licensure as
Massage/Bodywork Therapist
- 3.0 Examination
- 4.0 Application for Certification as Massage Technician.
- 5.0 Expired License or Certificate
- 6.0 Continuing Education

7.0 Scope of Practice

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Definitions and General Definitions

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

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

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

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

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

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

Visceral Manipulation

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

Alexander Technique

Aroma therapy

Feldenkrais

Hellerwork

Polarity Therapy

Reiki

Shamanic Techniques

Therapeutic Touch

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

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist

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

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

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

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

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

2.4 Renewal. Applicants for renewal of a massage/bodywork therapist license shall submit a completed renewal form, renewal fee, proof of continuing education pursuant to Rule 6.0 and a copy of a current certificate from a State

certified cardiopulmonary resuscitation program. License holders shall be required to maintain current CPR certification throughout the biennial licensure period.

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

3.0 Examination

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

4.0 Application for Certification as Massage Technician

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

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

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

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

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

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

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

throughout the biennial licensure period.

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

5.0 Expired License or Certificate

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

6.0 Continuing Education

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

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

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

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

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

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

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

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

6.3 *Content.*

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

6.3.2 No more than twenty-five percent (25%) of the continuing education hours required in any licensing period may be earned in any combination of the ~~following~~ areas and methods described or listed in Rules 6.3.2.1 through 6.3.2.5. For example, a licensed massage therapist licensed for the entire licensing period may obtain no more than six (6) hours of the required twenty-four (24) hours in any combination of the following areas and methods:

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

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

6.4 *Board approval.*

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

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

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

6.4.3 *Self-directed activity:* The Board may, upon request, review and approve credit for self-directed activities, including, but not limited to, teaching, research, preparation and/or presentation of professional papers and articles. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a

written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants (e.g. research) and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee.

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

6.5 *Reporting.*

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

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

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

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

The licensee may not practice until reinstatement of the license.

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

7.0 Scope of Practice

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

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

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

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

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

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

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

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

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

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

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

PUBLIC SERVICE COMMISSION

Statutory Authority: 26 Delaware Code,
Section 211 (26 Del.C. §211)

IN THE MATTER OF THE
PROPOSED REVISION OF THE
RULES AND REGULATIONS
BY THE PUBLIC SERVICE
COMMISSION GOVERNING
MINIMUM STANDARDS FOR
SERVICE PROVIDED BY
PUBLIC WATER COMPANIES
(OPENED MAY 14, 1985;
REOPENED AUGUST 21, 2001)

PSC REGULATION
DOCKET NO. 13

ORDER NO. 5787

AND NOW, to-wit, this 21st day of August, 2001;

WHEREAS, in PSC Order No. 2076 (May 27, 1980) entered *In The Matter of the Proposed Revision of Rules and Regulations by the Public Service Commission Governing Minimum Standards for Service Provided by Public Water Companies* ("Minimum Standards"), PSC Regulation Docket No. 13, the Commission originally adopted *Minimum Standards Governing Service Provided by Public Water Companies*; and

WHEREAS, Standard 4.2.4 of such Minimum Standards requires public water utilities to ensure the accuracy of meters by conducting testing procedures on all meters in service on a specified frequency keyed to the size of the meter; and

WHEREAS, in October, 2000, United Water Delaware, Inc. ("United"), filed a request with the Commission for a waiver of the application of the testing procedures under Standard 4.2.4 in the context of testing the 32,000 5/8" meters utilized by United; and

WHEREAS, as part of its application for a waiver, United proposed undertaking a plan to move completely to the use of encoder meters (with 12,000 such meters already and future replacement of 20,000 non-encoder units) for 5/8" service, and during the contemplated replacement period, to use a statistical sampling technique (testing of 50 meters from a 3,000 meter group) to monitor the accuracy of the non-encoder meters remaining in service and, after substantial completion of the encoder installations, to then use a random sampling testing procedure (involving up to 3 tests of each of 100 meters randomly selected from age-linked groups) to assure accuracy of United's meters; and

WHEREAS, in light of United's submission, the Commission Staff has recently reviewed the Minimum Standards and has proposed an amendment to Standard 4.2.4 to allow a public water utility to ensure the accuracy of its meters by either: (1) conducting periodic tests on meters

under the presently mandated schedule; or (2) conducting tests on a sampling of meters pursuant to a statistical meter sampling program submitted by the water utility and approved by the Commission; and

WHEREAS, the Staff has reviewed United's statistical meter sampling program and has determined that United's program is a reasonable one; and

WHEREAS, the Commission is authorized, by 26 Del.C. § 211, to fix, after hearing, just and reasonable rules and standards to secure the accuracy of meters and like appliances used by public utilities; and

WHEREAS, the Commission deems it appropriate to propose an amendment of Standard 4.2.4 of the Minimum Standards, as offered by its Staff, pursuant to the procedures for amendment of agency regulations set forth in 29 Del.C. §§ 10113-10119;

Now, therefore, **IT IS HEREBY ORDERED THAT:**

1. The Commission proceedings captioned **In The Matter of the Proposed Revision of Rules and Regulations by the Public Service Commission Governing Minimum Standards for Service Provided by Public Water Companies**, PSC Regulation Docket No. 13, are hereby reopened to consider an amendment of the Minimum Standards Governing Service Provided by Public Water Companies as originally promulgated in PSC Order No. 2076.

2. William F. O'Brien is designated as the Hearing Examiner for this matter pursuant to the terms of 26 Del.C. §502 and 29 Del.C. §10116, to organize, classify, and summarize all materials and other testimony filed in this proceeding, and to make findings and recommendations to the Commission concerning the proposed amendment on the basis of the materials and information submitted. Hearing Examiner O'Brien is specifically authorized to solicit additional comments and to conduct, upon due notice, one or more public hearings so as to allow for additional public comment in order to develop a complete record in this matter. Francis J. Murphy, Jr., Esquire, is designated as Staff Counsel for this matter.

3. The Commission solicits public comment and input concerning the proposed amendment to Standard 4.2.4 of its *Minimum Standards Governing Service Provided by Public Water Companies*, and to comply with the requirements of 29 Del.C. §§ 10113 and 10115, the Commission hereby issues the Notice of Proposed Rules Amendment attached hereto as Exhibit "A" for publication in the Register of Regulations and in two (2) newspapers of general circulation in the State.

4. Pursuant to 26 Del.C. §211 and 29 Del.C. §10111 **et seq.**, the Commission hereby proposes a revision of Standard 4.2.4 of the *Minimum Standards Governing Service Provided by Public Water Companies* as set forth in the form attached hereto as Exhibit "B." Exhibit "B" reflects the existing Standard 4.2.4 of the *Minimum Standards*

Governing Service Provided by Public Water Companies and the proposed amended Standard 4.2.4.

5. The Secretary shall file the Notice of Proposed Rules Amendment, together with a copy of the existing text of Standard 4.2.4 of the *Minimum Standards Governing Service Provided by Public Water Companies* and the proposed amendment thereto, with the Registrar of Regulations for publication in the Register of Regulations, as required by 29 **Del.C.** §10115, on October 1, 2001. In addition, the Secretary shall, contemporaneous with such filing, cause the Notice, attached as Exhibit "A," and the proposed revised *Minimum Standards Governing Service Provided by Public Water Companies*, attached as Exhibit "B," to be sent by United States Mail to: (a) all public water utilities regulated by the Commission; (b) all persons who have made timely requests for advance notice of such proceedings; and (c) the Division of the Public Advocate.

6. The Secretary shall cause the publication of the Notice of Proposed Rules Amendment attached hereto as Exhibit "A" to be made in **The News Journal** and the **Delaware State News** newspapers on the following dates, in two column format, outlined in black:

October 1, 2001 (**The News Journal**)

October 2, 2001 (**Delaware State News**)

7. The public water utilities regulated by the Commission are notified that they may be charged for the cost of this proceeding under 26 **Del.C.** §114.

8. The Commission shall forego any enforcement action under the present Standard 4.2.4 against United Water Delaware, Inc., during the pendency of this proceeding so long as United Water Delaware, Inc., adheres to its Statistical Meter Program as outlined in its submission of October 11, 2000.

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

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

BY ORDER OF THE COMMISSION:

Arnetta McRae, Chair

Joshua M. Twilley, Vice Chair

Donald J. Puglisi, Commissioner

Jaymes B. Lester, Commissioner

Joann T. Conaway, Commissioner

ATTEST:

Karen J. Nickerson, Secretary

EXHIBIT "A"

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE PROPOSED REVISION OF THE RULES AND REGULATIONS BY THE PUBLIC SERVICE COMMISSION GOVERNING MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WATER COMPANIES (OPENED MAY 14, 1985; REOPENED AUGUST 21, 2001)	PSC REGULATION DOCKET NO. 13
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**NOTICE OF PUBLIC COMMENT PERIOD AND
PROPOSED AMENDMENT TO THE DELAWARE
PUBLIC SERVICE COMMISSION'S MINIMUM
STANDARDS GOVERNING SERVICE PROVIDED
BY PUBLIC WATER COMPANIES**

On August 21, 2001, the Delaware Public Service Commission ("the Commission") entered an Order proposing a revision to Standard 4.2.4 of the Commission's *Minimum Standards Governing Service Provided by Public Water Companies* ("Minimum Standards").

Currently, Standard 4.2.4 requires public water utilities to undertake periodic testing of their meters based on a schedule linked to the size of the meter. The proposed amendment will allow a public water utility the alternative to propose to the Commission a statistical sampling methodology for testing the accuracy of its meters. If such a plan is approved by the Commission, the public water utility could, thereafter, in lieu of testing all meters on a periodic basis, test a random sampling of particular groups of meters in order to ascertain the accuracy of its meters. The Commission has proposed allowing public water utilities this alternative in light of changes and improvements in the design and manufacturing of water meters.

The full text of the proposed amendment to Standard 4.2.4 has been filed with the Delaware Registrar of Regulations for publication in the Register of Regulations. The full text of the proposed amendment is also available at the Commission's website located at www.state.de.us/delpsc.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §211 and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed amendment to Standard 4.2.4. Twelve (12) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware

19904. All such materials shall be filed with the Commission on or before October 31, 2001. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate. Such letter must be received on or before October 31, 2001.

In addition, the Commission will conduct a public hearing on the proposed amendment to Standard 4.2.4 on Wednesday, November 7, 2001, at the Commission's Dover office at the address set forth above. Such hearing shall begin at 10:00 AM. At such hearing, persons may present comments, evidence, and other materials concerning the proposed amendment.

ONLY PERSONS WHO SUBMIT COMMENTS, PARTICIPATE IN THE HEARING, OR FILE A NOTICE OF INTENT TO PARTICIPATE WILL RECEIVE NOTICE OF FURTHER PROCEEDINGS IN THIS MATTER.

The proposed and existing Standard and the materials submitted in connection therewith are available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed amendment is also available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephone (including text telephone and TRS), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. The Commission may also be contacted at (302) 739-4333 (including text telephone). Inquiries can also be sent by Internet e-mail to connie.mcdowell@state.de.us.

EXHIBIT "B"

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF DELAWARE

IN THE MATTER OF THE PROPOSED REVISION OF THE RULES AND REGULATIONS BY THE PUBLIC SERVICE COMMISSION GOVERNING MINIMUM STANDARDS FOR SERVICE PROVIDED BY PUBLIC WATER COMPANIES (OPENED MAY 14, 1985; REOPENED AUGUST 21, 2001)		PSC REGULATION DOCKET NO. 13
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4.2.4 ~~Meter Testing. Each utility shall make periodic tests of meters to assure their accuracy. The~~

~~periodic test interval shall not be longer than provided in the following schedule: Each utility shall have in place, and implement, a program for the testing of its meters to ensure their accuracy. Such program shall consist of either:~~

~~(a) The periodic testing of meters at intervals no longer than provided in the following schedule:~~

- ~~(1) 5/8 inch and 3/4 inch:
Once every 15 years~~
- ~~(2) 1 inch and 1-1/2 inch:
Once every 10 years~~
- ~~(3) 2 inch, 3 inch, and 4 inch:
Once every 3 years~~
- ~~(4) 6 inches and larger: Once every year~~

~~or~~

~~(b) The periodic testing of a random sampling of particularly-grouped meters under a meter testing plan submitted by the utility and specifically approved by the Commission. Such a plan may apply to the testing of all sizes of meters or meters of a particular size. The sampling procedures in any such plan shall be sufficient to ensure confidence in the accuracy of the meters included in the group represented by the sample. With such plan, the utility shall submit sufficient information and data to establish the ability of the sampling procedure to establish the accuracy of the utility's meters. The results of testing under any such approved plan shall be available to the Commission.~~

DEPARTMENT OF EDUCATION

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

EDUCATIONAL IMPACT ANALYSIS PURSUANT TO 14 DEL.C. SECTION 122(d)

103 SCHOOL ACCOUNTABILITY FOR ACADEMIC PERFORMANCE

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 103 School Accountability for Academic Performance. The amendments are necessary to bring the regulation in line with the changes in the statute as per H.B. 220. Three new sections were added, 4.0 Performance Classifications, 5.0 School Review Process and 6.0 Appeals Process and in sections 2.3.2, 2.4 and 3.0 the word "accreditation" was changed to the word "performance".

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school accountability and it is based on the results of the Delaware Student Testing Program. The DSTP is designed to assist in approving student achievement.

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

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

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

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the amended regulation? The amendments to the statute require that the regulation also be amended.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation? The legislature has provided funding for the implementation of school accountability.

103 School Accountability for Academic Performance

1.0 Accountability School: The school to which a student's performance is assigned shall be the Accountability School. Except as defined in sections 1.1 to 1.3 the Accountability School shall be the school that provided the majority of instructional services to that student in a given school year so long as the student was enrolled in the school for more than 530 school hours or more than 90 school days. No student shall have his/her performance assigned to more than one Accountability School in a given school year.

1.1 Except as in section 1.1.1, for students enrolled in an intra-district intensive learning center or intra-district special school or program operating within one or more existing school facilities the school facility in which the student is served shall be the Accountability School.

1.1.1 If in such a program the number of students included in a School Composite Score would be greater than or equal to 30 a school district may elect to define the program as an Accountability School.

1.1.2 Within 30 days of request by the Secretary of Education school districts shall inform the Secretary of Education in writing of any Accountability Schools they elect to define pursuant to section 1.1.1. Such definitions may not be changed for four measurement cycles.

1.2 For students enrolled in inter-district special schools or programs that have an agreement to serve students from multiple school districts that school or program shall be the Accountability School provided the number of students included in the School Composite Score is greater than or equal to 30.

1.2.1 If in such a school or program the number of students included in a School Composite Score is less than 30 the student scores shall be assigned to the Accountability School the student would have been assigned to if an Individual Education Program was not in place.

1.3 For students enrolled in alternative school programs pursuant to 14 *Del.C.*, Chapter 16, or the Delaware Adolescent Program the Accountability School shall be the school that assigned them to the program. For the purposes of this chapter the time the students were enrolled in the alternative or transitional program shall be credited to the Accountability School.

2.0 Composite Score: A School Composite Score for each Accountability School shall be created utilizing the formula found in 14 *Del. C.*, Section 154(b)(1).

2.1 The School Composite Score shall include the collective performance of all students in each Standards Cluster as defined in section 2.6 and 2.7 below on the assessments administered pursuant to 14 *Del.C.*, Section 151 (b) and (c).

2.1.1 For students who take a portion of the assessment more than once within a measurement cycle, the

best test score except re-tests by 12th grade students shall be included in the School Composite Score.

2.1.2 For school accountability purposes a student not assessed either pursuant to 14 *Del.C.*, Section 151 (b) and (c) or not assessed with alternate assessments approved by the Department of Education shall be assigned to Performance Level 0, and such score shall be assigned to the school that failed to assess the student.

2.1.3 Except for students who participate in out-of-level testing, students who test with non-aggregable conditions as defined in the Department of Education's *Guidelines for the Inclusion of Students with Disabilities and Students with Limited English Proficiency* shall have her/his performance level included in the School Composite Score.

2.1.4 For school accountability purposes a student who tests but does not meet attemptedness rules as defined in the Department of Education's Scoring Specifications, who participates in out-of-level testing or otherwise receives an invalid score shall be assigned to Performance Level 1.

2.1.5 A student participating in alternate assessments shall have her/his performance level included in the School Composite Score.

2.2 Schools with more than one tested grade shall receive a single School Composite Score determined by aggregating the performance levels of students who score at each performance level in each tested grade.

2.3 Baselines for Accountability Schools shall be determined using two years of their students' performance, beginning with the Accountability School's first two administrations of the Delaware Student Testing Program. New School Composite Scores shall be established each two years thereafter.

2.3.1 Prior to 2003 reading, writing and mathematics results shall be utilized to determine School Composite Scores.

2.3.2 In 2003 two School Composite Scores shall be calculated. The School Composite Score used to determine ~~accreditation~~ performance shall include reading, writing and mathematics results. The School Composite Score used as the school's new baseline shall include reading, writing, mathematics, science and social studies results.

2.3.3 After 2003 reading, writing, mathematics, science and social studies results shall be utilized to determine all School Composite Scores.

2.4 Schools shall be evaluated for ~~accreditation~~ performance by comparing their performance on the three measures defined in section 3.0 over a measurement cycle.

2.5 Student performance in a tested grade shall be apportioned in equal weights to each grade in a Standards Cluster, except that Kindergarten shall be weighted at 10%.

2.6 Prior to the inclusion of science and social studies

results in the School Composite Score the weights assigned to each subject shall be 40% for reading, 40% for mathematics and 20% for writing.

2.6.1 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics
Grades 4-5	Grade 5 reading, writing, mathematics
Grades 6-8	Grade 8 reading, writing, mathematics
Grades 9-10	Grade 10 reading, writing, mathematics

2.7 When science and social studies results are included in the School Composite Score, the weights assigned to each subject shall be as follows:

2.7.1 For assessments in grades 3 through grade 6: 35% for reading, 35% for mathematics, 10% for writing, 10% for science and 10% for social studies.

2.7.2 For assessments in grades 8 through grade 11: 20% for reading, 20% for mathematics, 20% for writing, 20% for science and 20% for social studies.

2.7.3 Standards Clusters shall be defined as follows:

Standards Cluster	Spring Assessments, Calendar Year A	Fall Assessments, Calendar Year A
Grades K-3	Grade 3 reading, writing, mathematics	Grade 4 science, social studies
Grades 4-5	Grade 5 reading, writing, mathematics	Grade 6 science, social studies
Grades 6-8	Grade 8 reading, writing, mathematics, science, social studies	
Grades 9-10	Grade 10 reading, writing, mathematics	
Grades 9-11	Grade 11 science, social studies	

3.0 Performance Criteria: The Department of Education shall determine the ~~accreditation~~ performance status of a school by utilizing three measures of performance.

3.1 Absolute Performance: The Absolute Performance of the school's student body on the assessments administered pursuant to 14 *Del.C.*, Section 151 (b) and (c) measured using the School Composite Score. Target School Composite Scores shall be determined by the Department of Education with the consent of the State Board of Education.

3.2 **Improvement Performance:** The school's record in improving its School Composite Score over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.2.1 The expected improvement for a given school shall be the difference between the school's current composite score and a target School Composite Score that all schools are expected to achieve divided by the number of measurement cycles the school has to reach the target School Composite Score.

3.2.2 For schools that have already met the target School Composite Score, a higher target shall be established. Target School Composite Scores and time periods shall be determined by the Department of Education with the consent of the State Board of Education.

3.3 **Distributional Performance:** The school's record in improving the performance of low achieving students over a measurement cycle by an amount determined by the Department of Education with the consent of the State Board of Education.

3.3.1 The expected Distributional Performance for a given school shall be a specified decrease in the percentage of students performing below the standard (those in levels 0, 1, and 2) in tested content areas while the percentage of students in Level 0 and the percentage of students in Level 1 in tested content areas do not increase by a targeted amount.

3.3.1.1 All regulations utilized to calculate school composite scores pursuant to 2.0 shall also apply to calculate distributional performance.

3.3.2 An Accountability School that has no change in the percentage of students performing below the standard or reduces that percentage by less than the target shall be assessed by whether the Distributional Composite Score, calculated by including only those students who have not met the standard, increases by a targeted amount. Distributional Targets shall be determined by the Department of Education with the consent of the State Board of Education.

4.0 **Accreditation: RESERVED.**

Performance Classifications: Schools shall be rated by the Department of Education based on their collective performance on the three specific measures of performance described in section 3.0. The performance classification of each school shall be reported in School Profiles.

4.1 **Superior Performance:** A school's performance is deemed excellent. Schools in this category shall have met or exceeded performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.2 **Commendable Performance:** A school's performance is deemed acceptable. Schools in this category

shall have met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education.

4.3 **Under School Improvement:** A school's performance is deemed as needing improvement. Schools in this category have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education. Schools initially classified in this category shall be evaluated using a School Review Process pursuant to section 5.0 below. Following a final classification of a school as Under School Improvement the school shall be required to undertake improvement and accountability activities as defined in 14 Del.C., Section 154(d)(2).

4.4 **Unsatisfactory Performance:** A school's performance is deemed as unacceptable. Schools Under School Improvement who after two years have not met sufficient performance targets as determined by the Department of Education with the consent of the State Board of Education shall be classified as Unsatisfactory. Schools in this category shall be required to undertake improvement and accountability activities as defined in 14 Del.C., Section 154(d)(3).

4.5 Schools required to develop a school improvement plan pursuant to 14 Del.C., Section 154(d)(2) and (3) shall include specific strategies to improve the performance of students in each low performing sub-population as defined by the Department of Education.

5.0 **Appeals process: RESERVED.**

5.0 **School Review Process:** Schools classified as Under School Improvement shall be evaluated by a School Review Team.

5.1 The purpose of the evaluation is to determine whether additional evidence of school performance demonstrates that a school should be reclassified as Commendable.

5.2 For each school subject to review, the School Review Team shall consist of two representatives of the Department of Education and two educators from Delaware public schools, and may include educators who have retired within the previous five years. Each team shall be chaired by a representative of the Department of Education. All School Review Team members shall be appointed by the Secretary of Education.

5.3 Schools subject to review shall provide the Department of Education with evidence of school performance in a form acceptable to the Department. Such evidence, along with school performance data available to the Department of Education, shall provide the basis for the evaluation of the school's performance.

5.4 **Criteria used to evaluate other evidence of school performance shall include at a minimum:**

5.4.1 Curriculum aligned to state content

standards and assessments aligned to curriculum and standards.

5.4.2 Instruction aligned to the curriculum and teaching strategies selected based on student needs.

5.4.3 School community collaborations that support high standards of student achievement and behavior for all students.

5.4.4 The use of data to improve instruction for all students.

5.4.5 Development and maintenance of a climate in the school that supports high achievement.

5.4.6 Development and implementation by school community of a comprehensive plan to address all students' needs.

5.4.7 Professional development opportunities that support the acquisition of new knowledge and the transference of skills to classroom practices.

5.4.8 Resources identified and used effectively to support best educational practices.

5.5 The School Review Team shall evaluate evidence of school performance with respect to the criteria in section 5.4 above using a scoring process approved by the Department of Education. A target score shall determine whether a school should receive a site visit or shall remain classified as Under School Improvement. Target scores for site visits shall be determined by the Department of Education with the consent of the State Board of Education. No school with a score below the target shall receive a site visit or be reclassified.

5.5.1 Schools that are designated to receive a site visit shall have the option of declining such a visit. No school shall receive a recommendation to be reclassified to Commendable without a site visit by a School Review Team. The district in which the school is located shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. Charter schools shall have five working days to notify the Secretary of Education in writing if they do not wish to receive a site visit. All schools that decline a site visit shall remain classified as Under School Improvement.

5.6 Following any site visits the School Review Team shall recommend to the Secretary of Education whether a school shall remain Under School Improvement or whether additional evidence exists to reclassify the school to Commendable Performance. Target scores used as the basis for such recommendations shall be determined by the Department of Education with the consent of the State Board of Education.

5.6.1 Upon such a recommendation the Secretary of Education may reclassify a school to Commendable Performance subject to the consent of the State Board of Education.

6.0 Appeals Process: A school may appeal its

performance classification as follows.

6.1 The school must file a written notice of appeal with the Secretary no later than 30 days after receiving written notification of its performance classification. The notice of appeal shall state with specificity the grounds for the appeal, and shall be signed by the principal of the school and the superintendent of the district that has authority over the school.

6.2 Upon receipt of a satisfactory form of notice of appeal, the Secretary will decide whether to hear the appeal or assign it to a hearing officer.

6.3 The Secretary or hearing officer, as the case may be, will establish a date upon which the appeal will be heard. The school shall be given not less than 20 days notice of the hearing date. A written position statement, legal brief or memorandum in support of its appeal shall be filed by the school with the Secretary or hearing officer no later than 10 days prior to the hearing date. Any written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal is based upon a legal issue or interpretation.

6.4 A school challenging its classification must prove by clear and convincing evidence that the classification assigned to it by the department was contrary to law or regulations, was not supported by substantial evidence, or was arbitrary or capricious, or should be changed because of other extraordinary mitigating circumstances beyond the school's control.

6.5 If the appeal has been assigned to a hearing officer, the hearing officer will issue a recommended decision to the Secretary in the form of a Proposed Order. The Secretary will not conduct any further hearings on the matter, but will issue a final decision within 30 days thereafter.

DEPARTMENT OF FINANCE

DIVISION OF REVENUE

DELAWARE STATE LOTTERY OFFICE

Statutory Authority: 29 Delaware Code,
Section 4805(a) (29 Del.C. §4805(a))

The Delaware Lottery Office proposes to amend Video Lottery Regulations 5.2.1(2), 7.2, 7.3, and 14.7. The Lottery proposes to amend the Regulations as follows:

5.2.1 All contracts with technology providers who are video lottery machine manufacturers shall include without limitations, provisions to the following effect:

...

(2)The technology provider shall submit video

lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of ~~twenty-five (\$25)~~ one-hundred (\$100) shall be permitted for wagering on a single play of any video game.

7.2 Video games shall be based on bills, coins, tokens, or credits, worth between \$.05 and ~~\$25.00~~ \$100.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended play features from time to time to which the maximum wager limit of ~~\$25.00~~ \$100.00 shall not apply

14.7 The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below:

(1) Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2) The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of the letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3) A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

(4) A person determined to be unsuitable for licensure pursuant to these Regulations shall be prohibited from reapplying for licensure for a period of twelve (12) months.

The Lottery proposes these Regulation amendments pursuant to 29 Del.C. §4805(a). The Lottery will accept

written comments from October 1, 2001 through October 31, 2001. The Lottery will hold a public hearing on the proposed amendments on October 22, 2001 at 10:00 a.m. at the Lottery Office, Second Floor Conference Room, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to the Lottery at the above address and noted to the attention of Lottery Director Wayne Lemons.

5.0 Technology Providers: Contracts; Requirements; Duties

5.1. The Director shall, pursuant to the procedures set forth in chapter 69 of title 29 of the Delaware Code enter into contracts with licensed technology providers as he or she shall determine to be appropriate, pursuant to which the technology providers shall furnish by sale or lease to the State video lottery machines in such numbers and for such video games as the Director shall approve from time to time as necessary for the efficient and economical operation of the lottery, or convenience of the players, and in accordance with the agents' business plans as approved and amended by the Director. No single technology provider shall supply more than 65% of the total number of video lottery machines at the premises of any agent. No more than 1,000 video lottery machines shall be located within the confines of an agent's premises unless the Director approves up to an additional 1,000 machines or other number approved by the Director as permitted by law.

5.2.1 All contracts with technology providers who are video lottery machine manufacturers shall include without limitation, provisions to the following effect:

(1) The technology provider shall furnish a person to work with the agency and its consultants to provide assistance as needed in establishing, planning and executing acceptance tests on the video lottery machines provided by such technology provider. Technology provider assistance shall be provided as requested by the agency in troubleshooting communication and technical problems that are discovered when video lottery machines are initially placed at the agent's site;

(2) The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of ~~twenty five dollars (\$25)~~ one-hundred (\$100) shall be permitted for wagering on a single play of any video game;

(3) For testing, examination and analysis purposes, the technology provider shall furnish working models of video lottery machines, associated equipment, and documentation at locations designated by the Director. The technology provider shall pay all costs of any testing, examination, analysis and transportation of the video lottery

machines, which may include the entire dismantling of the machines and some tests that may result in damage or destruction to one or more electronic components of the machines. The agency and its agents shall have no liability for any damage or destruction. The agency may require that the technology provider provide specialized equipment or the agency may employ the services of an independent technical laboratory expert to test the video lottery machine at the technology provider's expense;

(4) Technology providers shall submit all hardware, software, and test equipment necessary for testing of their video lottery machines and shall provide the Director with keys and locks subject to the Director's specifications for each approved video lottery machine;

(5) The EPROMs of each video lottery machine shall be certified to be in compliance with published specifications;

(6) No video lottery machine shall be put into use prior to certification of its model by the Director;

5.2.2 All contracts with technology providers shall include without limitation, provisions to the following effect:

(1) Technology providers shall agree to promptly report any violation or any facts or circumstances that may result in a violation of these rules; provide immediate access to all its records and its physical premises for inspection at the request of the Director; attend all trade shows or conferences as required by the Director;

(2) Technology providers shall agree to modify their hardware and software as necessary to accommodate video game changes directed by the agency from time to time;

(3) Technology providers shall provide such bonds and provide evidence of such insurance as the Director shall require from time to time and in such amounts and issued by such companies as the Director shall approve; and

(4) Technology providers shall have a valid license to conduct business in the State of Delaware, shall comply with all applicable tax provisions, and shall in all other respects be qualified to conduct business in Delaware.

5.3 Each video lottery machine certified by the Director shall bear a decal and shall conform to the exact specifications of the video lottery machine model tested and certified by the Director.

5.4 No video lottery machine may be transported out of the State until the decal has been removed and no decal shall be removed from a video lottery machine without prior agency approval.

5.5 Technology providers shall hold harmless the agency, the State of Delaware, and their respective employees for any claims, loss, cost, damage, liability or expense, including, without limitation, legal expense arising out of any hardware or software malfunction resulting in the wrongful award or denial of credits or cash.

5.6 A technology provider shall not distribute a video lottery machine for placement in the state unless the video lottery machine has been approved by the agency. Only licensed technology providers may apply for approval of a video lottery machine or associated equipment. The technology provider shall submit two copies of video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code, and any other information requested by the agency for purposes of analyzing and testing the video lottery machine or associated equipment.

5.7 The agency may require that two working models of a video lottery machine be transported to the location designated by the agency for testing, examination, and analysis. The technology provider shall pay all costs of testing, examination, analysis and transportation of such video lottery machine models, which may include the entire dismantling of the video lottery machine and tests which may result in damage or destruction to one or more electronic components of such video lottery machine model. The agency may require that the technology provider provide specialized equipment or the services of an independent technical expert in testing the terminal.

5.8 After each test has been completed, the agency shall provide the video lottery machine technology provider with a report that contains findings, conclusions, and pass/fail results. Prior to approving a particular video lottery machine model, the agency may require a trial period not in excess of sixty (60) days for a licensed agent to test the video lottery machine. During the trial period, the technology provider may not make any modifications to the video lottery machine model unless such modifications are approved by the agency.

5.9 The technology provider is responsible for the assembly and initial operation, in the manner approved and licensed by the agency, of all its video lottery machines and associated equipment. The technology provider may not change the assembly or operational functions of any of its video lottery machines approved for placement in Delaware unless a "request for modification to an existing video lottery machine prototype" is made to the agency, that request to contain all appropriate information relating to the type of change, reason for change, and all documentation required. The agency must approve such request prior to any changes being made, and the agency shall reserve the right to require second testing of video lottery machines after modifications have been made.

5.10 Each video lottery machine approved for placement in a licensed agent's place of business shall conform to the exact specifications of the video lottery machine prototype tested and approved by the agency. Any video lottery machine which does not so conform shall be disconnected from the Delaware video lottery system until compliance has been achieved. Each video lottery machine

shall at all times operate and be placed in accordance with the provisions of these regulations.

5.11 The following duties are required of all licensed technology providers, without limitation:

(1) Manufacture terminals and associated equipment for placement in Delaware in accordance with the specifications of the agency.

(2) Manufacture terminals and associated equipment to ensure timely delivery to licensed Delaware agents.

(3) Maintain and provide an inventory of associated equipment to assure the timely repair and continued, approved operation and play of licensed video lottery machines acquired under the contract for placement in Delaware.

(4) Provide an appropriate number of service technicians with the appropriate technical knowledge and training to provide for the service and repair of its licensed video lottery machines and associated equipment so as to assure the continued, approved operation and play of those licensed video lottery machines acquired under contract for placement in Delaware.

(5) Obtain any certification of compliance required under the applicable provisions of rules adopted by the Federal Communications Commission.

(6) Promptly report to the agency any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations adopted pursuant thereto.

(7) Conduct video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of Delaware, or reflect adversely on the security or integrity of the video lottery.

(8) Hold the agency and the State of Delaware and its employees harmless from any and all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in or the operation of a video lottery game.

(9) Defend and pay for the defense of all claims that may be made against the agency, the State of Delaware, or the employees of either, arising from the technology provider's participation in video lottery operations.

(10) Maintain all required records.

(11) Lease or sell only those licensed video lottery machines, validation units and associated equipment approved under these regulations.

(12) It shall be the continuing duty of the technology provider licensee to provide the Director with an updated list of the names and addresses of all its employees who are involved in the daily operation of the video lottery machines. These employees will include individuals or their supervisors involved with (1) the repair or maintenance of the video lottery machines, or (2) positions that provide direct access to the video lottery machines. It shall be the

continuing duty of the technology provider licensee to provide for the bonding of each of these individuals to ensure against financial loss resulting from wrongful acts on their parts.

(13) It shall be the ongoing duty of the technology provider licensee to notify the Director of any change in officers, partners, directors, key employees, video lottery operations employees, or owners. These individuals shall also be subject to a background investigation. The failure of any of the above-mentioned individuals to satisfy a background investigation may constitute "cause" for the suspension or revocation of the technology provider's license.

(14) Provide the agents with the technical ability to distribute the proceeds of the video lottery in accordance with the requirements of these regulations and 29 Del. C. chapter 48.

(15) Supervise its employees and their activities to ensure compliance with these rules.

(16) Promptly report to the Lottery any violation or any facts or circumstances that may result in a violation of State or Federal law and/or any rules or regulations pursuant thereto, excluding violations concerning motor vehicle laws.

(17) Comply with such other requirements as shall be specified by the Director.

7.0 Game Requirements

7.1 The Director shall authorize such video games to be played on the agent's premises in conformity with approved business plans, as amended.

7.2 Video games shall be based on bills, coins, tokens or credits, worth between \$.05 and ~~\$25.00~~ \$100.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended play features from time to time to which the maximum wager limit of ~~\$25.00~~ \$100.00 shall not apply.

7.4 Each video game shall display the amount wagered and the amount awarded for each possible winning occurrence based on the number of credits wagered.

7.5 Each video game shall provide a method for players to view payout tables.

7.6 Each player shall be at least twenty-one (21) years of age. In the event an underage player attempts to claim a prize, the video lottery agent should treat the play of the game as void and the underage player shall not be entitled to any prize won or a refund of amounts bet.

7.7 Agents shall redeem credit slips or tokens presented by a player in accordance with procedures proposed by the agent and approved by the Director prior to the opening of the premises for video game play. Such procedures shall be modified at the direction of the Director in his or her sole discretion at any time. Nothing in this

subsection (7.7) shall prohibit the use of coin-in/coin-out machines.

7.8 Credit slips may be redeemed by a player at the designated place on the premises where the video game issuing the credit slip is located during the one hundred and eighty (180) day redeeming period commencing on the date the credit slip was issued.

7.9 No credit slip shall be redeemed more than one (1) year from the date of issuance. No jackpot from a coin-in/coin-out machine shall be redeemed more than one (1) year from the date on which the jackpot occurred. Funds reserved for the payment of a credit slip or expired unclaimed jackpot shall be treated as net proceeds if unredeemed one (1) year from the date of issuance of the credit slip or occurrence of the winning jackpot. The one (1) year redemption policy in this regulation shall be prominently displayed on the premises of the video lottery agent.

7.10 No payment for credits awarded on a video lottery machine may be made unless the credit slip meets the following requirements:

- (1) It is presented on a fully legible, valid, printed credit slip on paper approved by the agency, containing the information as required;
- (2) It is not mutilated, altered, unreadable, or tampered with in any manner, or previously paid;
- (3) It is not counterfeit in whole or in part; and
- (4) It is presented by a person authorized to play.

7.11 **Method of Payment** - The management of each licensed agent shall designate employees authorized to redeem credit slips during the hours of operation. Credits shall be immediately paid in cash or by check when a player presents a credit slip for payment meeting the requirements of this section. No credits may be paid in tokens, chips or merchandise.

7.12 **Restrictions on Payment** - Agents may only redeem credit slips for credits awarded on video lottery machines located on its premises. The agency and the State of Delaware are not liable for the payment of any credits on any credit slips.

7.13 **Redeemed Tickets Defaced** - All credit slips redeemed by a licensed agent shall be marked or defaced in a manner that prevents any subsequent presentment and payment.

7.14 **Liability for Malfunction** - The agency and the State of Delaware are not responsible for any video lottery machine malfunction or for any error by the agent that causes credit to be wrongfully awarded or denied to players.

7.15 Video lottery machines shall not be operated or available for play on Christmas, Easter, or between the hours of 2:00 a.m. and 1:00 p.m. on Sundays, or between the hours of 2:00 a.m. and 8:00 a.m. on any day other than Sunday.

14.0 Fingerprinting Procedure

14.1 The license applicant, licensee, or video lottery agent or technology provider employee will contact the State Bureau of Identification or the Delaware State Police Video Lottery Enforcement Unit to make arrangements for fingerprint processing.

14.2 A fee is required to be paid for state and federal processing of fingerprint cards and criminal history cards and criminal history records. The fee is set by the State Bureau of Identification and payment is to be made directly to that agency.

14.3 Applicants must complete fingerprint cards with the necessary personal information to sign the waiver form to release criminal history to the Director or the Video Lottery Enforcement Unit. At the time of the processing, the applicant must show proof of identification to complete the criminal history request.

14.4 Certified copies of the criminal history record will be forwarded to the Director of the Lottery or the Video Lottery Enforcement Unit. The Lottery Director or Video Lottery Enforcement Unit will forward copies of the criminal history to license applicants or licensees. For employees of video lottery agents or technology providers, the Director or the Video Lottery Enforcement Unit will forward copies of the employee's criminal history to the employer's designated contact person upon request.

14.5 The State Bureau of Identification shall act as the intermediary for the receipt of the federal criminal history record checks performed by the Federal Bureau of Identification. The State Bureau of Identification shall forward the results of these federal record checks to the attention of the Lottery Director and/or the Video Lottery Enforcement Unit in a confidential manner.

14.6 A person subject to 29 **Del. C.** §4807A shall have the opportunity to respond to the Lottery Director regarding any information obtained prior to a determination of suitability for licensure. Such a response shall be made within ten (10) working days of the person's receipt of the criminal background information from the State Bureau of Identification.

The determination of suitability for licensure shall be made by the Lottery pursuant to the factors listed in 29 **Del. C.** §4807A regarding an applicant's criminal history. The Lottery will also consider the factors contained in 29 **Del. C.** chapter 48 and these Video Lottery Regulations in considering applications for licensure. The Lottery will consider the truthfulness of the applicant, licensee, or employee in disclosing their criminal history. Under 29 **Del. C.** §4805(a)(16)(17), the Lottery Director shall consider the background of key employees or video lottery operations employees in order to determine if the person's reputation, habits, and associations pose a threat to the public interest of the State or to the reputation of or effective regulation and control of the video lottery. It is specifically provided,

pursuant to 29 Del. C. §4805(a)(16)(17), that any person convicted of any felony, a crime involving gambling, or a crime of moral turpitude within ten (10) years prior to applying for a license or at any time thereafter shall be deemed unfit. The Director may determine whether the licensing standards of another state are comprehensive, thorough and provide similar adequate safeguards and, if so, may in the Director's discretion, license an applicant already licensed in such state without the necessity of a full application and background check. The Delaware State Police shall conduct the security, fitness, and background checks required by §4805(a)(16)(17) and the Video Lottery Regulations.

14.7 The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below.

(1) Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2) The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of the letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3) A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

(4) A person determined to be unsuitable for licensure pursuant to these Regulations shall be prohibited from reapplying for licensure for a period of twelve (12) months.

14.8 The Lottery or the Video Lottery Enforcement Unit will communicate the results of suitability in writing regarding an employee to either the video lottery agent or technology provider employing said individual. The Lottery will provide a copy of the criminal history record to the employee upon request.

14.9 All records pertaining to criminal background checks, pursuant to 29 Del. C. §4807A and copies of suitability determinations of applicants for licensure, shall be maintained in a confidential manner, including, but not limited to the following:

(1) Access to criminal background check records, and letters of reference accompanying out-of-state

criminal background checks, and determinations of suitability of applicants shall be limited to the Director and designated personnel;

(2) All such records shall be kept in locked, fireproof cabinets;

(3) No information from such records shall be released without the signed release of the applicant.

14.10 Subsequent criminal history shall be sent by the State Bureau of Identification to the Director of the Lottery and/or the Video Lottery Enforcement Unit. This subsequent criminal history information shall be used by the Lottery and the Video Lottery Enforcement Unit in making a determination about the person's continued suitability as a licensee or employee of a video lottery agent. The licensee or employee shall notify the Video Lottery Enforcement Unit within twenty-four (24) hours of any change in his criminal history information.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF LONG TERM CARE

Statutory Authority: 16 Delaware Code,
Sections 3001A-3006A (16 Del.C. §§3001A-3006A)

PUBLIC NOTICE

Delaware Health and Social Services (DHSS), in compliance with Senate Bill 20 passed in the 140th General Assembly, has prepared revised draft regulations governing training and qualifications for nursing assistants and certified nursing assistants as required in Title 16 Del.C., Chapter 30A.

These regulations address certified nursing assistant training, the composition of the certified nursing assistant training course and curriculum, the mandatory orientation period and senior certified nursing assistant certification.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Tuesday, November 6, 2001, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover

Thursday, November 8, 2001, 9:00 AM
Room 301, Main Building
Herman Holloway Campus

1901 N. DuPont Highway
New Castle

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

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

Elise MacEwan
Division of Long Term Care Residents Protection
3 Mill Road
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing November 8, 2001.

The Regulations currently in place are being replaced in their entirety by the new ones being submitted for publication on October 1, 2001.

Training and Qualifications for Nursing Assistants and Certified Nursing Assistants

~~57.606 — NURSE AIDE/NURSE ASSISTANT REQUIREMENTS:~~

~~Each nurse aide/nurse assistant employed by any nursing home either as contract/agency or facility staff as of October 1, 1990 shall be required to meet the following:~~

~~A. Training/Testing~~

~~1. Nurse aide/nurse assistant shall complete a nurse aide training course approved by the Delaware State Board of Nursing and by the State Board of Health.~~

~~2. Nurse aide/nurse assistant is required to pass competency evaluation test approved by the State of Delaware.~~

~~3. Employees of Delaware nursing homes shall by duly certified within 4 months of employment.~~

~~4. Contract aides must be certified prior to placement in any nursing home.~~

~~B. A nurse aide/nurse assistant who has not performed nursing related services for pay for a continuous 24 month period after completion of a training and testing program, must complete and pass a new training and competency evaluation (testing) program.~~

~~C. A nurse aide/nurse assistant who has not been employed in health care setting for three years will be required to meet the requirements in Section (A) above.~~

~~D. A nurse aide/nurse assistant trained and certified outside the State of Delaware may be deemed qualified to meet the Board of Health requirements based on a case by case review and approval.~~

~~E. Employees hired as nurse aide/nurse assistant who are currently, enrolled in a nursing program and have satisfactorily completed the fundamentals of nursing course with a clinical component will be deemed to meet the training and testing requirements. These individuals will be approved with submittal of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.~~

~~57.607 — NURSE AIDE TRAINING PROGRAM CURRICULUM~~

~~The following material identifies the minimum curriculum content for nurse aides/nursing assistants being prepared to work in nursing home facilities either as direct or contract staff.~~

~~The curriculum content for the nurse aide training program must include material which will provide a basic level of both knowledge and demonstrable skills for each individual completing the program. The program must be a minimum of 75 hours in length, divided equally between skills training and classroom instruction. Additional hours may be in either of these areas or both.~~

~~Programs may expand the curriculum content to provide opportunities for nurse aides to be placed in settings where nurse aides/nursing assistants are employed to perform basic skills as delegated by a licensed nurse in support of a professional plan of care.~~

~~A. THE NURSE AIDE ROLE AND FUNCTION~~

~~Key Concepts:~~

~~Introduces the characteristics of an effective nurse aide: — personal attributes, onthejob conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nurse aide as a member of the patient care team. Legal aspects of patient care and patient rights are presented. Relevant Federal and State statutes are referenced.~~

~~Competencies:~~

~~A.1 Function as a nurse aide within the legal and ethical standards setforth by the profession of nursing.~~

~~A.1.1 Define the role and functions of the nurse aide and provide awareness of the legal limitations of being a nurse aide.~~

~~A.1.2 Recognize the responsibilities of the nurse aide as a member of the health care team.~~

~~A.1.3 Identify the "chain of command" in the organizational structure of the health care agency.~~

~~A.1.4 Maintain acceptable personal hygiene and exhibit appropriate dress practices.~~

~~A.1.5 Recognize the importance of punctuality and commitment on the job.~~

~~A.1.6 Differentiate between ethical and unethical behavior on the job.~~

A.2 Demonstrate behavior which maintains resident's and/or client's rights:

A.2.1 Provide privacy and maintenance of confidentiality.

A.2.2 Promote the resident's right to make personal choices to accommodate individual needs.

A.2.3 Give assistance in resolving grievances.

A.2.4 Provide needed assistance in giving to and participating in resident and family groups and other activities.

A.2.5 Maintain care and security of resident's personal possessions.

A.2.6 Provide care which maintains the residents free from abuse, mistreatment or neglect and report any instances of such poor care to appropriate facility staff.

A.2.7 Maintain the resident's environment and care through appropriate nurse aide behavior so as to minimize the need for physical and chemical restraints.

B. Environmental Needs of the Patient

Key Concepts: Introduces the nurse aide to the need to keep patients safe from injury and infection in the long-term care setting. The nurse aide is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

B.1 Apply the basic principles of infection control:

B.1.1 Identify how diseases are transmitted.

B.1.2 Demonstrate handwashing technique.

B.1.3 Perform basic cleaning, disinfecting, and sterilizing tasks.

B.1.4 Demonstrate proper isolation and safety techniques in care of infectious resident.

B.2 Assist with basic emergency procedures:

B.2.1 Follow safety and emergency procedures.

B.2.2 Identify safety measures that prevent accidents to residents.

B.2.3 Recognize signs, when a resident is choking or may have an obstructed airway.

B.2.4 Assist with clearing obstructed airway.

B.2.5 Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

B.2.6 Follow disaster procedures.

B.2.7 Report emergencies accurately and immediately.

B.2.8 Identify potential fire hazards.

B.3 Provide a safe, clean environment:

B.3.1 Identify the resident's need for a clean and comfortable environment.

B.3.2 Report unsafe conditions.

B.3.3 Report pests.

B.3.4 Report nonfunctioning equipment.

B.3.5 Prepare soiled linen for laundry.

B.3.6 Clean and disinfect unit for admission or following discharge.

B.3.7 Arrange furniture and equipment for the resident's convenience.

C. PSYCHOSOCIAL NEEDS OF THE PATIENT

Key Concepts: Focus is placed on the social, emotional, recreational and religious needs of patients in a long-term care setting. It describes some of the physical, mental, and emotional changes associated with aging and institutionalization, and presents ways in which the nurse aide may effectively communicate with patients and their families.

Competencies:

C.1 Demonstrates appropriate and effective communication skills:

C.1.1 Demonstrate effective verbal and nonverbal communications in keeping with the nurse aide's role with residents and their families.

C.1.2 Observe by using the senses of sight, hearing, touch and smell to report resident behavior to the licensed nurse.

C.1.3 Document observations using appropriate terms.

C.1.4 Recognize the importance of maintaining the patient's record.

C.1.5 Communicate with residents according to their state of development.

C.2 Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease and related disorders.

C.2.1 Indicate the ways to meet the resident's basic human needs for life and mental well-being.

C.2.2 Modify his/her own behavior in response to resident's behavior.

C.2.3 Identify developmental tasks associated with the aging process.

C.2.4 Provide training in, and the opportunity for, self care according to resident's capabilities.

C.2.5 Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

C.2.6 Demonstrate skills supporting age appropriate behavior by allowing the resident to make personal choices, providing and reinforcing other behavior consistent with resident's dignity.

C.2.7 Utilize resident's family as a source of emotional support.

C.2.8 Recognize how age, illness and disability affect sexuality.

D. PHYSICAL NEEDS OF THE PATIENT

~~Key Concepts~~ Presents the basic skills which nurse use in the physical care of patients. nurse aide will learn basic facts about systems and what is needed to promote functioning. The nurse aide will learn provide physical care to patients safe to keep the patient clean, dry comfortable. The nurse aide will also learn to make observations regarding patients and to record and/or report observations. The nurse aide will learn to maintain range of motion while providing physical care to patient. Introduction of the basics of range of motion and its integration into routine personal care activities.

Competencies:

D.1 Apply the principles of basic nutrition in the preparation and serving of meals.

D.1.1 List general principles of basic nutrition.

D.1.2 Read the instructions for special diets.

D.1.3 Serve prepared foods as instructed.

D.1.4 Identify cultural variations in diet.

D.2 Recognize abnormal signs and symptoms of common diseases and conditions. Examples are:

D.2.1 Upper respiratory infection — Report coughing, sneezing, elevated temperatures, etc.

D.2.2 Diabetes — Report excessive thirst, frequent urination, change in urine output and drowsiness, excessive perspiration and headache.

D.2.3 Urinary tract infection — Report frequent urination, burning or pain on urination, change in color of urine, blood or sediment in urine and strong odors.

D.2.4 Cardiovascular conditions — Report shortness of breath, chest pain, blue color to lips, indigestion, sweating, change in pulse, etc

D.2.5 Cerebral vascular conditions — Report dizziness, changes in vision such as seeing double, etc., change in blood pressure, numbness in any part of the body, or inability to move arm or leg, etc.

D. 2.6 — Skin conditions — Report break in skin, discoloration such as redness, black and blue areas, rash, itching, etc.

D.2.7 Gastrointestinal conditions — Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, constipation. (Continue to list common diseases and conditions based on the population being served.)

D.3 Provide personal care and basic nursing skills as directed by the licensed nurse.

D.3.1 Provide for resident's privacy when providing personal care.

D.3.2 Assist the resident to dress and undress.

D.3.3 Assist the resident with bathing and personal grooming.

D.3.4 Observe and report condition of the skin.

D.3.5 Assist the resident with oral hygiene.

D.3.6 Administer oral hygiene for the unconscious resident.

D.3.7 Demonstrate measures to prevent decubitus, ulcers, i.e., positioning, turning, and applying heel and elbow protectors.

D.3.8 Assist the resident in using the bathroom.

D.3.9 Assist the resident in using a bedside commode, urinal and bedpan.

D.3.10 Demonstrate proper bed making procedures.

D.3.11 Feed residents oral table foods in an appropriate manner.

D.3.12 Distribute nourishment and water.

D.3.13 Accurately measure and record:

a. intake and output

b. height and weight

c. T,P,R

D.3.14 Assist the resident with shaving.

D.3.15 Shampoo and groom hair.

D.3.16 Provide basic care of toenails and fingernails if appropriate.

D.3.17 Assist with catheter care.

D.3.18 Assist the professional nurse with a physical examination.

D.3.19 Apply a nonsterile dressing.

D.3.20 Apply nonsterile compresses and soaks.

D.3.21 Apply cold and/or heat applications.

D.4 Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

D.4.1 Assist the resident in bowel and bladder training.

D.4.2 Assist the resident in activities of daily living and encourage self help activities.

D.4.3 Assist the resident with ambulation aids, i.e., cane, quad cane, walker, crutches, wheelchair and transfer aids, i.e. [†]hydraulic lifts.

D.4.4 Perform range of motion exercise as instructed by the physical therapist or the professional nurse.

D.4.5 Assist in care and use of prosthetic devices.

D.4.6 Assist the resident in proper use of body mechanics.

D.4.7 Assist the resident with dangling, standing and walking.

D.4.8 Demonstrate proper turning and/or positioning both in bed and in a chair.

D.4.9 Demonstrate proper technique of transferring resident from bed to chair.

D.5 One man cardiopulmonary resuscitation (CPR) skills in the checking of conscious and unconscious victims.

D.6 Provide care to resident when death is imminent.

D.6.1 Discuss own feelings and attitude about death.

D.6.2 Explain how culture and religion influence a person's attitude toward death.

D.6.3 Discuss the stages of dying.

D.6.4 Recognize and report the common signs of approaching death.

D.6.5 Provide care (if appropriate) to the resident's body after death.

57.608 INSTRUCTORS

A. Primary instructor As an individual responsible for overall coordination and implementation of nurse aide training program.

QUALIFICATIONS:

1. RN licensure in the State of Delaware.

2. Two (2) years nursing experience in caring for the elderly and/or chronically ill of any age.

3. For instructors without prior teaching experience:

a. Successful completion of a "Train the Trainer" program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies.

4. Waiver of the Train the Trainer requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

B. Program Trainer (s) is the individual (s) who provide assistance to primary instructors as resource personnel from the health field.

QUALIFICATIONS:

1. Trainers may include: registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical or occupational therapists, environmental health specialists, etc.

2. One (1) year of current experience in caring for the elderly and/or chronically ill of any age or have equivalent experience.

3. Trainers are to be licensed, registered and/or certified in their field, where applicable.

57.609 TRAINING FOR PRIMARY INSTRUCTORS

The approved instructors will develop into competent trainers, possessing the necessary skills to train nursing assistants to meet the established certification criteria. The trainers will understand the roles and responsibilities associated with training. They will be able to design and implement a training program, assess its value, and modify it as needed. They will recognize the characteristics of adult learners and create a training environment conducive to effective learning.

A. Training course outline shall include:

I. Role of trainer.

II. Communication techniques.

III. Demonstration skills.

IV. Teaching a process.

V. Teaching techniques.

VI. Training techniques.

VII. Developing a formal training plan.

B. Course Management Information

I. Training time will consist of sixteen minimum hours.

II. The instructor must have formal educational preparation or experience with skills of adult learning.

SECTION 57.7 PERSONNEL/ADMINISTRATIVE

57.701 The administrator (s) shall be responsible for complying with the regulations herein contained. In the absence of the administrator, an employee shall be authorized, in writing, to be in charge.

57.702 All administrators of nursing homes must be licensed by the Board of Examiners of Nursing Home Administrators. Such administrators must be full time (40 hours per week) employees.

57.703 A staff of persons sufficient in number and adequately trained to meet requirements for care shall be employed. In addition to the staff engaged in the direct care and treatment of patients, there must be sufficient personnel to provide basic services; such as: food service, laundry, housekeeping and plant maintenance.

57.704 No employee shall be less than sixteen (16) years of age, unless they have been issued proper working papers.

57.705 The institution shall have written personnel policies and procedures that adequately support sound patient care. Personnel records are to be kept current and available for each employee, and contain sufficient information to support placement in the positions to which assigned.

57.706 Minimum requirements for employee physical examination:

A. Each person, including volunteers, who is involved in the care of patients shall have a screening test for tuberculosis as a prerequisite to employment. Either a negative intradermal skin test or a chest xray showing no evidence of active tuberculosis shall satisfy this requirement.

B. A report of this test shall be on file at the facility of employment.

57.707 No person having a communicable disease shall be permitted to give care or service. All reportable communicable diseases shall be reported to the County Health Officer.

SECTION 57.8 SERVICES TO PATIENTS

57.801 General Services:

A. The skilled care nursing facility shall provide to all patients the care deemed necessary for their comfort, safety, nutritional requirements and general wellbeing.

B. The skilled care nursing facility shall have in effect a written transfer agreement with one (1) or more hospitals which provides the basis for effective working arrangements under which inpatient hospital care, or other hospital services, are available promptly to the facility's patients, when needed.

C. The skilled care nursing facility shall have a written provision for promptly obtaining required laboratory, xray and other diagnostic services. These services may be obtained from other facilities that are approved by the State Board of Health.

57.802 Medical Services:

A. All persons admitted to an institution (skilled care nursing home) shall be under the care of a licensed physician.

B. All nursing homes shall arrange for one (1) or more licensed physicians to be called in an emergency. Names and phone numbers of these physicians must be posted at all nurse's stations.

C. All orders for medications, treatments, diets, diagnostic services, etc. shall be in writing and signed by the attending physician.

D. All orders shall be renewed and signed by the physician at least every thirty (30) days.

E. A progress note shall be written and signed by the physician on each visit.

SECTION 69.100 - DEFINITIONS

69.101 Advanced Practice Nurse- shall mean an individual whose education and licensure meet the criteria outlined in 24 Del., C. Chapter 19 and who is certified in at least one of the following specialty areas: (1) Adult nurse practitioner; (2) Gerontological clinical nurse specialist; (3) Gerontological nurse practitioner; (4) Psychiatric/mental health clinical nurse specialist; (5) Family nurse practitioner.

69.102 Assisted Living Facility – Assisted living facility is a residential arrangement for fee licensed pursuant to 16 Del. C., Chapter 11.

69.103 Certified Nursing Assistant (CNA) – a duly certified individual under the supervision of a licensed nurse, who provides care which does not require the judgment and skills of a licensed nurse. The care may include, but is not limited to, the following: bathing, dressing, grooming, toileting, ambulating, transferring and feeding, observing and reporting the general well-being of the person(s) to whom they are providing care.

69.104 Department – the Department of Health and Social Services.

69.105 Division- the Division of Long Term Care Residents Protection.

69.106 Intermediate Care Facility - Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for intermediate care beds.

69.107 Licensed Nurse - shall mean a licensed practical nurse, registered nurse and/or advanced practice nurse whose education and licensure meet the criteria in 24 Del. C., Chapter 19.

69.108 Licensed Practical Nurse (LPN) – a nurse who is licensed as a practical nurse in Delaware or whose license is recognized to practice in the State of Delaware, and who may supervise LPN's, CNA's, NA's and other unlicensed personnel.

69.109 Nursing Assistant (NA) – an individual who has completed the requisite training to become a Certified Nursing Assistant but is awaiting certification.

69.110 Nursing Services Direct Caregivers- those individuals, as defined in 16 Del. C., Section 1161(e), assigned to the direct care of nursing facility residents.

69.111 Personal Care Services – those health-related services that include general supervision of, and direct assistance to, individuals in their activities of daily living.

69.112 Physician – a physician licensed to practice in the State of Delaware.

69.113 Registered Nurse (RN) – a nurse who is a graduate of an approved school of professional nursing and who is licensed in Delaware or whose license is recognized to practice in the State of Delaware.

69.114 Rehabilitation – the restoration or maintenance of an ill or injured person to self-sufficiency at his or her highest attainable level.

69.115 Resident – a person admitted to a nursing facility or similar facility licensed pursuant to 16 Del. C., Chapter 11.

69.116 Restraint – “physical restraints” are defined as any manual method or physical or mechanical device, material or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. “Chemical restraints” are defined as a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

69.117 Senior Certified Nursing Assistant – a Certified Nursing Assistant who has met the requirements and training specified in Section 4 of these regulations.

69.118 Skilled Care Facility – Facility licensed pursuant to 16 Del. C., Chapter 11 with a license designated for skilled care beds.

69.119 Student – a person enrolled in a course offering certification as a CNA.

69.120 Supervision – direct oversight and inspection of the act of accomplishing a function or activity.

SECTION 69.200 – GENERAL TRAINING REQUIREMENTS AND COMPETENCY TEST

Each Nursing Assistant/Certified Nursing Assistant employed by any nursing facility either as contract/agency or facility staff shall be required to meet the following:

69.201 An individual shall complete a nursing assistant training course approved by the Department on the recommendation of the CNA Training Curriculum Committee. The Committee shall consist of individuals with experience in the knowledge and skills required of CNAs.

69.202 Nursing Assistants are required to pass a competency test provided by the Department or by a contractor approved by the Department.

69.203 Nursing Assistants shall take the competency test within 30 days of completion of an approved program or when the nearest testing location is available to the nursing assistant, whichever is later. Nursing assistants who fail to obtain a passing score may repeat the test two additional times, but must obtain certification within 90 days of program completion. Nursing assistants who fail to obtain a passing score after testing three times must repeat the CNA training program before retaking the test, or they cannot continue to work as a nursing assistant.

69.204 A Certified Nursing Assistant must perform at least 64 hours of nursing related services in a health care setting during each 24-month certification period in order to qualify for recertification. A certified nursing assistant who does not perform at least 64 hours of nursing related services in a certification period must complete and pass a new training course and competency test, or competency test.

69.205 A Certified Nursing Assistant trained and certified outside the State of Delaware shall be deemed qualified to meet the Department's requirements based on a current certificate from the jurisdiction where he/she presently practices, documentation of the equivalent of one year of full-time experience as a certified nursing assistant and verification that he/she is in good standing on that jurisdiction's Registry.

69.206 Employees hired as Nursing Assistants/Certified Nursing Assistants who are currently enrolled in a nursing program and have satisfactorily completed a Fundamentals/Basic Nursing course with a clinical component will be deemed to meet the training requirements. These individuals will be approved to take the competency test upon submission of a letter from their school of nursing attesting to current enrollment status and satisfactory course completion as described.

69.207 For the purpose of calculating minimum staffing levels, any individual who has completed all of the classroom training and half of the clinical training in a facility sponsored training program **may** be considered as a member of such facility's staff while undergoing the last 37.5 hours of clinical training at such facility.

SECTION 69.300 - CNA TRAINING PROGRAM REQUIREMENTS

69.301 General

To obtain approval, the curriculum content for the Certified Nursing Assistant training programs shall meet each of the following requirements:

A. The curriculum shall include material that will provide a basic level of both knowledge and demonstrable skills for each individual completing the program.

B. The program shall be a minimum of 150 hours in length, divided equally between clinical skills training and classroom instruction. Additional hours may be in either of these areas or both.

C. Classroom instruction and demonstrated proficiency in each skill shall be completed prior to students' performing direct resident care. Programs shall maintain documentation of required skills that each student has successfully demonstrated to the RN instructor.

D. Classroom ratios of student to RN instructor shall not exceed 24:1. Clinical and laboratory ratios of student to instructor shall not exceed 8:1.

E. The RN instructor shall directly supervise students at all times during clinical instruction. Students shall remain in visual contact with the RN instructor in the clinical setting while performing any skills for which they have not yet demonstrated and the program has documented proficiency.

F. Programs must notify the State's recertification agency in writing when changes to the program or the program's personnel are made.

69.302 Equipment

All programs shall have available at a minimum the following equipment:

A. Audio/Visual (Overhead projector and/or TV with VCR)

B. Teaching Mannequin, Adult, for catheter and perineal care

C. Hospital Bed

D. Bedpan/Urinal

E. Bedside commode

F. Wheelchair

G. Scale

H. Overbed Table

I. Sphygmomanometer

J. Stethoscope

K. Resident Gowns

L. Thermometers, Glass and Electronic

M. Crutches

N. Canes (Variety)

O. Walker

P. Miscellaneous Supplies: i.e., Bandages, Compresses, Heating Pad, Hearing Aid, Dentures, Toothbrushes, Razors.

Q. Foley Catheter Drainage Bag

R. Hydraulic Lift

S. Adaptive eating utensils/equipment

69.303 Curriculum Content

The following material identifies the minimum competencies that the curriculum content shall develop. Nursing assistants being prepared to work in skilled, intermediate, or assisted living facilities either as direct or contract staff shall master each competency. All demonstrable competencies for each student must be documented as mastered by the RN instructor in order for a student to qualify as successfully having completed that section of programming.

A. THE NURSING ASSISTANT ROLE AND FUNCTION

Introduces the characteristics of an effective nursing assistant: personal attributes, on-the-job conduct, appearance, grooming, health and ethical behavior. Also presented are the responsibilities of the nursing assistant as a member of the resident care team. Legal aspects of resident care and resident rights are presented. Relevant Federal and State statutes are also reviewed.

Competencies:

(1) Function as a nursing assistant within the standards described below:

a. Define the role and functions of the nursing assistant and provide awareness of the legal limitations of being a nursing assistant.

b. Recognize the responsibilities of the nursing assistant as a member of the health care team. Understand the relevant State and Federal regulations for long term care and legalities of reporting and documenting incidents and accidents.

c. Understand the role of Long Term Care advocates, investigators and surveyors.

d. Identify the "chain of command" in the organizational structure of the health care agency.

e. Maintain personal hygiene and exhibit dress practices which meet professional standards.

f. Recognize the importance of punctuality and commitment to the job.

g. Differentiate between ethical and unethical behavior on the job.

h. Understand the role, responsibility and functional limitations of the nursing assistant.

(2) Demonstrate behavior that maintains resident's rights.

a. Provide privacy and maintenance of confidentiality.

b. Promote the resident's right to make personal choices to accommodate individual needs.

c. Give assistance in resolving grievances.

d. Provide needed assistance in going to and participating in resident and family groups and other activities.

e. Maintain care and security of

resident's personal possessions as per the resident's desires.

f. Provide care which ensures that the residents are free from abuse, mistreatment, neglect or financial exploitation and report any instances of such poor care to the Division of Long Term Care Residents Protection. Discuss the psychological impact of abuse, neglect, mistreatment, misappropriation of property of residents and/or financial exploitation.

g. Maintain the resident's environment and care through appropriate nursing assistant behavior so as to keep the resident free from physical and chemical restraints.

h. Discuss the potential negative outcomes of physical restraints, including side rails.

B. ENVIRONMENTAL NEEDS OF THE RESIDENT

Key Concepts: Introduces the nursing assistant to the need to keep residents safe from injury and infection in the long-term care setting. The nursing assistant is taught why and how to use infection control and isolation techniques. Safety through prevention of fires and accidents, and emergency procedures for fire and other disasters are presented.

Competencies:

(1) Apply the basic principles of infection control.

a. Identify how diseases are transmitted and understand concepts of infection prevention.

b. Demonstrate proper hand washing technique.

c. Demonstrate appropriate aseptic techniques in the performance of normal duties and understand the role of basic cleaning, disinfecting, and sterilization tasks.

d. Demonstrate proper isolation and safety techniques in the care of the infectious resident and proper handling and disposal of contaminated materials.

(2) Assist with basic emergency procedures.

a. Follow safety and emergency procedures.

b. Identify safety measures that prevent accidents to residents.

c. Recognize signs when a resident is choking or may have an obstructed airway.

d. Assist with clearing obstructed airway.

e. Call for help when encountering convulsive disorders, loss of consciousness, shock, hemorrhage, and assist the resident until professional help arrives.

f. Follow disaster procedures.

g. Report emergencies accurately and immediately.

h. Identify potential fire hazards.

(3) Provide a safe, clean environment.

a. Identify the resident's need for a clean and comfortable environment. Describe types of common accidents in the nursing home and their preventive measures. Be aware of the impact of environmental factors on the resident in all areas including but not limited to light and noise levels.

b. Report unsafe conditions to appropriate supervisor. Use the nurse call system effectively.

c. Report evidence of pests to appropriate supervisory personnel.

d. Report nonfunctioning equipment to appropriate supervisory/charge personnel.

e. Prepare soiled linen for laundry.

f. Make arrangement of furniture and equipment for the resident's convenience and to keep environment safe.

C. PSYCHOSOCIAL NEEDS OF THE RESIDENT

Key Concepts: Focus is placed on the diverse social, emotional, recreational and spiritual needs of residents in a long term care setting. The curriculum shall describe some of the physical, mental, and emotional changes associated with aging and institutionalization, and present ways in which the nursing assistant may effectively communicate with residents and their families.

Competencies:

(1) Demonstrate basic skills by identifying the psychosocial characteristics of the populations being served in the nursing facility including persons with mental retardation, mental illness and persons with dementia, Alzheimer's disease, developmental disabilities and other related disorders.

a. Indicate the ways to meet the resident's basic human needs for life and mental well being.

b. Modify his/her own behavior in response to resident's behavior. Respect the resident's beliefs recognizing cultural differences in holidays, spirituality, clothing, foods and medical treatments.

c. Identify methods to ensure that the resident may fulfill his/her maximum potential within the normal aging process.

d. Provide training in, and the opportunity for, self-care according to the resident's capabilities.

e. Demonstrate principles of behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior.

f. Demonstrate skills which allow the resident to make personal choices and promote the resident's dignity.

g. Utilize resident's family as a source of emotional support and recognize the family's need for

emotional support.

h. Recognize how age, illness and disability affect memory, sexuality, mood and behavior, including wandering.

i. Describe aggressive and wandering behavior; recognize responsibility of staff related to wanderers and aggressive residents.

j. Discuss how appropriate activities are beneficial to residents with cognitive impairments.

k. Recognize and utilize augmentative communication devices and methods of nonverbal communication.

(2) Demonstrate appropriate and effective communication skills.

a. Demonstrate effective verbal and nonverbal communications in keeping with the nursing assistant's role with residents, their families and staff.

b. Observe by using the senses of sight, hearing, touch and smell to report resident behavior to the licensed nurse.

c. Document observations using appropriate terms and participate in the care planning process.

d. Recognize the importance of maintaining the resident's record accurately and completely.

e. Communicate with residents according to their state of development. Identify barriers to effective communication. Recognize the importance of listening to residents.

f. Participate in sensitivity training in order to understand needs of residents with physical or cognitive impairments.

D. PHYSICAL NEEDS OF THE RESIDENT

Key Concepts: Presents the basic skills which nursing assistants use in the physical care of residents. The nursing assistant will learn basic facts about body systems and what is needed to promote good functioning. The nursing assistant will learn to provide physical care to residents safely and to keep the resident nourished, hydrated, clean, dry and comfortable. The nursing assistant will also learn to make observations regarding residents and to record and/or report observations. The nursing assistant will be introduced to the basics of range of motion and learn to integrate range of motion into routine personal care activities.

Competencies:

(1) Apply the principles of basic nutrition in the preparation and serving of meals.

a. Incorporate principles of nutrition and hydration in assisting residents at meals.

b. Understand basic physiology of nutrition and hydration.

c. Understand basic physiology of malnutrition and dehydration.

- d. Identify risk factors for poor nutritional status in the elderly:
- i. compromised skin integrity
 - ii. underweight or overweight
 - iii. therapeutic or mechanically altered diet
 - iv. poor dental status
 - v. drug-nutrient interactions
 - vi. acute/chronic disease
 - vii. depression or confusion
 - viii. decreased appetite
- e. Recognize how the aging process affects digestion.
- f. Accurately calculate and document meal intake and report inadequate intake or changes in normal intake.
- g. Accurately calculate and document fluid intake and report inadequate intake or changes in normal intake.
- h. Recognize and report signs and symptoms of malnutrition and dehydration.
- i. Understand concepts of therapeutic diets including dysphagia diets and the related risks associated with dysphagia including aspiration and aspiration pneumonia.
 - j. Incorporate food service principles into meal delivery including:
 - i. distributing meals as quickly as possible when they arrive from the kitchen to maintain food temperature.
 - ii. assisting residents with meal set-up if needed (i.e., opening packets or cartons, buttering bread if desired).
 - iii. serving meals to all residents seated together at the same time.
 - iv. offering appropriate substitutions if the residents don't like what they have received.
 - k. Utilize tray card or other mechanism to ensure the resident is served his/her prescribed diet and identify who to notify if a resident receives the wrong diet.
 - l. Demonstrate understanding of how to read menus.
 - m. Assist residents who are unable to feed themselves.
 - n. Demonstrate techniques for feeding someone who:
 - i. bites down on utensils
 - ii. can't or won't chew
 - iii. holds food in mouth
 - iv. pockets food in cheek
 - v. has poor lip closure
 - vi. has missing or no teeth
 - vii. has ill fitting dentures
 - viii. has a protruding tongue or tongue thrust
 - ix. will not open mouth
 - o. Demonstrate proper positioning of residents at mealtime.
 - p. Demonstrate skills for feeding residents who:
 - i. are cognitively impaired
 - ii. have swallowing difficulty
 - iii. have sensory problems
 - iv. have physical deformities
 - q. Demonstrate positioning techniques for residents who:
 - i. have poor sitting balance
 - ii. must take meals in bed
 - iii. fall forward when seated
 - iv. lean to one side
 - v. have poor neck control
 - vi. have physical deformities
 - r. Demonstrate use of assistive devices.
 - s. Identify signs and symptoms that require alerting a nurse, including:
 - i. difficulty swallowing or chewing
 - ii. coughing when swallowing liquids
 - iii. refusal of meal
 - iv. choking on food or fluids
 - v. excessive drooling
 - vi. vomiting while eating
 - vii. significant change in vital signs
 - t. Incorporate principles of a pleasant dining environment when assisting residents at mealtime including ensuring adequate lighting and eliminating background noise.
 - u. Demonstrate positive interaction with residents recognizing individual resident needs.
 - v. Ensure residents are dressed appropriately.
 - w. Allow residents to eat at their own pace.
 - x. Encourage independence and assist as needed.
 - y. Recognize and report as appropriate the risk factors and signs and symptoms of malnutrition, dehydration and fluid overload.
 - z. Accurately calculate and document intake and output including meal percentages and fluids.
- (2) Demonstrate understanding of basic anatomy and physiology in the following areas:
- a. Respiratory system
 - b. Circulatory system
 - c. Digestive system
 - d. Urinary system
 - e. Musculoskeletal system
 - f. Endocrine system

- g. Nervous system
- h. Integumentary system
- i. Sensory system
- j. Reproductive system

(3) Recognize abnormal signs and symptoms of common illness and conditions. Examples are:

- a. Respiratory infection – Report coughing, sneezing, elevated temperatures.
- b. Diabetes – Report excessive thirst, frequent urination, change in urine output, drowsiness, excessive perspiration and headache. Understand the healing process as it relates to diabetes.
- c. Urinary tract infection – Report frequent urination, burning or pain on urination, elevated temperature, change in amount and color of urine, blood or sediment in urine and strong odors.
- d. Cardiovascular conditions – Report shortness of breath, chest pain, blue color to lips, indigestion, sweating, change in pulse, edema of the feet or legs.
- e. Cerebral vascular conditions – Report dizziness, changes in vision such as seeing double, change in blood pressure, numbness in any part of the body, or inability to move arm or leg.
- f. Skin conditions – Report break in skin, discoloration such as redness, black and blue areas, rash, itching.
- g. Gastrointestinal conditions – Report nausea, vomiting, pain, inability to swallow, bowel movement changes such as color, diarrhea, and constipation.
- h. Infectious diseases.

(4) Provide personal care and basic nursing skills as directed by the licensed nurse in the appropriate licensed entity.

- a. Provide for resident's privacy and dignity when providing personal care.
- b. Assist the resident to dress and undress.
- c. Assist the resident with bathing and personal grooming.
- d. Observe and report condition of the skin.
- e. Assist the resident with oral hygiene, including prosthetic devices.
- f. Administer oral hygiene for the unconscious resident.
- g. Demonstrate measures to prevent decubitus ulcers, i.e., positioning, turning and applying heel and elbow protectors.
- h. Assist the resident in using the bathroom. Understand consequences of not assisting resident to the bathroom.
- i. Assist the resident in using a bedside commode, urinal and bedpan.
- j. Demonstrate proper bed making

procedures for occupied and unoccupied beds.

- k. Feed residents oral table foods in an appropriate manner. Demonstrate proper positioning of residents who receive tube feeding.
- l. Distribute nourishment and water.
- m. Accurately measure and record with a variety of commonly used devices:
 - i. Blood pressure
 - ii. Height and weight
 - iii. Temperature, pulse, respiration
- n. Assist the resident with shaving.
- o. Shampoo and groom hair.
- p. Provide basic care of toenails unless medically contraindicated.
- q. Provide basic care of fingernails unless medically contraindicated.
- r. Demonstrate proper catheter care.
- s. Demonstrate proper perineal care.
- t. Assist the licensed nurse with a physical examination.
- u. Apply a non-sterile dressing properly.
- v. Apply non-sterile compresses and soaks properly and safely.
- w. Apply cold and/or heat applications properly and safely.
- x. Demonstrate how to properly apply elastic stockings.
- y. Demonstrate proper application of physical restraints including side rails.

(5) Demonstrate skills which incorporate principles of restorative care under the direction of a licensed nurse.

- a. Assist the resident in bowel and bladder training.
- b. Provide enemas within the scope of duties of the nurse assistant.
- c. Assist the resident in activities of daily living and encourage self-help activities.
- d. Assist the resident with ambulation aids, i.e., cane, quadcane, walker, crutches, wheelchair and transfer aids, i.e., hydraulic lifts.
- e. Perform range of motion exercise as instructed by the physical therapist or the licensed nurse.
- f. Assist in care and use of prosthetic devices.
- g. Assist the resident in proper use of body mechanics.
- h. Assist the resident with dangling, standing and walking.
- i. Demonstrate proper turning and/or positioning both in bed and in a chair.
- j. Demonstrate proper technique of transferring resident from low and high bed to chair.

(6) Demonstrate safety and emergency

procedures including proficiency in the Heimlich maneuver.
 (7) Provide care to resident when death is imminent.

- a. Discuss own feelings and attitude about death.
- b. Explain how culture and religion influence a person's attitude toward death.
- c. Discuss the role of the CNA, the resident's family and significant others involved in the dying process.
- d. Discuss the stages of death and dying and the role of the nurse assistant.
- e. Provide care, if appropriate, to the resident's body after death.

SECTION 69.400 – MANDATORY ORIENTATION PERIOD

69.401 - SKILLED AND INTERMEDIATE CARE FACILITIES

A. GENERAL REQUIREMENTS

(1) All Nursing Assistants hired to work in a skilled or intermediate care facility, after completing 150 hours of training, shall undergo a minimum of 80 hours of orientation at least 40 of which shall be clinical. An exception to this requirement is that any Nursing Assistant who has undergone 150 hours of training, sponsored by the facility where the Nursing Assistant will be employed immediately thereafter, shall only be required to complete additional facility specific orientation of 40 hours in the same facility.

(2) All Certified Nursing Assistants hired to work in a skilled or intermediate care facility shall undergo a minimum of 80 hours of orientation; at least 40 of which shall be clinical.

(3) While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

(4) Any Certified Nursing Assistant or Nursing Assistant undergoing orientation **may** be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

B. ORIENTATION PROGRAM REQUIREMENTS

(1) The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

- a. Tour of the facility and assigned residents' rooms
- b. Fire and disaster plans
- c. Emergency equipment and supplies
- d. Communication (including the facility chain of command) and documentation requirements
- e. Process for reporting emergencies,

change of condition and shift report

f. Operation of facility equipment and supplies, including scales, lifts, special beds and tubs.

g. Review of the plan of care for each assigned resident including:

i. ADL/personal care needs
 ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

iv. Infection control procedures

v. Safety needs

(a.) Role and function of the CNA/NA

(b.) Resident rights/abuse reporting

(c.) Safety and body mechanics: transfer techniques

(d.) Vital signs

(e.) Psychosocial needs

(f.) Facility policies and procedures

(2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:

a. Taking and recording vital signs

b. Measuring and recording height and weight

c. Handwashing and infection control techniques

d. Caring for the resident's environment

e. Bathing and skin care, including foot and nail care

f. Grooming and mouth care, including denture care

g. Dressing

h. Toileting, perineal and catheter care

i. Assisting with eating and hydration

j. Proper feeding techniques

k. Positioning, turning and transfers

l. Range of motion

m. Bowel and bladder training

n. Care and use of prosthetic and orthotic devices

o. Assisting with ambulation

p. Measuring intake and output

q. Use of elastic stockings, heel and ankle protectors

r. Bedmaking skills

69.402 - ASSISTED LIVING FACILITIES

A. GENERAL REQUIREMENTS

(1) Nursing Assistants hired to work in an assisted living facility, after completing 150 hours of instruction, shall undergo a minimum 64 hours of orientation, at least 24 of which shall be clinical. An

exception to this requirement is that any Nursing Assistant who has undergone 150 hours of training in a training program sponsored by the facility where the Nursing Assistant will be employed immediately thereafter shall only be required to complete an additional 32 hours of facility specific orientation in the same facility.

(2) Certified Nursing Assistants hired to work in an assisted living facility shall undergo a minimum of 64 hours of orientation at least 24 of which shall be clinical.

(3) While undergoing orientation, Nursing Assistants shall have direct physical contact with residents only while under the visual observation of a Certified Nursing Assistant or licensed nurse employed by the facility.

(4) Any Certified Nursing Assistant or Nursing Assistant undergoing orientation **may** be considered a facility employee for purposes of satisfying the minimum facility staffing requirements as set forth by the Department.

B. ORIENTATION PROGRAM REQUIREMENTS

(1) The mandatory orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

- a. Tour of the facility and assigned residents' rooms
- b. Fire and disaster plans
- c. Emergency equipment and supplies
- d. Communication and documentation requirements
- e. Process for reporting emergencies, change of condition and shift report
- f. Operation of facility equipment and supplies, including but not limited to scales, lifts, and wheelchairs.
- g. Review of the plan of care for each assigned resident including:
 - i. ADL/personal care needs
 - ii. Nutrition, hydration and feeding techniques and time schedules
 - iii. Bowel and bladder training programs
 - iv. Infection control procedures
 - v. Safety needs
- h. Role and function of the CNA/NA
- i. Resident rights/abuse reporting
- j. Safety and body mechanics: transfer techniques
- k. Vital signs
- l. Psychosocial needs
- m. Facility policies and procedures

(2) Nursing Assistants shall satisfactorily demonstrate competency in clinical skills including:

- a. Taking and recording vital signs
- b. Measuring and recording height and weight

- c. Handwashing and infection control techniques
- d. Caring for the resident's environment
- e. Bathing and skin care
- f. Grooming and mouth care, including denture care
- g. Dressing
- h. Toileting, perineal and catheter care
- i. Assisting with eating and hydration
- j. Proper feeding techniques
- k. Positioning, turning and transfers
- l. Range of motion
- m. Bowel and bladder training
- n. Care and use of prosthetic and orthotic devices
- o. Assisting with ambulation
- p. Measuring intake and output
- q. Use of elastic stockings, heel and ankle protectors
- r. Bedmaking skill

69.403 - TEMPORARY AGENCIES

A. GENERAL REQUIREMENTS

(1) All Certified Nursing Assistants employed by temporary agencies and placed in a facility in which they have not worked within the previous six (6) months shall undergo a minimum of two (2) hours of orientation prior to beginning their first shift at the facility.

(2) Any Certified Nursing Assistant employed by a temporary agency and undergoing orientation shall **not** be considered a facility employee for purposes of satisfying the minimum facility staffing requirements.

(3) Nursing Assistants employed by a temporary agency must be certified prior to placement in any nursing home.

B. ORIENTATION PROGRAM REQUIREMENTS

(1) The mandatory two-hour orientation program shall include but is not limited to a review and written instruction on the following material by a licensed nurse:

- a. Tour of the facility and assigned residents' rooms
- b. Fire and disaster plans
- c. Emergency equipment and supplies
- d. Communication and documentation requirements
- e. Process for reporting emergencies, change of condition and shift report
- f. Operation of facility equipment and supplies including but not limited to scales, lifts, special beds and tubs
- g. Review of the plan of care for each assigned resident including:
 - i. ADL/personal care needs

ii. Nutrition, hydration and feeding techniques and time schedules

iii. Bowel and bladder training programs

- iv. Infection control procedures
- v. Safety needs

SECTION 69.500 - VOLUNTARY SENIOR CERTIFIED NURSING ASSISTANT CERTIFICATION

69.501 - TRAINING REQUIREMENTS AND COMPETENCY TEST

Any Certified Nursing Assistant may pursue designation as a Senior Certified Nursing Assistant and shall be so designated if such individual meets the following minimum requirements:

A. Has been a Certified Nursing Assistant for a minimum of three years, in good standing with no adverse findings entered on the Nurse Aide Registry;

B. Has successfully completed an additional 50 hours of advanced training in a program approved by the Department;

C. Has passed a competency test provided by the Department or by a contractor approved by the Department.

69.502 - VOLUNTARY SENIOR CNA CURRICULUM

The Senior CNA program must meet the same requirements as those specified in Section 2 of these regulations in terms of classroom ratios of students to instructors. The Senior CNA curriculum must meet the following minimum course content, which will provide an advanced level of knowledge and demonstrable skills. All demonstrable competencies shall be documented by the RN instructor.

A. LEADERSHIP TRAINING AND MENTORING SKILLS

Key Concepts: Senior Certified Nursing Assistants will learn how to teach new Nursing Assistants standards of care. Senior CNAs will learn how to be a role model and preceptor for new Nursing Assistants and CNAs. Senior CNAs will learn how to prepare assignments, conduct team meetings and resolve conflicts.

Competencies: Function effectively as a team leader and mentor/preceptor within the facility.

(1) Define the role and functions of an effective team leader and mentor.

(2) Identify principles of adult learning.

(3) Recognize various learning styles and communication barriers.

(4) Assess learner knowledge.

(5) Supervise, evaluate and act as a preceptor for the Nursing Assistant and Certified Nursing Assistant during orientation.

(6) Demonstrate effective communication techniques.

(7) Recognize the importance of teamwork.

(8) Actively participate in resident care plan and team meetings.

(9) Identify strategies for conflict management.

(10) Learn how to prepare assignments, assist with scheduling and other administrative duties.

B. DEMENTIA TRAINING

Key Concepts: The senior CNA will gain greater knowledge of Alzheimer's Disease and related dementias. The senior CNA will gain the skills necessary to effectively care for residents exhibiting signs and symptoms of dementia. The senior CNA will act as a role model and resource person for other CNAs.

Competencies: Demonstrate appropriate skills and techniques necessary to provide care to residents exhibiting signs and symptoms of dementia.

(1) Recognize signs and symptoms of Alzheimer's Disease and related disorders.

(2) Identify types of dementias.

(3) Discuss methods for managing difficult behavior.

(4) Demonstrate effective communication techniques.

(5) Recognize specific issues that arise in providing care to persons with Alzheimer's Disease and other memory loss conditions and appropriate interventions for dealing with these problems including, but not limited to, agitation, combativeness, sundown syndrome, wandering.

C. ADVANCED GERIATRIC NURSING ASSISTANT TRAINING

Key Concepts: The senior CNA will gain greater knowledge of anatomy and physiology with emphasis on the effects of aging. The senior CNA will effectively carry out restorative nursing skills as specified in the resident's plan of care.

Competencies:

(1) Verbalize understanding of anatomy, physiology and pathophysiology of common disorders of the elderly.

a. Describe the effects of aging on the various organs and systems within the body.

b. Describe signs and symptoms of common disorders.

c. Describe the pathophysiology of common disorders.

d. Identify measures to assist residents with common medical problems (e.g., promoting oxygenation in residents with breathing problems).

e. Observe, report and document condition changes using appropriate medical terminology.

f. Recognize basic medical emergencies

and how to respond appropriately.

(2) Maintain or improve resident mobility and the resident's ability to perform activities of daily living. Understand the reasons for rehabilitation (physiologically), reasons for, and benefits of Restorative Nursing and be able to demonstrate the same.

a. Assist the resident with exercise routine as specified in his/her care plan.

b. Carry out special rehabilitation procedures as ordered including working with the visually impaired, special feeding skills/devices, splints, ambulatory devices and prostheses.

c. Identify ways to prevent contractures.

d. Effectively communicate with the Rehabilitation Department.

SECTION 69.600 – SENIOR CNA TRAINING PROGRAM INSTRUCTORS

A. The Primary Instructor is an individual responsible for the overall coordination and implementation of the senior certified nursing assistant training program. The primary instructor is present and available during clinical training. The primary instructor and all who serve as instructors in the program must meet the following qualifications:

(1) RN licensure in the State of Delaware.

(2) Three (3) years nursing experience in caring for the elderly or chronically ill of any age.

(3) Instructors shall demonstrate:

a. Successful completion of "Train-the-Trainer" program which provides preparation in teaching adult learners principles of effective teaching and teaching methodologies or:

b. Successful completion of a college level course of at least one semester in length, that was related to education and the principles of adult learning.

(4) Waiver of the Train-the-Trainer and the college level education course requirement is made for those nurses who demonstrate at least one (1) year of continuous teaching experience at the nursing assistant or LPN or RN program level.

B. Program Trainer(s) may provide assistance to instructors as resource personnel from the health field. They may provide limited assistance and instruction in the senior certified nursing assistant program. Senior CNAs are excluded from conducting training. Program trainers shall meet the following qualifications:

(1) Trainers shall be registered nurses, licensed practical nurses, pharmacists, dietitians, social workers, physical, speech or occupational therapists, environmental/fire safety specialists, activity directors, or other licensed health care professionals.

(2) One (1) year of current experience in caring for the elderly or have equivalent experience.

(3) Trainers shall be licensed or certified in their field, where applicable.

SECTION 69.700 – TRAIN-THE-TRAINER PROGRAM REQUIREMENTS

Each train-the-trainer program shall ensure that an RN designated as primary instructor meets the following minimum requirements:

69.701 TRAINING COURSE CONTENT

A. Role of Trainer

B. Communication techniques

C. Demonstration skills

D. Teaching a process

E. Teaching techniques

F. Training techniques

G. Developing a formal training plan

69.702 COURSE MANAGEMENT INFORMATION

A. Training time shall consist of sixteen minimum hours.

B. The train-the-trainer instructor must have formal educational preparation or experience with skills of adult learning.

DIVISION OF PUBLIC HEALTH **Health Systems Protection Section** Statutory Authority 16 Delaware Code, Section 4711(1) (16 Del.C. 4711(1))

Notice of proposed amendments to the Uniform Controlled Substance Act

Under the authority set forth in 16 **Del.C.**, Section 4711 (1), the Secretary of the Department of Health and Social Services proposes amendments to 16 **Del.C.** §4716(g) and §4718(1). The amendments to these two Statutes will reschedule the drug Dronabinol in the Delaware Controlled Substances Act following the rescheduling of Dronabinol within the federal schedules of controlled substances by the Attorney General of the United States pursuant to 21 USC §811.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of the controlled substance rescheduling of Dronabinol from schedule II to schedule III. This amendment mimics the federal rescheduling of this drug. The amendment will remove Dronabinol from 16 **Del.C.** 4716(g) and place Dronabinol in 16 **Del.C.** 4718 (1)

The public hearing will be held on Wednesday, October 31, 2001, at 1:00 PM, in the 3rd floor conference room (Rm 309), Jesse Cooper Building, Federal and Water Streets, Dover, Delaware. Information concerning the proposed rescheduling of Dronabinol is available at the following locations:

Office of Narcotics & Dangerous Drugs
 Jesse Cooper Building
 Federal & Water Streets
 P.O. Box 637
 Dover, DE 19903
 (302) 739-4798

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by October 30, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by November 1, 2001, to:

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

PROPOSED 16 Del.C. STATUTE AMENDMENTS

§4716. Schedule II.

(a) The controlled substances listed in this section are included in Schedule II.

(b) Any of the following substances, except those narcotics drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- 1) Opium and opiate, and any salt compound derivative or preparation of opium or opiate.
- 2) Any salt, compound, isomer, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium.
- 3) Opium poppy and poppy straw.
- 4) Coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, derivative or preparation of coca leaves, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever

the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- 1) Alphaprodine;
- 2) Anileridine;
- 3) Bezitramide;
- 4) Dihydrocodeine;
- 5) Diphenoxylate;
- 6) Fentanyl;
- 7) Isomethadone;
- 8) Levo-alpha-acetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, "LAAM")
- 9) Levomethorphan;
- 10) Levorphanol;
- 11) Metazocine;
- 12) Methadone;
- 13) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 14) Moramide-Intermediate 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid;
- 15) Pethidine;
- 16) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- 17) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- 18) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- 19) Phenazocine;
- 20) Piminodine;
- 21) Racemethorphan;
- 22) Racemorphan;
- 23) Sufentanil; and
- 24) Alfentanil.

(d) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

- 1) Amphetamine, its salts, optical isomers and salt of its optical isomers;
- 2) Phenmetrazine and its salts;
- 3) Any substance which contains any quantity of methamphetamine including its salts, isomers and salts of isomers; and
- 4) Methylphenidate.

(e) Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- 1) Methaqualone and its salts;
- 2) Amobarbital;
- 3) Secobarbital;
- 4) Pentobarbital;
- 5) Phencyclidine;
- 6) Phencyclidine Immediate Precursors:
 - a) 1-Phenylcyclohexylamine; and

b) 1-Piperidinocyclohexane Carbonitrile (PCC); and

7) Glutethimide.

(f) 1) Immediate Precursor to Amphetamine and Methamphetamine.

2) Phenylacetone (P-2-P).

~~(g) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. (16 Del.C. 1953, § 4716; 58 Del. Laws, c. 424, § 1; 59 Del. Laws, c. 59, § 1; 66 Del. Laws, c. 66 § 1; 67 Del. Laws, c. 201 § 2.)~~

§4718. Schedule III.

(a) The controlled substances listed in this section are included in Schedule III.

(b) Unless specifically excepted or unless listed in another schedule, any compound, mixture or preparation containing limited quantities of any stimulant drugs or any salts, isomers or salts of isomers thereof and 1 or more active medicinal ingredients not having a stimulant effect on the central nervous system and in such combinations, quantity, proportion or concentration that reduce the potential abuse of the substances which have a stimulant effect on the central nervous system:

(c) Unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system.

1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules;

- 2) Chlorhexadol;
- 3) Lysergic acid;
- 4) Lysergic acid amide;
- 5) Methyprylon;
- 6) [Rescheduled];
- 7) Sulfondiethylmethane;
- 8) Sulfonethylmethane; and
- 9) Sulfonmethane.

(d) Nalorphine.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof;

1) Not more than 1.8 grams of codeine or any of its salts per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

2) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

3) Not more than 300 milligrams of

dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

4) Not more than 300 milligrams of dihydrocodeinone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

5) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts;

6) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with 1 or more ingredients in recognized therapeutic amounts;

7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts; and

8) Not more than 50 milligrams of morphine or any of its salts per 100 milliliters or per 100 grams with 1 or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids and combinations:

- 1) Boldenone;
- 2) Chlorotestosterone (4-dihydrotestosterone);
- 3) Clostebol;
- 4) Dehydrochlormethyltestosterone;
- 5) Dihydrotestosterone (4-dihydrotestosterone);
- 6) Drostanolone;
- 7) Ethylestrenol;
- 8) Fluoxymesterone;
- 9) Formebolone (formebolone);
- 10) Mesterolone;
- 11) Methandienone;
- 12) Methandranone;
- 13) Methandriol;
- 14) Methandrostenolone;
- 15) Methenolone;
- 16) Methyltestosterone;
- 17) Mibolerone;
- 18) Nandrolone;
- 19) Norethandrolone;
- 20) Oxandrolone;
- 21) Oxymesterone;
- 22) Oxymetholone;
- 23) Stanolone;
- 24) Stanozolol;
- 25) Testolactone;
- 26) Testosterone;
- 27) Trenbolone; and
- 28) Any salt, ester, or isomer of a drug or substance

described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

- (g) Clortermine.
- (h) Benzphetamine.
- (i) Chlorphentermine.
- (j) Phendametrazine.
- (k) Ketamine
- (l) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product.

(+) (m) The Secretary may except by rule any compound, mixture or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture or preparation contains 1 or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(+) (n) Any anabolic steroid, as listed in subsection (f), which is a combination of estrogen and anabolic steroid and which is expressly intended for administration to hormone-deficient women, shall be exempt from the provisions of this chapter. If any person prescribes, dispenses or distributes an anabolic steroid which is a combination of estrogen and anabolic steroid for use by persons who are not hormone-deficient women, such person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this chapter. (16 Del. C. 1953, § 4718; 58 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 201 § 1; 70 Del. Laws, c. 81 § 2; 71 Del. Laws, c. 50, § 1.)

DIVISION OF PUBLIC HEALTH
Health Systems Protection Section
 Statutory Authority 16 Delaware Code,
 Section 4731 (16 Del.C. 4731)

The proposed amendment to the Uniform Controlled Substance Regulation #4 is to be adopted in accordance with Title 16, Delaware Code, Section 4731.

The amendment to Regulation #4, paragraph (h) as attached will provide greater quantities of controlled substances to be dispensed while still protecting the public's safety and welfare. This amendment would provide for at least a 31-day supply and a mechanism for the pharmacist to validate an outdated and otherwise voided schedule II or III controlled substance prescription via practitioner authorization.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of the regulatory amendment to Regulation 4, paragraph (h) of the Uniform Controlled Substance Regulations. This amendment will provide greater quantities of controlled substances to be dispensed while still protecting the public's safety and welfare. This amendment would provide for at least a 31-day supply and a mechanism for the pharmacist to validate an outdated and otherwise voided schedule II or III controlled substance prescription via practitioner authorization.

The public hearing will be held on Wednesday, October 31, 2001, at 10:00 AM, in the 3rd floor conference room (Rm 309), Jesse Cooper Building, Federal and Water Streets, Dover, Delaware. Information concerning the proposed regulatory amendment is available at the following locations:

Office of Narcotics & Dangerous Drugs
 Jesse Cooper Building
 Federal & Water Streets
 P.O. Box 637
 Dover, DE 19903
 (302) 739-4798

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by October 30, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by November 1, 2001, to:

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

PROPOSED REGULATION AMENDMENT

Uniform Controlled Substance Regulations Regulation #4 - - Prescriptions

- h. Expiration of Prescription
 Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or if the original prescriber authorizes the prescription past the seven (7) days period. Such prescriptions cannot be written nor dispensed for more than 100 dosage units ~~nor can more than 100 dosage units be dispensed~~ or a 31 day supply whatever is the greater at one time. As an exception to dosage limitations

set forth in this subparagraph, and in accordance with 21 C.F.R. Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.

UNIFORM CONTROLLED SUBSTANCES ACT REGULATIONS

(Adopted by the Secretary of Health and Social Services pursuant to 16 Del. C. § 4731 effective February, 1973 amended July 8, 1974, May 27, October 30, 1975, September 27, 1976, February 1, 1983, July 1, 1985, January 28, 1987, March 5, 1992, and August 29, 1995.)

1. Adoption of Federal Regulations

To the extent consistent with 16 Del. C. Ch. 47, regulations promulgated by the Federal Government pursuant to the Federal Comprehensive Drug Abuse Prevention and Control Act of 1970, and in effect as of this date, are adopted as a part of these regulations.

Readopted October 30, 1975.

2. Requirements

a. Requirements

Registration shall be on a biennial basis upon forms supplied by the Secretary for that purpose. The registration fee for prescribers, dispensers, researchers and laboratories will be \$40. The registration fee for manufacturers or distributors will be \$100. A separate registration is required at each principal place of business or professional practice where controlled substances are manufactured, distributed, dispensed, or kept for research substances are manufactured, distributed, dispensed, or kept for research or analysis.

b. Revocation and Suspension

1) Revocation of registration by the Federal Government will result in automatic revocation of the State registration.

2) Proceedings for denying, suspending or revoking a Registration shall be informal in nature. Persons complained against may appear personally or by counsel, and may produce any competent evidence in their behalf in

answer to the alleged violation. Such proceedings shall be tape recorded.

3) Whenever a registration is denied, suspended, or revoked, the Secretary or his designee will reduce in writing his findings and rulings, and the reasons therefore, and forward them to the persons complained against within 15 days. This provision shall in no way stay any such denial, suspension, or revocation.

3. Records and Inventory

a. Requirements

1) Practitioners authorized to prescribe or dispense controlled substance shall maintain a record with the following information:

- (a) Name and address of patient
- (b) Date prescribed
- (c) Name, strength and amount of medication.

2) Other records required by 21 CFR 1300 to end of 1316. The information for prescribed controlled substances may be kept either in a log or on patient records provided such records or logs are made available for inspection. The information for dispensed controlled substances must be maintained in a separate log at least 8 by 11 inches in dimension. Entries must include the date dispensed, name and address of the patient, name and strength of medication, and amount dispensed.

3) Other persons registered to manufacture, distribute, or dispense controlled substances shall maintain a record with the following information:

- (a) Amount received or distributed.
- (b) Names, addresses and dates regarding these transactions.

(c) Other records required by 21 CFR 1300 to the end of 1316.

b. Accountability Audits

1) Pharmacies - Accountability audits in pharmacies will be accomplished through a review of invoices, prescription files, other records required by 21 CFR 1300 to the end of 1316.

2) Medical, dental and veterinary - Accountability audits of medical, dental and veterinary practitioners will be accomplished through a review of records to be kept by paragraph (a) of this section.

3) Manufacturers and distributors - Accountability audits of manufacturers and distributors (including wholesalers) will be accomplished through a review of invoices received and distributed and other records required by 21 CFR 1300 to the end of 1316.

c. Final inventory

1) Pharmacies

Whenever the pharmacist in charge of a pharmacy in the State of Delaware leaves his position, a complete inventory of all medication covered by 16 Del. C., Ch. 47 will be taken by the present and prospective

pharmacist-in-charge. A copy of such inventory will be sent to the Office of Narcotics and Dangerous Drugs and another copy retained on the premises. For the purpose of this regulation, the "pharmacist-in-charge" is a pharmacist registered with the State Board of pharmacy and who is responsible for the prescription department of the registrant.

2) Medical, dental and veterinary

Medical, dental and veterinary practitioners who cease legal existence or discontinue business or professional practice shall notify the Office of Narcotics and Dangerous Drugs promptly of such fact, and shall provide the Office with an inventory of controlled substance on hand.

d. Retention of Records

All records required by this Regulation must be retained for a period of at least two (2) years.

4. Prescriptions

a. Definitions

As used in this section:

1) The term "Act" means the Controlled Substance Act, 16 Del. C., Ch. 47.

2) The term "individual practitioner" means physician, dentist, veterinarian, or other individual, licensed, registered, or otherwise permitted, by the United States or the State of Delaware to dispense a controlled substance in the course of professional practice but does not include a pharmacist, a pharmacy, or an institutional practitioner.

3) The term "pharmacist" means any pharmacist licensed by the State of Delaware to dispense controlled substances and shall include any other person (e.g. pharmacist intern) authorized by the State of Delaware to dispense controlled substances under the supervision of a pharmacist licensed by this State.

4) The term "prescription" means an order for medication which is dispensed to or for an ultimate user but does not include an order for medication which is dispensed for immediate administration to the ultimate user. (e.g. an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

5) The terms "register" and "registered" refer to registration required by 16 Del. C., §4732.

b. Persons Entitled to Issue Prescriptions

1) A Prescription for a controlled substance may be issued only by an individual practitioner who is:

(a) Authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

(b) Either registered or exempt from registration pursuant to 16 Del. C. § 4732.

2) A verbal prescription for a controlled substance may only be communicated to a pharmacist by the prescriber. Prescriptions for controlled substances communicated by an employee or agent of the prescriber are

not valid.

3) Written prescriptions for controlled substances may be transmitted via facsimile by a practitioner or by the practitioner's authorized agent to a pharmacy only when the transmission complies with 21 CFR 1306.11, 1306.21 and 1306.31.

c. Purposes of Issue of Prescription

1) A prescription for a controlled substance to be effective, must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription not issued in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of §4738 of the Act and the person knowingly filling such a purported prescription, as well as the person issuing it shall be subject to the penalties provided for violation of the provisions of law relating to controlled substances.

2) A prescription may not be issued in order for an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients.

3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs, unless otherwise authorized by law.

d. Manner of Issuance of Prescriptions

1) All prescriptions for controlled substances shall be dated and signed on the day when issued and shall bear the full name and address of the patient, and the name, address and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g. J.H. Smith or John H. Smith). When an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or typewriter and shall be manually signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner but the prescribing practitioner is responsible where the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations. Each written prescription shall have the name of the practitioner stamped, typed, or hand-printed on it, as well as the signature of the practitioner.

e. Persons Entitled to fill Prescriptions

A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or

employed in a registered pharmacy or by a registered institutional practitioner.

f. Dispensing Narcotic Drugs for Maintenance Purposes

No person shall administer or dispense narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence except in compliance with and as authorized by Federal law and regulation.

g. Emergency Dispensing of Schedule II Substances

In an emergency situation a pharmacist may dispense controlled substances listed in Schedule II upon receiving oral authorization of a prescribing individual practitioner, provided that the procedures comply with Federal law and regulation.

h. Expiration of Prescription

Prescriptions for controlled substances in Schedules II and III will become void unless dispensed within seven (7) days of the original date of the prescription or if the original prescriber authorizes the prescription past the seven (7) days period. Such prescriptions cannot be written nor dispensed for more than 100 dosage units ~~nor can more than 100 dosage units be dispensed~~ or a 31 day supply whatever is the greater at one time. As an exception to dosage limitations set forth in this subparagraph, and in accordance with 21 C.F.R. Section 1306.1(b), prescriptions for controlled substances in Schedule II for patients either having a medically documented terminal illness or patients in Long Term Facilities (LTCF), may be filled in partial quantities, to include individual dosage units. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed and the identification of the dispensing pharmacist. The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for terminally ill or LTCF patients, shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of the medication.

i. Mail Order Prescription

Before dispensing prescriptions for Schedules II, III, IV, V controlled substances by mail, the registrant and/or the pharmacist-in-charge must assure that the prescription is valid and written by a prescriber properly registered with the Federal Government. Such verification may be made either in writing or orally.

j. Pursuant to authority granted by 16 Del. C. §4732 the Secretary finds that waiver of the registration requirements contained in that section as to non-resident physicians or dentists is consistent with the public health and safety subject to the conditions contained in this regulation. Pharmacists may dispense controlled substances pursuant to

a prescription written by a non-resident physician or dentist (who is not registered under 16 Del. C., Ch. 47) provided that:

1) The pharmacist must establish that the non-resident physician or dentist is properly registered to prescribe controlled substances under Federal Law. The pharmacist may keep a record which contains the name and address of the non-resident physician or dentist, his Federal registration number, and the name and address of the source of the registration data.

2) The pharmacist must verify the identification of the bearer of the prescription by reference to a driver's license or some other identification which contains the bearer's photograph, and must keep a record of such person.

3) The pharmacist must establish that the name of the non-resident physician or dentist does not appear on the list kept by the Office of Narcotics and Dangerous Drugs of the Division of Public Health of those non-resident physicians and dentists to whom the waiver granted by this regulation does not apply.

The waiver of the registration requirement provided by the registration shall not apply to non-resident physicians and dentists determined by the Office of Narcotics and Dangerous Drugs of the Division of Public Health to have acted in a manner inconsistent with the Public Health and Safety, and Safety, and the Office of Narcotics and Dangerous Drugs shall maintain a list of those non-resident physicians and dentists found by them to have so acted. Pharmacists shall not honor the prescriptions of non-resident physicians and dentists whose names appear on that list unless such non-resident physicians and dentists have registered pursuant to the provisions of 16 Del. C. § 4732.

k. Except when dispensed directly by a practitioner other than a pharmacy to an ultimate user, no Schedule V cough preparation containing codeine, dilaudid or any other narcotic cough preparation may be dispensed without the written or oral prescription of a practitioner - effective date January 1, 1974.

l. The pharmacist or an employee under his/her supervision must verify the identity of the person receiving a dispensed controlled substance at the time it is transferred to that person. A driver's license or a similar document containing a photograph and the name and address of the person is an acceptable document. The name and address of the person should be recorded on either the prescription or patient's profile. The pharmacist or employee is not required to follow this procedure for each transaction if the identify of the person is clearly established by visual recognition. In those cases, the information shall be recorded at least once.

5. Security and Disposal

a. Security

1) Schedule II Substances Storage

(a) Pharmacies and medical, dental and

veterinary practitioners must store Schedule II controlled substances in a burglar resistant type safe or GSA Class 5 grade steel cabinet or their equivalent. If the safe weighs less than 750 pounds, it must be bolted, cemented, or secured to the wall or floor in such a way that it cannot be readily removed. Other types of substantially construed, securely locked cabinets or drawers are acceptable provided that the room, storage area or areas shall be provided with electronic intrusion detection equipment to all sections of the said area or areas where Schedule II controlled substances are stored, so as to detect four-step movement (as defined in Section 12.8 of U.L. Standards 681). The aforementioned electronic intrusion detection equipment shall be installed using equipment that must be U.L. approved and listed. The said system must be capable of transmitting a local alarm to an outside audible device that shall comply with U.L. Standard 4.64. A local alarm connection shall not be permitted if the controlled substance premise is located more than 400 feet from a public roadway. If said controlled substances premise is more than 400 feet from public roadway or found to be within a location where such an alarm would not be effective, then the alarm system on said controlled substances premises shall transmit an alarm signal to a certified station or directly into a law enforcement agency that has 24-hour monitoring capabilities. The Secretary may require additional security requirements if he deems it necessary as a result of excessive diversion of controlled substances. DEFINITIONS: Four-step movement - 12.8 - The system shall respond to the movement of a Four-step person walking not more than four consecutive steps at a rate of one step per second. Such Four-step movement shall constitute a "trial", and a sufficient number of detection units shall be installed so that, upon test, an alarm will be initiated in at least three out of every four consecutive "trials" made moving progressively through the protective area.

(b) Safes, cabinets or drawers containing Schedule II controlled substances must be kept locked at all times. They may be opened only by the practitioner or by the pharmacist-in charge or other designees, who must be licensed medical professionals.

(c) Practitioners who store no more than 400 total dosage units of Schedule II substances are not required to comply with the safe or alarm requirements of the Regulation. However, their Schedule II controlled substances must be stored in securely locked, substantially constructed cabinets.

(d) Controlled substances listed in Schedules III, IV and V shall be stored in a securely locked, substantially constructed cabinet. Pharmacies may disperse such substances in Schedule III, IV and V throughout the stock of non-controlled substances in such a manner as to obstruct the theft or diversion of the controlled substances. The immediate area in a pharmacy containing dispersed, controlled drugs must be secured in a manner approved by

the Office of Narcotics and Dangerous Drugs which will prevent entry by unauthorized persons. The keys to such area shall at all times be carried by a pharmacist. The doors shall be locked whenever the area is not directly under the supervision of a pharmacist or a responsible person designated by the pharmacist.

2) Pharmacies

Schedule II controlled substances kept in areas other than prescription areas in pharmacies must be placed in safes, cabinets or drawers of the type described above. These must be kept locked at all times and may be opened only by the pharmacist-in-charge or his designee, who must also be a registered pharmacist. Schedule III through V controlled substances kept in areas other than prescription areas in pharmacies must be kept in adequately locked enclosures. They may be opened only by the pharmacist-in-charge, or his designees, who must be licensed pharmacists.

3) Report of Loss or Theft

Registrants shall notify the Office of Narcotics and Dangerous Drugs, Division of Public Health, of any theft or significant loss of any controlled substances, or of any prescription blanks, upon the discovery of such loss or theft. In addition, registrants shall complete the Federal forms regarding such loss or theft, one copy of which must be filed with the Office of Narcotics and Dangerous Drugs.

4) Hypodermic syringes and needles must be secured in an area only accessible to personnel authorized under 16 Del. C., Ch. 47 to dispense such items.

b. Disposal

1) Controlled Substances

Any registrant in possession of any controlled substances and desiring or required to dispose of such substance or substances shall contact the Office of Narcotics and Dangerous Drugs of the Division of Public Health for proper instructions regarding disposal.

2) Hypodermic Syringe or Needle

Hypodermic syringes or needles shall be destroyed before disposal in such a manner as will render it impossible to adapt them for the use of narcotic drugs by subcutaneous injections.

6. Procedures for Adoption of Regulations

a. Notice

Prior to the adoption, amendment or repeal of any of these controlled substances regulations, the Secretary will give at least twenty (20) days notice of the intended action. The notice will include a statement of either the terms of substance of the intended action or a description of the subjects and issues involved, and the time when, the place where present their views thereon. The notice will be mailed to persons who have made timely request of the Office of Narcotics and Dangerous Drugs for advance notice of such rule-making proceedings and shall be published in a newspaper of general circulation in this State.

b. Hearing

The Secretary will afford all interested persons a reasonable opportunity to submit data, views or arguments, orally or in writing. He may appoint subordinates to preside over such hearings.

c. Emergency Regulations

If the Secretary finds that an imminent peril to the public health, safety or welfare requires adoption of a regulation upon fewer than twenty (20) days notice and states in writing his reasons for that finding, he may proceed without prior notice or hearing or upon any abbreviated notice and hearing he finds practicable, to adopt an emergency regulation. Such rules will be effective for a period not longer than 120 days, but the adoption of an identical rule under the procedures discussed above is not precluded.

d. Finding and Availability

The Secretary will file any adoption, amendment or repeal of these regulations with the Secretary of State. Regulations will become effective upon such filing. In addition, copies of these regulations will be available for public inspection at the Office of Narcotics and Dangerous Drugs of the Division of Public Health, Jesse S. Cooper Building, Dover, Delaware, 19901.

7. Severability

If any provision of these regulations is held invalid the invalidity does not effect other provisions of the regulations which can be given effect without the invalid provisions or application, and to this end the provisions of the regulation are severable. Pursuant to 16 Del. C. §4718 (f) and 16 Del. C. §4720 (c) the Secretary finds that the compounds, mixtures or preparations listed in 21 CFR 1301.21, 21 CFR 1308.24 contain one or more active medical ingredients not having a stimulant or depressant effect on the central nervous system and that the admixtures included therein are in combinations, quantities, proportions, or concentrations that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system, and therefore: The Secretary, as authorized by 16 Del. C. §4718 (f) and 16 Del. C. §4720 (c), does hereby except by rule the substances listed in 21 CFR 130.21, CFR 1308.24 and 21 CFR 1308.32 from Schedules III and IV of the Uniform Controlled Substances Act, 16 Del. C., Chapter 47.

DIVISION OF SOCIAL SERVICES

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

CHILD CARE FEE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services is proposing to implement a policy change to the Division of Social Services Manual, Section 11004.7, clarifying when the child care fee will be waived.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed revised regulation must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by October 31, 2001.

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 REGULATION

Provides for situations where parent fees can be waived when paying the parent fee would create an excessive financial burden for certain families. The revised policy would define excessive financial burden as situations where the family's disposable income after deductions result in the family having income below 75% of the Federal Poverty Level. Deductions are limited to:

- Rent, mortgage, lot rent;
- Any mandatory expense required by the landlord or mortgage holder (e.g., homeowner's insurance, property taxes, school taxes);
- Actual utility expenses (e.g., electric, gas, water, sewer).

REVISION**11004.7 Determination Of The Child Care Fee & Fee Waiving**

Under regulations, families are required to contribute to the cost of child care services based upon their ability to pay. Families contribute to the cost of care by paying a child care fee. DSS, however, provides child care services to certain families at no cost. Part of the process, therefore, of determining fees includes not only the decision of how much parent/caretakers should pay for the cost of care, but also which families should receive services at no cost.

~~Parent/caretakers who have a need for service or who receive child care services in Categories 11 and 12 receive service at no cost. In addition, Caretakers in Category 31, who have a need for services and who are the caretakers of~~

children who receive ABC or GA assistance, will receive service at no cost. Also, parent/caretakers in Category 31 who are in need of protective services will receive service at no cost, unless the Division of Family Services specifically requests that a parent/caretaker pay a fee.

NOTE: the CCMIS is designed so that if Category 11 or 12 is entered as the child care category, the child care fee is waived automatically.

Parent/Caretakers in Categories 13, 21, and 31 are to pay a child care fee, unless the fee is waived.

In categories other than 13 where parent/caretakers are to pay a child care fee, the fee may be still be waived under the following circumstances:

A. a family has extensive medical expenses for which there are no payments through Medicaid or other insurance carriers;

B. a family's shelter costs exceed 30 percent of household expenses;

C. a family's utility costs, exclusive of telephone, exceed 15 percent of household income;

D. a family has additional food expenses resulting from diets prescribed by a physician;

E. a family has additional transportation costs due to lack of public transportation in rural areas;

F. a family is homeless;

G. a family has a special need and this need poses a financial hardship; or

H. other situations of hardship exist (multiple children in care, household crisis, etc.).

Document the decision to waive the fee as well as obtain supervisory approval before doing so. The CCMIS User Manual contains the appropriate waiver codes for waiving fees in the CCMIS.

All child care fees will be waived if the family meets one of the four (4) conditions below.

1. For all families in Category 31 active with the Division of Family Services (DFS) including foster care families.

2. For all families in Delaware's A Better Chance Welfare Reform Program (DABC) in Categories 11 and 12, General Assistance (GA) families, and caretakers in Category 31 caring for children who receive DABC or GA assistance where the adult requesting the child care is not the child's natural or adoptive parent (for example, grandparents, aunts, uncles, etc.).

3. When paying the fee creates an excessive financial burden (as defined below). Excessive financial burden is defined as situations where the family's disposable income, after deductions listed below, result in the family having income below 75% of the federal poverty level. Deductions are limited to:

- rent, mortgage, lot rent;
- any mandatory expense required by the landlord or mortgage holder (e.g., homeowners insurance, property taxes, school taxes);
- actual utility expenses (e.g., electric, gas, water, sewer);

4. Families where the need for service is based on the special needs of the child or the caretaker.

All requests to waive the fee must be documented in the case file and be approved by the unit supervisor. Requests to waive the fee for Division of Social Service (DSS) employees (seasonal, merit system) or temporary employees working for DSS must be approved by the Operations Administrator, as well as the unit supervisor.

As is the case with income, a person who acts as a child's caretaker, as defined in Section 11002.9, pays a child care fee based only upon income attributable to the child, unless the family meets one of the waived fee conditions above.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL
DIVISION OF AIR & WASTE MANAGEMENT
Air Quality Management Section**
Statutory Authority: 7 Delaware Code,
Section 6010, (7 Del.C. 6010)



REGISTER NOTICE

1. TITLE OF THE PROPOSAL:

State Implementation Plan Development: A new regulation #43 that will incorporate by reference the "Not to Exceed" California rules covering new heavy duty diesel engines registered for model years 2005 and 2006

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

The proposed regulation requires manufacturers to perform supplemental test procedures, in addition to the

existing Federal Test Procedure (FTP). The regulation will cover a gap in the legal requirements on manufacturers for these two model years that will ensure diesel powered heavy duty vehicles will continue to reduce NOx (nitrogen oxides) emissions in the years between those covered by a court consent decree and the adopted federal standards which begin in model year 2007.

Under this regulation, manufacturers and dealers must provide documentation to purchasers of the applicable heavy duty diesel vehicles they sell in the State that verifies the vehicles are equipped with engines that comply with the "Not to Exceed" California rules. Anyone registering these vehicles must submit a copy of this documentation to the Division of Motor Vehicles.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

- 7 Del. C. Section 6010
- 29 Del. C. Chapter 101

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Public Hearing is on October 31, 2001, 6 P.M. 156 South State Street, Second Floor, Dover

7. PREPARED BY:

Philip A. Wheeler, 739-4791, September 10, 2001

Proposed Regulation 43
Not To Exceed California Heavy Duty Diesel Engine
Standards

xx/xx/2001

Section 1 - Applicability

These rules apply to heavy-duty diesel engines produced for the 2005 and 2006 model years, and to new motor vehicles with a gross vehicle weight rating (GVWR) of greater than 14,000 pounds containing such engines that are sold, leased, offered for sale or lease, imported, delivered, rented acquired, or received in the State of Delaware

xx/xx/2001

Section 2 - Definitions

The following definitions are applicable to this regulation:

Department means The Delaware Department of Natural Resources and Environmental Control.

Division means The Delaware Division of Motor Vehicles of the Delaware Department of Public Safety

Emergency vehicle means any publicly owned and operated ambulance, lifeguard, or lifesaving equipment or any privately owned or operated to operate in response to emergency calls. Any publicly owned vehicle operated by the following persons, agencies, or organizations: (1) Any federal, state, or local agency, department, or district employing peace officers for use by those officers in the performance of their duties. (2) Any forestry or fire department of any public agency or fire department Any vehicle owned by the state, or any bridge and highway district, and equipped and used either for fighting fires, or towing or servicing other vehicles, caring for injured persons, or repairing damaged lighting or electrical equipment. Any state-owned vehicle used in responding to emergency fire, rescue or communications calls and operated either by the Delaware Emergency Management Agency or by any public agency or industrial fire department to which the Delaware Emergency Management Agency has assigned the vehicle. Any vehicle owned or operated by any department or agency of the United States government when the vehicle is used in responding to emergency fire, ambulance, or lifesaving calls or is actively engaged in law enforcement work. Any vehicle for which an authorized emergency vehicle permit has been issued by the Superintendent of the Delaware State Police.

Executive Order means a document issued by the California Air Resources Board (CARB) certifying that a specified engine family or model year vehicle has met all applicable Title 13 CCR requirements for certification and sale in California.

Heavy-duty diesel engine means a diesel engine that is used to propel a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater.

Heavy-duty motor vehicle means a motor vehicle with a Gross Vehicle Weight Rating of 14,001 pounds or greater

Model year means the manufacturer's annual production period which includes January 1 of a calendar year or, if the manufacturer has no annual production period, the calendar year. In the case of any vehicle manufactured in two or more stages, the time of manufacture shall be the date of completion of the chassis.

New motor vehicle means a motor vehicle, the equitable or legal title to which has never been transferred to an ultimate purchaser

New motor vehicle engine means a new engine in a motor vehicle.

Ultimate purchaser means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases a new motor vehicle or new motor vehicle engine for purposes other than resale.

Ultra-small volume manufacturer means any manufacturer with Delaware sales less than or equal to 300

new passenger cars, light-duty trucks, medium-duty vehicles, heavy-duty vehicles, and heavy-duty engines per model year based on the average number of vehicles and engines sold by the manufacturer in the previous three consecutive model years.

Urban bus means a passenger-carrying vehicle powered by a heavy heavy-duty diesel engine, or of a type normally powered by a heavy heavy-duty diesel engine, with a load capacity of fifteen (15) or more passengers and intended primarily for intra-city operation, i.e., within the confines of a city or greater metropolitan area. Urban bus operation is characterized by short rides and frequent stops. To facilitate this type of operation, more than one set of quick-operating entrance and exit doors would normally be installed. Since fares are usually paid in cash or token, rather than purchased in advance in the form of tickets, urban buses would normally have equipment installed for the collection of fares. Urban buses are also typically characterized by the absence of equipment and facilities for long distance travel, e.g., restrooms, large luggage compartments, and facilities for stowing carry-on luggage.

xx/xx/2001

Section 3 - Severability

Each section of this regulation shall be deemed severable. If any section of this regulation is held to be invalid, the remainder shall continue in full force and effect.

xx/xx/2001

Section 4 - Reporting Requirements

All manufacturers of 2005 and 2006 model year heavy-duty diesel vehicles with a MGWR of 14,001 pounds or greater shall provide certification that the engine used in the manufacturer's vehicle comply with the applicable exhaust emissions standards under Title 13, Section 1956.8 of the California Code of Regulations, and shall be consistent with the Executive Order issued by CARB for the appropriate engine family or model year. This certification shall be sent to the Department thirty (30) days prior to the date of the first vehicle being potentially available for sale.

xx/xx/2001

Section 5 - Dealer Compliance

No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in the State of Delaware, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in the State of Delaware, unless the manufacturer has certified on the Certificate of Origin that the engine in the vehicle complies with Title 13, Section 1956.8 of the California Code of Regulations last amended

on July 25, 2001 or complies with other documentation approved and provided by the Department:

- a. A 2005 or 2006 model year heavy-duty diesel engine;
- b. A new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine; or
- c. A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

xx/xx/2001

Section 6 - Exemptions and Technology Review

Notwithstanding Section 4, the requirements of this regulation shall not apply to:

- a. A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;
- b. An engine if, following a technology review, the California Air Resources Board determines that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;
- c. A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;
- d. A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;
- e. A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;
- f. An emergency vehicle;
- g. A military tactical vehicle or equipment; or
- h. Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

xx/xx/2001

Section 7 - Manufacturer Compliance with California Orders and Voluntary Recalls

a. Any order or enforcement action taken by the California Air Resources Board to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department satisfaction, within 21 days

of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

b. Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13, sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

xx/xx/2001

Section 8 - Adoption and Incorporation by Reference of California Rules

The Department hereby adopts and incorporates by reference the exhaust emission standards (and associated performance test procedures) for model year 2005 and 2006 heavy-duty diesel engines adopted by the California Air Resources Board on December 8, 2000, and any future amendments to these provisions that the CARB may promulgate. These standards are found in section 1956.8 of Title 13 of the California Code of Regulations, which incorporates by reference the test procedures for determining compliance with the standards.

xx/xx/2001

Section 9 - Requirements for Vehicle Registration and Transactions

a. No new motor vehicle equipped with a 2005 or 2006 model year heavy-duty diesel engine may be registered with the Division unless the applicant provides a copy of the Certificate of Origin which complies with Section 5 of this regulation or the Department provides notification to the Division that all vehicles from a specific manufacturer are in compliance with Section 5 of this regulation or other documentation approved by the Department.

b. No person who is a resident of this state, or who operates an established place of business within this state, shall sell, lease, rent, import, deliver, lease, purchase, acquire, or receive in this state, or offer for sale, lease, or rental in this state (or attempt or assist in any such prohibited action) any of the following types of motor vehicles or engines that are intended primarily for use or for registration in this state, unless the manufacturer of the engine has received such a Certificate of Origin complies with the standards adopted in Section 4 of this regulation or the manufacturer provides other Department approved documents certifying compliance with Title 13, Section 1956.8 of the California Code of Regulations, last amended July 25, 2001:

1. A 2005 or 2006;
2. A new motor vehicle equipped with a 2005 or

2006 model year heavy-duty diesel engine; or

3. A motor vehicle with a new 2005 or 2006 model year heavy-duty diesel engine.

xx/xx/2001

Section 10 - Exemptions and Technology Review

Notwithstanding section 8 the requirements of this regulation shall not apply to:

a. A model year 2005 or 2006 heavy-duty diesel engine manufactured by an ultra-small volume manufacturer or intended for use in an urban bus;

b. An engine if, following a technology review, the CARB determines, and is subsequently approved by the Department, that it is inappropriate to require compliance for heavy-duty diesel engines of that particular model year and engine family;

c. A vehicle acquired by a resident of this state for the purpose of replacing a vehicle registered to such resident which was damaged or became inoperative beyond reasonable repair or was stolen while out of this state; provided that such replacement vehicle is acquired out of state at the time the previously owned vehicle was either damaged or became inoperative or was stolen;

d. A vehicle transferred by inheritance, or by a decree of divorce, dissolution, or legal separation entered by a court of competent jurisdiction;

e. A motor vehicle having a certificate of conformity issued pursuant to the Clean Air Act (42 U.S.C. §7401 et seq.) and originally registered in another state by a resident of that state who subsequently establishes residence in this state and who, upon registration of the vehicle in this state provides satisfactory evidence to the Division of the previous residence and registration;

f. An emergency vehicle;

g. A military tactical vehicle or equipment; or

h. Any other vehicles exempted by the California Health and Safety Code, section 43656 as of March 20, 2001.

xx/xx/2001

Section 11 - Manufacturer Compliance with California Orders and Voluntary Recalls

a. Any order or enforcement action taken by the CARB to correct noncompliance with any heavy-duty diesel engine requirements adopted by such Board on December 8, 2000 shall be applicable to all such engines and motor vehicles subject to this regulation, sold, leased, or rented, offered for sale, lease, or rental, or registered in State of Delaware, except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of issuance of such CARB action, that this action is not applicable to such engines or vehicles in Delaware.

b. Any voluntary or influenced emission-related recall campaign initiated by any manufacturer pursuant to Title 13,

sections 2113 through 2121 of the California Code of Regulations shall extend to all applicable engines and motor vehicles subject to this regulation:

1. Sold, leased, or rented.
2. Offered for sale, lease, or rental, or
3. Registered in Delaware.

except where the manufacturer demonstrates to the Department's satisfaction, within 21 days of approval of the campaign by the CARB, that this campaign is not applicable to such engines or vehicles in Delaware.

DIVISION OF WATER RESOURCES

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

REGISTER NOTICE

1. Brief Synopsis of the Subject, Substance and Issues:

The State of Delaware revised on-site wastewater treatment and disposal system criteria and standards to keep pace with the industry and maintain its prominence as a nationally recognized leader in this field. To ensure the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems** are current with industry standards, engineering practices, soil science principles and compliance issues, the State of Delaware, in accordance with 7 Del.C. §6010, will amend Sections 2 through 10 and the Exhibits.

2. Possible Terms of the Agency Action:

N/A

3. Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

4. List of Other Regulations That May be Impacted or Affected by the Proposal:

N/A

5. Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, will conduct a public hearing on October 23, 2001, beginning at 6:00 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to hear testimony and receive comments on the proposed amendments to the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems**.

The State of Delaware revised on-site wastewater treatment and disposal system criteria and standards to keep

pace with the industry and maintain its prominence as a nationally recognized leader in this field. To ensure the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems** are current with industry standards, engineering practices, soil science principles and compliance issues, the State of Delaware, in accordance with 7 Del. C. §6010, will amend Sections 2 through 10 and the Exhibits.

For additional information or to request a copy of the proposed revisions to the regulations please contact the Ground Water Discharges Section at (302) 739-4761.

The procedures for public hearings are established in 7 Del.C. § 6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to Lisa A. Vest at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. The deadline for inclusion of written comments in the hearing record will be announced at the time of the hearing. Written statements may be presented prior to the hearing and should be addressed to: Lisa A. Vest, Paralegal, DNREC, 89 Kings Highway, Dover, DE 19901.

THE REGULATIONS GOVERNING THE DESIGN, INSTALLATION AND OPERATION OF ON-SITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS

ADOPTED:	January 4, 1985
EFFECTIVE:	January 4, 1985 - Sections 1.00000, 2.00000, 3.00000, 7.00000, 9.00000 and Exhibits May 1, 1985, Section 4.00000 July 10, 1985 Sections 5.00000, 6.00000, 8.00000 and 10.00000
Amended	7/10/85 8/15/86 9/30/89 1/31/95 <u>July 25, 2001 Revision of all Sections and Exhibits from public workshops and written comments</u>

FORWARD

The Department of Natural Resources and Environmental Control (the Department) finds that a substantial portion of the State's population lives where centralized water supplies or wastewater treatment services are limited. It is the intent of the Department to aid and assist the public in the installation of on-site wastewater treatment and disposal systems, where possible, by utilizing the best information, techniques and soil evaluations for the most suitable system that site and soil conditions permit.

Statewide regulations governing the installation and operation of septic tank wastewater treatment and disposal systems have existed since 1968. Inappropriate installations and poor operation and maintenance practices resulted in disposal system malfunctions. Inadequately renovated wastewater contaminated the State's ground water and presented a threat to the public health, safety, and welfare. Corrective measures required the replacement of water supply and wastewater systems at a very high cost which was sometimes borne by the general public. Several well known studies examined these conditions. They found that the Department's regulations governing the site evaluation, siting density, installation and operation of on-site wastewater treatment and disposal systems have been identified as required revisions.

In considering these findings, the Department determined that the adoption of effective on-site wastewater treatment and disposal regulations was the proper course of action. Through a process that included considerable staff research, consultant studies, the development of over 650 pages of background "working papers", interaction with a 21 member public/private sector On-Site Wastewater Advisory Committee, public meetings and presentations, public workshops, a public hearing and a hearing officer's report along with ~~five~~ four draft versions of these Regulations were prepared, reviewed and revised. This final version is the result of those various activities, and incorporates, as best as possible, all valid concerns into its provisions.

The purpose of these Regulations, is to prevent the problems listed above. They are based on the best information available and include the establishment of a process for updating Regulations as information changes. They include what are considered to be the best engineered design standards for on-site systems, as determined by research and practical experience. These Regulations seek to require the use of on-site systems that will function according to their performance criteria without causing the State's ground water resources to violate U.S. Environmental Protection Agency Drinking Water Standards on an average annual basis. Wastewater management actions necessary to achieve those standards were recommended to the Department in Delaware's 1983 Comprehensive Committee's Final Report which has since been adopted as state policy.

The proper siting of systems is addressed by the establishment of various soil criteria which lead to the selection of the most suitable on-site wastewater treatment and disposal system for local conditions. System selection and sizing are determined using the results of the site specific soil evaluations and percolation tests. Density is addressed by the adoption of minimum lot sizes tied to appropriate treatment and disposal techniques, and in some cases, the use of scientific ground water and geological analyses that both assure renovation of degradable pollutants

and dilution of wastes which are inadequately treated in the soil. Site evaluation and system selection, design, installation and pump-outs are required to be performed by individuals licensed under these regulations. Alternative and experimental system design criteria are established to enable proper waste treatment and disposal to occur in locations where conventional systems would be inappropriate. Finally, a specific variance procedure is established to provide an opportunity to reconsider any provision of these Regulations, provided that proper public disclosure and adequate consideration of the consequences are provided.

In developing these Regulations, the Department operated under the philosophy that where soil and site conditions permit, the least complex, easy to maintain and most economical system should be used. Although it has not been possible to include directly every method of on-site treatment and disposal, the Department's policy is to encourage development of systems, processes and techniques which may benefit significant numbers of people within Delaware. It is expected that these Regulations will be reviewed and revised periodically and that standards for other alternative systems will be prepared as more experience and research data become available. The Regulations contain provisions that enable that process to occur.

SECTION 1.00000 - AUTHORITY AND SCOPE

1.01000 These Regulations are adopted by the Secretary of the Department of Natural Resources and Environmental Control under and pursuant to the authority set forth in 7 Del. C., Chapter 60.

1.02000 These Regulations shall apply to all aspects of:

1.02010 The planning, design, construction, operation, maintenance, rehabilitation, replacement, and modification of individual and community on-site wastewater treatment and disposal systems within the boundaries of the State of Delaware; and

1.02020 The planning, design, construction and operation and maintenance of on-site wastewater holding tanks within the boundaries of the State of Delaware; and

1.02030 The licensing of percolation testers, on-site wastewater treatment and disposal system designers, site evaluators, on-site wastewater treatment and disposal system contractors, system inspectors and liquid waste haulers within the boundaries of the State of Delaware.

1.03000 These Regulations shall supersede and replace Water Pollution Control Regulations #2 Governing The Installation and Operation of Septic Tank Sewage Disposal Systems, the Guidelines for Septic Tank Systems, and Part II of Section 9 of the Regulations Governing the Control of Water Pollution. With respect to the other provisions of the Regulations Governing the Control of

Water Pollution these Regulations shall supersede such Regulations only to the extent of any inconsistency. These Regulations shall apply throughout the State of Delaware.

1.04000 The Department has the authority to establish and collect fees for the defraying of expenses incurred by the Department for facilities and services needed to provide for the administration of its programs. The authority is contained within Amendment 4701(a), 7 Del.C., Chapter 60, which also contains the schedule of fees.

SECTION 2.00000 - DEFINITIONS

2.01000 Words and Phrases

The following words and phrases, when used in these Regulations ~~still~~ have the meaning ascribed to them ~~as follows~~, unless the text clearly indicates otherwise:

2.01010 Absorption Facility: System of open-jointed or perforated piping, alternative distribution units, or other seepage systems for receiving the flow from septic tanks or other treatment facilities and designed to distribute effluent for oxidation and absorption by the soil within the zone of aeration.

2.01015 Aggregate-free Chambers: A buried structure used to create an enclosed unobstructed soil bottom absorption area and side-wall absorption area for infiltration and treatment of wastewater which can be use to replace the filter aggregate and distribution pipe in an absorption facility.

2.01020 Alteration: ~~An expansion and/or change~~ Any physical change in the design capacity ~~location~~ of an existing system, or any part thereof.

2.01030 Alternating System: Two or more disposal fields, equal in size with dosing provided alternatively to each field. ~~by means of diversion valves or a diversion box.~~

2.01040 Alternative Treatment ~~or~~ and Disposal System: A wastewater treatment or disposal system not specified in these regulations which has been proven to provide at least an equivalent level of treatment ~~or disposal~~ as the conventional systems included in these regulations.

2.01050 Applicant: The owner or legally authorized agent of the owner as evidenced by sufficient written documentation.

2.01060 Authorization ~~Notice~~ to use existing system: A written document issued by the Department which establishes that an on-site wastewater treatment and disposal system appears adequate to serve the purpose for which a particular application is made. ~~Applications for Authorization Notices shall be made on forms provided by the Department and shall be received only when the forms are complete.~~

2.01065 Aquifer: A part of a formation, a formation, or a group of formations that contains sufficient saturated permeable material to yield economically useful quantities of water to wells or springs.

2.01070 Backfill: Soil which is clean and free of foreign debris, placed over the disposal area and fill extensions.

2.01075 Blackwater: Waste carried off by toilets, urinals, and kitchen drains.

2.01080 Building Sewer: Piping ~~carrying~~ which carries ~~liquid wastes~~ wastewater from a building to the ~~treatment tank or holding tank~~ first component of the treatment and disposal system.

2.01090 Cesspool: A covered pit with a porous lining into which wastewater is discharged and allowed to seep or leach into the surrounding soils with or without an absorption facility. Note: Cesspools can not be certified for real estate transfers.

2.01100 Commercial Facility: Any structure or building, or any portion therefore, other than a residential dwelling.

2.01110 Community System: An on-site wastewater treatment and disposal system which will serve more than ~~one~~ (+) three (3) lots or parcels or more than ~~one~~ (+) three (3) condominium units or more than ~~one~~ (+) three (3) units of a planned unit development.

2.01120 Completed Application: One in which the application form is properly completed in full, is signed by the ~~owner~~ applicant, is accompanied by all required exhibits, detailed plans and specifications, and required fee ~~and is correct.~~

2.01123 Confined Aquifer: An aquifer bounded above and below by impermeable beds or by beds of distinctly lower percolation than that of the aquifer itself and containing ground water. An aquifer containing ground water which is everywhere at a pressure greater than atmospheric pressure and from which water in a well will rise to a level above the top of the aquifer.

2.01126 Confining Layer: A body of impermeable or distinctly less permeable material stratigraphically adjacent to one or more aquifers.

2.01130 Construction Permit: A permit issued by the Department for the construction, ~~modification~~ alteration, repair or replacement of an on-site wastewater treatment and ~~or~~ disposal system.

2.01132 Construction Report: A report prepared by the contractor and submitted to the Department within 10 calendars days after the absorption facility has been completely installed.

2.01136 Conventional On-Site Wastewater Systems: gravity, pressure-dosed, low pressure pipe and elevated sand mound.

2.01140 Conventional Sand Filter: A filter with two (2) feet of medium sand designed to filter and biologically treat septic tank or other treatment unit effluent from a pressurize distribution system at an application rate not to exceed one and twenty-three hundredths (1.23) gallons per square sand surface area per

day applied at a dose not to exceed twenty (20) percent of the projected daily sewage flow per cycle.

2.01150 Department: The Department of Natural Resources and Environmental Control of the State of Delaware (DNREC).

2.01160 Developer: A person, persons, partnership, firm, corporation, or cooperative enterprise undertaking or participating in the development of a subdivision, mobile home park, or multi-unit housing project.

2.01170 Director: The Director of the Division of Water Resources for the State of Delaware or his/her authorized representative.

2.01180 Disposal Area: The entire area used for ~~underground dispersion of the liquid portion of sewage~~ the absorption facility.

2.01190 Distribution Box: A box for distributing wastewater equally to separate distribution laterals of a ~~disposal area~~ the absorption facility.

2.01200 Distribution System: Piping or other devices used in the distribution of wastewater within the ~~disposal area~~ absorption facility. Also referred to as distribution laterals.

2.01210 ~~Diversion Box: A device which provides for the alternating use of portion of a disposal area~~

2.01220 Dosing: The pumped or regulated flow of wastewater to a ~~disposal area~~ the absorption facility.

2.01230 Dosing Chamber: A receptacle for retaining wastewater until pumped or ~~siphoned~~ regulated to the ~~disposal area~~ absorption facility.

2.01235 Down gradient: An area at which the potentiometric surface is lower (hydraulic head lower) than it is at some given point of comparison.

2.01240 Dwelling: Any structure or building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including but not limited to, houses, houseboats, boathouses, mobile homes, manufactured homes, travel trailers, hotels, motels, apartments, and condominiums.

2.01245 Easement: An interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

2.01247 Effluent filter: A device placed in the outlet compartment of a septic tank which conforms to ANSI/NSF Standard 46 for the purpose of removing particulate matter before the effluent enters the absorption facility.

2.01250 Effluent Line: The pipe beginning at the treatment unit or septic tank and terminating at the ~~disposal area~~ absorption facility.

2.01255 Elevated Sand Mound: An on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone which is pressurized into suitable fill material constructed above

existing grade.

2.01260 Emergency Repair: Repair of a ~~failing broken~~ system component where immediate action is necessary to ~~repair a broken pressure sewer pipe~~ protect public health.

2.01270 Escarpment: Any naturally occurring slope greater than thirty (30) percent which extends vertically six (6) feet or more as measured from toe to top, and which is characterized by a long cliff or steep slope which separates two (2) or more comparatively level or gently sloping surfaces, and may intercept one (1) or more layers than limit soil depth.

2.01280 ~~Existing On-Site Sewage Disposal~~ Wastewater Treatment and Disposal System: (existing system) Any installed on-site ~~sewage~~ wastewater treatment and disposal system constructed in conformance with the rules, laws and local ordinances in effect at the time of construction, or which would have conformed ~~substantially~~ satisfactorily with system design provided for in Department regulations. ~~Also referred to as an existing system.~~

2.01290 ~~Experimental Treatment or Disposal System: Wastewater treatment or disposal systems not specified in these Regulations which require demonstration in rural or low density areas to prove it will provide an equivalent level of treatment or disposal as systems included in these Regulations.~~

2.01290 Feasibility Study: A site/soil investigative report identifying the suitability of a parcel of land for on-site wastewater treatment and disposal systems. The report includes information pertinent to the Department and other local government agencies in the determination of certain land use decisions.

2.01300 Fill: Soil material which has been transported to and placed over the original soil or bedrock and is characterized by a lack of distinct horizons or color patterns as found in naturally developed, undisturbed soils.

2.01310 Filter Aggregate: Washed gravel or crushed stone ranging in size from 3/4" to 2 1/2" in any dimension and clean and free of ~~dust or other~~ fine materials (dust) or meeting grading specifications in Section 6.01042.

2.01315 Filter Fabric: Any material approved by the Department which is permeable but does not allow soil particles to pass through for the purpose of protecting the filter aggregate or aggregate free chambers within the absorption facility.

2.01317 Full Depth Gravity: A gravity fed on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed 24 inches into the natural soil.

2.01320 Governmental Unit: ~~Means~~ The state or any county, municipality, or political subdivision, or any part ~~therefore~~ thereof.

2.01330 GPD: Gallons per day.

2.01340 Grade: The inclination or slope of a conduit or ground or plane surface.

2.01344 Gravity Capping Fill: A gravity fed on-site wastewater treatment and disposal system which maintains 36 inches separation distance above the limiting zone where the trench or bed is installed between 12 and 23 inches into the natural soil below a soil cap of a specified depth and texture.

2.01347 Greywater: The untreated wastewater which has not come into contact with toilet waste. Greywater includes wastewater from bathtubs, showers, bathroom wash basins, clothes washing machines, laundry tubs and other waste water which does not present a threat from contamination by unhealthy processing, manufacturing or operating wastes. It does not include wastewater from kitchen sinks or dishwashers.

2.01350 Grease Trap: A watertight tank for the collection and retention of grease which is accessible for periodic removal. ~~of the contents.~~

2.01360 ~~Groundwater: Subsurface water occupying the saturation zone seasonally or year-round.~~ Groundwater: Any water naturally found under the surface of the earth.

2.01370 Holding Tank: A watertight receptacle used to ~~contain store~~ wastewater prior to being removed ~~from the premises.~~ by a licensed permitted waste hauler.

2.01380 Impervious Strata and Formation: An underground or surface layer of soil or rock which will not allow water to pass through it at a rate permissible for subsurface disposal and having a percolation rate greater slower than one hundred and twenty (120) minutes per inch.

2.01390 Invert: The floor, bottom or lowest portion of the internal cross section of a closed conduit or structure.

2.01400 Isolation Distance: The horizontal distance between a system component and selected site features or structures.

2.01410 Large System: Any on-site wastewater treatment and disposal system with a projected daily sewage wastewater design flow rate greater than two thousand five hundred (2,500) gallons per day.

2.01415 Lift Pump Station: A receptacle for pumping wastewater to a system component to overcome slope differentials for the use of gravity distribution.

2.01420 Limiting Zone: Any horizon or condition in the soil profile or underlying strata which includes:

(a) ~~A seasonal high water table, whether perched or regional, determined by direct observation well measurements which can be demonstrated to be representative of the maximum height of the water table on an annual basis during years of normal precipitation, or by the depth in the soil at which mottling first occurs; or. The~~

presence of seasonal or perennial saturation as evidenced by redoximorphic features or direct measurement of observation wells; or

(b) Rock with open joints, fractures or solution channels, masses of loose rock fragments, or loose weathered rock, including gravel, with insufficient fine soil to fill the voids between the fragments; or

(c) ~~Rock formation, other stratum, or soil condition which is so slowly permeable that it effectively limits downward passage of effluent. Geologic stratum or soil zone in which the percolation of the stratum or zone effectively limits the movement of water.~~

2.01430 Lot: A portion of a subdivision or parcel of land. ~~intended to accommodate one dwelling unit or its equivalent in wastewater flow.~~

2.01433 Low Pressure Pipe Capping Fill: A pressurized on-site wastewater treatment and disposal system which is installed as trenches and maintains 18 inch separation distance above the limiting zone. The trenches are installed between 9-17 inches into natural soil below a soil cap of a specified depth and texture.

2.01435 Low Pressure Pipe Full Depth: A pressurized on-site wastewater treatment and disposal system which is installed as trenches and maintains 18 inch separation distance above the limiting zone. The trenches are installed 18 inches into natural soil.

2.01440 Malfunctioning System: A system which is not functioning inadequately renovating or hydraulically eliminating the wastewater it is receiving as evidenced by, but not limited to, the following conditions:

(a) Failure of a system to accept wastewater discharge or the backup of wastewater into the structure served by the system.

(b) Direct discharge of wastewater to the surface of the ground, surface water, or groundwater without adequate renovation (This includes cesspools).

2.01450 Manifold: A pipe with numerous branches to convey ~~fluids~~ effluent between a large pipe and several smaller pipes, or to permit choice of diverting flow from one of several sources or to one of several discharge points.

2.01460 Medium Sand: A mixture of sand with 100 percent passing the 3/8 inch sieve, 95 percent to 100 percent passing the No. 4 sieve, 5 percent to 30 percent passing the No. 50 sieve, and one (1) percent to seven (7) percent passing the No. 100 sieve.

2.01460 Manufactured Home: A home built entirely in the factory under a federal building code administered by the Department of Housing and Urban Development (HUD). Manufactured homes may be single or multi-section and are transported to the site and installed.

2.01470 Mineral Soil: A soil, excluding the natural organic layers of the surface, consisting of naturally occurring mineral matter with organic materials not

exceeding 20 percent by weight.

2.01475 Monitor Well: A well installed for the sole purpose of the determination of subsurface conditions and collecting groundwater samples.

2.01480 Mottling: Soil irregularly marked with spots of different colors that vary in number and size which may indicate ~~indicating~~ poor aeration, lack of drainage and the upper extent of the seasonal high water table.

2.01490 ~~Natural Soil Drainage: The condition of frequency and duration of periods of saturation or partial saturation that existed during the development of the soil, as opposed to altered drainage, which is commonly the result of artificial drainage or irrigation but may be caused by the sudden deepening of channels or the blocking of drainage outlets. Seven different classes of natural soil drainage are:~~

~~(a) Excessively drained: Soils which are commonly very porous and rapidly permeable and have a low water holding capacity and are free from mottling throughout their profile.~~

~~(b) Somewhat excessively drained: Soils which are also very permeable and are free from mottling throughout their profile.~~

~~(c) Well drained: Soils which are nearly free from mottling and are commonly of intermediate texture.~~

~~(d) Moderately well drained: Soils which commonly have a slowly permeable layer in or immediately beneath the solum. They have uniform color in the A and upper B horizons and have mottling in the lower B and C horizons.~~

~~(e) Somewhat poorly drained: Soils which are wet for significant periods but not all the time, and commonly have mottling below 6 to 16 inches, in the lower part of the A horizon and in the B and C horizons.~~

~~(f) Poorly drained: Soils which are wet for long periods and are light gray and generally mottled from the surface downward, although mottling may be absent or nearly so in some soils.~~

~~(g) Very poorly drained: Soils which are wet nearly all the time. They have a dark gray or black surface layer and are gray or light gray with or without mottling in the deeper parts of the profile.~~

2.01495 Observation well: A well used for the sole purpose of determining groundwater levels.

2.01500 ~~On-Site Sewage Wastewater Treatment and Disposal System: Any existing or proposed on-site sewage disposal system including, but not limited to a standard subsurface Conventional or alternative, experimental or non-water carried sewage wastewater disposal systems installed or proposed to be installed on land of the owner of the system or on other land as to which the owner of the system has the legal right to install the system.~~

2.01505 On-Site System Advisory Board (OSSAB): A panel of licensee's representing the on-site industry, asked to serve by the Secretary, on all matters

pertaining to the issuance and revocation of all on-site license's.

2.01510 Owner: The person in whom is vested a ~~good~~ legal or equitable title to real or personal property, including an on-site ~~sewage~~ wastewater treatment and disposal system.

~~2.01520 Pan: A hard, cement-like layer within or just beneath the surface of the soil.~~

2.01530 Percolation rate: The downward movement of water through soil.

~~2.01540 Percolation: The property or capacity of a porous medium (rock or soil) for transmitting a fluid. which is described in the following terms: very slow, slow, moderately slow, moderate, moderately rapid, rapid, and very rapid.~~

2.01550 Permit: The written document ~~issued and signed~~ approved by the Department which authorizes the ~~permittee to install~~ the installation of a system or any part thereof, which may also require operation and maintenance of the system.

2.01560 ~~Person~~ Permittee: Any individual, partnership, corporation, association, institution, cooperative enterprise, agency, municipality, commission, political subdivision or duly established entity to which a permit is issued.

2.01565 Piezometer: A small diameter non-pumping well with a short screen that is used to measure elevation of the water table or potentiometric surface.

2.01570 Platy Structure: Soil aggregates that are developed predominantly along the horizontal axes; laminated; flaky.

2.01580 Pollution or Water Pollution: Any alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

2.01582 Pressure Dosed Capping Fill: A pressurized on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed between 12 and 23 inches into the natural soil below a soil cap of a specified depth and texture.

2.01587 Pressure Dosed Full Depth: A pressurized on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed 24

inches into the natural soil.

2.01590 **Pressurized Distribution:** A network of piping with ~~small diameter~~ orifices designed to evenly distribute wastewater under pressure through the entire absorption facility.

2.01600 **Professional Engineer:** A person registered by the Delaware Association of Professional Engineers to practice professional engineering in the State of Delaware.

2.01610 **Professional Geologist:** A person registered by the Delaware State Board of Registration of Geologists to practice professional geology in the State of Delaware.

2.01620 **Project Site:** The total area within the property lines of an individual lot or within the division lines of a parcel or subdivision.

2.01630 **Public Health Hazard:** A condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic, viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

2.01635 **Redoximorphic Features:** Characteristic color patterns associated with wetness that result from alternating periods of reduction and oxidation of iron and manganese compounds in the soil.

2.01640 **Repair:** Means Any modification to an existing on-site wastewater treatment and disposal system necessary to fix a problem or malfunction, installation of all portions of a system necessary to insure eliminate a public health hazard or pollution of public waters created by a failing system.

2.01650 **Replacement System:** ~~An area set aside for construction of a second disposal system to be used in the event the original disposal system malfunctions or is expanded~~

2.01650 **Replacement System:** An on-site wastewater treatment and disposal system to replace the existing on-site wastewater treatment and disposal system or a portion thereof.

2.01660 **Sand:** Individual mineral particles in a soil that range in diameter from the upper limit of silt (0.05 millimeters) to 2.0 millimeters.

2.01670 **Sand Filter System:** ~~The combination of septic tank or other treatment unit, dosing system with effluent pump(s) and controls, or dosing siphons, piping, and fittings, sand filter, and absorption facility used to treat sewage.~~

2.01680 **Sand Lined System:** ~~A pressure dosed type of seepage trench and or seepage bed soil absorption system facility constructed in the fill material below the natural soil surface and may require pressurization.~~ The fill material is used to replace a natural impermeable or slowly

~~IM permeable soil layer or to completely remove an existing absorption facility.~~

2.01685 **Sandy Fill:** Materials that consist of medium sand, sandy loam, loamy sand/sandy loam mixtures (see sieve requirements in Section 6.01041).

2.01690 **Sand Mound:** ~~A soil absorption system that is elevated above the natural soil surface in a suitable fill material.~~

2.01700 **Scarifying:** ~~Scraping or loosening the surface soil bottom and sidewall soil surfaces~~ in the preparation of percolation test holes, seepage trenches and beds, or similar excavations.

2.01710 **Scum:** A mass of sewage solids floating at the surface of sewage effluent and buoyed up by entrained gas, grease or other substances.

2.01720 **Seasonal High Water Table:** The highest zone of soil or rock that is seasonally or permanently saturated by a perched or shallow water table. A planar surface below which all pores in rock or soil (whether primary or secondary) that is seasonally or permanently saturated.

2.01730 **Secretary:** Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee.

2.01740 **Seep:** ~~An area where water oozes from the earth, often forming the source of a small trickling stream.~~

2.01750 **Seepage Bed:** An absorption ~~system~~ facility consisting of an area from which the entire earth contents have been removed and replaced with a network of perforated pipe, filter aggregate or aggregate-free chambers and covered with suitable backfill material.

2.01755 **Seepage Pit:** Synonymous with "cesspool" except it is usually preceded by a septic tank where a cesspool is not. Note: Seepage pits can not be certified for real estate transfers.

2.01760 **Seepage Trench:** A soil absorption ~~system~~ facility consisting of ditches with vertical sides and flat bottoms partially filled with filter aggregate and containing perforated pipe or aggregate-free chambers and covered with suitable backfill material.

2.01770 **Septage:** The liquid and solid contents of a septic tank.

2.01780 **Septic Tank:** A watertight receptacle which receives the discharge of sewage wastewater from a house structure sewer or part thereof and is designed and constructed so as to permit settling of settleable solids from the liquid, digestion of the organic matter by detention, and discharge of the liquid portion into an ~~disposal area~~ absorption facility.

2.01790 **Serial Distribution System:** ~~A soil absorption system consisting of a series of interconnected disposal trenches arranged so that each trench is forced to pond to the full depth of the gravel fill before liquid flows~~

into a relief line and fills the succeeding trench.

~~2.01800 Sewage: Water carried human or animal waste from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such groundwater infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.~~

2.01810 Single Family Dwelling: A residence intended for single family residential use.

2.01820 Siphon: A hydraulically operated device designed to rapidly discharge the ~~entire~~ contents of a dosing tank between predetermined hydraulic levels.

2.01830 Site Evaluation: The practice of investigating, evaluating and reporting basic soil and site conditions which apply to the on-site wastewater treatment and disposal system type and design criteria.

2.01840 Slope: Deviation of a plane surface from the horizontal. It is usually expressed as a ratio or percentage of number of units of vertical rise or fall per unit of horizontal distance.

~~2.01850 Soil Absorption System: A wastewater disposal method utilizing the natural biological, chemical and physical properties of the soil to renovate the wastewater.~~

2.01860 Soil Horizon: A layer of soil or soil material approximately parallel to the land surface and differing from adjacent genetically related layers in physical, chemical, and biological properties or characteristics such as color, structure, texture, consistence and pH.

2.01870 Soil Profile: The collection of all soil horizons, including the natural organic layers on the surface, ranging from 0" to 10" deep in shallow soils to in excess of 60" deep for deep soils.

2.01880 Soil Structure: The combination or arrangement of primary soil particles into secondary compound particles or clusters, the principle forms of which are: platy (laminated); prismatic (prisms with rounded tops); blocky (angular or subangular); ~~and~~ granular and columnar.

2.01890 Soil Texture: The grain sizes that comprise a soil consisting of three textural classes: sand, silt and clay amount of each soil separate in a soil mixture. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger.

(a) The major textural classifications are observed and can be determined in the field as follows:

(1) Sand: Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released, but will crumble when touched.

(2) Sandy Loam: Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily

seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(3) Loam: Consists of an even mixture of sand and of silt and a small amount of clay. It is easily crumbled when dry and has a slightly gritty yet fairly smooth feel. It is slightly plastic. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(4) Silt Loam: Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is pressed between thumb and finger, it will not press out into a smooth, unbroken ribbon, but will have a ribbon appearance.

(5) Clay: Consists of an even mixture of sand, silt, and clay, which breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and finger, it will form a thin ribbon that will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling.

(6) Silty Clay Loam: Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or one-eighth (1/8) inch wire can be formed between thumb and finger that will sustain its weight and will withstand gentle movement.

(7) Silty Clay: Consists of even amounts of silt and clay and very small amounts of sand. It breaks into hard clods or lumps when dry. When moist, a thin ribbon or one-eighth (1/8) inch or less sized wire formed between thumb and finger withstand considerable movement and deformation.

(8) Clay: Consists of large amounts of clay and moderate to small amounts of sand. It breaks into very hard clods or lumps when dry. When moist, a thin, long ribbon or one-sixteenth (1/16) inch wire can be molded with ease. Fingerprints will show on the soil, and a dull to bright polish is made on the soil by a shovel.

(b) These and other soil textural characteristics are defined as shown in the United States Department of Agricultural Textural Classification Chart which is hereby adopted as part of these Regulations (See Exhibit B). This textural classification chart is based on the Standard Pipette Analysis as defined in the United States

Department of Agriculture, Soil Conservation Service Soil Survey Investigations Report No. 1.

(c) Throughout these Regulations where soil textural classes and other terminology describing soils are utilized, definition and interpretation shall be in accordance with the latest edition of Soil Taxonomy, USDA SCS Agricultural Handbook No. 436 as published by the U.S. Department of Agriculture.

~~2.01900 Soil Type: The lowest unit in the natural system of soil classification consisting of describing soils that are alike in all characteristics.~~

2.01910 Solum: The upper part of the soil profile (A, E and B horizons) above the parent material in which the processes of soil formation are active.

2.01915 Spare Area: An area set aside for construction of a second absorption facility to be used in the event the original absorption facility malfunctions or is expanded.

~~2.1920 Standard Disposal System: On-site systems designated as gravity or pressure dosed seepage trenches, seepage beds, elevated sand mounds and sand lined systems.~~

2.01930 Subdivision: Any tract or parcel of land which has been divided into two or more lots for which development is intended.

2.01940 System: Abbreviation for on-site sewage wastewater treatment and disposal system.

2.01945 System Inspector: A person licensed by the Department to inspect, investigate, collect data and make determinations regarding the present operational condition of an on-site wastewater treatment and disposal system.

2.01950 Test Pit: An excavation used to ~~determine~~ inspect the soil profile, assign percolation rates and assess conditions.

2.01960 Topography: ~~Natural~~ Ground surface variations or contours of the earth's surface, both natural and anthropogenic.

2.01965 Unconfined Aquifer: An aquifer in which no relatively impermeable layer exists between the water table and the ground surface and an aquifer in which the water is at atmospheric pressure.

2.01970 Undisturbed Soil: Soil or soil profile, unaltered by filling, removal, or other man-made changes, with the exception of agricultural activities, ~~for a minimum of four years prior to testing.~~

2.01975 Upgradient: An area at which the potentiometric surface is higher (hydraulic head greater) than it is at some given point of comparison.

~~2.01980 Wastewater: The liquid and water borne wastes derived from residential, industrial, institutional or commercial sources. Water-carried waste from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such~~

groundwater infiltration, subsurface water, and mixtures of industrial wastes or other wastes as may be present.

2.01990 Wastewater Utility: Any person who engages in the business of providing wastewater disposal and related services to the public for a fee, charge, or other remuneration in the State of Delaware.

2.02000 Watercourse: Any ocean, bay, lake, pond, stream, river or defined ditch ~~body of water drained by a stream, dry ditch, or any depression~~ that will permit drainage into any surface water body, excluding ephemeral watercourses as defined below.

a) Ephemeral – A watercourse which flows briefly, only in direct response to precipitation in the immediate vicinity, and whose invert is above the seasonal high water table.

2.02010 Water Table: ~~The upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable formation~~ The surface of an unconfined aquifer where the groundwater pore water pressure is equal to atmospheric pressure.

2.02020 Waters of the State: Public waters, including lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the ocean within the territorial limits of the State, and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, within the jurisdiction of the State of Delaware.

2.02023 Well: Any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition, use; for extracting water from or for the artificial recharge of subsurface fluids; and where the depth is greater than the diameter or width. For the purpose of this regulation this definition does not include geotechnical test, soil, telephone and construction piling borings, fence posts, test pits, or horizontal closed loop heat pump circulation systems constructed within twenty (20) feet of the ground surface.

2.02030 Zone of Aeration: ~~The unsaturated zone that occurs below the ground surface and above the point at which the upper limit of the water table exists. A subsurface zone containing water under pressure less than that of the atmosphere, including water held by capillary and containing air or gases generally under atmospheric pressure. This zone is limited above by the land surface and below by the surface of the zone of saturation, i.e., the water table.~~

SECTION 3.0000 - GENERAL STANDARDS, PROHIBITIONS AND PROVISIONS

3.01000 Each and every owner of real property is jointly and severally responsible for:

(a) Disposing of wastewater ~~sewage on that property~~ in conformance with ~~these~~ applicable Regulations;

and

(b) Connecting all plumbing fixtures on that property, from which ~~sewage~~ wastewater is or may be discharged, to a central wastewater system or on-site ~~sewage~~ wastewater treatment and disposal system approved by the Department; and

(c) Maintaining, repairing, and/or replacing the system as necessary to assure proper operation of the system.

3.01500 All wastewater treatment and disposal systems which are proposed for construction in a watershed where total maximum daily loads (TMDL's) have been established for nitrogen and phosphorus shall be designed to reduce effluent nutrient levels prior to discharging to the absorption facility. The wastewater treatment system shall be designed to reduce nutrient concentration by the percentage reduction established by the Pollution Control Strategy (PCS) for that watershed.

3.02000 No person shall construct, install, modify, rehabilitate, or replace an on-site wastewater treatment and disposal system or construct or place any dwelling, building, mobile home, modular home or other structure capable of discharging wastewater on-site unless such person has a valid permit issued by the Department pursuant to these Regulations.

3.03000 No permit may be issued by the Department under these Regulations unless the County or Municipality having land use jurisdiction has first approved the activity through zoning procedures provided by law.

3.04000 Any county may assume responsibility and authority for administering its own regulatory program for on-site wastewater treatment and disposal systems pursuant to 7 Del. C., Chapter 60, Section 6003(d), if the delegated ~~permit~~ program establishes standards no less stringent than the standards established in these Regulations. ~~under a pre-existing memorandum of agreement, shall continue in force until reauthorized under a new memorandum of agreement as its standards established in those regulations are more appropriate to the conditions of New Castle County and in some cases may be more stringent than these Regulations.~~

3.05000 Administrative and judicial review and the enforcement under these Regulations shall be in accordance with the provisions of 7 Del. C., Chapter 60.

3.06000 If any part of these Regulations, or the application of any part thereof, is held invalid or unconstitutional, the application of such part to other persons or circumstances, and the remainder of these Regulations, shall not be affected thereby and shall be deemed valid and effective.

3.07000 These Regulations, being necessary for the health and welfare of the State and its inhabitants, shall be liberally construed in order to preserve the land, surface water and ground water resources of the State.

3.08000 At the sole discretion of the Department, if

the proposed operation of a system ~~would~~ may cause pollution of public waters or create a public health hazard, system installation or use shall not be authorized.

3.09000 All wastewater shall be treated and disposed of in a manner approved by the Department.

3.10000 No person shall dispose of ~~sewage wastewater or septage~~ wastewater at any location not authorized by the Department under applicable laws and regulations for such disposal.

3.11000 Discharge of untreated or partially treated wastewater or septic tank effluent directly or indirectly onto the ground surface or into surface waters of the State, unless authorized by a permit issued by the Department, constitutes a public health hazard and is prohibited.

3.12000 No cooling water, air conditioning water, groundwater, oil, water softener brine or roof drainage shall be discharged into any system without specific authorization of the Department. Water softener brine shall be discharged in a manner that does not allow surface discharge (curtain drain).

3.13000 Except where specifically allowed within these Regulations, no person shall connect a dwelling or commercial facility to a system if the total projected wastewater flow would be greater than that allowed under the original system construction permit.

3.14000 Each system shall have adequate capacity to properly treat and dispose of the maximum projected daily wastewater flow. The quantity of wastewater shall be determined from these Regulations or other information the Department determines to be valid that may show different flows.

3.15000 A permit to install a new system can be issued only if each site has received an approved site evaluation and is free of encumbrances (e.g., easements, deed restrictions, etc.), which could prevent the installation or operation of the system from being in conformance with these Regulations.

3.16000 A recorded utility easement is required whenever a system crosses a property line separating property under different ownership. The easement must accommodate that part of the system, including setbacks, which lies beyond the property line, and must allow entry to install, maintain and repair the system.

3.17000 Whenever real property is recorded as two separate lots under common ownership and an on-site sewage wastewater treatment and disposal system crosses the common boundary of the recorded lots, the owner shall execute and record, in the appropriate county office of Recorder of Deeds, an affidavit which notifies prospective purchasers of this fact on a form approved by the Department.

3.18000 Except as provided in these Regulations, the system replacement spare area shall be kept vacant, free of vehicular traffic and soil modifications.

3.19000 All systems shall be operated and maintained so as not to create a public health hazard or cause water pollution.

3.20000 Exhibits A through Z are incorporated into these Regulations by reference.

3.21000 No person shall transfer any portion of real property if the transfer would create a lot boundary which would cross an existing system or any part thereof including required setbacks and isolation distances unless, a utility easement is granted to the owner of the existing system and recorded in the appropriate county office of Recorder of Deeds.

(a) A utility easement is granted to the owner of the existing system; and

(b) The transferred parcel is of sufficient size to accommodate an independent on-site system which would comply with all requirements of these Regulations.

3.22000 The Department shall have the power to enter, at reasonable times, upon any private or public property for the purpose of inspecting and investigating conditions relative to the enforcement of these Regulations.

3.23000 No person shall transfer any portion of real property after the issuance of a permit pursuant to these regulations if the transfer would result in the use of the permitted on-site system on a lot which does not comply with these Regulations and the terms of the permit, including density, set back and isolation distance requirements.

SECTION 4.00000 - LICENSES

4.01000 The Department shall administer a program for the licensing of percolation testers, system designers, site evaluators, system contractors, ~~and~~ liquid waste haulers and system inspectors. The licensing program shall provide the issuance of licenses as follows;

(a) Class A - Percolation Tester: The Class license authorizes the performance of percolation tests and other types of infiltrometer testing.

(b) Class B - Designer: The Class B license authorizes the design of ~~standard~~ conventional on-site wastewater treatment and disposal systems which utilize gravity distribution systems for seepage beds and seepage trenches ~~and certain standardized pressure distribution and disposal systems as provided in these Regulations~~ and lift pump stations as provided for in these Regulations.

(c) Class C - Designer: The Class C license authorizes the design of ~~standard~~ conventional and alternative ~~and experimental~~ on-site sewage wastewater treatment and disposal systems and all pressure distribution ~~and disposal~~ systems.

(d) Class D - Site Evaluator: The Class D license authorizes the performance of site soil evaluations, percolation and/or percolation tests.

(e) Class E - System Contractor: The Class E license authorizes the construction, repair and installation of

on-site wastewater treatment and disposal systems.

(f) Class F - Liquid Waste Hauler: The Class F license authorizes the removal or disposal of ~~waste petroleum products~~ or the solid and liquid contents of septic tanks, cesspools, seepage pits, holding tanks or other wastewater treatment or disposal facilities as specified and required under these Regulations.

(g) Class GB - Designer: The Class GB license authorizes the design of combined well and conventional on-site wastewater treatment and disposal systems which utilize gravity distribution systems for bed and trench designs.

(h) Class GC - Designer: The Class GC license authorizes the design of combined well and conventional and alternative on-site wastewater treatment and disposal systems and all pressure distribution systems.

(i) Class H - System Inspector: The Class H license authorizes the inspection, investigation, data collection and certification/non-certification of on-site wastewater treatment and disposal systems for the express purpose of real estate transfers and/or governmental or municipalities requirements.

4.02000 It shall be necessary to have the Class A, Class B, Class C, Class D, Class E, ~~and~~ Class F, Class GB, Class GC and Class H licenses in order to engage in the specified activities under Section 4.01000 of these Regulations. ~~Any person expecting to be licensed as of May 1, 1985 should submit a completed application no later than March 1, 1985.~~

4.03000 Any person seeking a license under this Section shall submit a complete application to the Department on a standard form provided by the Department, references and pay the non-refundable application fee, if required. All applicants for a Class A, B, ~~or~~ E, F, GB and H license will be required to pass an examination prepared and administered by the Department to test the competency and knowledge of the applicant regarding pertinent subject matter and the application and use of these Regulations. (GB and GC licenses shall not be available until Section 3.04 of the Regulations Governing the Construction and Use of Wells is amended. Class H license's shall not become effective until one (1) year after the adoption of these Regulations.)

4.03050 In the event an applicant fails to receive a passing grade on the examination, he/she shall be so notified by the Board within 30 days. The applicant may re-apply for a subsequent examination. In the event an applicant fails to receive a passing grade on the subsequent examination they will be required to complete a training course approved by the On-Site System Advisory Board (OSSAB). The examination may be taken no more than twice in a twelve (12) month time period unless the applicant provides certification of completion of an approved training course.

4.04000 With respect to Class C licenses the

following shall constitute the Department's requirements:

(a) Registration as a Professional Engineer with the Delaware Association of Professional Engineers; and

(b) A complete qualifications statement on approved Department forms which verifies the individual's knowledge and competency in the field of on-site sewage wastewater treatment and disposal system engineering and design.

4.05000 With respect to Class D licenses the following shall constitute the Department's requirements:

(a) A completed qualifications statement on appropriate Department forms which verifies the individual's knowledge and competency in the field of site evaluations for on-site sewage wastewater treatment and disposal systems; and

(b) Registration as a Professional Soil Scientist or Soil Classifier with the American Registry of Certified Professionals in Agronomy, Crops and Soils (ARCPACS); or

NOTE: If not ARCPACS certified, a field practicum shall be performed to assess whether competency exists for soils in Delaware. This field practicum shall be administered by the soil scientist(s) on the On-Site System Advisory/Site Interpretations Boards and/or from DNREC.

(c) Six (6) years of professional experience in soil classifications, mapping and interpretations with nine (9) semester hours in soil science and six (6) semester hours in geological sciences from an accredited college or university; or

(d) Four (4) years of professional experience in soils classifications, mapping and interpretations and an undergraduate degree from an accredited college or university with nine (9) semester hours in soil science and six (6) semester hours in geological sciences; or

(e) Two (2) years of professional experience in soils classifications, mapping and interpretations and a graduate degree from an accredited college or university, with thirty (30) semester hours or the equivalent in biological, physical and earth sciences with fifteen (15) of such semester hours in soil science.

4.06000 With respect to Class E licenses the following shall constitute the Department's requirements:

(a) A completed qualification's statement, on appropriate Department forms, which verifies the individuals knowledge and competency of the application and requirements of these Regulations.

(b) A minimum of two (2) years of experience under the guidance of an experienced supervisor in the construction of on-site wastewater treatment and disposal systems.

(c) Show proof of insurance for a minimum of \$300,000.00 for general liability and \$100,000.00 per occurrence.

4.06050 With respect to Class GB licenses the

following shall constitute the Department's requirements:

(a) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the field of gravity on-site wastewater treatment and disposal systems; and

(b) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the placement of wells and the Regulations Governing the Construction and Use of Wells.

4.06100 With respect to Class GC licenses the following shall constitute the Department's requirements:

(a) Registration as a Professional Engineer with the Delaware Association of Professional Engineers; and

(b) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the field of engineering and the design of on-site wastewater treatment and disposal systems.

(c) A complete qualifications statement on approved Department forms which verify the individual's knowledge and competency in the placement of wells and the Regulations Governing the Construction and Use of Wells.

4.06200 With respect to Class H licenses the following shall constitute the Department's requirements:

(a) Has had at least two (2) years experience in the on-site wastewater industry;

(b) Furnishes certification of training completed under the National Association of Waste Transporters (NAWT) guidelines, Del-Tech certification program or as approved by the Board.

4.06250 Responsibilities of Licensees

4.06260 Any Class D licensed site evaluator shall may be required to notify the Department orally or in writing at least thirty-six (36) hours, excluding Saturdays, Sundays and state holidays, prior to conducting the site evaluation. This is at the sole discretion of the Department.

4.06270 All Class A, B, C, D, E, F, GB, GC and H licensee's are responsible for correct and complete information submitted to the Department as it pertains to current Regulations.

4.06300 All Class E licensed system contractors shall:

(a) Initiate work only on systems for which a construction permit has been granted; and

(b) Comply with all applicable regulations and requirements; and

(c) Be responsible for ~~Supervise~~ the work carried out by their employees; and

(d) Submit to the Department within ten (10) days of completion of a system, a ~~Completion~~ Construction Report on forms provided by the Department, signed by the licensed contractor; installer system contractor, for systems

PROPOSED REGULATIONS

for which the Department has waived pursuant to Section 5.0402 of these Regulations and

(e) Notify the Department 24 hours prior to construction start up to receive an authorization number; and

(f) Be the sole contact person to the Department regarding inspection call-ins, consequential changes or problems. An individual employed by the licensee may be the contact person for inspection call-ins provided that person is a Class E licensee or has been designated as a contact person in writing to the Department by the licensee prior to calling; and

(g) Submit proof of insurance annually.

4.06400 All Class F licensed liquid waste haulers shall:

(a) Display the name, address and permit number of the licensee in standard block letters no less than three (3) inches high on both sides of each vehicle used for hauling purposes; and

(b) Equip every vehicle used for hauling purposes with a watertight tank or body and be maintained in a clean and sanitary condition. Liquid wastes shall not be transported in an open body vehicle unless contained within suitable receptacles. All pumps and hose lines shall be free of leaks; and

(c) Assure all receptacles used for transporting liquid or solid wastes are watertight, equipped with tight fitting lids and are cleaned daily; and

(d) Obtain prior approval in writing from the Department for every site at which a hauler plans to discharge a specified amount of waste material collected. No waste material shall be discharged on a site without such prior approval. Written approval will be based upon the applicant having satisfied the requirements of all applicable regulations adopted by the Department. Waste material collected by the hauler shall not be discharged into ditches, watercourses, lakes, ponds, tidewater or at any point where it can pollute any watercourse, water supply source, bathing area, or shellfish growing area. It shall not be deposited within 300 feet of any highway, except as provided in subpart (e) thereunder; and

(e) Discharge liquid wastes into approved wastewater treatment facilities unless otherwise authorized by the Department, provided such facilities have sufficient capacity and capability to handle such liquid wastes; and

(f) Fit all truck pumping and discharge hoses with automatic shutoff valves; and

(g) ~~Separately identify vehicles used to haul waste petroleum products as specified by the Department.~~

Remove all wastewater from the appropriate tanks in accordance with National Standards as set forth by the National Association of Waste Transporters (NAWT).

(h) May repair, add or replace risers and baffles on or within septic tanks.

4.06430 All Class H System Inspectors shall:

(a) All certification/non-certification of on-site wastewater treatment and disposal systems shall be submitted to the Department on forms approved by the Department (See Exhibit A). These forms shall be submitted within seventy two (72) hours of inspection completion.

4.06450 Any person who engages in the practice of professional engineering or professional geology in the specified activities under this Section shall be duly registered in conformance with the requirements of the laws of the State of Delaware.

4.06460 The Department may issue temporary Class A, B, or E licenses to property owners who wish to conduct their own percolation testing, system design, or system installation on their own property and for their own use. Certification of the intended use will be required. The applicant shall submit an application on Department forms along with any required fee and shall demonstrate his competency in those fields by successfully completing a test conducted by the Department. The term of the temporary Class A, B, or E license shall expire upon completion of work conducted by the applicant for which the permit was issued.

4.07000 In exercising exclusive licensing authority under this section, the Department shall seek the views of an On-Site Systems Advisory Board regarding licensing matters. The Board shall consist of six (6) members designated by the Secretary. The board shall, if possible, have one (1) member who is a representative of the Department, one (1) member who is a Professional Engineer, one (1) member who is a Professional Geologist, one (1) member who is a representative of the USDA, one (1) member who is a Class D Site Soil Evaluator, and one (1) member who is a Class E System Contractor. The members of the Board shall serve at the discretion of the Secretary. The Board shall advise the Department on matters relating to issuance of Class A, Class B, Class C, Class D, Class E, Class F, Class GB, Class GC and Class H licenses.

4.07100 Upon adoption of these Regulations, the applicant for a license renewal shall submit with the renewal application proof that he/she has attended and/or satisfactorily completed a minimum of ten (10) hours of continuing education training relating to the wastewater industry. This is to include siting, design, construction, operation and/or maintenance of on-site wastewater treatment and disposal systems. Class D licensee's not ARCPAC certified must attend at least three (3) hours of soil related curriculum. Any training must be sponsored by recognized governmental, educational or industrial groups which include equipment manufacturers and be approved by the OSSAB. The number of hours of continuing education for first year licensee's will be decided by the OSSAB and be based upon license issuance date.

4.07500 The Secretary may suspend or revoke the

license of a ~~percolation tester, designer, system contractor, or liquid waste hauler~~, Class A, B, C, D, E, F, GB, GC or H licensee after considering the recommendations of the On-Site Systems Advisory Board and demonstration that the licensee has practiced fraud or deception; that reasonable care, judgment, or the application of their knowledge or ability was not used in performance of their duties; or that the licensee is incompetent or unable to perform their duties properly and;

(a) Violated any provision of these Regulations;

(b) Violated any lawful order or rule rendered or adopted by the Department;

(c) Obtained his/her license or any order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts;

(d) Failure to obtain the necessary hours of continuing education training required by these Regulations;

(e) Been found guilty of misconduct in the pursuit of his/her profession.

4.08000 Any person whose application for a license has been denied or person whose license has been suspended or revoked shall be notified in writing and provided reasons for the decision. Within ~~thirty (30) twenty~~ (20) days of notification, the person shall notify the Secretary, in writing, if ~~a public hearing~~ an appeal pursuant to 7 Del. C., Chapter 60, Section §6006 6008 is to be ~~required~~ requested. If no ~~hearing appeal~~ request is received within the designated period the decision shall become final.

4.09000 Licenses issued pursuant to this Section are not transferable and shall expire on ~~June 30~~ December 31 of each year. A license may be renewed for one year without examination for an ensuing year provided the licensee makes application for renewal ~~at least sixty (60) days prior to the expiration date, by November 30th of each year, shows proof of the number of hours of continuing education training and pays any applicable renewal fees adopted by the Department. If the licensee fails to renew the license he/she may reapply, without examination, within the first year. If more than a year passes the licensee must reapply for the license and take all necessary examinations. A reminder will be sent to the licensee to renew his/her license by the Department. The reminder will be sent to the address on file for the licensee. It is the licensee's responsibility to renew the license yearly and notify the Department of any changes.~~

SECTION 5.00000 - SITE EVALUATIONS AND PERMITS

5.01000 Site Evaluation Procedures

5.01010 A site evaluation is the first step in the process of obtaining a construction permit for an on-site wastewater disposal system. Any person applying for a permit to install a new or replacement on-site ~~sewage~~ wastewater treatment and disposal system shall first obtain a

site evaluation report prepared by a Class D Licensee licensed site evaluator. The Department shall conduct site evaluations only for ~~H~~Home ~~R~~Rehabilitation ~~L~~Loan ~~P~~Programs (HRLP), block grant households, State Revolving Fund (SRF) sites and other qualifying low income individual programs with similar criteria. ~~All other site evaluations shall be conducted by a private site evaluator.~~

5.01020 ~~Applications for site evaluations to be conducted by the Department shall be made on forms approved by the Department. Each report shall be completed in full, signed by the owner or his legal authorized agent, and shall be accompanied by all required exhibits, site plats (sketches), and the appropriate fee.~~

5.01020 Site evaluations performed for the purpose of siting large/community systems refer to the necessary criteria in Section 5.12000.

5.01025 ~~All other site evaluations shall be conducted by a private site evaluator. Each report shall be completed in full and be accompanied by all required exhibits, site plats approval page(s) (excluding sites not suitable for conventional on-site wastewater treatment and disposal systems (OWTDS), report page(s), site plat, soil profile notes, zoning verification form and the appropriate fee. The site evaluation report shall contain specific site conditions or limitations including, but not limited to, isolation and separation distances, slopes, existing wells, cuts and fills, and unstable landforms. The report shall contain the appropriate zoning verification. The Department shall prepare and provide to site evaluators a standardized form to be used for design specifications including percolation rates and siting requirements such as isolation distances.~~

5.01028 ~~The site evaluator~~ Class D Licensee shall specify on the approval page the type of on-site wastewater treatment and disposal system that may be constructed in the acceptable on-site disposal area as indicated on the site plat. Any other on-site wastewater treatment and disposal options available in the evaluated area shall be specified by the ~~site evaluator~~ Class D Licensee. The ~~evaluator~~ licensee shall either assign a percolation rate or have the appropriate hydraulic conductivity or percolation test conducted in the proposed disposal area prior to submittal.

5.01030 A site plat (sketch) to scale showing the information referenced in Section 5.01080, accurate dimensions and configuration of the property, proposed and/or existing structures, driveways, encumbrances, easements, underground and overhead utilities on the property, adjacent sewage disposal systems, bodies of water, drainageways, agricultural drain tile, wells, cisterns, and springs for a minimum of 150 feet from the evaluated area shall be submitted. All site plats are required to show a reference point such as a numbered utility pole, telephone or electrical box, building(s), property corners or fixed survey marker. A

minimum of two reference points are required for navigation and mapping without supplied bearings. If the site plat is based on a survey by a professional surveyor, only property corner markers as shown by the survey shall be required. Plats shall be at appropriate magnitude scales not to exceed 1" = 100'. Any site plat which exceeds 8.5" X 11" must be submitted in duplicate for the purpose of providing the client with this documentation.

5.01035 Showing the location of all on-site and adjacent wells within 150 feet of the approved soils area is the responsibility of the Class D licensee. The following procedure shall be used in all cases when on-site or adjacent well(s) cannot be located. For instances where the on-site or adjacent well(s) are below ground and the homeowner or adjacent property owner states that the well is located in a certain area, this information shall suffice for verification of well location. Any well(s) that can not be verified must be researched through the Water Supply Section of the Department. The search attempts to locate any well(s) that are near the affected parcel. If, after this search is completed, the well location(s) cannot be identified the Class D licensee can state "records were researched under this property owner's name and no information was found". The Department then sends a letter to the adjacent well owners notifying them of the need to locate their well(s) due to the future installation of an on-site wastewater treatment and disposal system. If no response is rendered within fifteen (15) days of receipt then the new system is to be designed to maximize the isolation distance from the property line.

5.01040 A site evaluation prescription for a subsurface soil absorption system shall follow an approach that includes consideration of topography, available area, slope gradient and uniformity, soil profile (thickness and depth of each horizon, color, percolation, absorption rate, redoximorphic features, texture (see Exhibit B), and zones of saturation), drinking water supplies, bodies of water, and shellfish growing areas. All suitable soils shall be delineated regardless of isolation distances, encumbrances and easement requirements as well as any of the above conditions which may exist.

5.01045 All test soil borings, holes and/or pits shall be flagged, identified and adequately shown on the site plat along with the distance to the nearest fixed point of reference.

5.01060 The Department or site evaluator shall evaluate the site of the proposed system, shall consider system options, and shall provide a report of such evaluation that determines if the site is suitable for an on-site disposal system. In describing the soils and soil profile, the site evaluator Class D licensee shall adhere to the procedures and techniques provided in the latest edition of the Soil Survey Manual, USDA Agricultural Handbook No. 18, as published by the U.S. Department of Agriculture.

5.01080 The report shall contain, at a

minimum, a site plat and observations of the following site characteristics if present:

- (a) Parcel size, location map of project site, configuration and approximate dimensions
- (b) Slope - ~~in absorption area and replacement areas~~ percent and direction
- (c) Surface streams, springs or other bodies of water and their definition (i.e. shellfish, intermittent, ephemeral, etc.)
- (d) Existing ~~and proposed~~ wells within 150 feet of approved soils area
- (e) Escarpments
- (f) Cuts and fills
- (g) Unstable landforms
- (h) Soil profiles A representative number of soil profile descriptions in the evaluated area(s) and shall identify the soil series or classification to the subgroup level (i.e. Sassafras or Typic Hapludult).
- (i) Zones of saturation (as indicated by redoximorphic features)
- (j) Useable area of initial and replacement disposal fields ~~Approved soils area(s)~~
- (k) Encumbrances
- (l) Central wastewater or water systems availability
- (m) Any other applicable information such as hydric soils (if any delineated and recorded state or federal wetlands), beach preservation line, and topographic contour lines of at least two (2) feet intervals for slopes greater than 5%.
- (n) Any overhead ~~or underground~~ utilities
- (o) Existing dwellings

5.01100 A copy of the report from the evaluator shall be sent directly to the property owner and/or his/designated agent. Another copy shall be sent with appropriate fee to DNREC prior to the submittal for the application/construction permit. The copy sent to DNREC shall have the correct address and phone number of the property owner and/or his designated agent. The application/construction permit report may be submitted with the site evaluation, in an emergency situation, when there is a public health risk associated with a malfunctioning system. The permit shall not be approved until the site evaluation is reviewed and complies with the Regulations. Site evaluations needed to replace the malfunctioning system shall be given a priority review.

5.01105 Once received, the report shall be reviewed for compliance with current Regulations by a DNREC soil-Environmental Scientist with a soil science background. If the report is in non-compliance, a notice shall be sent to the owner or his/her authorized agent and the Class D licensee shall be notified, site evaluator. The Class D licensee site evaluator shall contact the Department to rectify the discrepancy. The Department shall not modify any site

evaluation report unless requested by the Class D individual. The corrections shall be submitted to the Department from the evaluator and a corrected copy to the owner, etc. The review process, which may include a field check, shall take place within ten (10) calendar working days of receipt from the post mark date if mailed or the Departmental date stamp if submitted in person. (NOTE: If approval cannot be issued within ten (10) working days, the property owner or authorized agent shall be notified of the delay and a tentative date of approval or denial shall be given). Once ~~If~~ approved, the report shall be ~~stamped as so and~~ mailed to the property owner or his/her authorized agent. A percentage of randomly chosen site evaluations submitted shall be field verified by DNREC staff. Site evaluations requiring test pits (~~particularly in northern New Castle County~~) should be reported to the Department prior to conducting the site evaluation.

5.01125 ~~An approved site evaluation report allows a permit to be issued for construction of a system on that property provided procedures and conditions for permit issuance found in these Regulations are met. Approval of a site evaluation indicates only that the site evaluation was conducted in compliance with these Regulations. It is not an indication of the correctness or quality of the site evaluation nor an indication that a permit can be issued.~~

5.01130 ~~In order to obtain an approved site evaluation report, the conditions outlined in these regulations shall be met.~~

5.01140 The approved site evaluation report shall indicate the type of the initial and type of replacement system for which the site is approved.

5.01160 Approval of a site evaluation shall be denied where the conditions for approval are not met.

5.01170 Technical regulation changes shall not invalidate an approved site evaluation but may require the use of a different type of system.

5.01172 The approved site evaluation shall be valid for five (5) years from the date of the Department's approval or the adoption of this regulation revision unless a base plan restricting well and on-site wastewater treatment and disposal system locations has been approved by the Department and recorded in the local Recorder of Deeds Office. After the five (5) year period, an updated site evaluation as outlined in Section 5.01080, shall be submitted to the Department for approval. This updated site evaluation will be reviewed as outlined in Sections 5.01100 and 5.01105.

5.01175 ~~Any request for modification of a site evaluation found to be in compliance shall be submitted in writing to the Department either by the property owner or the legally authorized agent. Any modification to a site evaluation resulting in system type change requires a new report be submitted to the Department with the appropriate fee. The report shall once again be reviewed by procedures~~

~~outlined in Sections 5.011000 and 5.01105.~~

5.01176 Supplemental soil information submitted after the original site evaluation ~~report~~ has been ~~submitted~~ approved shall include a revised approval page, report page, soil profile notes, and revised plat drawing locating supplemental borings/test pits. In all cases, the new report shall be approved provided all criteria for approval are met. ~~Supplemental borings/test pits conducted on parcels of one acre or less for the sole purpose of moving a system shall not require a fee. However, if~~ the purpose of supplemental work is to change the type of system previously prescribed, another review fee shall be required. Likewise, any borings/test pits conducted greater than 100 ft. from the previously evaluated approved area, with or without a system change, shall require a review fee. On larger parcels, the area evaluated shall be delineated on the site plat.

5.01180 The Department shall issue a notice of its intention to deny a site evaluation when appropriate. Alternative technologies for on-site wastewater treatment and disposal systems, ~~system~~, if appropriate, shall be included in the letter of denial. ~~The tentative site evaluation denial may be reviewed by the Director at the request of the applicant. The application for review shall be submitted to the Director in writing, within thirty (30) days of the date of the notice to deny the site evaluation, and shall be accompanied by the denial review fee. The review shall be conducted and a report prepared by the Director. The applicant still maintains his/her right to appeal the decision of the Secretary, within 20 days of receipt, in accordance with 7 Del. C., Chapter 60, Section §6008.~~

5.01190 A property owner or agent has the option to use observation wells to demonstrate that ~~soil mottling or other color patterns~~ redoximorphic features at a particular site are not an indication of zones of saturation. The following procedures for the use of observation wells to determine the depth and duration of zones of saturation shall be implemented.

5.0A1200 Observation Wells

5.0A1210 ~~Observing~~ Determining the zones of saturation using observation wells shall follow these procedures:

(a) The property owner or authorized agent shall notify the Department, in writing, of the intent to ~~observe~~ use observation wells to determine the zones of saturation.

(b) At least three (3) observation wells shall be installed and monitored at a site. ~~for the proposed initial and replacement on-site wastewater disposal systems~~. If, in the judgment of the Department, more than three (3) observation wells are needed, the property owner or agent shall be ~~so advised~~ notified in writing within ten (10) days of receipt of the letter of intent.

(c) The design illustrated in Exhibit Y shall be used when constructing observation wells. At least two (2)

wells shall extend to a depth of at least six (6) feet below ground surface. ~~and shall be a minimum of three (3) feet below the proposed gravel depth.~~ However, with layered mottled soil over permeable unmottled soil, at least one (1) well shall terminate within the mottled layer. Site conditions may, in some cases, require monitoring at greater depths. It shall be the responsibility of the ~~site evaluator~~ Class D licensee to determine the depth of the observation wells for each site and, if in doubt, they shall request the guidance of the Department.

(d) All observation wells are required to be permitted by the Department Water Supply Branch.

(e) Observation wells shall be installed by or under the direct on-site supervision of a well driller licensed by the State of Delaware.

(f) Monitoring of water levels shall be done by an ~~Class B, C, D individual or by a well driller, all of whom are~~ is licensed by the State of Delaware Division of Water Resources. The property owner/agent or any relative shall not, at anytime, be allowed to monitor the water levels of these wells.

(g) The preferred monitoring is from ~~October 15th~~ December 1st through May 15th of the following year to verify the depth and duration of the zones of saturation during years of near normal precipitation for fall, winter and spring seasons. However, the Class D Licensee site evaluator may, at his/her discretion, allow clients to install wells at any time he/she deems appropriate. Depending on when peaks are observed, the State may or may not accept the monitoring for that season. A near normal ~~fall, winter and spring~~ monitoring period is when precipitation received at a local weather station is at or near the thirty year average as reported by the weather station. The licensed individual shall be responsible for relating precipitation levels received during the monitoring period to precipitation received in the previous three years. (Dover, Georgetown, or Wilmington) is equal to or exceeds, for both periods October 1st to March 1st and March 1st to May 1st, 13.55 inches and 11.23 inches, respectively. A precipitation gauge may be installed at the site. ~~Otherwise precipitation data shall be compiled from the nearest local weather station. (The modal precipitation values were determined from 30 years of precipitation data from the U. S. National Weather Service for Dover, Georgetown and Wilmington for the years 1958 to 1987 with the ten (10) driest years being thrown out and using the 11th year as modal.)~~

(i) The Department shall field check the monitoring periodically during the time of expected saturated soil conditions at their discretion.

(ii) ~~The first observation shall be made on or before October 15th. Observations shall be thereafter made every seven (7) days or less until May 1st or until the site is determined to be unacceptable, whichever comes first.~~

~~If water is observed above the critical depth twenty (20) inches from the soil surface or present grade) at any time, an observation shall be made one (1) week later. If water is present above the critical depth at both observations, monitoring may cease because the site is then considered unacceptable. If water is not present above the critical depth, monitoring shall continue until May 1st. If any two (2) observations seven (7) days apart show the presence of water above the critical depth, the site is unacceptable and the Department shall be notified in writing.~~

(iii) The occurrence of rainfall(s) of 1/2 inch or more in a 24 hour period during monitoring may necessitate observations at more frequent intervals.

(iv) The Department may, at any time during the observation period, verify the observed water depth by conducting a soil boring next to, and of equal depth with, any of the observation wells. If the water level in the fresh boring, after 24 hours, presents a discrepancy with the water level observed in the well, then at the discretion of the Department, the data may be declared invalid. If the data is declared invalid, then ~~an~~ the Department will notify the owner in writing of the invalid data within ten (10) days of determination. ~~an unsuccessful site procedure shall be initiated.~~

5.0A102 ~~When monitoring shows saturated conditions above the critical depth, data giving test locations, ground elevations at the wells, soil profile descriptions, dates observed, depths to observed water and local precipitation data (monthly from October 15th to May 1st and daily during monitoring) shall be submitted to the Department, in writing, accompanied by two (2) copies of the same.~~

5.0A12203 ~~When water well monitoring discloses that the site is acceptable, documentation including location and depth of wells, ground elevations at wells, soil profile descriptions, dates observed, result of observations, local precipitation data and information on artificial drainage shall be submitted in writing to the Department in a site evaluation report with appropriate review fee. When monitoring determines that the site is suitable, the Department will request that a new site evaluation be submitted. The monitoring information must be incorporated into the new site evaluation. shall approve the site evaluation and, if necessary, rescind the denial. An approved site evaluation report shall be issued indicating the appropriate system type(s).~~

5.0A104 ~~The monitoring of soil borings for periods of time less than the above stated time frame may be permitted to help determine if observation well procedures, as outlined above, are warranted to determine if the site evaluation needs to be revised.~~

5.0A12305 Observation wells are required to be abandoned in accordance with the current Regulations Governing the Construction and Use of Water Wells.

5.0A106 ~~Areas which are to be monitored shall~~

~~be carefully checked for drainage tile and open ditches which may have altered natural high ground water levels. Where such factors are involved, information on the location, design, ownership and maintenance responsibilities for such drainage shall be provided. Documentation shall be provided to show that the drainage network has an adequate outlet, and can and shall be maintained. Sites affected by agricultural drain tile shall not be acceptable for system installation.~~

5.0B13000 Site Interpretation Advisory Council

5.0B13100 The purpose of the Site Interpretation Advisory Council (Council) is to act as an objective peer group in the review of discrepancies between the Department of Natural Resources and Environmental Control (DNREC) and Class D licensee's soil scientists regarding questions of interpretation of soil and site information for siting on-site wastewater treatment and disposal systems.

5.0B13202 The Council shall restrict its charge to those items normally and commonly addressed when conducting a site evaluation as discussed below. The Council specifically excludes instances regarding the engineering design and/or installation of septic on-site wastewater treatment and disposal systems except when it is directly applied to the soil science practice.

(a) The description and interpretation of soil morphology in regard to the proper functioning of on-site wastewater treatment and disposal systems utilizing the soil as part of the treatment process.

(b) The characterization of lithologic and hydrologic limiting layers and geomorphology pertinent to the proper siting and functioning of on-site septic wastewater treatment and disposal systems.

(c) The recognition and documentation of site limitations for the placement of on-site septic wastewater treatment and disposal systems (i.e. existing wells and septic on-site wastewater treatment and disposal systems) in accordance with standard practice in Delaware.

5.0B13303 The Site Interpretation Advisory Council shall be appointed by the Secretary and consist of the following members:

(a) Four (4) non-governmental Class D licensee's site evaluators actively practicing in the State of Delaware for two (2) or more years with one (1) acting as an alternate.

(b) One (1) employee of the Department with soils and on-site wastewater industry expertise.

(c) One (1) soil scientist designated by the State Conservationist through the State Soil Scientist, SCS NRCS, USDA.

(d) ~~The A~~ manager of the Soil Assessment Branch (SAB) Ground Water Discharges Section (GWDS), DNREC, shall serve as a liaison to the Council without voting privileges.

(e) All members shall serve three (3) year terms. Procedures shall be established by the Council to stagger terms so as to provide continuity.

5.0B13404 Documentation and testimony regarding a review shall be submitted to the Council. After the initial review by the Council, a determination shall be made as to whether sufficient information has been submitted to render an informed decision. The Council may request additional information from the applicant before proceeding with the review. There shall be no cost to the Council for any information submitted.

5.0B13505 Within thirty (30) days from receipt of the documentation, the Council shall render a decision, based on a simple majority vote, regarding which system(s), if any, are suitable under the Delaware Regulations law.

5.0B13606 A site visit shall be conducted by at least four (4) members of the Council. The applicant is responsible for all costs that may be incurred. Council members shall not be reimbursed for any expenses.

~~5.0B13707 Council decisions may be used by the Director of Water Resources in Director's Reviews. However, a~~ Any decision rendered by the Council ~~may shall~~ be considered by the Secretary ~~but shall not and may be the a~~ deciding factor in his/her decision. The applicant still maintains his/her right to appeal the decision of the Secretary in accordance with 7 Del. C., Chapter 60, Section §6008.

5.0B13808 The Council shall designate one of its members representing the private sector to serve as chairperson man for a period of one year. The chairperson man, or his/her designee, serving as the principal contact person between the Council and ~~the a~~ manager of the Soils Assessment Branch Ground Water Discharges Section (GWDS), shall perform the following duties:

(a) Call and preside at all Council meetings. ~~(The SAB A GWDS manager may also call a meeting, but is not entitled to preside at a Council meeting.)~~

(b) Upon receipt of a request, poll the Council members and communicate the results to the SAB GWDS manager calling a Council meeting when appropriate. (This function may also be performed by the SAB GWDS manager when necessary.)

(c) Prepare a letter communicating the Council's decision in each case. (The letter shall be sent within fifteen (15) working days after the Council's decision to the SAB GWDS manager for signature and returned for mailing within three (3) working days.)

5.0B13909 The following services shall be furnished by the DNREC to facilitate the operation of this Council:

(a) ~~The A~~ manager of the Soil Assessment Branch Ground Water Discharges Section shall represent the Section's position at all Council meetings.

(b) All submittals for consideration shall be circulated to the Council under the direction of the SAB

GWDS manager within ten (10) working days.

(c) ~~The SAB~~ A GWDS manager, at the request of the Council chairperson man, shall reserve space in the DNREC facilities for Council meetings.

(d) The DNREC shall provide clerical services for record keeping. Records of the Council meetings shall be furnished to all Council members within fifteen (15) working days following the meetings.

(e) The clerical person shall prepare and mail the decisions of the Council upon receipt from the chairperson man.

~~5.0B1404~~ The Council shall restrict reviews to those submittals directly affected by the expertise of the soil scientist's decision, using one of the following two (2) methods:

(a) A submittal from the Secretary, DNREC;

or

(b) A submittal from a ~~DNREC~~ Class D licensee site evaluator.

~~5.0B14104~~ All submittals shall be circulated to the Council membership. A majority vote of the Council is required for any submittal to be accepted for Council review.

5.02000 Permit Application Procedures - General Requirements

5.02010 No person shall cause or allow construction, alteration, or repair of a system, or any part thereof, without a permit. An exception may be allowed for certain emergency repairs as set forth in these Regulations.

5.02020 Applications for permits shall be made by the owner of the property or the owner's legally authorized agent on forms ~~provided and~~ approved by the Department.

5.02030 An application is complete only when the form is completed in full, is signed by the owner or the owner's legally authorized agent, is accompanied by all required exhibits (~~including provided~~ an approved site evaluation report is on file) and fee and includes, from the appropriate government unit having jurisdiction, a statement that the local governmental unit has approved the activity by zoning. Incomplete applications will not be processed and may be returned.

~~5.02040 The application form shall be received by the Department only when the form is complete, as detailed in these Regulations.~~

5.02050 ~~Upon receipt of an application~~ The Department shall deny the permit if:

(a) The application contains false information;

(b) The proposed system would not comply with these Regulations;

(c) The proposed system, if constructed, would violate a Department moratorium;

(d) A central ~~wastewater~~ wastewater system which can serve the proposed ~~sewage~~ wastewater flow is

both legally and physically available as described in Sections 5.02060 and 5.02070 of these Regulations;

(e) Construction of an on-site wastewater treatment and disposal system is prohibited by codes, ordinances or county or municipal regulations having jurisdiction.

5.02055 The completed application shall include at a minimum the following site information:

(a) Parcel and/or lot dimensions and size with a location map of project site;

(b) Slope - in absorption facility and replacement areas (percent and direction);

(c) Existing wells within 150 feet of the proposed system.

(d) Any and all watercourses or bodies of water;

(e) Distances of the on-site well(s) and on-site wastewater treatment and disposal systems from the nearest two fixed points of reference. Points of reference as defined in Section 5.01030;

(f) Soil boring and test pit locations along with limits of approved area as indicated on the approved site evaluation;

(g) Any other information required to satisfy these Regulations.

5.02060 A central wastewater system shall be deemed physically available if its nearest connection point from the property to be served is:

(a) For a single family dwelling, or other establishment with a maximum projected daily sewage wastewater flow of not more than five hundred (500) gallons, within ~~three two hundred (300)~~ (200) feet;

(b) For a proposed subdivision or group of two (2) to five (5) single family dwellings, or equivalent projected daily sewage wastewater flow, not further than two hundred (200) feet multiplied by the number of dwellings or dwelling equivalents.

(c) For proposed subdivision or other developments with more than five (5) single family dwellings, or equivalents, the determination of central wastewater availability shall be in the sole discretion of the Department.

However, a central wastewater system shall not be considered available by the Department if topographic or manmade features make connection physically impractical.

5.02070 A central wastewater system shall be deemed legally available if the system is not under a Department connection permit moratorium and the wastewater system owner is willing or obligated to provide sewer service.

5.02080 A permit shall be issued only to the owner or easement holder of the land on which the system is to be installed.

5.02090 The Department shall either issue or

deny the permit within twenty (20) working days after receipt of the completed application. However, if conditions prevent the Department from acting to either issue or deny the permit within twenty (20) working days, the applicant shall be notified ~~in writing~~. The Department shall either issue or ~~return deny~~ the permit within thirty (30) working days after the mailing date of such notification.

5.02100 All permits issued for on-site wastewater treatment and disposal systems pursuant to these Regulations shall be effective for ~~one (1) two (2) years~~ from the date of issuance. If the system has been started the Department may issue a limited time period extension, and is not transferable. A one year limited extension may will, if requested, be granted by the Department upon demonstration by the applicant that no changes have occurred in system design, siting, or Regulations applicable to the permit since the permit was issued and written certification to such factual findings is provided and all appropriate fees are paid.

5.02105 If any portion of the approved disposal area is disturbed during site construction activities, through grubbing, tree removal or other activities utilizing heavy equipment, additional soil borings or test pits shall be performed within the disturbed area(s) to substantiate the initial site evaluation.

5.03000 Permit Denial Review

5.03010 The Department shall issue a notice of its intention to deny a permit. The tentative permit denial shall be reviewed by the Director at the request of the applicant. The application for review shall be submitted to the Director in writing, within thirty (30) days of the date of the tentative permit denial notice from the Department and be accompanied by the denial review fee. The denial review shall be conducted and a report prepared by the Director. The Department shall make a decision on the application which it determines will best implement the purposes of 7 Del. C., Chapter 60 and these Regulations. The providing of the requisite information in the application procedure by the applicant shall not be construed as a mandatory prerequisite for the issuance of the permit by the Department.

5.03020 Permit denials for systems and denial reviews may be appealed to the Environmental Appeals Board in accordance with 7 Del. C., Chapter 60, Section 6008.

5.03030 If the Department intends to deny a permit for a parcel of ten (10) acres or larger in size, the Department shall:

- (a) Provide the applicant with a Notice of Intent to Deny;
- (b) Specify reasons for the intended denial;
- and
- (c) Offer an ~~public hearing~~ appeals process in accordance with 7 Del. C., Chapter 60, Section 6006 8.

5.04000 Pre-Cover Inspections

5.04005 The Class E contractor shall contact

the Department 24 hours prior to system construction to obtain a startup number to authorize the construction.

5.04006 Changes to a permit which result in only a relocation of the system can be done by submitting a pre-inspection as-built, which requires a minimal check against the site evaluation to ensure the system is still located within approved soils and that all required isolation distances are met. These "as-builts" are to be submitted to the Department by the Class E contractor prior to installation. The Class E contractor must obtain permission from the designer prior to submittal.

5.04010 When construction, alteration or repair of a system is complete, except for backfill (cover), or as required by permit, the ~~owner~~ system Class E contractor installer shall notify the Department. The ~~Department~~ inspector shall inspect the installation to determine if it complies with these Regulations and the terms and conditions of the permit, unless the inspection is waived by the Department in accordance with Section 5.04020.

5.04013 It is the responsibility of the Class E contractor to confirm the results of the pre-cover inspection prior to backfilling the system.

5.04017 An inspector shall be either:

(a) An employee of the Ground Water Discharges Section;

(b) A Class "C" designer or his/her designee. The Class C designer must submit a list of authorized personnel, on company letterhead, to the Department for review and approval.

(c) Any person officially authorized by the Department to perform inspections of on-site wastewater treatment and disposal systems.

5.04020 The Department may waive the pre-cover inspection, provided:

(a) The installation is a ~~standard subsurface system~~ gravity fed on-site wastewater treatment and disposal system installed by a licensed person pursuant to these Regulations; and

(b) After system completion the installer provides a ~~completion~~ construction report which certifies in writing that the system complies with the Department's Regulations. If any changes were made to the system the contractor must provide a detailed "as-built" plan (drawn to scale).

5.04021 Failure to comply with Departmental Regulations and the conditions of the permit will result in verbal notification to the Class E contractor. Failure to correct deficiencies within calendar 10 days (weather permitting) will result in written notification of such to both the Class E contractor and permittee. Additional inspections may be required by the Department.

5.04023 Once a system has received a satisfactory pre-cover inspection or authorization to cover without a Departmental inspection, the system may be

covered as specified in the approved permit. Backfilling must be completed within ten (10) calendar days of a satisfactory pre-cover inspection, weather permitting.

5.04027 Systems requiring earthen caps and all mound systems shall require a final cover inspection pursuant to Section 5.04010 or 5.04020. Capping of systems must be completed within ten (10) calendar days of a satisfactory pre-cover inspection or authorization to cover without Departmental inspection, weather permitting.

5.04030 Precover inspection details shall be recorded by the installer on a form approved by the Department.

5.04033 Inspections performed by Class C designers shall conform to guidelines established by the Department.

5.04037 In situations where the Designer is not comfortable approving a system, he/she is to contact the Department immediately.

5.05000 Certificate of Satisfactory Completion

5.05010 The Department shall issue a Certificate of Satisfactory Completion, if, upon inspection of the installation, the system complies with the Department's Regulations, and the conditions of the permit, and a construction report is submitted to the Department.

5.05020 If the inspection is not made within forty-eight (48) hours excluding Saturdays, Sundays, and holidays after notification of completion, or the inspection is waived, a Certificate of Satisfactory Completion shall be deemed issued by operation of law. In such cases, a modified Certificate shall be issued to the owner upon compliance with the requirements of Section 5.04020.

5.05030 A system shall be backfilled (covered) when:

(a) The permittee Class E contractor is notified by the Department that inspection has been waived; or

(b) The inspection has been done and authorization has been granted to cover the system; or

(c) An authorization to cover has been issued by operation of law where the inspection had not been conducted within forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, of notification of completed installation.

5.05040 Corrections necessary to meet requirements for satisfactory completion shall be made within ~~thirty (30)~~ seven (7) calendar days after written notification by the Department, and posting of a Notice of Violation, unless otherwise required.

5.05050 Unless otherwise required by the Department the contractor shall backfill (cover) a system within ten (10) days after being authorized to do so for that system.

5.05060 A Certificate of Satisfactory Completion shall be valid for a period of ~~one (1)~~ two (2)

years from the date of issuance. After the ~~one (1)~~ two (2) year period, the Regulations for Authorization Notices to Use an Existing System Permit or Alteration Permits apply.

5.05070 Denial of a Certificate of Satisfactory Completion may be appealed in accordance with 7 Del. C., Chapter 60, Section 6008.

5.05080 If the system has been placed into operation without the required Certificate of Satisfactory Completion, a Notice of Non-Compliance shall be issued to the owner and must be corrected within ten (10) calendar days or system must be abandoned in accordance with Section 5.06020.

5.06000 Abandonment of Systems

5.06005 General Requirements

(a) All systems shall be abandoned by a Class E licensee or other governmental appointee.

(b) Within (10) calendar days of abandonment, the Class E licensee shall submit a System Abandonment Report on a form provided by the Department (see Exhibit Z). The report shall be filled out completely and signed by the licensee.

5.06010 The system shall be properly abandoned when:

(a) A central wastewater system becomes available and the building sewer has been connected thereto; or

(b) The source of wastewater has been permanently eliminated; or

(c) The system has been operated in violation of these Regulations, until a repair permit and Certificate of Satisfactory Completion are subsequently issued therefore; or

(d) The system has been constructed, installed, altered, or repaired without a required permit authorizing same, unless and until a permit is subsequently issued therefore; or

(e) The system has been operated or used without a required Certificate of Satisfactory Completion or Authorization Notice authorizing same, until a Certificate of Satisfactory Completion or Authorization Notice is subsequently issued therefore.

5.06020 Procedures for Abandonment:

(a) The septic tank, cesspool or other treatment unit shall be pumped by a Class F licensed ~~hauler~~ liquid waste hauler to remove all of the contents;

(b) The septic tank, cesspool or other treatment unit shall be removed or filled with ~~reject~~ sand, ~~bank~~ run gravel, or other material approved by the Department;

(c) The system building sewer shall be permanently capped.

5.07000 Authorization to Use an Existing System Permit

5.07010 Application for an Authorization to

Use an Existing System Notices Permit shall be made on forms provided by the Department and shall be received accepted only when the forms are complete.

5.07020 No person shall place into service, change the use of, or increase the projected daily sewage wastewater flow above design standards into an existing system without first obtaining an Authorization Notice to Use an Existing System Permit or Alteration, Repair or Replacement Permit as appropriate.

5.07030 An Authorization Notice to Use an Existing System Permit is not required:

(a) Where there is a replacement of a mobile manufactured home or recreational vehicle with similar units in mobile manufactured home communities parks or recreational vehicle facilities with on-site sewage wastewater treatment and disposal systems approved by the Department when an annual inspection has taken place by the Department or an authorized designee certifying that the existing system(s) is/are not malfunctioning and/or a cesspool.

(b) For use of a previously unused system for which a Certificate of Satisfactory Completion has been issued within one (1) year of the date that such system is placed into service, provided the projected daily sewage wastewater flow does not exceed the design flow.

5.07040 For changes in the use of an existing system where no increase in sewage wastewater flow above design standards is projected, or where the design flow is not exceeded an Authorization Notice to Use an Existing System Permit shall be issued if:

(a) The existing system is not malfunctioning and/or a cesspool; and

(b) All isolation distances from the existing system can be maintained; and

(c) ~~At the sole discretion of the Department,~~ The proposed use would not create a public health hazard; and

(d) If the Department has no record of an existing on-site wastewater treatment and disposal system, no connection to that system shall be permitted until an inspection has been performed provided the following are uncovered and left uncovered prior to the inspection:

(i) Septic tank

(ii) Distribution box

(iii) Corners of each trench or the bed (additional area may be required upon inspection)

5.07050 If the conditions of Section 5.07040 cannot be met, an Authorization Notice to Use an Existing System Permit shall be withheld until such time as alterations and/or repairs to the system are made. ~~in accordance with these Regulations.~~

5.07060 For changes in the use of a system where projected daily sewage wastewater flows would be increased above design criteria an Alteration, Repair or

Replacement permit must be obtained.

5.07070 The Department may allow a mobile home to use an existing system serving another dwelling, in order to provide temporary housing for a family member suffering hardship, by issuing an Authorization Notice to Use an Existing System Permit, if:

(a) The Department receives satisfactory evidence which indicates the family member is suffering physical or mental impairment, infirmity, or is otherwise disabled and is in need of temporary housing; and

(b) The system is not malfunctioning and/or is not a cesspool; and

(c) The application is for a mobile home; and

(d) Evidence is provided that a hardship mobile home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building; and

(e) A full system replacement area is available according to an approved site evaluation.

5.07080 An Authorization Notice to Use an Existing System Permit issued for personal hardship shall remain in effect for a specified period, not to exceed cessation of the hardship. ~~The Authorization Notice is renewable on an annual basis.~~ The Department shall impose conditions in the Authorization Notice to Use an Existing System Permit which are necessary to ~~assure~~ ensure protection of public health. If the system fails and additional replacement area is no longer available, the mobile home shall must be removed from the property.

5.08000 Alteration of Existing Systems:

5.08010 No person shall alter or increase the design capacity of an existing system without first obtaining an Alteration Permit.

5.08020 No person shall increase the projected daily sewage wastewater flow into an existing system beyond the design capacity of the system until an Alteration Permit is obtained.

5.08030 The Department may issue an Alteration Permit if:

(a) The existing system is not malfunctioning and/or is not a cesspool; and

(b) An approved site evaluation report has been obtained; and

(c) The proposed installation will be in ~~full~~ compliance with these Regulations.

5.08040 Upon completion of installation of that part of a system for which an Alteration Permit has been issued, the permittee shall obtain a Certificate of Satisfactory Completion from the Department. ~~An increase in the projected daily sewage flow into the system shall be prohibited until the Certificate is issued.~~

5.09000 Repair and Replacement of Existing Systems

5.09010 Steps to repair a malfunctioning

system shall be initiated immediately and followed until repaired. However, if at the sole discretion of the Department, it is determined that adverse soil conditions exist due to climatic conditions that would likely preclude a successful repair, the Department may allow a delay in commencing repairs until the soil conditions improve. If this allowance is made, a compliance date and interim system maintenance requirements shall be specified in a ~~Notice of Violation~~ system construction deficiencies to the system owner.

5.09020 No person shall repair a malfunctioning system without first obtaining a Repair Permit. Emergency repairs of broken ~~pressure or sewer pipes~~ system components, as specifically defined in these Regulations (see Section 2.01260), may be made without first obtaining a permit provided that a permit is applied for within three (3) working days after the emergency repairs are begun. Such a delayed application submittal does not relieve any person from complying with subsequent requirements or conditions of approval as may be imposed by the Department.

5.09030 Upon completion of installation of that part of a system for which a repair permit has been issued, the permittee shall obtain a Certificate of Satisfactory Completion from the Department.

5.09040 The following criteria for a repair or replacement permit shall apply:

(a) If the site characteristics and standards described in these Regulations can be met, then the repair installation shall conform to them.

(b) If the site characteristics or standards described in these Regulations cannot be met, the Department may allow a reasonable repair or replacement installation in order to eliminate a public health hazard. Reasonable repairs or replacements may require the installation of an alternative system in order to eliminate a public health hazard. In such cases the Department shall use its best professional judgment in approving repairs or replacements that will reasonably enable the system to function properly.

5.09050 Malfunctioning systems which cannot be repaired shall be abandoned in accordance with these Regulations.

5.10000 ~~Experimental~~ Alternative Wastewater Treatment and Disposal Systems

5.10010 ~~Policy.~~ Alternative technology to standard on-site sewage wastewater treatment and disposal systems may be appropriate for areas planned for rural or low density development where site constraints limit the suitability for conventional system types. The Department shall consider applications for alternative wastewater treatment and disposal systems on a case-by-case basis. It is the policy of the Department to pursue a program of experimentation for the purpose of obtaining sufficient data

for the development of alternative sewage wastewater treatment and disposal systems, which may benefit significant numbers of the people within of Delaware. For the purposes of this section, applications for community systems that employ advanced treatment units which are in conformance with standard engineering practice as determined by the Department shall not be considered alternative.

5.10015 Applications for alternative wastewater treatment and disposal systems shall provide documentation of the capabilities of the proposed system. Such documentation shall be in the form of proven data of long term usage of facilities similar to those specified in these Regulations, or short term documentation from controlled projects from reliable sources such as Universities or the National Sanitation Foundation. The Department shall approve only treatment and disposal system applications that provide thorough documentation of proven technology. Alternative wastewater treatment and disposal systems shall provide, at a minimum, an equivalent level of treatment and disposal as a conventional wastewater system. Alternative wastewater products will require the same documentation as above, however, these will not require a Class C licensee to incorporate into a design.

5.10020 No person shall construct an ~~experimental~~ alternative on-site ~~sewage~~ wastewater treatment and disposal system without ~~first~~ obtaining a permit from the Department.

5.10030 Applications for ~~experimental~~ alternative systems shall be made ~~on to the~~ to the Department ~~forms~~. The application shall be complete, signed by the owner and accompanied by the required fee. The application shall include detailed system design specifications, ~~and~~ plans and any additional information requested by the Department.

5.10035 Applications for alternative wastewater treatment and disposal systems shall include, but not be limited to, the following:

(a) Volume and rate of wastewater flow
 (b) Characteristics of the wastewater
 (c) The degree and extent of treatment expected.

(d) Design criteria, specifications, and drawings including a description of the system, its capabilities, operation and maintenance requirements, unique technical features and system advantages for treatment systems.

(e) Construction materials
 (f) Operational and maintenance details along with their requirements.

(g) The seal of a Professional Engineer having a Class C license may be required.

(h) Any other information required by the Department.

5.10040 Sites may be considered for

~~experimental alternative~~ system permits where:

(a) Soils, climate, ground water, or topographical conditions are ~~common enough to benefit large numbers of people~~ The seasonal high water table or a limiting condition is encountered deeper than ten (10) inches below the soil surface or observation well data determines the seasonal high water table is deeper than ten (10) inches; and

(b) A specific acceptable backup alternative is available in the event of system failure; and

~~(e) For absorption systems, soils in both original and system replacement areas are similar; and~~

(c) Installation of a particular system is necessary to provide a sufficient sampling data base; and

(d) Zoning, planning, and building requirements allow system installation; and

~~(f) A single family dwelling will be served;~~ and

(e) The system will be used on a continuous basis during the life of the test project; and

~~(f) Resources for monitoring, sample collection, and laboratory testing are available; and~~

~~(g) The property owner records with the deed, a Department approved affidavit, which notifies prospective property owner purchasers of the existence of an experimental system; and~~

~~(j) The parcel size is at least one-half (1/2) acre.~~

5.10050 The system installation permit shall:

(a) Specify method and manner of system installation, operation, and maintenance;

(b) Specify method, manner, and duration of system testing and monitoring, at the Department's discretion;

(c) Identify when and where the system is to be inspected;

~~(d) Not be transferable;~~

~~(ed) Require system construction and use within one two (± 2) years of permit issuance.~~

5.10060 Inspections of an installed system shall be performed by a Class C designer and the Department. Upon completing ion of construction for each phase requiring inspection by the permit, the ~~permit holder~~ Class E contractor shall notify the Department and the Class C designer.

5.10070 The Department may inspect construction at any time to determine whether it complies with permit conditions and requirements.

5.10080 After system installation is complete and the Department has determined that it complies with permit conditions, a Certificate of Satisfactory Completion shall be issued.

5.10090 If the Department finds the operation of the system is unsatisfactory, the owner, upon written

notification by the Department shall promptly repair or modify the system, replace it with another acceptable system, or abandon the system.

5.10100 The system may will be monitored by the Department in accordance with a schedule contained in the permit.

5.10110 Should any additional guidelines be developed by the Department, the permittee would be responsible for meeting these guidelines.

5.11000 Community Systems

5.11010 Without first applying for and obtaining a construction ~~installation~~ permit, no person shall install a community on-site wastewater treatment and disposal system.

5.11015 A community on-site wastewater treatment and disposal system shall be required for a subdivision when any of the following conditions exist:

(a) Lot size is less than one (1) acre and more than 55% of the subdivision or planned unit development contains soil mapping units identified as being suitable for on-site wastewater treatment and disposal systems that require pressurization; or

(b) Where overall density of the subdivision or planned unit development is more than one dwelling unit per ½ acre.

(c) Where the number of dwelling units exceeds one hundred (100) and advanced treatment will be necessary.

5.11020 ~~Permit applications for all community systems shall include operation and maintenance details including details for financing the system operation and maintenance, utilization of qualified system operators, and financial capability to satisfy the cost requirements of the system for its design life. Permit applications for community systems to serve condominiums, townhouses, subdivisions, or multi-family dwellings where treatment and/or disposal may be under common or joint control shall be made by submitting to the Department a properly executed agreement (tri-party) among the Department, developers including their successors or assigns, and Council on behalf of the unit property owners or owners' association in subdivisions which addresses ownership, transfer of ownership, maintenance, repairs, operation, performance, and necessary funds. The permit application shall also include the following documents for legal review by the Department.~~

~~(a) Identification of a long term trustee to assume operation and management of the wastewater treatment plant, pump stations, manholes, sewer lines, effluent disposal system, and all appurtenances (herein after called the wastewater utility system). The following information regarding the trustee shall be submitted to the Department:~~

~~i) The full name and business address of the trustee; and~~

ii) ~~A description of the trustee's experience, training, and education in the wastewater treatment and disposal industry, together with any supporting data showing the trustee's qualifications to engage in such a business; and~~

iii) ~~Proof of trustee's financial solvency, including a statement of financial encumbrances; and~~

iv) ~~A list of licensed wastewater treatment facility operators employed by the trustee.~~

~~(b) Terms and conditions under which the Trustee shall assume possession, ownership and responsibility of the wastewater utility system.~~

~~(c) A detailed description of the wastewater utility system.~~

~~(d) A disclosure of any existing encumbrances, liens, or other indebtedness to the title of the wastewater utility system.~~

~~(e) Provisions for the proper abandonment of the wastewater utility system in the event that a governmental sewer district is established in the area served by the wastewater utility system and requires the community to connect to the sewer district.~~

~~(f) Provisions for long term management of the wastewater transmission and conveyance system in the event that the community, business or industry is required to connect to a regional sewer district that will not accept responsibility for the wastewater transmission and conveyance system.~~

~~(g) An operating budget to provide sufficient funds for the proper operation and maintenance of the wastewater utility system, including the accumulation of funds necessary to provide for replacement of mechanical components of the wastewater utility system, based on manufacturer recommendations.~~

Applications for permits to construct community on-site wastewater treatment and disposal systems shall provide documentation which addresses ownership, transfer of ownership, maintenance, repairs, operation, performance and funding of the on-site wastewater treatment and disposal system through the design life of the system. This documentation shall be in the form of a "Trust Indenture" between the applicant for the construction permit, the "permittee", and an operator or owner, the "Trustee", and a non-profit organization that represents the residential property owners, the "Homeowners Association". The final Trust Indenture must:

a) Identify a Trustee that will assume the operation, management, maintenance and repairs of the community on-site wastewater and disposal system, "the wastewater system", upon satisfactory completion of the construction, by providing:

1) Full name and business address of the Trustee;

2) A description of Trustee's experience,

training and education in the wastewater treatment and disposal industry, together with any supporting data regarding Trustee's qualifications in the industry;

3) Proof of Trustee's financial solvency by providing a business financial statement (including balance sheet) that is not more than six (6) months old, and a statement of financial encumbrances;

4) A list of licensed wastewater treatment facility operators employed by the Trustee.

b) Identify the terms and conditions under which the Trustee shall assume operational responsibility or ownership of the wastewater system.

c) Provide a detailed description of the wastewater system.

d) Disclose any existing encumbrances, liens, or other indebtedness to the title of the wastewater system.

e) Provide for the proper abandonment of the wastewater system in the event that a governmental sewer district is established in the area served by the wastewater system and requires the community to connect to the sewer district.

f) Provide for the long-term management of the wastewater transmission and conveyance system, including sewer lines, manholes, pump stations, etc., in the event the community is required to connect to a regional sewer district that will not accept responsibility for the wastewater transmission and conveyance system.

g) Be approved by the Department and fully executed before residential units may connect to the wastewater system.

h) Provide an operating budget with sufficient funds for the proper operation and maintenance of the wastewater system, including the accumulation of funds necessary to provide for repair or replacement of mechanical components of the wastewater system based on manufacturer recommendation. The operating budget shall include the establishment of an escrow account to be used exclusively for repair and replacement of failed or failing components of the wastewater system. The escrow account may not be used for phasing construction or the expansion of the wastewater system to accommodate additional residential units.

1) The value of the escrow account shall be equivalent to 25% of the cost of all mechanical equipment (e.g., pumps, flow meters, aerators, blowers, gear boxes, etc.) plus 50% of the cost of construction of the wastewater treatment and disposal system (e.g., infiltration beds, trenches, etc.).

2) Funds shall be deposited into the escrow account as residential units are connected to the wastewater system. The amount of funds deposited shall be equivalent to the percentage of units connected to the wastewater system (i.e., at 50% of build-out, the balance of the escrow account shall equal 50% of the amount

established in 1, above).

3) The escrow account shall be transferred to either the Trustee or the Homeowners Association upon satisfactory completion of construction of the wastewater system.

4) The owner of the wastewater system shall notify the Department, in writing, of intent to access funds from the escrow account. The escrow funds may not be used without prior approval of the Department. When escrow funds are used for the repair and/or replacement of mechanical equipment, the owner must submit a plan for the reestablishment of the escrow fund balance through the use of user fees or other sources.

5) The escrow account established for a community or a development can only be used for the community or development for which it was established. Accounts for non-contiguous communities or developments may not be co-mingled.

6) If the community wastewater system for which the escrow account was established is abandoned, and the community development connects to a regional or municipal wastewater treatment facility, the escrow account may be reduced to cover 25% of the replacement cost of all mechanical equipment associated with the transmission and conveyance sewer lines. If the transmission and conveyance sewer lines are all gravity lines, with no lift stations, pumps, or other mechanical equipment, the escrow account may be terminated and the funds returned to the wastewater system owner.

i) The Department shall have the right to inspect and review the financial records of the owner of the wastewater system, to include the operating budget, escrow account, and financial statements.

5.11021 An application for a permit to construct a community system shall provide the Department with a performance bond, irrevocable letter of credit, or other security, as approved by the Department, for every wastewater system they are constructing. The performance bond shall be made payable to the Department of Natural Resources and Environmental Control (DNREC) and the obligation of the performance bond shall be conditioned upon the fulfillment of all requirements related to the construction permit. Terms of the performance bond shall be:

a) The amount shall be equivalent to 50% of the construction cost of the wastewater system (excluding the conveyance system and its appurtenances), but in no case shall it be less than \$25,000, nor more than \$100,000 for any single community system. Developers constructing multiple community systems shall file a performance bond for each system they are constructing, not to exceed a maximum total performance bond of \$500,000.

b) A performance bond is not required for any local, municipal, county, state, federal government

agency, non-profit association representing property owners, subdivision, or utility that is regulated by the Public Service Commission.

c) Liability under the performance bond shall run to the State for a continuous period. The Department shall release the bond only after the wastewater system has been turned over to an established homeowners association, their designee, or exempted trustee identified in Section 5.11021(b) above, provided the requirements of Section 5.11021(g) are met.

d) The performance bond shall be executed by the permittee through a corporate surety licensed to do business in the State of Delaware. In lieu of a performance bond, the permittee may elect to provide an original irrevocable letter of credit equal to the required sum of the performance bond.

e) The obligation of the permittee under the performance bond shall become due and payable for the purposes of properly fulfilling the requirements of the permit when the Department has:

1) Notified the permittee that the conditions of the permit have not been fulfilled and specified the specific deficiencies in the fulfillment of the permit conditions;

2) Given the permittee a reasonable opportunity to correct the deficiencies and to fulfill all the conditions of the permit; and

3) Determined that, at the end of a reasonable length of time, some or all of the deficiencies specified under Section 5.11021(e)(1) above remain uncorrected.

f) The Department has the authority to designate a new Trustee in the event that the provisions of Section 5.11021(e) have been implemented. Upon formal transfer of ownership of a community wastewater system to an established homeowners association, their designee, or entity identified in 5.11021(b), the performance bond requirement shall cease, provided the Trustee acknowledges, in writing, that the wastewater system has been constructed in accordance with approved plans and is operating properly.

g) Upon formal transfer of ownership of a community wastewater utility system to an established homeowners association, their designee, or entity identified in 5.11021 (b), the Department shall, in writing, release the permittee from the requirements of the performance bond, provided the Trustee acknowledges, in writing, that the wastewater system has been constructed in accordance with approved plans and is operating properly.

5.11022 The permit application shall also include the following documents for legal review by the Department:

(a) A Purchase and Sale Agreement -- which specifies that the purchaser or a dwelling unit has an encumbrance on the title for wastewater treatment and

disposal system operation fees, easements, and other assessments related to the community system.

(b) An Acknowledgment of Buyer -- which is appended to the Purchase and Sale Agreement and signed by the buyer after being furnished copies of appropriate agreements, covenants, restrictions, Articles of Incorporation and Bylaws of the Owner's Association, and indicates understanding that the buyer is obligated to pay assessments for maintaining the community system.

(c) The Articles of Incorporation -- which establishes the owner's association as a state-chartered, nonprofit corporation and gives the owners' association specific authority to operate, maintain, and repair the community system; to collect fees and special assessments; and to enforce any covenants, restrictions, or agreements.

(d) The Bylaws of the Owners' Association -- which govern the operation of the owners' association and specifically authorizes the Board of Directors to supervise the operation and maintenance of the community system, collect fees and special assessments, and to take appropriate action when the public health is imperiled by the malfunctioning of the community system.

(e) A Declaration of Covenants, Restrictions, and Easements -- which establishes, among many other limitations, the easements for the on-site sewage collection, treatment, and disposal system, and specifies responsibilities of the developers, their successors or assigns, and any owners' association regarding the community system. It further sets the fees and assessments for operation and maintenance of the community system.

5.11023 For developments that do not contain homeowner's associations, the above list of documents may be modified, at the Department's discretion, to include only those documents that are applicable.

5.11025 All community systems that are owned solely by one owner, partnership or corporation, who own the property that the system will be installed on must execute a Declaration of Covenants and Restrictions (DCR). The DCR must be notarized and recorded at the County's Office of the Recorder of Deeds after it has been approved by the Department. The recorded copy should then be returned to the Department. Community systems meeting this requirement shall be exempt from Sections 5.11020, 5.11021 and 5.11022.

5.11030 The site criteria for approval of community systems shall be the same as required for large systems (Section 5.12000).

5.11040 Responsibility for operation and maintenance of community systems shall be vested in a governmental unit or a Council on behalf of the unit property owners pursuant to 25 Del. C., Chapter 22 ~~or a wastewater utility pursuant to 26 Del. C., Chapter 12~~, or for subdivisions with an owners' association duly incorporated within the State with specific authority to operate, maintain, and repair

the community system; to collect fees and special assessments; and to enforce any covenants, restrictions or agreements (See Section 5.11021).

5.11050 Unless otherwise required by permit, community systems shall be inspected at least annually by the responsible person.

5.11060 A private wastewater utility corporation may be permitted subject to the following provisions:

(a) It must be duly incorporated within the State and remain in good standing.

(b) It must remain financially solvent on a continuous basis through a method of financing construction, maintenance, operation, and emergency work related to the community system to the exclusion of whatever other obligations the corporation may assume in other fields. A certification of compliance with this provision shall be provided to the Department annually.

(c) There must be a person as identified under Section 5.11040 to whom control and operation of the community system will pass in trusteeship in the event no persons are willing to serve as officers of the private utility corporation. Such person shall have the opportunity to review and comment on plans and specifications and perform inspections during construction. They shall also be notified of any future construction or major repairs.

(d) Funds collected for operation and maintenance of the system must be kept in an account to be used for the sole purpose of carrying out the functions of the community system.

(e) There shall be lien powers to assure the collection of delinquent debts.

5.12000 Large Systems

5.12010 Unless otherwise authorized by the Department, large systems shall comply with the following requirements:

(a) Prior to initiating the soils investigation report, a meeting with the Class D site evaluator, Class C designer, DNREC personnel and any other interested parties shall be held to discuss the project.

(b) All soils investigation reports for a large system (> 2,500 GPD) and permit application(s) shall be submitted to the Large Wastewater Systems Branch for review and approval.

(c) The proposed disposal area shall be mapped on a seventy five (75) foot grid, at a minimum using a combination of auger borings and test pits.

(d) A soils investigation report shall contain a description of the hydrologic properties of the water table aquifer, including horizontal and vertical conductivity, ground water flow direction, and water table elevations.

(e) A minimum of one percolation test (one group of three tests) shall be performed per mapping unit delineated in the proposed disposal area. Two representative

tests shall be performed per acre if only one mapping unit is delineated.

(f) Proposed disposal areas wooded at the time of investigation shall be inspected by the Class D licensee after tree clearing and prior to disposal system installation. Written documentation shall be submitted to the Department confirming site suitability.

(g) Large system absorption facilities shall be designed with pressure distribution.

(h) The disposal area system shall be divided into relatively equal units areas. For effluent distribution each area is compromised of units as follows. The length to width ratio for seepage beds and elevated sand mounds shall be 4:1 or greater. Each unit shall receive no more than one half (1/2) of the projected daily sewage flow per day one thousand three hundred (1,300) gallons per day if seepage beds are utilized and no more than two thousand six hundred (2,600) gallons per day if seepage trenches are utilized. The Department has sole discretion to deviate from this requirement if site constraints warrant such deviation.

(i) The replacement (repair) disposal area shall be divided into relatively equal units, with a replacement disposal area unit located adjacent to an initial disposal area unit. and sufficient replacement area must exist. Upgrading the initial system(s) will not suffice as replacement area.

(j) Effluent distribution shall alternate between the disposal area units. The absorption facilities shall be at least 10 feet apart.

(k) Each system shall have at least two (2) pumps or siphons.

(l) Large systems treating domestic wastes which utilize conventional septic tank treatment shall be required to install an effluent filter following the primary treatment.

(m) Large systems shall be designed with a means to measure wastewater flow. Flow data will be recorded and reported to the Department by the licensed operator in accordance with the permit requirements.

(n) Expected flows > 20,000 GPD shall incorporate secondary wastewater treatment as approved by the Department.

(o) Guidelines established by the Department may require additional information beyond the scope presented here.

(p) The applicant shall provide as written assessment of the impact of the proposed system upon the quality of waters of the state and public health. Such assessment may require the use of an analysis that conforms with the requirements of Sections 7.06000 and 7.07000. The Department may require modifications to the application if the assessment shows a significant adverse environmental impact. a Preliminary Ground Water Impact Assessment (PGIA). The PGIA shall assess the potential impact of the

large system upon waters of the State and upon public health. The PGIA shall comply with current guidelines established by the Department.

(q) Any on-site wastewater treatment and disposal system receiving over 2,500 GPD will require a licensed wastewater operator. The class of operator will be determined based on the board of certification for licensed wastewater operators.

5.12020 Detailed plans and specifications for large systems shall be prepared by a professional with education and experience in the specific technical field involved and having a Class C license.

5.12020 Unless waived by the Department, groundwater monitoring is required at all sites utilizing large on-site wastewater treatment and disposal systems. Such monitoring shall continue as long as required by the Department. Upon completion of the PGIA review, the Department may require the submittal of a monitoring plan. If monitoring is required, three (3) monitor wells, one up gradient and two down gradient from the proposed disposal areas must be installed and surveyed from a common datum to the nearest 1/100th of a foot.

5.12030 If, after review of the PGIA, the Department determines that there is a potential for significant adverse impact to the environment or public health, a more detailed Groundwater Impact Assessment (GIA) may be required.

5.13000 Holding Tanks

5.13010 The use of a holding tank is an unusual circumstance wherein sewage all wastewater is permitted to be held in a watertight structure until it is pumped and transported by vehicle to a point of disposal. The use of a holding tank on a permanent basis is prohibited except as provided in these Regulations.

5.13015 Permanent holding tanks are not permitted on unimproved lots.

5.13020 No person shall install a holding tank without first obtaining a permit from the Department.

5.13025 All holding tank permit applications and designs must be completed by a Class C licensee.

5.13030 Permits may be issued by the Department for the permanent use of holding tanks when all the following conditions are met:

(a) The site is not approvable for installation of an on-site sewage disposal system; and

(a) The site is improved with a dwelling that was platted, created or deeded prior to April 8, 1984 and has been evaluated for all means of on-site wastewater treatment and disposal, including alternative technologies, and has been deemed not suitable for an on-site wastewater treatment and disposal system; and

(b) No community or area-wide central wastewater system is available or expected to be available

within five (5) years; and

(c) The same isolation distances as required for septic tanks can be met; and

(d) ~~A governmental unit or wastewater utility enters into a contract with the Department setting forth that the governmental unit or wastewater utility will provide hauling services, either directly or through a licensed private hauler, to the home(s), commercial establishment(s) or occupied structure(s) for the period the occupied structure is utilized or until connection can be made to an approved wastewater facility. The owner(s) enter into a contract with a licensed liquid waste hauler to provide hauling services to the dwelling for the period it is utilized or until connection can be made to an approved wastewater facility. Should the owners change waste haulers, a new contract shall be submitted to the Department; and~~

(e) ~~Upon completion of the contract between the Department and the government unit or wastewater utility a single holding tank permit shall be issued to the governmental unit or wastewater utility. A separate construction permit shall be issued to the governmental unit or wastewater utility for each holding tank facility. The holding tank facility(s) shall be designed and constructed in accordance with the Department's Regulations. The proposed holding tank will comply with the requirements of these Regulations; and The property deed shall be amended with an Affidavit of Ownership at the time of permit issuance, which states that the dwelling is served by a permanent holding tank. The Affidavit of Ownership must be recorded at the Recorder of Deeds.~~

(f) When the governmental unit or wastewater utility provides the hauling services directly, it shall conform to the requirements for liquid waste haulers; and

(g) Have a water meter installed to measure the in-flow of water into the building or house or a metering device measuring the flow to the tank.

5.13040 In an area under the control of a governmental unit, or a wastewater utility which has a recorded covenant with the owner that runs with the land, either of which is authorized to construct, operate, and maintain a community or area-wide central wastewater system, a holding tank may be installed for temporary use provided:

(a) The application for permit includes a copy of a legal commitment from the governmental unit or wastewater utility that within five (5) years from the date of application the governmental unit or wastewater utility will extend the property covered by the application a community or area-wide central wastewater system meeting the requirements of the Department; and

(b) The community or area-wide central wastewater system has received the necessary approvals for full operation (established sewer district) which includes the

anticipated flow to the holding tank; and

(c) The proposed holding tank will comply with the requirements of these Regulations.

~~(d) The holding tank will be owned and operated by the governmental unit or wastewater utility.~~

5.13050 Temporary use of a holding tank may be approved when:

(a) Installation of an approved on-site system has been delayed by weather conditions; or

(b) The tank is to serve a temporary construction site (up to five (5) years).

~~5.13060 The following general requirements shall apply to all holding tank installations:~~

~~(a) No building may be served by more than one (1) holding tank.~~

~~(b) A holding tank may not serve more than one (1) dwelling unless the holding tank is under the control of a governmental unit or wastewater utility.~~

~~(c) All site restoration shall be conducted according to the specifications set forth in these regulations.~~

5.13070 Applications for holding tank installation shall contain plans and specifications in sufficient detail for each holding tank proposed to be installed and shall be submitted to the Department for review and approval. The application for a permit shall be made on the forms provided by the Department and contain:

(a) A copy of a contract with a licensed liquid waste hauler shall contain as a minimum the following conditions:

- (1) Duration of contract;
- (2) Pumping schedule;
- (3) Availability of equipment;
- (4) Emergency response capability;
- (5) Contents will be disposed of in a manner and at a facility or location approved by the Department;

(6) Evidence that the owner or operator of the proposed disposal facility will accept the pumping for treatment and disposal.

(7) Method of measuring wastewater use (water meter, wastewater meter, etc.)

(b) A record of pumping dates and the amounts pumped shall be maintained by both the ~~treatment facility owner,~~ the property owner and the liquid waste hauler, and be made available to the Department along with in-flow meter readings as part of the annual renewal of the permit.

(c) The appropriate ~~application~~ annual inspection fee.

5.13080 Each holding tank shall:

(a) ~~Be sized to provide a minimum holding capacity equal to 150% of the anticipated peak storage needed between pumping.~~ In no case shall the tank have a capacity less than seven days average flow from the

wastewater generating facility or 1,000 gallons, whichever is larger. When holding tanks are designed to serve the needs of a community system, the size shall be in conformance with standard engineering practice as determined by the Department and in accordance with an acceptable monitoring and pumping schedule.

(b) Comply with standards for septic tanks as prescribed in these Regulations (Section 6.0700).

(c) Be located and designed to facilitate removal of contents by pumping.

(d) Be equipped with both an audible and visual alarm installed on an AC circuit and placed in a location acceptable to the Department, to indicate when the contents of the tank are at seventy-five (75) percent of capacity.

(e) Have no ~~overflow~~ vent at an elevation lower than the overflow level of the lowest fixture served.

(f) Be designed for anti-buoyancy if test hole examination or other observations indicate that seasonally high groundwater may float the tank when empty.

(g) Be constructed of the same materials approved for septic tanks. Holding tanks shall be watertight and structurally sound to withstand internal and external loads.

(h) Be equipped with an 18 inch diameter or square access opening. The access opening shall be extended to grade level.

(i) All tanks constructed on-site (i.e. cast-in-place, concrete block, etc.) shall be tested to assure watertight conditions. Alarms shall be tested for proper operation.

5.13090 Each holding tank installed under these Regulations shall be inspected annually. A fee shall be charged for each annual inspection ~~by the Department and all required documentation shall be submitted also.~~

5.13100 No liquid waste from a holding tank shall be applied directly or indirectly onto the ground surface or into surface waters.

5.13120 Prior to purchase of a dwelling that is currently served by a holding tank or is proposed to be served by a holding tank, the prospective buyer must sign an Affidavit of Understanding of the terms and conditions associated with use of a holding tank. This Affidavit shall be submitted to the Department to be filed with the permit.

5.14000 Moratorium Areas

5.14010 ~~Whenever~~ As soon as the Department ~~finds~~ determines that construction of on-site ~~sewage wastewater treatment and disposal systems~~ should be limited or prohibited in an area, it shall issue an order limiting or prohibiting such construction.

5.14020 The order shall be issued only after a public hearing ~~for which shall insure that more than~~ twenty (20) days notice is given.

5.14030 The order shall ~~be a rule which~~

contains a specific description of the moratorium area and shall be limited to the area immediately threatened with ground water or surface water contamination if construction in that area continues.

5.14040 In issuing an order under this section the Department shall consider the factors contained in 7 Del. C., Chapter 60, Section 6001.

5.14050 The moratorium shall be limited to a period of five years, after which re-establishment of the moratorium may be considered.

SECTION 6.00000 -- DESIGN AND CONSTRUCTION

6.01000 General Requirements

6.01010 Location: All disposal systems shall be located according to the minimum horizontal isolation distances specified in these Regulations (see Exhibit T). All isolation distances for capped systems and elevated sand mounds shall be measured from the perimeter edge of fill material the aggregate or aggregate-free chamber. Siting and construction of on-site disposal systems on areas which have been disturbed is prohibited unless there is at least 3 feet of undisturbed soil horizon above the limiting zone. Fine textured soils shall be examined to make sure they have not been compacted.

6.01015 All pressurized systems must be constructed in such a manner that the operating pressure can be checked at the end of the distal lateral (permanent tee, etc).

6.01020 Disposal System Sizing

6.01021 All disposal systems shall be sized based on the estimated wastewater flow and the results of ~~the~~ percolation tests or the assigned percolation rate. Percolation rates shall be based on USDA soil textures and assigned by the Class D licensee. The table of percolation rates used by the Department (Exhibit W) does not assign rates, it gives estimates based upon textures. Percolation rates of less than 20 minutes per inch (mpi) will not be allowed for designing any on-site wastewater treatment and disposal system, unless otherwise approved by the Department.

6.01022 The minimum disposal area required for trench systems with percolation rates ~~between 6 and less than~~ 120 mpi shall be determined from the following equation:

$$A = 0.33 Q (t)^{0.5}$$

Where

A = the minimum disposal area required in square feet

Q = wastewater application rate in gallons per day

t = the average percolation rate in minutes per inch (minimum rate is 20 mpi for design)

6.01023 The minimum disposal area required

for seepage bed systems with percolation rates ~~between 6 and less than~~ 120 mpi shall be determined from the following equation:

$$A = 0.42 Q (t)^{0.5}$$

Where

A = the minimum disposal area required in square feet

Q = wastewater application rate in gallons per day

t = the average percolation rate in minutes per inch (minimum rate is 20 mpi for design)

6.01024 Where percolation rates are faster than 6 mpi, such as in soils with USDA textures of sands, and loamy sands, a pressurized distribution system is required; the minimum disposal area shall be determined from the following equation:

$$A = \del{0.82} \underline{1.2} Q$$

Where:

A = the minimum disposal area required in square feet

Q = design flow rate in gallons per day (minimum rate is 20 mpi for design)

6.01025 The minimum disposal area required for low-pressure pipe systems with percolation rates less than 120 mpi shall be determined from the following equation:

$$A = UQ$$

Where:

A = the minimum disposal are required in square feet

Q = design flow rate in gallons per day

U = unit absorption area (see Exhibit X)

6.01030 Excavation

6.01031 Clearing and Grubbing: All vegetation shall be cut and removed from the grade surface at a distance of ten (10) feet beyond the perimeter of the disposal area. Trees and shrubs shall be cut and removed at grade level while roots may be left in place. All cut materials shall be removed from the disposal area.

6.010315 Special care should be taken when clearing vegetation from an approved disposal area as disturbance of the soil surface may render the site unsuitable.

6.01032 All unsuitable excavation materials shall be discarded and the excavation shall be kept dry and de-watered from surface drainage until backfilling is completed.

6.01033 Excavation machinery shall be of such type and operated in such a manner that they will not compact or smear the trench or bed sidewall soils. If smearing does occur, the smeared surfaces shall be hand raked to expose an unsmearred soil interface. Trenchers are preferred for excavation of LPP trenches.

6.01035 Excavations below the design depth

shall be brought up to proper elevation with approved fill materials installed in accordance with these Regulations and the requirements for sand-lined systems. Additional ~~stone or gravel aggregate~~ may only be used when a minimum of three (3) feet of undisturbed soil can be maintained between the bottom of the ~~stone or gravel aggregate~~ and the limiting zone. In no case shall more than one (1) foot of additional ~~stone or gravel aggregate~~ be used.

6.01036 The sides of the trenches or beds shall be practically plumb and scarified.

6.01037 The bottom of the trench or bed area shall be practically level as determined by using a transit, or laser level, with a maximum grade tolerance of two inches per 100 feet.

6.01038 All trench or bed excavations shall be kept free of water and dry. Tamping of trench sides and bottoms is not permitted.

6.01040 Materials

6.01041 Sandy fill materials ~~of construction~~ shall be medium sand, sandy loam, loamy sand/sandy loam mixture. The fill material shall have the following characteristics:

Sieve Size	Maximum Percentage Passing Sieve
3/8"	100%
No. 4	95-100%
No. 50	5-30%
No. 100	1-7%

6.010412 Filter aggregate shall consist of: washed gravel or crushed stone ranging in size from 3/4" to 2 1/2" in any dimension. Filter aggregate must come from a supplier approved by the Department. Storage and cleaning procedures must be approved by DNREC before supplier can be included on approved list. Random inspection of supply pits and supplier's storage facilities shall be performed by the Department.

Sieve Size	Maximum Percentage Passing Sieve
2 1/2"	100% minimum
2"	100% minimum
1 1/2"	100% minimum
1"	100% minimum
1/2"	50% maximum
#4	10% maximum
#8	0% maximum

Note: The Class E contractor shall submit upon request a Certification of Materials for fill and aggregate used in systems. This certificate shall be obtained from the supplier

6.01043 Grade boards or blocks may be used

in pipe installation to assure a proper slope of less than two inches per 100 feet for gravity distribution lines.

6.01044 Filter fabric shall be placed over the gravel with a two (2) inch overlap turned up on each side of the trench or bed.

6.01045 Aggregate-free chambers or any other similar devices may be used in the design, installation, and operation of on-site wastewater treatment and disposal systems in Delaware, but are subject to approval of the Department. The minimum disposal area required when using aggregate-free chambers shall be calculated by utilizing the most recent guidelines and Sections 6.01022 and 6.01023.

6.01050 Distribution Networks

6.01051 All systems requiring a total of more than ~~1,250~~ 2,500 square feet of disposal area shall have a pressurized distribution system pursuant to these Regulations.

6.01052 All systems requiring more than 2,500 square feet of disposal area shall be divided into a minimum of two separate alternating systems of equal size with pressurized distribution provided alternatively to each system. The minimum separation between absorption facilities shall be ten (10) feet, which, with the exception of subsurface irrigation systems, will be determined on a case by case basis.

~~6.01053 Distribution networks for all elevated sand mounds and sand lined systems shall be pressurized and constructed of the same materials required for pressurized distribution systems.~~

6.01054 All systems installed on lots where percolation rates are faster than six (6) mpi shall have pressure distribution systems.

6.01055 A minimum distance of four (4) feet and a maximum distance of six (6) feet shall separate adjacent laterals in a bed. Laterals shall be placed no farther than three (3) feet from the sidewalls of the bed. The length to width ratio for seepage beds and elevated sand mounds shall be 4:1 or greater and maximum bed width shall not exceed twenty five (25) feet, unless approved by the Department. A minimum distance of six (6) feet shall separate laterals in a trench disposal system. ~~and a maximum of eight (8') feet shall separate laterals in a trench disposal system.~~

~~6.01056 All Gravity system distribution laterals shall may be connected in closed loop systems.~~

6.01057 The maximum allowable lateral length is 100 feet for gravity distribution systems and pressure distribution systems with more than 1,250 ft.² of disposal area. ~~Pressure distribution laterals shall have a maximum length of 50 feet for areas less than 1,250 ft.² of disposal area unless designed by Class C Designer.~~

6.01058 Each trench or bed system shall

contain at least two distribution laterals. Trenches shall be utilized in all distribution systems located on slopes in excess of two (2) percent.

~~6.01059 All pressure distribution systems shall be tested to insure even dozing throughout the network prior to placement of backfill ensure equal distribution when designed on slopes.~~

6.01060 Conventional Treatment and Disposal Systems

6.01061 Gravity Trenches and Beds (See Exhibits K, L, M and N)

(a) A minimum of 12 inches of filter aggregate shall be placed in the bed or trench. A minimum of six inches of aggregate shall be placed under the distribution laterals. The remaining filter ~~material~~ aggregate shall be placed so that a minimum depth of no less than two inches exists above the crown of the distribution pipe.

(b) For trenches or beds with a minimum sidewall depth of twenty-four (24) inches, backfill shall be placed in accordance with permit requirements. Unless otherwise required by the Department, the construction sequence shall be as follows:

(1) The backfill material shall be at least 12 inches in depth above the ~~barrier material~~ filter fabric ~~or~~ sloped returned to the original grade.

(2) Backfill material shall be carefully deposited ~~in the trench~~ by methods which will not damage or disturb the distribution pipe or result in undue compaction of the backfill.

(3) Backfill over trenches or beds shall not be tamped.

(4) Material containing an excess of moisture shall be permitted to dry until the moisture content is within workable limits. The moisture content of the material being placed shall be within plus or minus 3% of optimum as determined by AASHTO Designation T-99.

(5) Backfill material which is too dry for proper placement shall be wetted. All materials shall be free of stones larger than two (2) inches in diameter, debris, trash, wood or other similar materials.

(c) For trenches or beds with a minimum sidewall depth of twelve (12) inches but less than twenty-four (24) inches, a capping fill shall be placed over the disposal system. The cap shall be constructed pursuant to permit requirements (See Exhibit M and P N). Unless otherwise required by the Department, the construction sequence shall be as follows:

(1) ~~The capping soil shall be examined and approved by the Department prior to placement.~~ The texture of the soil used for the cap shall be of the same textural class, or of one textural class finer, as the natural topsoil. All materials shall be free of stones larger than two (2) inches in diameter, debris, trash, wood or other similar materials. The minimum gradient of 3 to 1 with 5 to 1

recommended by the Department.

(2) Construction of capping fills shall not occur when the natural soil is at a moisture content which causes loss of soil structure and porosity when worked.

(3) The disposal area ~~and the borrow site~~ shall be scarified to destroy the vegetative mat.

(4) The system shall be installed as specified in the construction permit. There shall be a minimum of ten (10) feet of separation between the edge of the fill and the absorption facility.

(5) Suitable backfill shall be applied to the fill site and worked in so that the two (2) contact layers (native soil and fill) are mixed. Fill material shall be evenly graded to a final depth of sixteen (16) inches over the gravel aggregate.

(6) The site shall be landscaped according to permit conditions and be protected from livestock, automotive traffic or other activity that could damage the system.

~~(d) The following minimum inspections shall be performed for each capping fill installed:~~

~~(1) Both the disposal area and borrow material must be inspected for scarification, soil texture, and moisture content, prior to cap construction.~~

~~(2) Pre-cover inspection of the installed absorption facility.~~

~~(3) After cap is placed, to determine that there is good contact between fill material and native soil (no obvious contact zone visible), adequate depth of material, and uniform distribution of fill material.~~

~~(4) Final inspection, after completion of all site work and restoration. A certificate of Satisfactory Completion may be issued at this point.~~

6.01062 Sand Mounds (See Exhibit O & P)

(a) Sand mound absorption areas shall be plowed 6 to 8 inches deep parallel to the contour after removing the vegetative mat. Plowing shall not be done on wet soils. No plowing instruments which compact the soil shall be used. ~~Two bottom plows, Moldboard plows, or chisel plows~~ are recommended.

(b) Immediately after plowing, sandy fill shall be placed on the up-slope edges of the plowed mound absorption area and spread to a ~~minimum~~ depth of 24" ~~throughout the absorption area~~ as specified in the permit. Only lightweight equipment such as small track type tractors shall be allowed.

(c) A 12 inch bed of ~~coarse~~ filter aggregate shall be placed over the sand fill. Six inches of aggregate shall be placed under the distribution lateral. The remaining filter aggregate shall be placed to an additional six inches in depth with at least two inches over the crown of the distribution pipe.

(d) A minimum allowable distance of four (4) feet and a maximum distance of six (6) feet shall separate

adjacent laterals in an elevated sand mound bed.

(e) The slope of the sand fill not directly beneath the filter aggregate shall be 1 to ~~2~~ 3, with 1 to 5 recommended by the Department.

(f) Mound covering or berm soil shall be loamy sand or sandy loam.

(g) The mound berm shall extend at least 12 inches ~~and one-half (1-1/2) feet~~ above the 12 inch filter aggregate layer ~~with~~ plus at least six inches of topsoil cover.

(h) The outside slopes of the mound cover or berm shall be approximately 1 to ~~2~~ 3 with 1 to 5 recommended by the Department.

~~(i) Grass shall be planted over the entire mound. Shrubs may be planted at the base of the mound. Erosion control shall be provided over the complete mound in one of the following manners:~~

1) Grass shall be planted over the entire mound and stabilized with mulch, or

2) Sod entire mound, or

3) Other pre-authorized methods of erosion control.

6.01063 Low Pressure Pipe Systems (See Exhibit O & X)

(a) A trench width of twelve (12) inches shall be used.

(b) Trenches shall not be less than five (5) feet on center.

(c) There shall be six (6) inches of aggregate below the pipe and two (2) inches of aggregate above the pipe. There shall be a minimum of six (6) inches and a maximum of nine (9) inches of soil cover.

(d) Filter fabric shall be placed on top of the aggregate in the trench with a two (2) inch overlap turned up on each side of the trench.

(e) Check valves are required to eliminate the back siphoning of effluent from the laterals.

(f) Turn ups or cleanouts shall be finished below grade and protected by a four (4) inch diameter or greater Sch. 40 PVC sleeve with a cap and ferrule finished at grade.

(g) Timers or other electrical on/off delay devices shall be installed to insure dosing frequencies.

6.01070 Site Restoration:

6.01071 ~~The finished grade of the backfill over the seepage bed, trench and sand-lined disposal areas absorption facilities shall be crowned from the center of the disposal area at a 3% slope and extend three feet beyond the edge of the disposal area. At that point, the fill shall be sloped at a uniform grade of no greater than 10% to the original ground kept to provide positive drainage.~~

6.01072 ~~The land adjacent to all disposal areas absorption facilities shall be graded to prevent both the accumulation of surface water on the disposal area absorption facility and the flow of surface water across the~~

disposal area absorption facility. The finished disposal area absorption facility and fill extensions shall be seeded and mulched to prevent erosion.

6.01073 ~~Trees and shrubs~~ shall not be planted within 10 feet of the perimeter of disposal area but may be planted on fill extensions absorption facility. All trees and shrubs shall be located to prevent root intrusion into the disposal area absorption facility and other components of the system. Shallow rooted shrubs are permitted (ie, rhododendrons, azalea's, etc.).

6.01074 All areas of disturbance due to the installation of the absorption facility ~~disturbed sites~~ shall be either limed, fertilized sodded or seeded and mulched to establish a permanent grass cover.

6.01080 Filed Areas

~~6.01081 On-site disposal systems to be constructed on fill materials may be considered only when guidelines and specifications for fill placement have been approved by the Department.~~

6.01082 The texture of the fill material shall be moderately coarse, medium, or moderately fine. These general groups contain the soil textural classes as follows:

- (a) Moderately coarse-textured soils
 - (1) Sandy loam
 - (2) Fine sandy loam
- (b) Medium-textured soils
 - (1) Very fine sandy loam
 - (2) Loam
 - (3) Silt loam
 - (4) Silt
- (c) Moderately fine textured soils
 - (1) Clay loam
 - (2) Sandy clay loam
 - (3) Silty clay loam

~~6.01083 Moderately coarse textured fills shall be handled to minimize segregation during loading, unloading and spreading. Moderately coarse fines shall only be moved when moist to minimize segregation.~~

~~6.01084 Moderately coarse fill materials shall be placed in one foot depths and lightly compacted with a front end loader. Packing of fill material shall achieve a bulk density in the range of 82 to 94 pounds per cubic foot.~~

~~6.01085 Moderately coarse fill material shall be allowed to settle through at least one wet-dry cycle before system installation. The fill shall be saturated above field capacity and allowed to dry until the moisture content is below field capacity. Artificial saturation may be used by applying water over the entire area in a manner that does not cause erosion of the fill.~~

~~6.01086 Moderately fine or medium textured fill material shall not be moved when wet (above field capacity) and shall not be compacted when moved.~~

~~6.01087 Moderately fine or medium textured fill materials shall be allowed to settle one year for each foot~~

~~of fill material.~~

~~6.01088 All fills shall contain less than twenty percent (20%) by volume of coarse fragments and organic matter content shall be less than five percent (5%) by weight.~~

~~6.01089 On-site disposal systems constructed in filled areas shall be sized so that when the effluent is distributed throughout the disposal area, the underlying fill shall remain unsaturated. The wastewater application rate shall not exceed 0.75 gallons per square foot of disposal area. Only pressurized distribution systems shall be allowed with on-site systems constructed in filled areas.~~

6.01090 Replacement System Spare Area

6.01091 Each site utilizing an on-site ~~system or community sewage~~ wastewater treatment and disposal system shall have sufficient area to accommodate a complete replacement system or an acceptable alternative approved by the Department which satisfies the requirements of these Regulations. This area shall be maintained so that it is free from encroachments by accessory buildings and additions to the main building. Encroachment shall include the ten (10) foot isolation distance to buildings as required by these Regulations. This requirement may be waived if the application for a permit includes a copy of a legal commitment from the governmental unit that states that within five years from the date of the application the governmental unit will extend to the property a community or area-wide central wastewater system meeting the requirements of the Department or an acceptable alternative is approved by the Department. ~~The and that the~~ community or area-wide central wastewater system has received the necessary approvals for full operation which includes the anticipated flow to the on-site wastewater treatment and disposal system.

~~6.01095 A replacement area is not required in areas under control of a governmental unit such as a city, county, or sanitary district, provided the governmental unit gives a written commitment that central wastewater service shall be provided within five (5) years.~~

6.01100 Artificially Drained Systems

6.01101 Disposal systems shall not be constructed on sites where curtain drains, vertical drains, underdrains, or similar drainage methods are utilized to artificially lower the level of the water table to meet the requirements of these Regulations. Observation wells may be used to demonstrate the change in the hydrology of a particular property for the purpose of siting an on-site wastewater treatment and disposal system.

6.02000 Test Pits

~~6.02010~~ Test pits shall be used to evaluate soils for the selection and design of on-site systems when deemed necessary by the Department in its sole discretion. When the Department conducts the site evaluation and a test pit is deemed necessary, the property owner shall be responsible for pit excavation in accordance with these Regulations.

6.02020 The number and location of test pits for non-residential or community systems or pre-testing for entire subdivisions shall be as directed by the Department. The Department may require additional test pits in areas of varying soil structure or when warranted at the sole discretion of the Department, because of size of the required disposal area. Test pits shall be located adjacent to proposed disposal areas.

6.02030 The procedure used to install and evaluate the test pits shall be as follows:

(a) The pit configuration shall be at least (2) feet wide, (6) feet long and (5) feet deep (or to rock or water table if encountered at a depth of less than (5) feet). Soil borings shall be taken in the bottom of the pit to a minimum depth of 2 feet (or to rock or water table if encountered at a depth of less than 2 feet). The removed soils shall be examined as removed for the presence of mottling, structure, rock or other indicators of unsuitability. The excavation shall be aligned to make the best use of available sunlight.

(b) The sidewalls of the pit shall be checked to determine which wall will be described. The soil face which best represents the soil conditions present shall be used. Through use of a pick type tool, such as a knife or screwdriver, the sidewall shall be probed from the top to bottom to reveal a fresh surface at least 10 inches wide. A general description of the pit shall be provided including such factors as; slope of the area, depth of the probe, depth to a pan, depth to water table, depth to seeps, and depth of the root zone. Changes in soil density may be identified based on relative penetration resulting from repeated jabbing of the sidewall of the pit.

(c) Through the use of the prepared section of the test pit, horizons shall be identified; the depth to the beginning and end of the horizons shall be measured; and lower boundaries shall be marked with nails or other identifying objects.

(d) Work shall be conducted from lowest horizons toward the top of the test pit to avoid disrupting the undescribed horizons as the lower soil is examined.

(e) The characteristics of each horizon shall be described using color, texture, consistency, structure, presence of roots or animal life, coarse fragments, rock and mottling. The coarse fragments and rock shall be examined and identified if possible.

(f) The findings of the soil evaluation shall be recorded on a standard form provided by the Department. As a part of the soil description the evaluator shall designate the type of limiting zone present and its depth from the mineral soil surface as observed.

6.03000 Soil Percolation Rate Determination

6.03003 Percolation rates are assigned by State environmental scientists and Class D site evaluators based upon observed soil structure and textures during the site evaluation. The Department has established percolation

rates based upon USDA soil textures (see Exhibit W).

6.03005 Soil Percolation Test

6.03010 The soil percolation test shall provide a measure of the rate at which water moves from an uncased bore hole into the surrounding soil under nearly constant head in both vertical and horizontal directions.

6.03015 One soil percolation test shall consist of three (3) test holes.

6.03020 The percolation test shall be performed only after a site evaluation has indicated that the soil may be suitable for an on-site wastewater disposal system. The percolation test shall ~~evaluate the soil suitability~~ by be used to determining e the rate at which wastewater effluent can be expected to seep into the soil. This rate shall be used in conjunction with a projected daily flow rate to determine the area required ~~to for~~ for properly dispose al of the projected daily sewage flow.

6.03030 The depth of the percolation test holes shall not be determined until a ~~soil~~ site evaluation is completed and a limiting zone, if any, is identified. The depth of the percolation test holes shall be as follows:

(a) ~~If the limiting zone is located 60 inches or more from the mineral soil surface, the bottom of the percolation holes shall be at the depth of the proposed infiltration surface bottom.~~ If the limiting zone occurs at least 20 inches from the soil surface, the percolation test holes shall be within the soil horizon that is controlling the water movement vertically and/or horizontally to a depth of 60 inches.

(b) ~~If the limiting zone occurs at least 20 inches from the soil surface but less than 60 inches from the soil surface, the percolation holes shall be at the soil zone which is controlling the water movement vertically and/or horizontally.~~

(e b) ~~If the limiting zone occurs at less than 20 inches from the surface, the site is unsuitable for a conventional on-site wastewater treatment and disposal system. However, if replacing a failing or malfunctioning system, item (a) should be used without regard for the 20 inch limiting condition. In situations where sand-lining through an impermeable or less permeable horizon within the top 48 inches, a percolation test should be performed within the soil zone which is controlling the water movement vertically and/or horizontally beneath the restrictive material to a depth of 60 inches.~~

6.03040 The following procedures shall be used for percolation tests:

(a) A minimum of three (3) test holes shall be dug within the proposed installation area of the ~~soil absorption system facility. Test holes shall be located on the same site in which the final soil absorption system is to be installed.~~ Additional tests may be required in areas of with varying soil structure characteristics or when warranted at the sole discretion of the Department due to the size of the

required disposal area.

(b) Test holes with a horizontal diameter of six (6) inches shall be dug or bored. A post hole digger, auger or mechanical digger may be used to dig the holes.

(c) The bottom and sides of ~~the~~ each test hole shall be scarified to remove any smeared soil surfaces that result from digging. Loose soil shall be removed from the hole. Two (2) inches of coarse sand or fine gravel aggregate shall be placed in the bottom of the hole to prevent sealing of the hole bottom when water is added.

(d) The hole shall be filled with water to a minimum depth of twelve (12) inches above the gravel aggregate or sand. This level shall be maintained for a period of at least four (4) hours.

(e) The water level shall then be adjusted to six (6) inches over the gravel or sand. The hole shall be allowed to stand undisturbed for thirty (30) minutes. The water level shall again be adjusted to six (6) inches over the gravel and the hole allowed to stand undisturbed for another thirty (30) minutes.

(f) Where the drop in the water level is two (2) inches or more in thirty (30) minutes, the interval for readings during the percolation test shall be ten (10) minutes. Where the drop in the water level is less than two inches in 30 minutes, the interval for readings during the percolation test shall be thirty (30) minutes. The drop in water level shall be recorded after each reading and the water level shall be adjusted to six (6) inches above the gravel. Readings shall continue for a minimum of four (4) hours where the interval between readings is thirty (30) minutes. Where the interval is ten (10) minutes due to fast percolation, the readings may be discontinued after one (1) hour. Where the drop between readings has not stabilized at the end of the minimum period, the reading shall continue until a steady rate is established. A steady rate is established when two (2) successive water level drops do not vary by more than one-sixteenth of an inch. If any of the holes has a rate that is significantly different from the other holes, it shall be examined to see if this hole is in a soil that is different from the soil described in the site evaluation. If the hole is determined, by the licensed percolation tester, to be uncharacteristic of the site it shall be excluded from analysis but listed on the application.

(g) The percolation rate for the site shall be determined by taking the arithmetic average of all percolation tests conducted. Percolation rates slower than one hundred and twenty (120) minutes per inch (mpi) are unacceptable and shall not be used to determine the arithmetic average percolation rate but shall be reported. On-site wastewater treatment and disposal systems shall not be placed on those portions of any sites which have percolation rates slower than one hundred and twenty (120) minutes per inch mpi.

6.03045 Hydraulic Conductivity Test

6.03050 At the discretion of the Department, a

hydraulic conductivity test may be required as a substitute for the soil percolation test. Approved test methods are given in the current addition of Methods of Soil Analysis, ASA, Part , Physical and Mineralogical Methods Agronomy Monograph No. 9 (2nd Edition), ASA 1986.

6.04000 Wastewater Sewage Design Flow Rates

6.04010 The projected peak daily sewage wastewater flow shall be used to determine the appropriate size and design of on-site and community wastewater treatment and disposal systems.

6.04020 Where actual calibrated metered flow data indicating peak daily flows over the most recent three year period are available for a similar facility, such peak flow data may be substituted for the sewage wastewater flows listed in this Section subject to the approval of the Department. When ranked in descending order the adjusted design daily flow shall be determined by taking the numerical average of the daily readings that fall within the upper ten (10) percent of the daily readings.

6.04030 The minimum design sewage wastewater flow from residential dwellings, including single family, multiple family, mobile homes, and apartments served by individual on-site or community sewage wastewater treatment and disposal systems shall be 120 gallons per day per bedroom. The minimum design flow for any residential dwelling shall be 240 gallons per day. Credit for water conservation devices will be accounted for according to current Department guidelines.

6.04040 The minimum design sewage wastewater flow from other residential, commercial/institutional facilities served by individual on-site or community systems shall be as prescribed in Exhibit D.

6.04050 Disposal systems shall be designed to receive all sewage wastewater, except for water softener brine, from the building or structure served unless otherwise approved by the Department.

6.04060 All restaurants or other establishments involved in food preparation activities shall install external grease traps when as required by the Department.

6.04070 Laundromat and car wash wastewater shall be pretreated as specified by the Department prior to discharge to any ~~disposal system~~ absorption facility under these Regulations.

6.04080 Industrial wastewater shall not be discharged into a septic tank system unless prior approval is obtained from the Department.

6.05000 Isolation Distances

6.05010 The minimum isolation distances set forth in Exhibit C shall be maintained when designing, cating, constructing, repairing, replacing, and installing individual on-site and community wastewater treatment and disposal systems.

6.05020 The Department may require greater isolation distances for systems when conditions warrant for

purposes of protecting environmental resources and the public health.

6.05030 Isolation distances may be decreased by the Department based on a site specific geological and hydrogeological analysis performed pursuant to the requirements of these Regulations, provided that the Department is satisfied that such decrease will allow for protection of environmental resources and the public health.

6.05040 Existing on-site wastewater treatment and disposal systems which are repaired or replaced shall be subject to the requirements of this Section, provided however, that if it is impossible to comply with such requirements due to lot size limitations, the repaired or replaced system shall conform to the maximum extent practicable with the requirements of this Section as determined by the Department in its sole discretion.

6.06000 Standard Conventional On-Site
Wastewater Treatment and Disposal Systems Criteria

6.06010 All ~~standard~~ full depth gravity and capping fill gravity trench and bed treatment and disposal systems shall be designed in accordance with the following criteria. (See Exhibits K, L, M or N).

6.06011 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and which are not prone to flooding.

6.06012 Slope: 0-15%. Bed systems can not be sited on slopes > 2%. All systems must be constructed with level bottoms and shall incorporate construction procedures prohibiting equipment from entering the excavation. Trench systems on slopes in excess of 15% shall be permitted only if the design is prepared by a licensed Class C professional engineer Designer, having a Class C license. Any such design shall incorporate construction procedures. Systems placed on slopes between 10% and 15% shall provide for serial distribution.

6.06013 Soil depth: Deep to very deep.

6.06014 Soil Drainage: Well to excessively drained. > 48 inches to evidence of a limiting zone.

6.06015 Soil Texture: Coarse to medium textured.

6.06016 Soil Structure: Granular, blocky, subangular blocky, and prismatic structure.

6.06017 Depth to Limiting Zone: The limiting zone shall be a minimum of three (3) feet below the bottom of the trench (i.e., a minimum of five feet below existing grade for standard two (2) foot deep trench systems). ≥ 48 inches beneath the soil surface.

6.06018 Percolation Rates:

(a) 6-6 120 min/in mpi: Gravity distribution systems may be allowed unless otherwise required by these Regulations. Construction of seepage trenches and beds in soils with percolation rates slower than 6 120 min/in mpi shall not be permitted.

(b) Less than 6 min/in mpi: A pressurized

distribution system is required for seepage trenches or beds. The trench or bed may be placed between 12 and 24 inches in order to maintain 36 inch separation distance between rapidly permeable material and the limiting zone.

6.06020 All standard gravity and capping fill gravity bed disposal systems shall be designed in accordance with the following criteria. (See Exhibit M or P)

6.06021 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding.

6.06022 Slope: 0-5%. Bottom of bed shall be constructed level. Design shall incorporate construction procedures prohibiting construction equipment from entering the excavation.

6.06023 Soil Depth: Deep to very deep.

6.06024 Soil Drainage: Well to excessively drained. > 48 inches to evidence of a limiting zone.

6.06025 Soil Texture: Coarse to medium textured.

6.06026 Soil Structure: Granular, blocky, subangular blocky, and prismatic structure.

6.06027 Depth to Limiting Zone: The limiting zone shall be a minimum of three feet below the bottom of the bed (i.e., a minimum of five feet below existing grade for standard two foot deep bed systems).

6.06028 Percolation Rates:

(a) 6-60 min/in mpi: Gravity distribution systems may be allowed unless otherwise required by these Regulations. Construction of seepage beds in soils with percolation rates slower than 60 min/in shall not be permitted.

(b) Less than 6 min/in mpi: A pressurized distribution system is required for seepage beds.

6.06030 All Low Pressure Pipe Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit O & X)

6.06031 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding. Low pressure pipe treatment and disposal systems shall not be prescribed in coastal beach sands.

6.06034 The depth to the bottom excavation shall be nine (9) inches to eighteen (18) inches. Trench width shall be no larger than twelve (12) inches for LPP systems unless otherwise approved by the Department.

6.06035 Depth to limiting zone: The limiting zone shall be a minimum of 18 inches below the bottom of the trench (i.e. a minimum of 27 inches below existing grade for a 9 inch deep LPP trench system). Shallow disposal trenches (placed not less than nine (9) inches into the original soil profile) may be used with a capping fill to achieve the minimum separation distance specified above. The capping fill, if required, shall be placed in accordance with these Regulations (See Exhibit O). A capping fill cover

is required for all LPP disposal systems with trench depths less than 18 inches.

6.06037 Additional criteria:

(a) Lateral lines of the LPP disposal system which are placed on lower landscape positions (i.e. concave slope) shall have an interceptor drain installed upslope of the uppermost lateral to intercept and divert subsurface waters away from the absorption facility as determined by a Class D licensee.

(b) There shall be no soil disturbance to the proposed disposal area except the minimum required for installation. The soils may be rendered unsuitable should unnecessary soil disturbance occur. Particular care should be taken when clearing wooded lots so as not to remove the surface soil material.

(c) LPP disposal systems shall be installed only with equipment approved by DNREC.

(d) LPP disposal systems shall not be allowed where sand-lining is required or where soils have been filled or disturbed.

6.06040 All Elevated Sand Mound Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit P Θ).

6.06041 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding.

6.06042 Slope:

(a) 0-6% for soils with percolation rates slower than 60 min/in mpi.

(b) 0-12% for soils with percolation rates faster than 60 min/in mpi.

~~6.06033 Filled Areas: Elevated sand mound systems may be permitted in filled areas at the sole discretion of the Department provided it can be demonstrated that the filled area is of sufficient size and uniformity and will remain stable during system operation. Filled areas must comply with the requirements of Section 6.01080 of these Regulations. System design shall conform with the requirements of Section 6.01089.~~

~~6.06043 Soil Depth: Shallow~~

~~6.06044 Soil Drainage: Moderate to excessively drained. Depth to Limiting Zone: > 20 inches to evidence of a limiting zone.~~

~~6.06036 Soil Texture: Coarse to medium textured.~~

~~6.06037 Soil Structure: Granular, blocky, subangular blocky, and prismatic structure.~~

6.06045 Percolation Rate: 0-120 min/in mpi. Construction on soils with slower percolation rates is not permitted. A pressurized distribution system is required in all cases.

6.06050 All Pressure-Dosed Full Depth and Capping Fill Treatment and Disposal Systems shall be designed in accordance with the following criteria (See

Exhibit Q & R).

6.06051 Landscape Position: Areas with good surface drainage which allows surface water to run off easily without ponding and are not prone to flooding.

6.06052 Slope: 0-15%. Bed systems can not be sited on slopes > 2%. All designs must be constructed with level bottoms and shall incorporate construction procedures prohibiting equipment from entering the excavation. Slopes in excess of 15% shall be permitted only if the design is prepared by a licensed Class C professional engineer. Any such design shall incorporate construction procedures.

6.06053 Soil Depth: Deep to very deep.

6.06054 Depth to Limiting Zone: > 48 inches to evidence of a limiting zone.

6.06055 Depth to Limiting Zone: 48 inches or greater from original grade and three (3) feet below bottom of filter aggregate. (i.e. a minimum of five (5) feet below existing grade for two (2) foot deep trench and bed systems).

6.06056 Percolation Rate: 0 - 120 mpi. Construction on soils with slower percolation rates is not permitted. A pressurized distribution system is required in all cases.

6.06060 All Sand-lined Treatment and Disposal Systems shall be designed in accordance with the following criteria (See Exhibit S)

6.06061 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and are not prone to flooding.

6.06062 Slope: 0-15%. Slopes in excess of 15% shall only be allowed if the design is prepared by a Class C Professional Engineer designer. with a Class C license. Any such design shall incorporate construction procedures.

~~(b) Systems on slopes between 10% and 15% shall use serial distribution.~~

~~6.06063 Soil Depth: Deep to very deep.~~

~~6.06064 Soil Drainage: Depth to Limiting Zone: Well drained Unsaturated for at least 12 inches below the depth of sand-lining.~~

~~6.06045 Soil Texture: Coarse to medium textured.~~

~~6.06046 Soil Structure: Granular, blocky, subangular blocky, prismatic structure.~~

6.06065 Depth to Limiting Zone: 48 inches or greater from original grade and three (3) feet below bottom of filter aggregate. A minimum of two (2) feet of fill replacement below the filter aggregate shall be provided. Sand lined systems shall not be used where there is less than one (1) foot of unsaturated soil between the limiting zone and the impermeable or slowly permeable soil zone. Sand-lining will not be permitted into the water table, except in instances where it is necessary for replacement systems to function hydraulically. If a perched water table occurs above an impermeable zone, but the soils below the impermeable zone

remain unsaturated, the depth to the perched water table can be as shallow as 36 inches. A minimum of two (2) feet of suitable soil shall be placed below the filter aggregate.

6.06066 Percolation Rate: 0-60 min/in 120 mpi. A pressurized distribution system ~~is~~ may be required. The percolation test shall be taken in the permeable soil below the impermeable or ~~poorly~~ less permeable soil zone. The bottom of the percolation test hole shall extend a minimum of six (6) inches below the ~~poor~~ slowly permeable soil zone but in no case shall it be less than six (6) inches above the underlying limiting zone. If the percolation tests are to be conducted at a depth too deep to obtain accurate percolation rates, a percolation rate based on USDA soil textures shall be assigned (Exhibit W). Otherwise, hydraulic conductivity tests may be substituted.

6.06067 Additional Criteria:

(a) Sand lined systems may be used where the site evaluation has shown that there is an impermeable or ~~very poorly~~ slowly permeable soil zone located over an acceptable soil. Use of ~~the~~ this system requires removal of that zone within the disposal area and its replacement with a sandy fill as prescribed under Section 6.01041. The system shall be constructed in accordance with specifications for sand-lined seepage trenches and beds (See Exhibit S). Installation shall require a Class D site evaluator on site to monitor depth to sand-lining.

~~(b) Sand lined systems shall not be used where there is less than one (1) foot of unsaturated soil between the limiting zone and the very poorly impermeable or slowly impermeable soil zone. Sand lining will not be permitted into the water table.~~

~~(c) When clay or other slowly permeable soil textures are encountered on a site, the following applies:~~

~~(1) For excavation from 0-24 inches a gravity disposal system may be installed.~~

~~(2) For excavation from 25-36 inches a full depth gravity disposal system with extra stone may be installed if 36 inches can be maintained between the bottom of the stone and limiting zone.~~

~~(3) For excavation greater than 36 inches a sand lined disposal system may be installed.~~

6.07000 Septic Tanks:

6.07100 The standard sewage wastewater treatment system used for on-site sewage wastewater treatment and disposal shall be the septic tank.

6.07200 All septic tank treatment units shall be designed in accordance with the following requirements. (See Exhibit F G)

6.07201 The location of septic tanks shall be in accordance with the minimum isolation distances set forth in these Regulations as prescribed in Exhibit C.

6.07202 Minimum liquid volume capacity of a septic tank shall be 1,000 gallons.

6.07203 The capacity of septic tanks for

residential use shall be:

~~(a) For 1, 2, 3 or 4 bedroom residences: Minimum liquid capacity shall be 1000 gallons. For flows \leq 500 GPD the minimum liquid capacity shall be 1,000 gallons.~~

~~(b) For each additional bedroom over 4: Minimum liquid capacity shall be an additional 250 gallons/bedroom. For flows > 500 GPD but \leq 15,000 GPD shall have a capacity of 1.5 times the expected flow rate with a minimum liquid capacity of 1,500 gallons.~~

~~(c) For flows > 15,000 GPD shall be determined on a case by case basis at the sole discretion of the Department.~~

6.07204 All septic tanks shall be capable of providing twenty-four (24) hours detention at peak flow rates and maximum sludge and scum accumulation.

6.07205 ~~Septic tanks for residential community, commercial, industrial, and institutional use shall have a capacity of 1.5 times the peak flow rate for systems having flows less than 1,500 GPD. Flows in excess of 1,500 GPD but no greater than 15,000 GPD shall be sized according to the following equation:~~

$$V = 1,125 + 0.75 Q$$

where:

V = net volume of septic tank in gallons

Q = peak daily wastewater flow in gallons

6.07206 If large flow surges are anticipated the septic tank shall be increased in size to accommodate the surges without causing sludge or scum to be discharged from the tank.

6.07207 Residential, commercial, industrial, and institutional flows greater than 15,000 GPD shall be pretreated by use of a two (2) compartment treatment tank which accomplishes sedimentation in the first compartment and sludge digestion in the second compartment. The treatment tank shall be designed by a Class C licensee and provide for adequate sludge and scum storage. The Department may approve such designs in its sole discretion.

6.07208 All tanks shall be watertight, non-corrosive, durable and structurally sound. Materials of construction for tanks shall be one of the following:

(a) Cast-in-place reinforced concrete.

(b) Pre-cast reinforced concrete.

~~(c) Concrete block, brick or other masonry materials for tanks with a liquid capacity of 2,000 gallons or more. If cinder blocks are used, the hollow cores shall be filled with concrete and reinforced steel.~~

(d) Or other suitable material approved as equal by and at the sole discretion of the Department.

6.07209 All septic tanks shall be of multi-compartment design with a minimum of two (2) compartments. The first compartment of a two (2) compartment tank shall contain two-thirds the liquid capacity of the total volume of the tank. Tanks shall be of

rectangular design.

6.07210 Pre-cast reinforced concrete tanks shall have a minimum wall thickness of two and one-half inches.

6.07211 Cast-in-place reinforced concrete tanks shall have a minimum wall thickness of four (4) inches.

6.07212 All inlet and outlet connections shall be sanitary tees or baffles constructed of cast-in-place concrete, vitrified clay or PVC. Inlet openings may have a minimum diameter equivalent to the diameter of the house sewer but in no instance shall the diameter be less than three (3) inches. The outlet invert shall be two (2) inches below the inlet invert. The inlet and outlet baffles or sanitary tees shall extend at least twelve (12) inches below the liquid level, but to a level no deeper than 40% of the liquid depth. Baffles or sanitary tees are not necessary for any portion of the tank to be used as a pumping chamber.

6.07213 All pipe cutouts for inlet and outlet connections shall be sealed with watertight bentonite grout or standard rubber gaskets.

6.07214 Connections between multi-compartment tanks shall consist of either a four (4) inch diameter sanitary tee or two (2) or more openings equally spaced across the width of the tank. Such openings shall be six (6) inches wide. All compartment connections shall extend to a level no deeper than 40% of the liquid depth as measured from the liquid level.

6.07215 All inlet, outlet and inter-compartment connections shall be located to provide a minimum air space of one (1) inch between the top of the connection and the underside of the tank cover.

6.07216 Each tank compartment shall be equipped with an access opening and cover. The opening shall be located to provide access to each tank compartment as well as providing access to the inlet and outlet connections for routine inspections. Access openings shall be at least eighteen (18) inches square or in diameter and extended to no more than twelve (12) inches below grade level with an appropriate manhole extension.

~~6.07217 A four (4) inch diameter inspection port shall be located over each inter compartment connection and shall be extended no more than six (6) inches below grade level to facilitate routine inspection.~~

6.07217 Each septic tank shall be constructed with a watertight access riser for each compartment and shall extend above grade. The riser and lid shall be made of concrete, masonry or an equivalent durable material.

~~6.07218 All below grade access covers shall be watertight and equipped with lifting lugs for easy removal.~~

6.07219 All above Ggrade level access covers shall be water and air tight and shall be secure from vandalism.

6.07225 All septic tanks shall be equipped

with an approved tank outlet filter. The maintenance of these filters is the responsibility of the property owner and must remain in service for the life of the septic tank. This unit must be maintained in accordance with the manufacturer's service instructions.

6.07300 All installations of septic tank treatment units shall be in accordance with the following requirements:

6.07301 Excavation: The excavation shall be large enough to allow safe, unencumbered working conditions but in no case shall the size of the excavation be less than two (2) feet beyond the perimeter of the tank. Excavations shall be kept dewatered from surface drainage until backfilling is complete.

6.07302 Foundations: The tank shall be placed on firm, dry, granular, undisturbed soil that has been graded level. A gravel bedding shall be used on damp or fine grained soils. A gravel bed foundation shall consist of stone no larger than that which will pass through a 3/4" sieve and shall be placed level to a minimum thickness of six (6) inches in the excavation. The gravel bed shall extend one (1) foot beyond the perimeter of the tank.

6.07303 All tanks shall be placed on a level grade and at a depth that provides adequate gravity flow from the source. Where adequate flow from the source is maintained through the use of pumping equipment, the impact of pumping rates and potential surge flows shall be evaluated so as to maintain the treatment efficiency of the septic tank unit.

6.07304 Previously excavated material from the tank excavation may be used for backfill provided the excavation material is dry and free of stones larger than four (4) inches in diameter, construction debris, concrete, wood and other similar materials. To equalize external pressure against the septic tank, backfill material shall be placed and compacted, extending a minimum of two (2) feet beyond the perimeter of the tank.

6.07305 Backfill materials shall be placed in uniform layers not more than eight (8) inches thick and compacted to no less than 85% Modified Proctor Density. Tamping shall be done in a manner that will not produce undue stress or strain on the tank. ~~Backfilling machinery shall not be allowed within five (5) feet of any part of the system.~~ All backfill shall be free of excessive moisture.

6.07400 Testing: All tanks constructed on-site (i.e., cast-in place, concrete block, etc.) shall be tested to ensure watertight conditions and to check alignment and operation of inlet, inter-compartment and outlet connections prior to backfill. When tested, tanks shall be filled to overflowing with water to observe operation of all connections and fittings. All visible leaks in the tank observed by the installer shall be repaired prior to backfilling.

6.08000 Grease Traps:

6.08010 Grease traps shall be utilized for

commercial and industrial wastewater sources at the sole discretion of the Department to assure the effectiveness of on-site sewage wastewater treatment and disposal systems. Grease interceptors shall not be approved for new construction designs as replacement for the grease trap. Grease interceptors may be allowed for replacement systems when there are site limitations and low flow applications.

6.08020 All grease traps shall be designed in accordance with the following requirements. The minimum size grease trap shall be 1,000 gallons. (See Exhibits E & F)

6.08021 The location of grease traps shall be in accordance with the minimum isolation distances set forth in these Regulations as prescribed in Exhibit C.

6.08022 The sizing of grease traps shall be based on wastewater flow data and grease retention capacity. The grease retention capacity in pounds shall be equal to at least twice the peak flow capacity in gallons per minute. The flow capacity can be determined from the individual flows from fixtures discharging into the grease trap. Exhibit E contains the minimum flow rate fixture capacities which shall be used for grease trap designs when actual calibrated metered flow data indicating peak daily flows over a three year period are not available.

6.08023 All grease traps shall have multi-compartments.

6.08024 All inlet and outlet connections shall be sanitary tees or baffles constructed of cast-in-place concrete, vitrified clay or PVC. Inlet and outlet openings shall be a minimum of four (4) inches in diameter. The outlet invert shall be two (2) inches below the inlet invert. The inlet baffle or sanitary tee shall extend at least 24 inches below the liquid level. The bottom of the outlet baffle or sanitary tee shall be eight (8) inches above the tank bottom.

6.08025 Connections between multi-compartment tanks shall consist of a four (4) inch diameter sanitary tee. The bottom of the sanitary tee shall be twelve (12) inches above the tank bottom.

6.08026 The requirements of Section 6.07208, 6.07210, 6.07211, 6.07213, 6.07215, 6.07216, 6.07217; ~~6.07218~~ and 6.07219 shall apply to all grease traps approved in accordance with these Regulations.

6.08030 All installations of grease traps shall be in accordance with the requirements of Section 6.07300 and testing shall be conducted in accordance with Section 6.07400 of these Regulations.

6.08031 Grease traps must have access at grade.

6.09000 Dosing and Diversion Systems

6.09010 Effluent from on-site sewage wastewater treatment and disposal systems shall be transmitted to the disposal area absorption facility by gravity or pressure distribution systems or lifted by a lift station (see Exhibit V) to overcome elevational differences between the septic tank and the absorption facility.

6.09020 Gravity dosing and distribution

systems may be used when the design sewage wastewater flow requires less than 2,500 ft² of disposal area for seepage trenches or seepage beds and the percolation rate is equal to or slower than six (6) minutes per inch.

6.09030 Gravity distribution systems shall conform to the following requirements:

6.09031 All unperforated gravity transmission pipe up to the distribution box shall be Sch. 40 PVC or ANSI Class 22 thickness cast iron and shall be at least four inches or greater in diameter unless lifted by a lift station to a surge tank or the distribution box in which case 1 ½ inch or 2 inch Sch. 40 PVC pipe would be permissible with a minimum of twenty (20) feet of 4 inch diameter Sch. 40 PVC pipe prior to entering the distribution box.

6.09032 All gravity transmission pipes shall be placed on a firm undisturbed or well compacted soil. All joints shall be watertight. A minimum grade of 1/4 inch per foot shall be provided for gravity transmission piping. Clean backfill shall be placed around and over the pipe and hand tamped to provide compaction.

6.09033 All gravity distribution laterals shall be thin walled or Sch. 40 PVC and shall be at least four inches or greater in diameter. Perforated PVC pipe shall have 3/8 to 3/4 inch diameter holes a maximum of thirty (30) inches on center. Coiled and corrugated piping shall not be used. A grade of less than two (2) inches per one hundred (100) feet shall be provided for all gravity distribution laterals.

6.09034 The design and construction of the gravity distribution system shall provide uniform application of the effluent. All distribution laterals shall be of equal length unless approved by the Department. The effluent shall be equally divided between laterals of the gravity distribution system by means of a distribution box.

~~6.09035 Serial distribution systems may be used on sloping ground. All perforated distribution pipe shall be thin walled or Sch. 40 PVC and shall be at least four (4) inches in diameter. A grade of less than two (2) inches per one hundred (100) feet shall be provided. All serial relief lines shall be ANSI Class 22 thickness cast iron or Sch. 40 PVC pipe and shall be at least four inches in diameter and of the same diameter as the perforated distribution pipe it interconnects. All relief line joints shall be watertight and lines shall be placed on a firm undisturbed or well compacted soil. Clean backfill shall be placed around and over the pipe and hand tamped to provide compaction (See Exhibit R). Stepped trenches shall be used on sloping ground.~~

6.09040 All distribution boxes shall conform to the following requirements (see Exhibit H):

6.09041 Location: Distribution boxes shall be used with all gravity ~~closed~~ systems. They shall be located in accordance with the minimum horizontal isolation distances

set forth in Exhibit C. A minimum distance of three feet shall separate the inlet face of the distribution box from the septic tank outlet.

6.09042 Capacity: Distribution boxes shall be sized to accommodate the number of distribution laterals required for the distribution system.

6.09043 An inlet baffle shall be installed in all distribution boxes. The baffle shall be perpendicular to the inlet pipe and situated six (6) inches from the end of the inlet. The baffle shall be constructed of the same material as the distribution box and shall be a twelve (12) inch square rising from the box floor, centered with the inlet connection, and permanently affixed. PVC tee's may be incorporated as baffles when plastic distribution boxes are used.

6.09044 The inverts of all outlets shall be of the same elevation and at least one (1) inch below the inlet invert.

6.09045 Each inlet and outlet distribution lateral shall be connected separately to the distribution box. Unperforated distribution piping shall extend a minimum of five feet from the distribution box.

6.09046 The requirements of Sections 6.07208, 6.07210, 6.07211, 6.07213 and 6.07215 shall apply to all distribution boxes approved in accordance with these Regulations.

6.09047 Distribution boxes shall be accessible either by means of a removable cover approved by the Department ~~constructed of steel or reinforced concrete~~ or access manhole which shall be located not more than twelve (12) inches below grade.

6.09048 All installations of distribution boxes shall be in accordance with the requirements of Section 6.07300.

6.09049 All installed distribution boxes shall be tested to insure watertight conditions and leveled to insure an even distribution of flow to each lateral under operating conditions.

6.09050 Pressure distribution systems shall be utilized with:

(a) Trench or bed systems receiving flows requiring more than ~~1,250~~ 2,500 ft² of disposal area.

(b) All sand mounds.

(c) ~~All sand filter systems.~~

(d) ~~All~~ Certain sand-lined systems.

(e) All absorption ~~systems~~ facilities located on soils where percolation rates are faster than six (6) minutes per inch ~~or slower than 60 minutes per inch.~~

(f) All low pressure pipe systems.

6.09060 Pressure distribution systems shall conform with the following requirements:

6.09061 All unperforated pressure transmission pipes shall be Sch. 40 or SDR 26 PVC pipe unless approved by the Department. The pipe shall be ~~two~~

~~(2) to four (4) inches in diameter and sized to provide a minimum flow rate of two (2) feet per second in the pipe. At the discretion of the Department, larger diameter pipes may be used for large systems provided all proper engineering principles and practices are adhered to.~~

6.09062 All pressure transmission pipe shall be placed below the frost line, ~~whenever possible.~~ All joints shall be watertight and all pipes shall be placed on a firm undisturbed or well compacted soil. Clean backfill shall be placed around and over the pipe and hand tamped to provide compaction. Frost line minimums for each county are as follows:

Sussex – 18 inches, Kent – 24 inches, New Castle – 32 inches.

6.09063 All pressure distribution laterals shall be Sch. 40 and SDR 26 PVC pipe with ~~a~~ diameters between one (1) to three (3) inches as determined by a Class C licensee. Minimum hole diameters for perforated pressure distribution laterals shall be 1/4 to 1/2 inch for trenches and beds and 3/16 inch diameter holes for LPP's placed no less than 30 inches on center along the length of the pipe, and spacing intervals as determined by a Class C licensee and be placed on center along the length of the pipe. Recommended maximum hole spacing shall be determined by percolation rates as follows:

<u>Percolation Rate</u>	<u>Maximum Hole Spacing</u>
<u>20 - 30 MPI</u>	<u>Sixty (60) inches</u>
<u>30 - 60 MPI</u>	<u>Seventy (70) inches</u>
<u>60 - 90 MPI</u>	<u>Ninety six (96) inches</u>
<u>90 - 120 MPI</u>	<u>One hundred twenty (120) inches</u>

6.09064 All laterals shall be connected to manifolds with tees or sanitary tees constructed of PVC, ~~one (1) to three (3) inches in diameter,~~ corresponding to the size of the connecting laterals.

6.09065 Distribution of effluent from the ~~dosing chamber header~~ pressure transmission pipe to the distribution laterals shall be by a central PVC manifold ranging in diameter from one and one-half (1-1/2) inches to three (3) inches.

6.09066 The dose volume shall be designed so that the estimated daily flow shall be discharged to the absorption facility in a minimum of equal four (4) doses. Dose volume shall be five (5) times the internal (liquid) capacity of the pressure transmission pipe, manifold, and laterals not flooded.

6.09067 The size of the dosing pumps or siphons shall be selected to maintain a minimum pressure of one (1) psi (2.31 feet of head) at the end of each distribution line. Pump characteristics and head calculations which include maximum static lift, pipe friction and orifice head requirements shall be submitted with permit applications.

6.09100 Dosing Chambers (See Exhibit I)

6.09101 Location: Dosing chambers shall be located in compliance with the minimum isolation distances

of these Regulations (See Exhibit C).

6.09102 Size/capacity: ~~The dosing chamber shall be designed so that the estimated daily flow shall be discharged to the absorption facility in a minimum of three (3) equal doses. Dose volume shall be five (5) times the internal (liquid) capacity of the dosing chamber header, manifold, and laterals. The volume per dosing cycle shall not exceed 1.25 gallons per square foot of absorption area. The dosing volume for installations without check valves shall be sized to account for backflow of effluent into the dosing chamber after the end of the dosing cycle. If the design daily flow is \leq 500 GPD, the dosing chamber shall have a minimum liquid capacity equal to the designed dose volume plus the design daily flow. If the design daily flow is $>$ 500 GPD, the dosing chamber shall have minimum liquid capacity equal to two (2) times the designed dose volume. (The dosing chamber shall have a minimum liquid capacity equal to the designed dose volume plus the design daily flow volume. The size of the dosing pumps or siphons shall be selected to maintain a minimum pressure of one (1) PSI (2.31 feet of head) at the end of each distribution line. Pump characteristics and head calculations which include maximum static lift, pipe friction, and orifice head requirements shall be submitted with permit applications.~~

6.09103 The requirements of Sections 6.07208, 6.07210, 6.07211, 6.07215, 6.07216, ~~6.07218~~, and 6.07219 shall apply to all dosing chambers approved in accordance with these Regulations.

6.09104 All inlet pipe connections shall be located above the high water level as predetermined by the pump or siphon installation.

6.09105 All pipe cutouts shall be sealed watertight with bentonite grout or standard rubber gaskets.

6.09106 Dosing chambers shall be constructed with a ventilation port and a watertight access manhole. The ventilation port shall be extended at least six (6) inches above grade while the access manhole shall be extended to the finished grade at a minimum, the Department recommends six (6) inches above grade. The vent shall be three (3) inches in diameter and the access manhole shall be sized for easy removal of pumps or siphons. In no case shall the manhole be less than twenty (20) inches square in diameter. The vent shall be turned down and shall be fitted with ~~and~~ insect and rodent proof, corrosion resistant screen.

6.09107 Pumps and siphons which are suitable for handling septic tank effluent shall be used to meet dosing requirements. Pumps and siphons shall be installed in accordance with the manufacturer's recommendations.

6.09108 Dosing chambers using pumps shall have an installed pump for which a replacement is readily available in the event of failure.

6.09109 Pumps and siphons shall be sized to discharge a flow rate equal to the combined flows from all discharge holes in the laterals when operating at designed

level or head.

6.09110 Pumps and valves shall be equipped with suitable connections so that they may be removed for inspection or repair without entering the dosing chamber. A slide rail system or disconnect coupling accessible from outside the dosing chamber shall be utilized to allow removal and access to the pump and pump check valve for repairs and maintenance. A corrosion-proof lifting chain device shall be attached to the pumps and tied off at the access manhole.

6.09111 Check valves shall be ~~allowed only with dual pumping systems piping discharges below the frost line. All systems larger than 500 gallons per day shall utilize check valves required on all pressure distribution systems.~~

6.09112 An audible and visual high level warning device shall be installed for all siphons and pumps, and shall be installed on a separate AC circuit from the pump. ~~when a pump is required.~~

6.09113 All pump electrical connections and alarm controls shall be corrosion resistant and waterproof. ~~Controls for systems larger than 500 gallons per day shall also be explosion proof.~~

6.09114 ~~Maximum and minimum~~ Elevations for pump controls and high water level sensor elevations shall be provided in the plan and specifications design.

6.09115 ~~Unperforated distribution piping shall extend a minimum of five (5) feet from the distribution manifold. This requirement does not apply in the case of tee'd or branched manifolds.~~

6.09120 Testing: All dosing chambers constructed on-site (i.e., cast-in-place, concrete block, etc.) shall be field tested to ensure watertight conditions. Pumps, siphons, alarm controls and related appurtenances shall also be field tested to ensure accuracy and proper operation in accordance with the manufacturer's recommendations. A minimum schedule for periodic testing and calibration of the dosing chambers, pumps, siphons, alarm controls and related appurtenances shall be established and incorporated into the permit. All installed pumps and siphons shall be accompanied by instruction manuals which include operation and maintenance procedures and pump characteristics.

6.09200 Diversion Boxes and Diversion Valves.

6.09210 Location: Diversion boxes or diversion valves for alternating dual systems shall be located according to the requirements set forth in Exhibit C.

6.09220 Capacity: Diversion boxes and valves shall be sized to accommodate the piping connected to them.

6.09230 Diversion Valves: All pressure dosed alternating dual disposal systems shall use diversion valves.

6.09240 All installation of diversion boxes shall be in accordance with the requirements of Section 6.07300.

6.09250 Diversion boxes shall be pre-cast

concrete ~~or other approved products, with treated cypress or redwood gates.~~ Diversion valve systems shall be commercially available diversion or gate valves constructed of durable cast iron or plastic.

6.09260 Diversion Box and Diversion Valve Specifications: (See Exhibit ~~K J~~)

6.09261 All diversion boxes and diversion valves shall be installed level with connecting piping to minimize stress.

6.09262 Cast iron valves shall be free of dirt and rust. Plastic valves shall be clean and dry before installation.

6.09263 Diversion boxes may be standard distribution boxes with selective flow diversion devices.

6.09264 All inlet and outlet cutout connections shall be sealed watertight with grout or approved rubber gaskets.

6.09270 Appurtenances: All buried valves shall be furnished with a suitable box constructed of durable material extended to grade with a tight fitting access cap.

6.09280 Testing: Installed valves and gates shall be tested in the field prior to back fill. Pre-cast boxes shall be tested for watertight conditions.

6.10000 Building Sewers

6.10010 The minimum requirements contained in this Section shall apply to all conduits, pipes or sewers which transmit ~~sewage~~ wastewater flows from building or house drains to a septic tank (or other treatment device) and from the septic tank (or other treatment device) to the distribution box or dosing tank. Collection systems servicing three (3) or more units (i.e., community systems) meet all other requirements of the Ten States Standards shall be in conformance with National Standards.

6.10020 Building sewers shall comply with the following requirements:

6.10021 Location: A minimum horizontal separation of ten (10) feet shall be provided between a house or building sewer and any water line. Suction lines from wells shall not cross under house or building sewers.

6.10022 Size: Building sewers shall be sized to serve the expected flow from the connected fixtures. All building gravity sewer sewers plumbing shall be at least as large as the internal building sewer plumbing but in no case less than three (3) inches in diameter. Pressure building sewers transmitting wastewater to a septic tank (or other device) shall be a minimum of two inches in diameter.

6.10023 Foundation: All building sewers shall be laid on a firm compacted bed through its entire length. Building sewers placed in wet soil shall have a four (4) inch bedding of 3/4" to 1-1/2" ~~gravel or stone~~ aggregate.

6.10024 Materials: Building sewers shall be constructed of ANSI Class 22 thickness cast iron, Sch. 40 or Sch. 80 PVC, reinforced concrete, or Sch. 40 or Sch. 80 ABS pipe. Cast iron pipe ~~of or PVC pipe in a cast iron sleeve~~

encased in six (6) inches of concrete shall be used for building sewers located ~~under~~ < 3 feet below driveways, parking area, or other areas subject to vehicular traffic ~~or similar loadings.~~ The cast iron pipe or encasement shall extend a minimum of two (2) feet beyond the edge of driveways, parking areas, or other areas subject to vehicular traffic or similar loading and shall be adequately bedded.

6.10025 Joints: All pipe joints shall be watertight and protected against external and internal loads.

6.10026 Grade: A building sewer shall be installed in a straight line to the maximum extent practicable with a uniform continuous grade not less than 1/8 inch/foot, unless it can be demonstrated to the satisfaction of the Department that an alternative design can maintain adequate flow from the source and is approveable under the applicable local building code.

6.10027 Cleanouts: Building sewer cleanouts shall be installed at minimum intervals of fifty (50) feet for three (3) inch diameter pipe and one hundred (100) feet for four (4) inch and larger diameter pipe. Cleanouts shall be provided at all changes in direction greater than 45°. Wherever possible, bends should be limited to 45°. Every house or building sewer shall have at least one (1) cleanout fitting to provide access to the ~~sewer plumbing.~~ Cleanouts may be placed at greater distances provided National Standards are used to design the total collection system.

6.11000 Water Conservation Devices.

6.11010 Twenty five percent reductions in design flow are allowed for water conservation. ~~However, there shall be suitable reserve area available to dispose of the proposed design flow without the reductions for conservation methods.~~ The soil absorption system facility shall be enlarged to the original required size if the conservation devices are removed, become inoperative, or the system malfunctions.

6.11020 Water saving plumbing devices are encouraged to lengthen the life of the ~~soil absorption system facility.~~ However, only permanent water saving plumbing devices such as low flush toilets shall be considered in reducing the size of the ~~disposal area~~ absorption facility. Devices such as inserts in showers are considered temporary.

~~6.12000 Alternative Sewage Wastewater Treatment and Disposal Systems~~

~~6.12010 The Department shall consider applications for alternative sewage treatment and/or disposal systems on a case-by-case basis, when it has been demonstrated that the use of a standard sewage treatment and/or disposal system is unacceptable. For the purposes of this section, applications for community systems that employ pretreatment devices which are in conformance with standard engineering practice as determined by the Department shall not be considered alternative.~~

~~6.12020 Applications for alternative sewage~~

treatment and/or disposal systems shall provide documentation of the capabilities of the proposed system. Such documentation shall be in the form of proven data of long term usage of facilities similar to those specified in these Regulations, or short term documentation from controlled projects from reliable sources such as Universities or the National Sanitation Foundation. The Department shall approve only treatment and/or disposal system applications which provide thorough documentation of proven technology. Alternative sewage treatment and/or disposal systems shall provide, at a minimum, an equivalent level of treatment and disposal as a conventional wastewater system provided by those treatment and/or disposal systems specified in these Regulations.

6.12030 Applications for alternative sewage treatment and/or disposal systems shall include, but not be limited to, the following:

- (a) Volume and rate of sewage flow.
- (b) Characteristics of the sewage.
- (c) The degree and extent of treatment expected.
- (d) Design criteria, specifications, and drawings including a description of the system, its capabilities, operation and maintenance requirements, unique technical features and system advantages for treatment systems.
- (e) Materials of construction.
- (f) For disposal systems the type of sewage treatment preceding the disposal system and the degree and extent of treatment expected with respect to: bacteria and virus removal; nitrate generation and removal; inorganic, organic, soluble and suspended solids removal.
- (g) The seal of a Professional Engineer having a Class C license.
- (h) Any other information required by the Department.

6.12040 Alternative sewage treatment and/or disposal systems shall be designed and operated to achieve the following criteria:

- (a) Within the project boundaries the total discharge from all sources to the groundwaters of the State does not exceed 0.0000834 pounds of total nitrogen per gallon of discharge.
- (b) No pathogen or virus migration beyond the boundaries of the project site.

6.13000 Sand Filter Systems

6.13010 Each sand filter system installed under these Regulations may be inspected annually. An annual fee may be required. The Department may waive the annual fee during years when the inspection is not performed.

6.13020 Sand filters may be permitted on any site meeting requirements for standard disposal systems contained under Section 6.06000 or where disposal trenches would be used, and all the following minimum site

conditions can be met:

- (a) The highest level attained by the water table would be equal to or more than distances specified as follows:

Soil Textures	Minimum Separation Distance from Bottom of the Seepage Area
sandy, loamy sand, sandy loam	24 inches
Loam, silt loam, sandy clay loam, clay loam	18 inches
silty clay loam, silty clay, clay, sandy clay	12 inches

- (b) Soils or fractured bedrock diggable with a backhoe occur such that a standard twenty-four (24) in deep trench can be installed.

6.13030 Shallow disposal trenches (placed not less than twelve (12) inches into the original soil profile) may be used with a capping fill to achieve the minimum separation distances from the water table. The fill shall be placed in accordance to the provisions of these Regulations.

6.13040 Water table levels shall be determined in accordance with methods contained in Section 5.01000. Sand filters shall not discharge more than five hundred (500) gallons of effluent per one-half (1/2) acre per day except where:

- (a) A site specific geologic and hydrogeologic analysis discloses loading rates exceeding five hundred (500) gallons per one-half (1/2) acre per day would not increase the total nitrogen concentrations in the groundwater beneath the site, or any down gradient location, above ten (10) milligrams per liter.

6.13050 The size of sand filter absorption facilities shall be determined in the same manner as provided under Section 6.01020 for subsurface disposal system sizing except that, the minimum disposal area may be reduced to one-third of the area determined by the appropriate sizing equation.

6.13060 Sites with soil textures of sand, loamy sand, or sandy loam in a continuous section at least two (2) feet thick in contact with and below the bottom of the sand filter, that meet all other requirements of Section 6.13000, may utilize either a conventional sand filter without a bottom or a sand filter in a trench that discharges treated effluent directly into those materials. The application rate shall be based on the design sewage flow and the basal area of the sand in either type of sand filter. A minimum twenty-four (24) inch separation shall be maintained between a water table and the bottom of the sand filter.

6.13070 Materials:

6.13071—All materials used in sand filter system construction shall be structurally sound, durable and capable of withstanding normal installation and operation stresses. Component parts subject to malfunction or excessive wear shall be readily accessible for repair and replacement.

6.13072—All filter containers shall be placed over a stable level base.

6.13073—Piping and fittings for the sand filter distribution system shall be as required under these Regulations for pressure distribution systems.

6.13080—Conventional Sand Filter Design Criteria

6.13081—Design sewage flows for a system proposed to serve a single family dwelling or commercial facility shall be limited to five hundred (500) gallons or less per day except as provided in these Regulations.

6.13082—Minimum Filter Area. Sand filters shall be sized based on an application rate of no more than one and twenty-three hundredths (1.23) gallons septic tank effluent per square foot medium sand surface per day.

6.13083—Sand filter containers, piping, medium sand, gravel, gravel cover, and soil crown material for a sand filter system discharging to disposal trenches shall meet minimum specifications indicated in Exhibit Q unless otherwise authorized by the Department.

6.13090—Container Design and Construction

6.13091—A reinforced concrete container consisting of floor and walls as shown in Exhibit Q is required where water tightness is necessary to prevent groundwater from infiltrating into the filter.

6.13092—The container may be constructed of materials other than concrete where equivalent function, workmanship, watertightness and at least a twenty (20) year serve life can be documented.

6.13093—Flexible membrane liner (FML) materials shall have properties which are at least equivalent to thirty (30) ml unreinforced polyvinyl chloride (PVC) described in Exhibit S. To be approved for filter installation, FML materials must:

(a) Have field repair instructions and materials which are provided to the purchaser with the liner; and

(b) Have factory fabricated "boots" suitable for field bonding onto the liner to facilitate the passage of piping through the liner in a waterproof manner.

6.13094—Where accepted for use, flexible membrane liners shall be placed against relatively smooth, regular surfaces. Surfaces shall be free of sharp edges, corners, roots, nails, wire, splinters and other projections which might puncture, tear, or cut the liner. Where a smooth, uniform surface cannot be assured in the field, filter system plans must include specifications for liner protection. A four (4) inch bed of clean sand or a non-degradable filter fabric acceptable to the Department, shall be used to provide liner protection.

6.13100—Other Sand Filter Design Criteria

6.13101—Other sand filters which vary in design from the conventional sand filter may be authorized by the Department if they can be demonstrated to produce comparable effluent quality.

6.13102—Pre-application Submittal. Prior to applying for a construction permit for a variation to the conventional sand filter the Department must approve the design. To receive approval the applicant shall submit the following required information to the Department:

(a) Effluent quality data. Filter effluent quality samples shall be collected and analyzed by a testing agency acceptable to the Department using procedures identified in the latest edition of "Standard Methods for the Examination of Wastewater", published by the American Public Health Association, Inc. The duration of filter effluent testing shall be sufficient to ensure results are reliable and applicable to anticipated field operation conditions. The length of the evaluation period and number of data points shall be specified in the test report. The following parameters shall be addressed: BOD₅; Suspended Solids; Fecal Coliform; Total Nitrogen; Ammonia Nitrogen; Organic Nitrogen; Nitrite Nitrogen; and Nitrate Nitrogen.

(b) A description of unique technical features and process advantages.

(c) Design criteria, loading rates.

(d) Filter media characteristics.

(e) A description of operation and maintenance details and requirements.

(f) Any additional information specifically requested by the Department.

6.13103—Construction Procedure. Following pre-application approval, a permit application shall be submitted in the usual manner. Applications shall include applicable drawings, details and written specifications to fully describe proposed construction and allow system construction by contractors. Included must be the specific site details peculiar to that application, including soils data, groundwater type and depth, slope, setbacks existing structures, wells, roads, streams, etc. Applications shall include a manual for homeowner operation and maintenance of the system.

6.13110—Sand Filter System Operation and Maintenance

6.13111—Sand filter operation and maintenance tasks and requirements shall be specified in the construction permit and may be supplemented in the Certificate of Satisfactory Completion. Where a conventional sand filter system or other sand filter system with comparable operation and maintenance requirements is used, the system owner shall be responsible for the continuous operation and maintenance of the system.

6.13112—The owner of any sand filter system shall provide the Department written verification that the system's septic tank has been pumped at least once each thirty-six

(36) months by a licensed liquid waste hauler. Service start date shall be assumed to be the date of issuance of the Certificate of Satisfactory Completion. The owner shall provide the Department certification of tank pumping within two (2) months of the date required for pumping.

6.13113— No permit shall be issued for the installation of any other sand filter which in the judgment of the Department would require operation and maintenance significantly greater than the conventional sand filter, unless arrangements for system operation and maintenance meeting the approval of the Department have been made which will ensure adequate operation and maintenance of the system.

6.13114— Each permitted installation may be inspected by the Department at least every twelve (12) months and checked for necessary corrective maintenance. The payment of an annual fee will be required. The Department may waive the annual fee during years when the inspection is not performed.

6.14000— Standardized Pressure Dosed Systems (See Exhibit T)

6.14010— The standardized systems contained in these Regulations may be utilized in locations where a pressure distribution system is required by Section 6.09050, Paragraph (e). Designs for standardized pressure dosed systems shall conform with the approved criteria described in Exhibit T and may be prepared by either a Class B or Class C Designer.

6.14020— The pressure distribution system shall conform to the requirements of Section 6.09060. The dosing chamber shall conform to the requirements of Section 6.09100. (See Exhibit I)

6.14030— Pumps: Pumps shall be submersible sewage pumps consisting of a motor, shaft, pump impeller and casing. The pump motor shall be designed for continuous submersible service, within open windings, operating in clean dielectric oil. The motor shaft and housing shall be sealed with a mechanical shaft seal with seal ring of ceramic and carbon materials, or other approved seal designed to prevent the entry of water or dirt into the motor housing. The motor shaft shall be stainless steel. The motor and pump housing shall be cast iron, bronze, or another approved corrosion-resistant material. The pump impeller shall be non-clog, capable of passing 1-1/4 inch spherical solids, constructed of cast iron, bronze, or another approved corrosion-resistant material. The pump shall have a minimum two (2) inch discharge. All fasteners shall be stainless steel. The pump shall be capable of running dry without damage to the components, and shall have a maximum operating temperature of 150 degrees Fahrenheit.

6.14040— Controls: The pump level controls shall be float type mercury switches set to control the pumps according to the levels required by the design selected. The mercury tube switches shall be sealed in solid floats of polyurethane or another approved material, designed for

corrosion and shock resistance. Each float shall be suspended on a support wire with a heavy neoprene jacket and a weight shall be attached to the cord above the float to hold the switch in place in the pumping chamber. Three float switches shall be provided, one each for pump off, pump on and high water alarm (this may be reduced to two switches if a single switch can be adjusted to provide the proper dosing volume between the pump off and pump on levels). Manufacturers may submit float specifications to the Department for prequalification.

6.14050— Accessories: The pump shall be equipped with a quick disconnect coupling or slide rail system in order to provide easy removal for maintenance or repair. If a quick disconnect coupling is installed, it shall be placed in the discharge piping within reach of the access manhole. If a slide rail system is used, the rails and other hardware shall be of a corrosion-resistant material. The pump shall be equipped with a lifting chain or strap made of stainless steel, nylon webbing or other corrosion-resistant materials designed to lift the weight of the pump and piping. The lifting chain or strap shall be tied off on a hook within reach of the access manhole. All piping is to meet the requirements of Section 6.09061.

6.14060— Electrical: The pump motors shall be designed for operation with 115 volt, single phase, 60 hertz electrical service (three phase motors may be substituted). All wiring within the pumping chamber shall be water and oil proof. All wiring connections to the motor, float controls and junction boxes shall be waterproof. Junction boxes, control boxes, or any other electrical enclosures located within the pumping chamber shall be minimum NEMA Type 4. Each pumping system shall be supplied with a control panel equipped with a contactor and circuit for the pump (one for each pump if a duplex system is installed), mercury switch level controls, a hand-off-automatic switch, and, if necessary, a transformer to supply a control current. The control panel shall be contained in a suitable enclosure, NEMA Type 3R if installed outside, NEMA Type 1 if installed inside. Each system shall be equipped with a high water alarm activated by the high water alarm float, consisting of both an audio and visual alarm. The audio alarm may be either a bell or a horn, and the visual horn shall be a flashing red light. The alarm may be installed in the system control panel enclosure, or within its own enclosure, which shall meet the requirements for the control panel enclosure. All electrical work shall meet the requirements of the National Electrical Code, the National Electrical Safety Code, and any applicable local codes. Upon completion of the installation, an electrician licensed in the State of Delaware shall certify that the electrical work complies with all of the requirements of this Section.

6.14070— Pump Selection: The use of the Standardized Pressure Dosed Systems requires the selection of a pump by the Designer. Exhibit T indicates the Pump

~~Group required for each system. The minimum performance requirements for each Pump Group are as follows:~~

~~Pump Group A— 90 GPM @ 12.0' TDH~~

~~Pump Group B— 100 GPM @ 12.0' TDH~~

~~Pump manufacturers may submit specifications and performance data on their pumps for prequalification by the Department in any of the Pump Groups listed above. The Designer shall select the pump he wishes to use from the Department prequalified list and specify it on the application.~~

SECTION 7.00000 -- SITING DENSITY AND HYDROGEOLOGICAL REQUIREMENTS

7.01000 The minimum isolation distances and siting densities set forth in these Regulations shall be maintained when designing, locating, constructing, repairing, replacing and installing holding tanks, commercial and individual on-site ~~or~~ and community wastewater treatment and disposal systems.

7.02000 The following maximum siting densities shall be maintained:

7.02010 For residential dwellings, the maximum siting density shall be one (1) dwelling unit per one-half (1/2) acre.

(a) For single family residences, only the area within the property lines of the lot shall be considered.

(b) For multiple family dwellings or where more than one (1) dwelling is to be served by an on-site sewage wastewater treatment and disposal system, the maximum siting density shall be based on the net pervious area (i.e., unpaved, without structures) available for groundwater recharge after total project completion. The following criteria shall be utilized in determining the maximum siting densities:

(i) For projects utilizing only a ~~standard~~ septic tank for treatment prior to discharge to the ~~soil~~ absorption facility system, the maximum siting density shall be one (1) dwelling unit per one-half (1/2) acre of pervious area.

(ii) For projects utilizing advanced treatment systems, in conformance with standard engineering practice and providing higher degrees of nitrogen removal, the maximum siting density shall be determined based on the degree of nitrogen removal prior to discharge to the ~~soil~~ absorption facility system. The degree of nitrogen removal required shall be determined in accordance with Exhibit U. The degree of nitrogen removal may be adjusted in accordance with a schedule for total project completion submitted by the applicant and approved by the Department. The owner of a treatment system which provides a higher degree of nitrogen removal, shall post a performance bond or certified letter of credit in an amount equal to the total cost of the treatment system for the project. The performance bond shall be held by the Department until,

such time as the treatment system demonstrates an acceptable level of compliance with the terms and conditions of a permit for a minimum period of one (1) year. Upon demonstration of a satisfactory level of compliance, the performance bond or certified letter of credit will be returned to the owner.

7.02020 For commercial facilities the maximum siting density shall be established by dividing the projected design flow by five hundred (500) gallons per day per one-half (1/2) acre and shall be based on the net pervious area (i.e., unpaved, without structures) available for groundwater recharge after total project completion. Campgrounds intended for overnight or transient use are evaluated as commercial facilities as opposed to mobile home parks, which are evaluated as single family residential facilities.

7.02030 In establishing maximum siting densities the Department may consider impervious areas where it can be demonstrated that through the establishment of an acceptable stormwater management plan, all runoff will be recharged to the groundwater of the State within the boundaries of the project site. Stormwater management plans shall be based upon a ten (10) year - one (1) hour storm event as a minimum and provide recharge of the runoff within 72 hours of the storm event.

7.03000 If the deed or instrument, under which an owner acquired title to a lot or parcel, was of record prior to April 8, 1984 and if such lot or parcel does not conform to the requirements of Section 7.02010, then the Department may approve a feasibility study and/or issue a construction permit for an on-site wastewater treatment and disposal system. This system is to serve a single family dwelling or for multiple systems to serve dwellings to be situated within an area which has been given final site plan approval prior to April 8, 1984 for single or multi-family dwellings provided that:

(a) The number of dwelling units per net pervious area (i.e., unpaved, without structures) does not increase from those approved prior to April 8, 1984 by the local governmental unit having jurisdiction; and

(b) At the time the permit is issued or ~~report of site suitability~~ feasibility study is approved, the lot or parcel complies with the requirements of Section 3.00000 through Section 6.00000 of these Regulations.

When it may be necessary to increase the net pervious area or reduce the number of dwelling units within a lot or parcel and thus create a new date of recordation or final site plan approval, the Department shall utilize the previous date of recordation or approval in determining conformance with these Regulations. The owner shall provide, prior to any action by the Department, all documentation determined by the Department to be necessary in establishing conformance with this section.

7.04000 For lots created by plats or deeds recorded

after April 8, 1984 and/or when the on-site wastewater treatment and disposal system will serve a commercial facility, the Department may approve a feasibility study evaluation of site suitability, and/or issue a construction permit for a new on-site wastewater treatment and sewage disposal system if it is determined that all Regulations of the Department can be met.

7.05000 Isolation distances and siting densities may be modified by the Department based upon a site specific ~~geological and hydrogeological analysis~~ Groundwater Impact Assessment (GIA) provided that in the sole discretion of the Department such modification will allow for the protection of environmental resources and the public health, safety and welfare. A site specific ~~geologic and hydrogeologic analyses~~ GIA may not be required when the proposed treatment prior to disposal will discharge no greater than five (5) milligrams per liter of total nitrogen as an average of all samples collected within a calendar year and not exceed ten (10) milligrams per liter of total nitrogen during any one month while providing adequate disinfection at all times.

~~7.06000 Site specific geological and hydrogeological analyses shall be performed by a Registered Professional Geologist and shall be based upon site specific investigations and testing which shall include:~~

(a) ~~Topographic location of the proposed disposal area.~~

(b) ~~Relationship of topography to groundwater flow.~~

(c) ~~Depth of water table at the proposed site, including seasonal variations.~~

(d) ~~Existing groundwater quality, quantity, and uses of existing wells within a 1000 foot perimeter surrounding the proposed disposal area. Groundwater quality characteristics shall include but not be limited to the following:~~

(1) ~~Total and Fecal Coliform~~

(2) ~~pH~~

(3) ~~Total nitrogen~~

(4) ~~BOD₅~~

(5) ~~Turbidity~~

(e) ~~The location, quality, flow characteristics and designated uses of any surface water within 1000 feet of the proposed disposal area.~~

(f) ~~A valid analytical groundwater dispersion equation which shall be utilized to demonstrate the following:~~

(1) ~~The groundwater quality at representative locations around the perimeter of the disposal area for parameters specified by the Department.~~

(2) ~~The distances from the proposed disposal area where the total nitrogen concentration is 10 mg/l.~~

(3) ~~Validity and accuracy of the equation parameters used in the dispersion equation.~~

~~Upon receipt, the Department shall attempt to review the analysis within thirty (30) days. The Department may require more detailed hydrogeological information based upon the information submitted and the projected impact on the environmental resources, public health, safety and welfare.~~

7.06000 The Department may require an applicant, owner or operator to perform a site specific Groundwater Impact Assessment (GIA). The GIA should be performed by a Delaware Registered Professional Geologist and shall be based upon site specific investigations and testing. If information required in the GIA was previously submitted in a PGIA for the site, the required information need not be resubmitted. The applicant may reference the PGIA and state that the information was submitted in the report. The Department will provide guidelines for preparation of the GIA.

~~7.097000 The requirements of this Section are subject to waiver by the Department for a specific area upon petition by an appropriate governmental unit. Such petition shall provide reasonable evidence that development using individual on-site sewage wastewater treatment and disposal systems will not cause unacceptable degradation of groundwater quality or surface water quality or it shall provide equally adequate evidence that degradation of groundwater or surface water quality will not occur as a result of such waiver.~~

~~7.10000 No waiver of the minimum siting densities or isolation distances shall be made until after a public notice of the proposed action has been made and a public hearing held in accordance with 7 Del. C., Chapter 60, Section 6006.~~

SECTION 8.00000 -- MAINTENANCE

8.01000 The owner shall be responsible for maintaining and operating on-site wastewater treatment and disposal systems. Upon transfer of ownership, the new owner shall be responsible for proper operation and maintenance of the system and will be subject to all penalties for any violation of these Regulations.

8.02000 Each on-site wastewater treatment and disposal system shall be pumped by a licensed liquid waste hauler ~~in accordance with a schedule established in the permit once every three years~~ and alternative treatment systems shall be pumped according to manufacturer recommendations unless determined that the tank is less than one-third (1/3) full of sludge. The schedule shall be prescribed in accordance with current Department guidelines based on the size of the treatment unit and anticipated number of residents. The owner of the on-site wastewater treatment and disposal system shall maintain a record indicating the system has been pumped and provide such documentation to the Department upon request.

8.03000 Organic chemical septic tank cleaning agents shall not be used in individual or community on-site

wastewater treatment and disposal systems.

8.04000 Grease traps shall be cleaned when 75 percent of the grease retention capacity has been reached.

8.05000 The sites of the initial and replacement absorption facilities shall not be covered by asphalt or concrete or subject to vehicular traffic or other activity which would adversely affect the soils. These sites shall be maintained so that they are free from encroachments by accessory buildings and additions to the main building.

8.06000 The Department may impose specific operation and maintenance requirements for ~~individual or community~~ on-site wastewater treatment and disposal systems to assure continuity of performance. ~~Unless otherwise required by permit, community systems shall be inspected at least annually by the responsible entity.~~

8.07000 For large systems which serve communities that experience a significant variation in flow on an annual basis, the Department may prescribe specific criteria in the permit for taking certain treatment units out of service during periods of low flow. The criteria will establish procedures for winterization and restart and the minimum levels of treatment which must be provided at all times and in no event shall it be less than the level of treatment provided by a ~~standard sewage~~ conventional on-site wastewater treatment and disposal system.

8.08000 The Department shall impose, in any permit for large or community systems, standards for evaluating treatment system performance and compliance with these Regulations. The standards may be in the form of limitations on flow and pollutant concentrations and/or mass loadings. The standards shall reflect the utilization of best management and operational practices.

8.09000 Unless otherwise required by a permit, all community and large systems shall be inspected annually by the Department or its designee.

8.09500 Alternative systems shall be inspected once every three years and a fee may be required by the Department. In addition, the Department recommends alternative systems be inspected annually, at a minimum, by a Class H inspector.

SECTION 9.00000 -- PRELIMINARY SUBDIVISION APPROVAL

9.01000 It is the policy of the Department to facilitate compliance with these Regulations through review of proposed development projects as early as possible in the development process to avoid unnecessary conflicts and expense. Those persons proposing to subdivide a parcel and use individual on-site or large and/or community wastewater treatment and disposal systems must submit a preliminary plan letter of intent prior to initiating any preliminary soils investigations.

9.01010 The Letter of Intent must contain the following details:

(a) The name of the Developer and landowner

(b) The size of parcel and number of proposed lots or projected flow rates

(c) Indication of type of system(s) – individual versus large/community

(d) Projected start date of site/soil investigative work

9.01020 A preliminary plan feasibility study shall be filed with the Department setting forth the proposed manner of compliance with these Regulations. Other development projects may submit a feasibility study to satisfy other local government approval processes. The plan feasibility study shall contain information of the nature required to accompany a permit application under these Regulations, and satisfy the following information:

(a) Site plan must be drawn to scale not to exceed one (1) inch equals 200 feet.

(b) Illustrate topography by two (2) foot contours intervals unless the Department approves the use of an alternate scale due to extreme variations in elevation on the site.

(c) Illustrate the location of all wells, water systems courses, sewerage systems, septic tanks, on-site sewage disposal systems, roads, houses, rights-of-way, and easements within ~~200~~ 150 feet of the perimeter of the property.

(d) Conduct a soil suitability evaluation of the project site following procedures prescribed in Section 5.01000. The extent and nature of the soil evaluation shall be determined by a Class D licensed ~~site evaluator~~. The ~~site evaluator~~ Class D licensee shall coordinate the planning of the soils evaluation with the Department prior to initiating work.

(e) Indicate the type of limiting zone, its depth, and list the results of the site and soils analysis on the appropriate forms. as provided by the Department.

(f) A representative number of percolation tests shall be conducted on the project site. The licensed Class A percolation tester shall coordinate his planning with the Class D site evaluator and the Department prior to initiating work. Each soil mapping unit identified for potential on-site wastewater disposal shall have at least one percolation test conducted within it to establish representative percolation rates for each mapping unit.

(g) Lot numbers and approximate lot areas shall be provided.

(h) A general site location map shall be included on the preliminary plan for reference identification of the area.

(i) The results of a geological and hydrogeological analysis conducted pursuant to the requirements of Section 7.00000 shall be included where the maximum siting density does not conform to the requirements of these Regulations. Proposed stormwater

management areas

(j) Location of jurisdictional wetlands, if delineated.

9.02000 ~~The Department shall conduct a general review of the preliminary plan and give the owner/developer a non-binding soil investigation report which shall contain a statement of on-site wastewater treatment and disposal feasibility. This Section shall not be construed to relieve the applicant of the responsibility of obtaining individual site evaluations and a permits from the Department for each lot prior to commencement of construction of any on-site wastewater treatment and disposal system. If site specific soil analysis information is submitted, and the Department determines that the soils conditions identified are representative of the entire parcel or subdivision, the Department may waive individual lot site evaluation requirements at the sole discretion of the Department. However, in any event, a minimum of one (1) soil profile per acre shall be submitted. If granted, such a waiver must be in writing and accompany the statement of feasibility.~~

9.03000 ~~All wastewater treatment and disposal systems which are proposed for construction in a watershed where total maximum daily loads (TMDL's) have been established for nitrogen and phosphorus shall be designed to reduce effluent nutrient levels prior to discharging to the absorption facility. The wastewater treatment system shall be designed to reduce nutrient concentration by the percentage reduction established by the Pollution Control Strategy (PCS) for that watershed.~~

9.04000 ~~If, in the estimation of the Department, more than fifty five (55) percent of the proposed absorption facilities for the subdivision will require pressurized disposal systems, due to limiting conditions, a community wastewater treatment and disposal system shall be utilized unless lot density is equal to or greater than one acre per dwelling unit.~~

9.05000 ~~Any lot created, recorded or platted after April 8, 1984 shall not have permanent holding tanks permitted as a means of on-site wastewater treatment and disposal.~~

9.06000 ~~Any other information required by the Department.~~

SECTION 10.0000 -- VARIANCES

10.01000 Rural Area Variances

10.01010 Variances for any provision of these Regulations may be granted by the Secretary in certain rural zones provided that:

(a) ~~The governing zoning agency designates and the Department accepts specific rural zoning classifications for purposes of this Section; and The owner executes and records in the appropriate County Office of the Recorder of Deeds an affidavit, on a form approved by the Department, which notifies prospective purchasers that the property is subject to a Rural Area Variance; and~~

(b) ~~The minimum parcel size considered under~~

~~this Section is designated by the governing zoning agency, but in no event shall it be less than ten (10) acres; and The parcel size is not less than ten (10) acres; and~~

(c) ~~The parcel is an existing parcel that does shall not have an area approveable for any standard type of on-site wastewater treatment and disposal system. The Class D licensee shall provide a soils map of the subject area and identify the area most suitable for wastewater treatment and disposal. Logged soil profile descriptions shall be provided for this area. Representative descriptions shall be provided for each other mapping unit identified; and~~

(d) ~~The permit is for an on-site wastewater treatment and disposal system designed to serve a single family dwelling, or for a commercial facility with an equivalent or less sewage flow permitted by county zoning regulations; and~~

(e) ~~The on-site wastewater treatment and disposal system will function in a satisfactory manner so as not to create a public health hazard, or cause pollution of waters of the State; and~~

(f) ~~Requiring strict compliance with these Regulations would in the sole discretion of the Department be unreasonable, burdensome, or impractical due to special physical conditions.~~

(f) ~~Applications must be completed per Section 10.02030 to obtain final approval for the Rural Area Variance.~~

~~10.01020 The conditions for rural area variances shall be set forth in a memorandum of agreement (contract) between the governing zoning agency and the Department.~~

10.02000 Formal Variances

10.02010 Variances from any provisions contained in these Regulations may be granted after a public notice and hearing, if any. Notice shall be provided to all contiguous property owners. A public hearing will be held if a meritorious request is received within a reasonable time as stated in the advertisement. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the variance's probable impact.

10.02020 No variance may be granted unless the hearing officer finds, or in the case of an appeal to the Environmental Appeals Board, it is found that;

(a) The requirements of 7 Del. C., Chapter 60, Section 6011 have been satisfied; and

(b) Strict compliance with the provision of these Regulations is inappropriate for cause; or

(c) Special physical conditions render strict compliance unreasonable, burdensome, or impractical.

10.02030 Applications for Variances

10.02031 A separate application shall be made to the Department for each site considered for a variance.

10.02032 Each Rural Area Variance application shall be accompanied by include:

(a) A site evaluation report conducted by a Class D licensee, unless waived by the Department, to include the requirements of Section 10.01000; and

(b) ~~A percolation test conducted by a Class A licensee~~ Proof the parcel is a minimum of ten (10) acres (survey or statement from zoning office); and

(c) ~~Plans and specifications for the proposed system prepared by a Class B or C licensee~~ Site evaluation report of the entire parcel by the Class D licensee with information including logged soil borings, detailed plot drawing and statement from the licensee that no suitable soils were found on the parcel and a wetland delineation shall also accompany the site evaluation report depicting any jurisdictional wetlands; and

(d) ~~The appropriate fee~~ A proposed disposal location which is a minimum of 100 feet from all property boundaries (when soil conditions allow); and

(e) ~~Other information necessary for rendering a proper decision~~ The location of all wells within 1,000 feet of the proposed absorption facility; and

(f) ~~The property owner's signature~~ shall provide a list of all property owners names and addresses within 1,000 feet of parcels property lines; and

(g) ~~A percolation test conducted by a Class A percolation tester or an assigned percolation rate by the Class D licensee based upon USDA soil textures (see Exhibit W); and~~

(h) Submit soils report with appropriate site evaluation fee, if fee not paid already. Upon reviewing the soils report, the Department will determine the system type, design specifications and return this information to the owner, or designated agent; and

10.2035 Upon completion of Section 10.02032, the following criteria will be required:

(a) A completed permit application prepared by a licensed designer; and

(b) An affidavit of a Rural Area Variance (as part of the permit application); and

(c) Appropriate fee's for the permit application and Rural Area Variance, if not already paid; and

(d) The Department shall advertise the application for a Rural Area Variance in a local newspaper to include direct notification of adjacent property owners. The Department will not hold a public hearing unless a meritorious request is made to the Department.

10.03000 Hardship Variances

10.03010 The Secretary may grant variances from any provision of these Regulations in cases of extreme and unusual hardship.

10.03020 The Department may consider the following factors in reviewing an application for a variance based on hardship:

(a) Advanced age or bad health of the applicant.

(b) Need of applicant to care for aged, incapacitated, or disabled relatives.

(c) Relative insignificance of the environmental impact of granting a variance.

10.03030 Hardship variances granted by the Secretary may contain conditions such as:

(a) Permits for the life of the applicant.

(b) Limiting the number of permanent residents using the system.

(c) Use of ~~experimental~~ conventional on-site wastewater treatment and disposal systems for specified periods of time.

(d) Any other conditions which the Secretary finds in his sole discretion to be appropriate.

10.03040 ~~Before an application is considered for a hardship variance it must have been denied a formal variance on the basis of technical Regulation considerations.~~ At the time of the application, the applicant must designate on the application that it is ~~to be reconsidered~~ for a hardship variance.

10.03050 Documentation of hardship must be provided before the application is referred to the Department for action.

10.03060 Department personnel shall strive to aid and accommodate the needs of applicants for variances due to hardship.

10.04000 Variance Hearings

10.04010 The hearing officer shall hold a public hearing in conformance with 7 Del. C., Chapter 60, Section 6006.

10.04020 The hearing shall be held in the county where the property ~~described in the application~~ is located.

~~10.04030 Each hearing shall be held within thirty (30) days after receipt of a completed application and public notice has been given subsequent to receipt of the completed application.~~

~~10.04040 A decision to grant or deny the variance shall be made in writing to the applicant within thirty (30) days after completion of the hearing. If the variance is granted, the Department shall issue the appropriate construction permit and perform necessary inspections to assure proper installation of the system.~~

10.05000 Variance Appeals

10.05010 Decisions of the Secretary to grant or deny a variance may be appealed to the Environmental Appeals Board.

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Diversion valve or box	50	10	25	10	--	--
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Notes:

a) Approval of a lesser distance to a minimum isolation distance of 50 feet may be approved by the Department ~~if the well has a permanent watertight casing installed through the aquifer receiving the effluent from the on site disposal system as per the Delaware Regulations Governing the Construction and Use of Wells, adopted February 6, 1997.~~ The applicant shall provide documentation regarding well distances, depths, and construction to the Department upon request.

b) Approval of a lesser distance to a minimum isolation of fifty (50) feet may be approved by the Department if the watercourse has not been designated for use as a public water supply or shellfish or the applicant and/or agent can prove there will be no adverse effect to the watercourse. NOTE: There is no setback from an ephemeral watercourse. It is the sole responsibility of the Class D licensee to determine whether a watercourse is, by definition, ephemeral.

c) For elevated sand mound and capping fill systems distances shall be measured from the outer edge of the ~~berm or fill stone or gravel less chamber.~~

d) For public or industrial wells the minimum isolation distance shall be 150 feet. **NOTE:** Paragraph 8.03(c) of Regulations Governing the Use of Water Resources and Public Subaqueous Lands states, "Every new or replacement well shall be located at least 150 feet from septic tanks, tile fields (absorption facility), and seepage pits."

e) ~~For lots created by plat or deed and recorded prior to April 8, 1984, A~~ an isolation distance of 50 feet between domestic and commercial wells and disposal area absorption facility may be considered by the Department where the lot size will not allow an isolation distance of 100 feet and an alternative source of water supply is not available. The well must be cased to a depth of 50 40 feet exclusive of the screen and pressure grouted with either concrete or bentonite clay to a minimum depth of 40 feet. The applicant shall provide documentation regarding well distances, depths, and construction to the Department upon request.

f) Except in the case of a septic tank for a central sewer system where the ~~disposal field~~ absorption facility is not located on the same lot as the septic tank in which case the distance shall be 5 feet from the interior lot ~~or easement~~ lines within a recorded subdivision.

g) Except in the case of a central sewer system where the ~~disposal area~~ absorption facility can be 5 feet from an interior lot ~~of easement lines within a recorded subdivision.~~

h) For replacement systems, if an additional twelve (12) inches of suitable soil exists below the required separation distance then the well isolation distance may be reduced

**EXHIBIT C
MINIMUM ISOLATION DISTANCES (FEET)**

Components	Well or Suction Line	Water Supply Pressure Line	Watercourse (Streams, Lakes, <u>Federal or State Regulated Wetlands</u> or other surface water)	Dwellings, Property Lines, <u>Easements or Right-of-way</u>	Other on-lot systems	Natural or man-made Slope >25%
Septic tank	50	10	25	10 (f)	--	--
Grease trap	50	10	25	10	--	--
Distribution box	50	10	25	10	--	--
Dosing chamber	50	10	25	10	--	--
Disposal area (c) (h) (i)	100 (a)(d) (e)	10	100(b)	10 (g)	20 10	15

from 100 feet to 50 feet. (ie. 36 inch separation for gravity systems to 48 inch separation for well isolation reduction).

i) For replacement systems, if advanced treatment is incorporated then the well isolation distance may be reduced from 100 feet to 50 feet.

**EXHIBIT D
SEWAGE WASTEWATER DESIGN FLOW RATES**

TYPE OF ESTABLISHMENT	UNIT	GALLONS/UNIT/DAY
Airport	Person	5
Assembly Hall, Auditoriums, Indoor Theaters	Seat	3
Banquet Halls	Seat	15
<u>With bar & food</u>		<u>30</u>
Barber Shop	Chair	50
Bar w/min food prep	Seat	20
Bath House	Person	10
Beauty Shop	Chair	125
Boarding or rooming houses	Person	<u>50</u>
Staff	Person	<u>10</u>
Bowling Alley <u>with no bar or restaurant</u>	Lane	100
<u>With bar or restaurant</u>	Lane	<u>200</u>
Camps		
Work	Person	50 <u>40</u>
Summer	Person	50 <u>40</u>
Trailer w/o sewer h/up	Site	50
Trailer w/ sewer h/up	Site	150 <u>125</u>
Churches	Seat	5
Country Clubs	Person	70 <u>100</u>
Day Care	Child or	15
Day Care – In-home	Employee	120/bedroom +
	Bedroom	<u>8/child</u>
	+ per child	
Dentist Office	Chair	200
<u>Office staff add</u>	Person	<u>20</u>
Factories	Person	25
w/ shower	Person	35
Gas & Go's w/o food and w/ restrooms	Employee/shift	<u>10</u> <u>130</u>
Gas & Go's w/food and w/ public restrooms	Bathroom/shift	
Hospitals	Bed	225 <u>250+</u>
Hotels	Room	120
Laundromat	Machine	500

Marinas	Boat Slip	10
Marinas w/restrooms	Boat Slip	30
Mini-markets w/food w/o restrooms	Ft ²	<u>.1</u> <u>130</u>
Mini-markets w/food w/ restrooms	Bathroom/shift	
Motels	Room	100
<u>w/ kitchen</u>	Room	150
Medical office buildings and clinics	Persons	<u>70</u>
Doctors, nurses and medical staff		<u>20</u>
Office staff		<u>7</u>
Patients		
Offices	Employee	20
Outdoor sporting facilities	Persons per day	<u>5</u>
Parks with beaches		
Lavatory waste only	Person	<u>5</u>
Bath house, showers, lavatories	Person	<u>13</u>
Picnic Grounds, Public Swimming Pools		
Picnic with toilets only	Person	<u>5</u>
Picnic with lavatories and showers	Person	<u>11</u> <u>13</u>
Swimming Pools and Beaches with lavatories and showers	Person	
Residential Dwellings	Bedroom	120

Restaurants	Seat	35
<u>24 hour service</u>		<u>40</u>
<u>18 hour service</u>		<u>30</u>
<u>12 hour service</u>		<u>20</u>
<u>Add for bars & cocktail lounges</u>		<u>5</u>
Rest/Nursing Homes	Bed	125
Schools	Student	10
w/ gym, showers, cafeteria	Student	20 <u>25</u>
w/ cafeteria	Student	15
Boarding	Student	75
<u>Non-resident staff</u>	Staff	<u>15</u>
Service Station	Island	500
Stores (Retail)	ft ²	.1

PROPOSED REGULATIONS

Theaters			
Drive in	Space	10	
Movie Theaters	Seat	4	

EXHIBIT E GREASE TRAP DESIGN CAPACITIES

TYPE OF FIXTURE	FLOW RATE (GPM)	GREASE RETENTION CAPACITY (LB)	REQUIRED CAPACITY PER FIXTURE CONNECTED TO TRAP (GAL)
Restaurant kitchen sink	15	30	50.0
Single-compartment sink	20	40	50.0
Double-compartment sink	25	50	62.5
Triple-compartment sink	30	60	75.0
2 single compartment sinks	25	50	62.5
2 triple compartment sinks	40	80	100.0
Dishwasher for restaurants			
Up to 30 gallons water	15	30	50.0
Up to 50 gallons	25	50	62.5
50 to 100 gallons	40	80	100.0

EXHIBIT S ~~FLEXIBLE MEMBRANE LINERS FOR SAND FILTERS TREATING SEPTIC TANK EFFLUENT.~~

~~Unsupported polyvinyl chloride (PVC) shall have the following properties:~~

Property	Test Method
----------	-------------

- (a) Thickness ASTM D1593 30 mil, minimum Para 8.1.3
- (b) Specific Gravity ASTM D792
(minimum) Method A
- (c) Minimum Tensile Properties ASTM D882
(each direction)
- (A) Breaking Factor Method A or B69
(pounds/inch width) (1 inch wide)
- (B) Elongation at Break Method A or B300
(percent)
- (C) Modulus (force) at Method A or B27 100% Elongation
(pounds/inch width)
- (d) Tear Resistance (pounds, minimum) ASTM D10048
DIE-C
- (e) Low Temperature ASTM D1790 -20°F
- (f) Dimensional Stability ASTM D1204 +/-5
(each direction, percent change maximum) 212°F, 15 min
- (g) Water Extraction ASTM D1239 -0.35% max.
- (h) Volatile Loss ASTM D1203 0.7% max.
Method A
- (i) Resistance to Soil Burial ASTM D3083
(percent change max. in original value)
- (A) Breaking Factor -5
- (B) Elongation at Break -20
- (C) Modulus at 100% Elongation +/-10
- (j) Bonded Seam Strength ASTM D3083 55.2
(factory seam, breaking factory, ppi width)
- (k) Hydrostatic Resistance ASTM D7512
Method A

~~Installation Standards:~~

- ~~(a) Patches, repairs and seams shall have the same physical properties as the parent material.~~
- ~~(b) Site considerations and preparation:~~
 - ~~(A) The supporting surface slopes and foundation to accept the liner shall be stable and structurally sound including appropriate compaction. Particular attention shall be paid to the potential of sink hole development and differential settlement.~~
 - ~~(B) Soil stabilizers such as cementations or chemical binding agents shall not adversely affect the membrane, cementations and chemical binding agents may be potentially abrasive agents.~~
- ~~(c) Only fully buried membrane liner installation shall be considered to avoid weathering.~~
- ~~(d) Unreinforced liners have high elongation and can conform to irregular surfaces and follow settlements within limits. Unreasonable strain reduces effective thickness and~~

may reduce life expectancy by lessening the chemical resistance of the thinner (stretched) material. Every effort shall be made to minimize the strain (or elongation) anywhere in the flexible membrane liner.

(e) Construction of site:

(A) Surface condition:

(i) Preparation of earth subgrade. The prepared subgrade shall be of soil types no larger than Unified Soil Classification System (USCS) sand (SP) to a minimum of four (4) inches below the surface and free from loose earth, rock, fractured stone, debris, cobbles, rubbish and roots. The surface of the completed subgrade shall be properly compacted, smooth, uniform and free from sudden changes in grade. Importing suitable soil may be required.

(ii) Maintenance of subgrade. The earth subgrade shall be maintained in a smooth, uniform and compacted condition during installation of the lining.

(B) Climatic conditions:

(i) Temperature: The desirable temperature range for membrane installation is 42°F to 78°F. Lower or higher temperatures may have an adverse effect on transportation, storage, field handling and placement, seaming and backfilling and attaching boots and patches may be difficult. Placing liner outside the desirable temperature range shall be avoided.

(ii) Wind: Wind may have an adverse effect on liner installation such as interfering with liner placement. Mechanical damage may result. Cleanliness of areas for boot connection and patching may not be possible. Alignment of seams and cleanliness may not be possible. Placing the liner in high wind shall be avoided.

(iii) Precipitation: When field seaming is adversely affected by moisture, portable protective structures and/or other methods shall be used to maintain a dry sealing surface. Proper surface preparation for bonding boots and patches may not be possible. Seaming, patching and attaching "boots" shall be done under dry conditions.

(C) Structures: Penetration of a flexible liner by any designed means shall be avoided. Where penetrations are necessary, such as horizontal and vertical pipes, it is essential to obtain a secure, liquid-tight seal between the pipes and the flexible liner. Liners shall be attached to pipes with a mechanical type seal supplemented by a chemically compatible caulking or adhesive to effect a liquid-tight seal. The highest order of compaction shall be provided in the area adjacent to pipes to compensate for any settlement.

(D) Liner Placement:

(i) Size: the final cut size of the liner shall be carefully determined and ordered to generously fit the container geometry without field seaming or excess straining of the liner material.

(ii) Transportation, handling and storage: Transportation, handling and storage procedures shall be

planned to prevent material damage. Material shall be stored in a secured area and protected from adverse material.

(iii) Site Inspection: A site inspection shall be carried out by the Department and the installer prior to liner installation to verify surface conditions, etc.

(iv) Deployment: Panels shall be positioned to minimize handling. Seaming should not be necessary. Bridging or stressed conditions shall be avoided with proper slack allowances for shrinkage. The liner shall be secured to prevent movement and promptly backfilled.

(v) Anchoring trenches: The liner edges should be secured frequently in a backfilled trench.

(vi) Field seaming: Field seaming, if absolutely necessary, shall only be attempted when weather conditions are favorable. The contact surfaces of the materials should be clean of dirt, dust, moisture, or other foreign materials. The contact surfaces shall be aligned with sufficient overlap and bonded in accordance with the suppliers recommended procedures. Wrinkles shall be smoothed out the seams should be inspected by nondestructive testing techniques to verify their integrity. As seaming occurs during installation, the field seams shall be inspected continuously and any faulty area repaired immediately.

(vii) Field repairs: It is important that traffic on the liner area be minimized. Any necessary repairs to the liner shall be patched using the same lining material and following the recommended procedure of the supplier.

(viii) Final Inspection and acceptance: As completed, the liner installation should be tested for functional integrity. All joints, seams and mechanical seals should be checked both during and after installation. Hydrostatic testing to evaluate watertightness of the completed liner installation before placement of any backfill may be required at the discretion of either the Department or the owner/purchaser. The lined basin shall be filled to the four (4) foot level with water after the pipe inlets and outlets have been fitted with temporary plugs. Acceptance of workmanship shall be based upon a leakage rate of no more than 0.25 inches in a 24 hour period. Virtually no leakage should result from good workmanship, however.

(ix) Operation and Maintenance Standards: The owner/purchaser of a sand filter system must recognize that he assumes the continuous responsibility to preserve the installation as near as practical in its "as built" state. This responsibility includes the control or erosion of any "mound", the control and removal of large perennial plants, the fencing out of livestock and the control of burrowing animals.

PROPOSED REGULATIONS

EXHIBIT T STANDARDIZED PRESSURE DOSED TRENCH SYSTEMS

PARAMETERS						
Width of trench (in)	24	24	24	36	36	36
Design flow (gpd)	240	360	480	240	360	480
No. of laterals	4	6	8	3	4	5
Length of laterals (ft)	45	45	45	40	45	50
Diam of laterals (in)	1 1/2	1 1/2	1 1/2	2	1 1/2	1 1/2
Diam of holes (in)	1/4	1/4	1/4	5/16	1/4	1/4
Spacing of holes (in)	30	36	42	30	30	30
Dosing Volume (gal)	80	120	120	80	120	120
Diam of transmission line (in)	2 1/2	3	3	2 1/2	2 1/2	3
Pump Group	a	b	b	a	a	b

STANDARDIZED PRESSURE DOSED BED SYSTEMS

PARAMETER			
Design flow (gpd)	240	360	480
Bed size (ft)	15 X 30	14 X 30	18 X 50
No. of laterals	3	3	3
Spacing of laterals (in)	4.5	4	6.0
Diameter of laterals (in)	1.5	2	2
Diameter of Holes (in)	5/16	5/16	5/16
Spacing of holes (in)	30	30	30
Dosing volumes (gal)	80	120	120
Diameter of transmission line (in)	2 1/2	2 1/2	2 1/2
Pump group	a	b	b

EXHIBIT U TOTAL NITROGEN EFFLUENT CONCENTRATIONS REQUIRED FOR COMMUNITY TREATMENTS SYSTEMS PROVIDING A HIGH DEGREE OF NITROGEN REMOVAL (mg/L)

Average Dwelling Unit Design Flow (GPD)

	240	300	360	420	480
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Maximum Siting Density (dwelling units per pervious acre)					
	35	30	23	22	14
3	29	22	14	13	11
4	22	13	11	10	10
5	14	11	10	10	10
6	13	10	10	10	10
7	11	10	10	10	10
8	10	10	10	10	10
9	10	10	10	10	10
10					

EXHIBIT X LOW PRESSURE PIPE DESIGN PERCOLATION RATES & MAXIMUM HOLE SPACING DISTANCES

MPI	FACTOR	MAX. SPC'G
20	3.70	60
25	4.20	60
30	4.80	72
35	5.50	72
40	5.58	72
45	5.87	72
50	6.16	72
55	6.45	72
60	6.65	72
65	7.35	96
70	8.05	96
75	8.75	96
80	9.45	96
85	10.15	96
90	10.99	96
95	11.76	96
100	12.74	96
105	13.86	96
110	15.26	96
115	16.52	96
120	17.50	96

PERCOLATION RATES BASED UPON USDA SOIL TEXTURES

USDA TEXTURE	DNREC ASSIGNED PERCOLATION RATE (MPI)*
Sands	5
Loamy Sand	10
Sandy Loam	20
Sandy Clay Loam	30

Loam	30
Silt Loam	50
Silt	50
Clay Loam	75
Silty Clay Loam	75
Sandy Clay	120
Silty Clay	120
Clay	120

* Other soil properties such as high bulk density, structure, total porosity, and size and continuity of the pores may significantly affect these percolation rates. Textures of loamy coarse sand and coarse sandy loam may have percolation rates faster than assigned, while loamy very fine sand, loamy fine sand, very fine sandy loam and fine sandy loam may have percolation rates slower than assigned.

Percolation Class	Percolation Rate (mpi)
Very Slow	>120
Slow	50 – 120
Moderate	25 – 49
Moderately Rapid	10 – 25
Rapid	6 – 10
Very Rapid	< 6

**EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE**

Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 67

Direct Grants Program

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of the Delaware Economic Development Office (“DEDO”) (of which the Delaware Tourism Office (“DTO”) is a subdivision), in cooperation with the Tourism Advisory Board (the “Board”), is proposing to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 74, Section 67 (the “Direct Grants Program”) and for the application and award procedure of the Direct Grants Program. The regulation originally proposed in 5 DE Reg. 512-13 (September 1, 2001) is hereby withdrawn and is re-proposed in the form set forth below. The regulation describes the Direct Grants Program, the eligibility criteria and application procedure for awards under the Direct Grants Program, the procedure for making of awards and the uses to which Direct Grants Program awards may not be put.

The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on November 9, 2001 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:00 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 9, 2001 at 9:00 a.m. Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271.

1.0 Program Description

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Direct Grants are only toward not-for-profit tourism entities are eligible. All projects must tie in to the State Marketing Plan.

1.2 The total amount available is for direct grants is designated by the general assembly in the operating budget. It is expected that there will be a number of direct grant programs awarded.

1.3 To be eligible, organizations must have a marketing plan with a clear vision as to how to attract out-of-state visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of Funds:

1.5.1 It is expected that the funds will be used to actively market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware.

1.5.2 The same organization may apply for more than one Direct Grant program.

2.0 Award Determination:

2.1 The organizations receiving awards will be selected by a panel composed of the following:

2.1.1 Delaware Tourism Office

2.1.2 Governor's Tourism Advisory Board

3.0 Criteria:

3.1 Organizations must demonstrate that their vision supports one or more of the attract goals of the Delaware tourism industry's Five-Year Strategic Plan and Marketing

Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. The program must support the Delaware Tourism Office Marketing Plan. DTO logo must appear on all created collateral. There will be no attempt to balance the awards geographically, politically, or categorically.

4.0 Award Process

4.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. Awards will be announced the following week.

4.2 Direct Grant Award Payments:

4.2.1 Payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. All requirements and criteria of the program need to be met.

5.0 Eligibility

5.1 Not-for-profit tourism related businesses and organizations.

5.2 Submitting organizations must submit proof of not-for-profit status.

5.3 Only in-state tourism entities may apply

5.4 The organization's main product or program must fit into the Industry's 5-Year Strategic Plan.

6.0 Application Requirements

6.1 Incomplete applications will not be considered (see application for required attachments).

6.2 More than one application may be submitted per organization.

6.3 All completed applications must sent to the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location.

6.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.0 Grant Awards

7.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Direct Grant Program is to attract new visitors and overnight business to Delaware. The goal of the Direct Grant Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit direct grant proposals. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

8.0 Payments

8.1 Final payments may be requested after all project

completion requirements have been met and proper documentation is submitted.

8.2 All invoices must be submitted to the Delaware Tourism Office.

9.0 Use of Funds

9.1 Funds may not be used for:

9.1.1 General operating expenses including staff salaries.

9.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

9.1.3 Food and beverages

9.1.4 Equipment purchase and rental

9.1.5 Business directories

9.1.6 Postage and office supplies

9.1.7 Meeting expenses

9.1.8 Anything contrary to state law.

9.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

10.0 Project Completion Requirements

10.1 At a minimum the following must be submitted for final payment:

10.1.1 Completed project report

10.1.2 Invoices must be submitted.

10.1.3 Marketing plan

10.1.4 Delaware Tourism Office name and logo must appear on all created collateral

10.2 Other project completion requirements may be added at the time of the award based on project definition.

11.0 Applicant Information

11.1 Applicants shall fill out the Direct Grant program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at 99 Kings Highway, Dover, DE 19901.§

DELAWARE ECONOMIC DEVELOPMENT OFFICE DELAWARE TOURISM OFFICE

Statutory Authority: Laws of Delaware
Volume 73, Chapter 74, Section 67

Matching Funds Program

NOTICE OF PUBLIC HEARING

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of the

Delaware Economic Development Office (“DEDO”) (of which the Delaware Tourism Office (“DTO”) is a subdivision), in cooperation with the Tourism Advisory Board (the “Board”), is proposing to adopt a regulation for the administration of the matching grants program set forth in 73 Delaware Laws Ch. 74, Section 67 (the “Matching Grants Program”) and for the application and award procedure of the Matching Grants Program. The regulation describes the Matching Grants Program, the matching funds requirement of the Matching Grants Program, the eligibility criteria and application procedure for awards under the Matching Grants Program, the procedure for making of awards and the uses to which Matching Grants Program awards may not be put.

The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on November 9, 2001 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:00 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 9, 2001 at 9:00 a.m. Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271.

1.0 Program Description

1.1 The purpose of the program is to attract visitors to Delaware and to bring in overnight business to Delaware. The goal of the Matching Funds Program is to increase the visibility of Delaware's tourism product. Only not-for-profit entities are able to submit matching funds proposals. However, for profit businesses are allowed to participate in partnership programs submitted by notfor-profits. All packaging programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan.

1.2 The total amount available for matching grants is designated by the general assembly in the operating budget. It is expected that there will be a number of matching funds programs awarded. Four or more properties working together on a package will be able to receive a match of 2 to 1 instead of 1 to 1.

1.3 To be eligible, the applicant organization must have a marketing plan with a clear vision as to how to attract outofstate visitors.

1.4 The grants are to be used for the marketing of tourism organizations, products, programs or areas.

1.5 Use of Funds:

1.5.1. It is expected that the funds will be used to market the petitioning tourism organization or partnership of organizations to attract new visitors to the state of Delaware:

1.5.2 The same organization may apply for more than one Matching Fund program.

1.5.3 The purpose is to attract visitors to Delaware and to bring in overnight business. Therefore, advertising applicants must show a plan to advertise out of state.

2.0 Matching Funds:

2.1 Matching funds are required. The organization's matching fund commitment is part of the application. The organization's matching fund commitment must be met for full payment of the grant. No other state grant funds may be used for the organization's match.

3.0 Award Determination:

3.1 The organizations receiving awards will be selected by a panel composed of the following:

3.1.1 Delaware Tourism Office

3.1.2 Governor's Tourism Advisory Board

4.0 Criteria:

4.1 Organizations must demonstrate that their vision supports the Delaware tourism industry's Five Year Strategic Plan and Marketing Plan. Awards will be based on the organization's ability to communicate a vision that the panel believes is possible and has the potential to increase tourism. There will be no attempt to balance the awards geographically, politically, or categorically.

5.0 Award Process

5.1 All complete applications that are received by the deadline will be forwarded to the awards panel for rating. The applications receiving the highest average rating will be scheduled to make an oral presentation to the panel. The awards will be announced a week later.

5.2 Grant Award Payments:

5.2.1 The payments will be paid upon proof of completion of the project and submission of invoices supporting the funds expenditures. To receive final payment, all organizations will need to complete all project completion requirements.

6.0 Eligibility

6.1 Notforprofit tourism related businesses and organizations.

6.2 Submitting organizations must submit proof of not-for-profit status.

6.3 For profit tourism businesses may be part of programs submitted for grant programs ,however, they must

be a partner of a not-for-profit applicant organization.

6.4 Only instate tourism entities may apply.

6.5 The organization's main product or program must be intended to attract new visitors and overnight business.

6.6 Partnerships between four or more tourism entities are encouraged. Partnerships will receive a 2 to 1 dollar match instead of a 1 to 1 dollar match.

7.0 Application Requirements

7.1 Incomplete applications will not be considered (see application for required attachments).

7.2 More than one application may be submitted per organization.

7.3 All completed applications must be received at the Delaware Tourism Office at 99 Kings Highway, Dover, DE 19901. Applications will not be accepted after the deadline or at any other location. Applications may not be submitted electronically, via fax or email.

7.4 It is the responsibility of the applicant to ensure that the application is complete and received prior to deadline.

7.5 If the creation of a package is a proposal for Matching Funds the package must include a hotel property.

7.6 All invoices must be received at the Delaware Tourism Office, 99 Kings Highway, Dover DE 19901.

8.0 Matching Funds

8.1 All funds must be raised and collected prior to payment of the award.

8.2 No other state grant funds may be used for the organization's match.

8.3 Staff salaries, volunteer labor and inkind donations do not qualify as a match.

9.0 Grant Awards

9.1 Awards will be granted based on the merit of the program being submitted. The purpose of the Matching Funds Program is to attract new visitors and overnight business to Delaware. The goal of the Matching Funds Program is to increase the visibility of Delaware's tourism product. Four or more properties working together including at least one hotel, through a package will be able to receive a match of 2 to 1 instead of 1 to 1. Only not for profit entities are able to submit matching funds proposals. However, for profit businesses are allowed to participate in partnership programs submitted by nonprofits. All package programs must include at least one hotel property in order to promote overnight business to Delaware. All projects must tie in to the State Marketing Plan. There will be no attempt to balance the awards geographically, politically, or categorically.

10.0 Payments

10.1 Final payments may be requested after all project completion requirements have been met and proper

documentation is submitted.

10.2 All invoices must be sent to the Delaware Tourism Office.

11.0 Use of Funds

11.1 Funds may not be used for:

11.1.1 General operating expenses including staff salaries.

11.1.2 Administrative expenses, including any commissions, fees or other expenses for administration of the project.

11.1.3 Food and beverages

11.1.4 Equipment purchase and rental

11.1.5 Business directories

11.1.6 Postage and office supplies

11.1.7 Meeting expenses

11.1.8 Anything contrary to state law.

11.1.9 Other restrictions on the use of the funds may be added at the time of the award based on the project definition.

12.0 Project Completion Requirements

12.1 At a minimum the following must be submitted for final payment:

12.1.1 Completed project report

12.1.2 Invoices

12.1.3 Marketing plan

12.1.4 Delaware Tourism Office name and logo must appear on all created collateral.

12.2 Other project completion requirements may be added at the time of the award based on project definition.

13.0 Applicant Information

13.1 Applicants shall fill out the Matching Funds program Applicant Information Sheet as prescribed by the Delaware Tourism Office. The Applicant Information is available at: 99 Kings Highway, Dover, DE 19901.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF LANDSCAPE ARCHITECTURE
24 DE Admin. Code 200
Statutory Authority: 24 Delaware Code,
Section 205(a)(1) (24 Del. C. § 205(a)(1))**

Order Adopting Rules and Regulations

AND NOW, this 7th day of September, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Landscape Architecture of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 *Del. C.* § 205(a)(1), the Board proposed to revise its existing Rules and Regulations to implement and clarify the requirement that applicants seeking licensure pursuant to 24 *Del. C.* § 206(a)(1) graduate from an approved or accredited college or university. The proposed revisions to the Rules and Regulations further clarified that applicants seeking licensure pursuant to 24 *Del. C.* § 206(a)(3) take their courses in landscape architecture from an approved or accredited college or university. Notice of the public hearing

to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated May 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on June 26, 2001 at 9:00 a.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the June 26, 2001 hearing, the Board received no comment from the public regarding the proposed revisions.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.
2. The proposed amendments to the Rules and Regulations are necessary to implement and clarify the requirement that applicants seeking licensure pursuant to Section 206(a)(1) of the Board's statutes graduate from an

approved or accredited college or university and that applicants seeking licensure pursuant to Section 206(a)(3) of the Board's statutes take their courses in landscape architecture from an approved or accredited college or university. The proposed amendments will assist licensees in understanding the requirements for licensure under these two sections of 24 *Delaware Code*, Chapter 2.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* §§ 205(a)(1) that implement or clarify the Board's statutes.

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* § 200.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the *Delaware Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

By Order Of The Board Of Landscape Architecture (As Authenticated By A Quorum Of The Board)

Paul DeVilbiss, RLA, President, Professional Member
Lorene Athey, RLA, Secretary, Professional Member
Marlene A. Bradley, Treasurer, Public Member
Abby L. Betts, Public Member
Denise Husband, RLA, Professional Member

- 1.0 Filing of Applications for Written Examination
- 2.0 Filing of Applications for Reciprocity
- 3.0 Filing of Applications for Certificate of Authorization
- 4.0 Licenses
- 5.0 Seal
- 6.0 Renewal of Licenses
- 7.0 Continuing Education as a Condition of Biennial Renewal
- 8.0 Inactive Status
- 9.0 Disciplinary Proceedings and Hearings
- 10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Filing of Applications for Written Examination

1.1 Persons seeking licensure pursuant to 24 *Del.C.* § 206 shall submit an application for written examination on a form prescribed by the Board to the Board's office at the Division of Professional Regulation (the "Division") along with the application fee established by the Division.

Applicants for written examination shall be filed in such office of the Board no later than twelve (12) weeks prior to the opening date of the examination.

1.2 Applicants seeking licensure pursuant to 24 *Del. C.* § 206(a)(1) shall have graduated from a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

1.3 For purposes of 24 *Del. C.* § 206(a)(3), courses in landscape architecture shall have been taken at a school or college of landscape architecture approved or accredited by the national Council of Landscape Architectural Registration Boards, the American Society of Landscape Architects Landscape Architectural Accreditation Board, or other legitimate national association of landscape architects.

~~1.2~~ 1.4 Each applicant must submit documentary evidence, as more fully described on the application form, to show the Board that the applicant is clearly eligible to sit for the examination under 24 *Del.C.* § 206.

~~1.3~~ 1.5 The Board shall not consider an application for written examination until all items described in paragraphs 1.1 and 1.2 of this Rule have been submitted to the Board's office.

~~1.4~~ 1.6 The Board reserves the right to retain as a permanent part of the application any or all documents submitted.

~~1.5~~ 1.7 The examination shall be the Council of Landscape Architectural Registration Board's ("CLARB") current uniform national examination. CLARB establishes a passing score for each uniform national examination.

Statutory Authority: 24 *Del.C.* §§206, 207

2.0 Filing of Applications for Reciprocity

2.1 Persons seeking licensure pursuant to 24 *Del.C.* § 208, shall submit payment of the fee established by the Division and an application on a form prescribed by the Board which shall include proof of licensure and good standing in each state or territory of current licensure, and on what basis the license was obtained therein, including the date licensure was granted. Letters of good standing must also be provided for each state or jurisdiction in which the applicant was ever previously licensed.

2.2 The Board shall not consider an application for licensure by reciprocity until all items described in 24 *Del.C.* § 208 and paragraph 2.1 of this Rule have been submitted to the Board's office.

2.3 A passing exam score for purposes of reciprocity shall be the passing score set by CLARB, or the passing score accepted by the Delaware Board, for the year in which the exam was taken.

Statutory Authority: 24 *Del.C.* §208.

3.0 Filing of Applications for Certificate of Authorization

Corporations or partnerships seeking a certificate of authorization pursuant to 24 *Del. C.* § 212 shall submit an application on a form prescribed by the Board. Such application shall include the (a) names and addresses of all officers and members of the corporation, or officers and partners of the partnership, and (b) the name of a corporate officer in the case of a corporation, or the name of a partner in the case of a partnership, who is licensed to practice landscape architecture in this State and who shall be responsible for services in the practice of landscape architecture on behalf of the corporation or partnership.

Statutory Authority: 24 **Del.C.** §212.

4.0 Licenses

Only one license shall be issued to a licensed landscape architect, except for a duplicate issued to replace a lost or destroyed license.

5.0 Seal

5.1 Technical Requirements

5.1.1 For the purpose of signing and sealing drawings, specifications, contract documents, plans, reports and other documents (hereinafter collectively referred to as “drawings”), each landscape architect shall provide him or herself with an individual seal of design and size as approved by the Board to be used as hereinafter directed on documents prepared by him or her or under his/her direct supervision for use in the State of Delaware.

5.1.2 The application of the seal impression or rubber stamp to the first sheet of the bound sheets of the drawings (with index of drawings included), title page of specifications, and other drawings and contract documents shall constitute the licensed landscape architect’s stamp.

5.1.3 The seal to be used by a licensee of the Board shall be of the embossing type or a rubber stamp, and have two (2) concentric circles. The outside circle measures across the center 1 13/16 inches. The inner circle shall contain only the words “NO.” and “State of Delaware.” At the bottom the words “Registered Landscape Architect” reading counterclockwise, and at the top the name of the licensee.

5.1.4 An impression of the seal is to be submitted to the Board to be included in the licensee’s records.

5.2 Use of the Seal

5.2.1 A landscape architect shall not sign or seal drawings unless they were prepared by him/her or under his/her direct supervision.

5.2.2 “Supervision” for purposes of signing and/or sealing drawings shall mean direct supervision, involving responsible control over and detailed professional knowledge of the contents of the drawings throughout their preparation. Reviewing, or reviewing and correcting,

drawings after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over, nor detailed professional knowledge of, the content of such drawings throughout their preparation.

5.2.3 The seal appearing on any drawings shall be prima facie evidence that said drawings were prepared by or under the direct supervision of the individual who signed and/or sealed the drawings. Signing or sealing of drawings prepared by another shall be a representation by the registered landscape architect that he/she has detailed professional knowledge of and vouches for the contents of the drawings.

Statutory Authority: 24 **Del.C.** §205(a)(1); 212(a).

6.0 Renewal of Licenses

6.1 Each application for license renewal or request for inactive status shall be submitted on or before the expiration date of the current licensing period. However, a practitioner may still renew his or her license within 60 days following the license renewal date upon payment of a late fee set by the Division. Upon the expiration of 60 days following the license renewal date an unrenewed license shall be deemed lapsed and the practitioner must reapply pursuant to the terms of 24 *Del.C.* §210(b).

6.2 It shall be the responsibility of all licensees to keep the Board and the Division informed of any change in name, home or business address.

Statutory Authority: 24 **Del.C.** §210.

7.0 Continuing Education as a Condition of Biennial Renewal

7.1 General Statement: Each licensee shall be required to meet the continuing education requirements of these guidelines for professional development as a condition for license renewal. Continuing education obtained by a licensee should maintain, improve or expand skills and knowledge obtained prior to initial licensure, or develop new and relevant skills and knowledge.

7.1.1 In order for a licensee to qualify for license renewal as a landscape architect in Delaware, the licensee must have completed 20 hours of continuing education acceptable to the Board within the previous two years, or be granted an extension by the Board for reasons of hardship. Such continuing education shall be obtained by active participation in courses, seminars, sessions, programs or self-directed activities approved by the Board.

7.1.1.1 For purposes of seminar or classroom continuing education, one hour of acceptable continuing education shall mean 60 minutes of instruction.

7.1.2 To be acceptable for credit toward this requirement, all courses, seminars, sessions, programs or self-directed activities shall be submitted to the Board. The Board shall recommend any course, seminar, session or

program for continuing education credit that meets the criteria in sub-paragraph 7.1.2.1 below.

7.1.2.1 Each course, seminar, session, program, or self-directed activity to be recommended for approval by the Board shall have a direct relationship to the practice of landscape architecture as defined in the Delaware Code and contain elements which will assist licensees to provide for the health, safety and welfare of the citizens of Delaware served by Delaware licensed landscape architects.

7.1.2.2 The Board shall meet at least once during each calendar quarter of the year and act on each course, seminar, session or program properly submitted for its review. Each program, or portion thereof, shall be either recommended for approval, recommended for disapproval or deferred for lack of information. If deferred or disapproved, the licensee will be notified and may be granted a period of time in which to correct deficiencies. The Board may also seek verification of information submitted by the licensee.

7.1.3 Continuing Education courses offered or sponsored by the following organizations will be automatically deemed to qualify for continuing education credit:

7.1.3.1 American Society of Landscape Architects (National and local/chapter levels)

7.1.3.2 Council of Landscape Architectural Registration

7.1.4 Erroneous or false information attested to by the licensee shall constitute grounds for denial of license renewal.

7.2 Effective Date: The Board shall commence requiring continuing education as a condition of renewal of a license for the license year commencing on February 1, 1995. The licensee shall be required to successfully complete twenty (20) hours of continuing education within the previous two calendar years (example: February 1, 1993 through January 31, 1995).

7.3 For licensing periods beginning February 1, 1999 and thereafter, requests for approval of continuing education activity, along with the required supporting documentation, shall be submitted to the Board on or before November 1 of the year preceding the biennial renewal date of the licenses. A license shall not be renewed until the Board has approved twenty (20) hours of continuing education classes as provided in Rule 7.1 or has granted an extension of time for reasons of hardship.

7.4 Reporting: The licensee shall submit the following documentation to the Board for each continuing education activity completed:

A completed Continuing Education Reporting Form

A syllabus, agenda, itinerary or brochure published by the sponsor of the activity

A document showing proof of attendance (i.e. certificate, a signed letter from the sponsor attesting to

attendance, report of passing test score).

7.4.1 Each licensee must retain copies of Board approved continuing education reporting forms and all supporting materials documenting proof of continuing education compliance. Licensees will be required to complete a continuing education log form prior to license renewal and to submit supporting materials upon request.

7.5 Hardship: The Board will consider any reasonable special request from individual licensees for continuing education credits and procedures. The Board may, in individual cases involving physical disability, illness, or extenuating circumstances, grant an extension, not to exceed two (2) years, of time within which continuing education requirements must be completed. In cases of physical disability or illness, the Board reserves the right to require a letter from a physician attesting to the licensee's physical condition. No extension of time shall be granted unless the licensee submits a written request to the Board prior to the expiration of the license.

7.6 Self-directed Activities: For renewal periods beginning February 1, 2001, the following rules regarding self-directed activity shall apply. The Board will have the authority to allow self-directed activities to fulfill the continuing education requirements of the licensees. However, these activities must result in a book draft, published article, delivered paper, workshop, symposium, or public address within the two (2) year reporting period. Self-directed activities must advance the practitioner's knowledge of the field and be beyond the practitioner's normal work duties. Instructors will not be granted CE credit for studies customarily associated with their usual university or college instruction teaching loads.

7.6.1 The Board may, upon request, review and approve credit for self-directed activities in a given biennial licensing period. A licensee must obtain pre-approval of the Board prior to undertaking the self-directed activity in order to assure continuing education credit for the activity. Any self-directed activity submitted for approval must include a written proposal outlining the scope of the activity, the number of continuing education hours requested, the anticipated completion date(s), the role of the licensee in the case of multiple participants and whether any part of the self-directed activity has ever been previously approved or submitted for credit by the same licensee. Determination of credit will be made by the Board upon review of the completed final project.

7.7 Exemptions: New licensees by way of uniform national examination or by way of reciprocity shall be exempt from the continuing education requirements set forth herein for their first renewal period.

Statutory Authority: 24 Del.C. §205(12).

8.0 Inactive Status

8.1 A licensee may, upon written request to the Board,

place his/her license on inactive status.

8.2 A licensee who has been granted inactive status and who wishes to re-enter the practice of landscape architecture, shall submit a written request to the Board along with a prorated renewal fee and proof of completion of twenty (20) hours of continuing education during the period of inactive status.

8.3 Licensees on inactive status shall renew their inactive status by notification to the Division of Professional Regulation at the time of biennial license renewal.

Statutory Authority: 24 **Del.C.** §210(c).

9.0 Disciplinary Proceedings and Hearings

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

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

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

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

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

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list

of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

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

Statutory authority: 24 **Del.C.** §§213 and 215; 29 **Del.C.** §§10111, 10122 and 10131

9.2 Hearing procedures

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

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

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

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if a majority of the members of the Board find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 **Del.C.** §213.

Statutory authority: 24 **Del.C.** §§205(7)(8); 213, 214, 215.

10.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the

chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

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

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

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

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

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

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

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

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

DIVISION OF PROFESSIONAL REGULATION**BOARD OF MASSAGE & BODYWORK**

24 DE Admin. Code 5300

Statutory Authority: 24 Delaware Code,
Section 5306(1) (24 Del.C. 5306(1))**Order Adopting Rules and Regulations**

AND NOW, this 6th day of September, 2001, in accordance with 29 *Del. C.* § 10118 and for the reasons stated hereinafter, the Board of Massage and Bodywork of the State of Delaware (hereinafter "the Board") enters this Order adopting amendments to Rules and Regulations.

I. Nature of the Proceedings

Pursuant to the Board's authority under 24 *Del. C.* § 5306(1) and 5312(c), the Board proposed to revise its existing Rules and Regulations to increase to one year the period of time within which a licensed massage and bodywork therapist or a certified massage technician may still renew such license or certificate notwithstanding the fact that such licensee or certificate holder has failed to renew on or before the renewal date. Notice of the public hearing to consider the proposed amendments to the Rules and Regulations was published in the Delaware *Register of Regulations* dated July 1, 2001, and two Delaware newspapers of general circulation, in accordance with 29 *Del. C.* § 10115. The public hearing was held on August 2, 2001 at 1:30 p.m. in Dover, Delaware, as duly noticed, and at which a quorum of the Board was present. The Board

deliberated and voted on the proposed revisions to the Rules and Regulations. This is the Board's Decision and Order ADOPTING the amendments to the Rules and Regulations as proposed.

II. Evidence and Information Submitted

The Board received no written comments in response to the notice of intention to adopt the proposed revisions to the Rules and Regulations. At the August 2, 2001 hearing, although members of the public were present, the Board received no public comment regarding the proposed changes.

III. Findings of Fact and Conclusions

1. The public was given notice of the proposed amendments to the Rules and Regulations and offered an adequate opportunity to provide the Board with comments.

2. The proposed amendments to the Rules and Regulations are necessary to increase the period of time within which a licensed massage and bodywork therapist or a certified massage technician may still renew their license or certificate even though they failed to renew on or before the renewal date, and to clarify that documentation of compliance with the continuing education requirements shall be submitted. The proposed amendments will assist licensees and certificate holders in understanding late renewal of a license or certificate.

3. The Board concludes that it has statutory authority to promulgate rules and regulations pursuant to 24 *Del. C.* § 5306(1). The Board further concludes that it has statutory authority to determine by rule and regulation the period of time within which a licensed massage and bodywork therapist or a certified massage technician may still renew such license or certificate notwithstanding the fact that such licensee or certificate holder has failed to renew on or before the renewal date under 24 *Del. C.* § 5312(c).

4. For the foregoing reasons, the Board concludes that it is necessary to adopt amendments to its Rules and Regulations, and that such amendments are in furtherance of its objectives set forth in 24 *Del. C.* Chapter 53.

IV. Decision and Order to Adopt Amendments

NOW, THEREFORE, by unanimous vote of a quorum of the Board, **IT IS ORDERED**, that the Rules and Regulations are approved and adopted in the exact text as set forth in Exhibit A attached hereto. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations* pursuant to 29 *Del. C.* § 10118(g).

**By Order of the Board Massage and Bodywork
(As authenticated by a quorum of the Board)**

Allan Angel, President, Public Member
Phyllis E. Mikell, Vice President, Professional Member
Daniel Stokes, Secretary, Professional Member
Carla Arcaro, Professional Member
Patricia A. Beetschen, Professional Member
Vivian L. Cebrick, Public Member
Katherine J. Marshall, Public Member

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

1.0 Definitions and General Definitions

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

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

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

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

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

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

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

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

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

2.0 Filing of Application for Licensure as Massage/Bodywork Therapist

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

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

2.3 The Board shall not consider an application for

licensure as a massage/bodywork therapist until all items specified in 2.1 and 2.2 of this Rule are submitted to the Board's office.

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

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

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

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

3.0 Examination

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

4.0 Application for Certification as Massage Technician

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

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

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

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

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

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

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

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

5.0 Expired License or Certificate

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

6.0 Continuing Education

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

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

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

6.1.2 If during a licensing period an individual

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

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

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

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

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

6.3 *Content.*

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

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

6.3.2.1 Courses in modalities other than massage/bodywork therapy

6.3.2.2 Personal growth and self-improvement courses

6.3.2.3 Business and management courses

6.3.2.4 Courses taught by correspondence or mail

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

6.4 *Board approval.*

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

6.4.1.1 NCBTMB

6.4.1.2 American Massage Therapy Association

6.4.1.3 Association of Oriental Bodywork Therapists of America

6.4.1.4 Association of Bodywork and Massage Practitioners

6.4.1.5 Delaware Nurses Association

6.4.2 Other continuing education programs or providers may apply for pre-approval of continuing

education hours by submitting a written request to the Board which includes the program agenda, syllabus and time spent on each topic, the names and resumes of the presenters and the number of hours for which approval is requested. The Board reserves the right to approve less than the number of hours requested.

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

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

6.5 *Reporting.*

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

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

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

of attendance provided by the program sponsor.

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

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

7.0 Scope of Practice

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

8.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

8.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

8.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

8.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

8.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's

designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

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

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

8.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

8.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

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

8.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment

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

8.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/ her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

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

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

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

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

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

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

8.12 Any regulated professional who complies with all

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

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 Del.C. §10027)

Order

Pursuant to 29 Del. C. §10118 and 3 Del. C. §10027, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating proposed amendments to the Commission's Rules. Following notice and a public hearing held on September 6, 2001 on the proposed Rule amendments, the Commission makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Commission posted public notice of the proposed rule revisions in the August 1, 2001 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained proposed amendments to Rules 1.0, 3.2.4, 4.1.1, 4.4.5, 5.2.1.3, 5.3.3, 7.1.6.1.3, and 8.3.3. The proposed amendment to Rule 1.0 would add a definition for the phrase "Required Days Off". The proposed amendment to Rule 3.2.4 would delete the requirement that the State Steward/judges investigate and keep a record of every objection and complaint, and would add a time limit for the filing of a protest. The proposed amendment to Rule 4.1.1 would provide that associations comply with, rather than enforce, Commission rules. The proposed amendment to Rule 4.4.5 would delete the requirement that an association notify the Commission of any exclusion. The proposed amendment to Rule 5.2.1.3 would permit the licensing of an owner younger than fourteen years of age provided that such an owner may not access the paddock. The proposed deletion of Rule 5.3.3 would delete the requirement that a trainer be responsible for all horses owned wholly or in part that are participating in a race meet. The proposed amendment to Rule 7.1.6.1.3 would clarify the procedure for determination of preference dates. The proposed amendment to Rule 8.3.3 would clarify the definition of a foreign substance that interferes with testing procedures.

2. The Commission held a public hearing on September

6, 2001 and received public comments. Salvatore DiMario, Executive Director of the Delaware Standardbred Owners Association (_DSOA_), noted objection to the proposed amendment to Rule 8.3.3. Mr. DiMario stated that the proposed Rule was inconsistent with the Commission's adoption of the RCI guidelines in the Commission Rules, and could lead to subjective interpretation. Russ MacKinnon, a DSOA Director, stated that the proposed Rule 8.3.3 would be a benefit to the horsemen and would prevent the administration of foreign substances like solvents. Presiding Judge Don Harmon testified that he had spoken to the Joseph Strug of Dalare Associates, the Commission's testing laboratory. According to Mr. Strug, the laboratory has difficulty testing samples when a person gives the horse a cocktail containing a number of different substances.

3. On the proposed amendment to Rule 4.1.1, Charles Lockhart, Vice President-Horse Racing of Dover Downs, stated the amendment would not impact the current nature of harness racing. The track does not currently enforce the Commission rules, but more accurately complies with the orders of the Commission. On proposed amendment to Rule 4.4.5, Mr. Lockhart stated that the track was in favor of the rule so that it would not have to publicize its reason for exclusions.

Findings of Fact

4. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments.

5. The Commission received no public comments regarding the proposed amendments to Rule 1.0, 3.2.4, 5.3.3, 7.1.6, and 5.2.1.3. The Commission finds that these proposed amendments are in the best interests of harness racing and necessary for the effective regulation of harness racing. The Commission adopts these Rules in their proposed form.

6. The Commission received public comment both for and against the proposed amendment to Rule 8.3.3.3.4. The Commission finds that the proposed Rule change would simply prohibit a licensee from administering a foreign substance to a horse that interferes with laboratory testing procedures. The Commission finds no justification to permit a licensed trainer to attempt to mask or hide an illegal drug by administering a foreign substance to interfere with the laboratory testing. The Commission believes the rule is a necessary enforcement measure for the Commission's medication regulations in Chapter 8. The Commission will adopt the amendment to Rule 8.3.3.3.4 as proposed. The Commission received public statements from Charles Lockhart regarding proposed amendments to Rule 4.1.1 and Rule 4.4.5. The Commission received no other comments regarding these proposed rules. The Commission finds the

rule amendments to Rule 4.1.1 and 4.4.5 are in the best interests of racing and are consistent with the Commission's role as the regulator of the licensed associations. The Commission will adopt the proposed amendments to Rule 4.1.1 and Rule 4.4.5 in their proposed form.

Conclusions

7. The proposed rule amendments to Rules 1.0, 3.2.4, 4.1.1, 4.4.5, 5.2.1.3, 5.3.3, 7.1.6.1.3, and 8.3.3 were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del. C. §10027. The proposed rule amendments are necessary for the Commission to regulate and oversee the sport of harness racing in the public interest as required by 3 Del. C. §10005. The Commission concludes that the proposed Rules should be adopted in their proposed form.

8. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on October 1, 2001.

IT IS SO ORDERED this 7th day of September, 2001.

Beth Steele, Chairman
Mary Ann Lambertson, Commissioner
Thomas P. Conaty, IV, Commissioner
Robert Everett, Commissioner
Kenny Williamson, Commissioner

1.0 Definitions

"Act" is Chapter 100 of Title 3 of the Delaware Code.

"Added Money" is the amount exclusive of trophy added into a stakes by the association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from the horsemen.

"Age" of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

"Also Eligible" pertains to a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline.

"Appeal" is a request for the Commission or its designee to investigate, consider and review any decisions or rulings of steward/judges of a meeting.

"Association" is a person or business entity holding a license from the commission to conduct racing and/or pari-mutuel wagering.

"Association Grounds" is all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands, offices, barns, stable area, employee housing facilities and parking lots and any other areas under the jurisdiction of the Commission.

"Authorized Agent" is a person licensed by the

Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

"Betting Interest" is one or more horses in a pari-mutuel contest which are identified by a single program number for wagering purposes.

"Bleeder" is a horse which has demonstrated external evidence of exercise induced pulmonary hemorrhage (epistaxis, or bleeding from one or both nostrils) and/or the existence of hemorrhage into the trachea post exercise as observed upon endoscopic examination.

"Bleeder List" is a tabulation of all bleeders to be maintained by the Commission.

"Claiming Race" is a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

"Commission" is the Delaware Harness Racing Commission.

"Conditioned Race" is an overnight race to which eligibility is determined according to specified conditions which include age, sex, earnings, number of starts and position of finishes.

"Controlled Substance" is any substance included in the five classification schedules of the (U.S.) Controlled Substance Act of 1970.

"Coupled Entry" is two or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes (also see "Entry").

"Course" is the track over which horses race.

"Dead Heat" is the finish of a race in which the noses of two or more horses reach the finish line at the same time.

"Declaration" is the naming of a particular horse as a starter in a particular race.

"Draw" is the process of assigning post positions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

"Driver" is a person who is licensed to drive in races.

"Early Closing Race" is a race for a definite amount of money to which entries close at least six weeks prior to the race.

"Entry" (see "Coupled Entry").

"Exhibition Race" is a race on which no wagering is permitted.

"Financial Interest" is an interest that could result directly or indirectly in receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity or other compensation or remuneration from any person. The lessee and lessor of a horse have a financial interest.

"Guest Association" is an association which offers licensed pari-mutuel wagering on contests conducted by another association (the host) in either the same jurisdiction or another jurisdiction.

"Handicap" is a race in which allowances are made according to a horse's age, sex, claiming price and performance.

"Handle" is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Host Association" is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

"In Harness" is when the horses are attached to a dual shaft sulky. All sulkies used in a race must be equipped with unicolored or colorless wheel discs of a type approved by the Commission and placed on the inside and outside of the wheel. Any change in the basic design of a sulky and/or major equipment shall require Commission approval. Rules, regulations, standards and/or guidelines affecting the use of any new sulky and/or equipment must be approved by the Commission before their adoption.

"Inquiry" is when the judges suspect that a foul or any other misconduct occurred during a heat or dash.

"Late Closing Race" is a race for a fixed amount of money to which entries close less than six weeks but not more than three days before the race is to be contested.

"Licensee" is any person or entity holding a license from the Commission to engage in racing or a regulated activity.

"Maiden" is a stallion, mare or gelding that has never won a heat or race at the gait at which it is entered to start and for which a purse is offered; provided, however, that other provisions of these Rules notwithstanding, races and/or purse money awarded to a horse after the 'Official Sign' has been posted shall be considered winning performance and effect status as a maiden, and in such cases a horse placed first by virtue of disqualification shall acquire a win race record only if such horse's actual time can be determined by photo finish or electronic timing in accordance with the provisions of Rule 7.2.1.

1 DE Reg. 501 (11/01/97)

"Match Race" is a race between two or more horses under conditions agreed to by their owners.

"Matinee Race" is a race in which no entrance fee is charged and where the premiums, if any, are other than money.

"Meeting" is the specified period and dates each year during which an association is authorized to conduct racing and/or pari-mutuel wagering by approval of the Commission.

"Minus Pool" occurs when the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool.

"Mutuel Field" is two or more contestants treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

"Net Pool" is the amount of gross ticket sales less refundable wagers and statutory commissions.

"No Contest" is a race canceled for any reason by the stewards/judges.

"Nomination" is the naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.

"Objection" is a verbal claim of foul in a race lodged by the horse's driver.

"Off Time" is the moment at which, on the signal of the official starter, the starting gate is opened, officially dispatching the horses in each contest.

"Official Order of Finish" is the order of finish of the horses in a contest as declared official by the judges.

"Official Starter" is the official responsible for dispatching the horses for a race.

"Official Time" is the elapsed time from the moment the first horse crosses the timing beam until the first horse crosses the finish line.

"Optional Claiming Race" is a conditioned race in which a horse may be entered for a stated claiming price. In the case of horses entered to be claimed in such a race, the race shall be considered, for the purpose of these rules, a claiming race. In the case of horses not entered to be claimed in such a race, the race shall be considered a conditioned race.

"Overnight Race" is a contest for which declarations close not more than seven days, omitting Sunday, before the date on which it will be contested. In the absence of conditions or notice to the contrary, declarations must close not later than 6:00 p.m. of the day preceding the race.

"Owner" is a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

"Paddock" is an enclosure in which horses scheduled to compete in a contest are confined prior to racing.

"Pari-Mutuel System" is the manual, electro-mechanical or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

"Pari-Mutuel Wagering" is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

"Patron" is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

"Person" is any individual, partnership, corporation or other association or entity.

"Post Position" is the pre-assigned position from which a horse will leave the starting gate.

"Post Time" is the scheduled starting time for a contest.

"Primary Laboratory" is a facility designated by the Commission for the testing of samples.

"Programmed" means listed in the official program made available for sale or distribution to the public.

"Protest" is a written complaint alleging that a horse is ineligible to race.

"Purse" is the total cash amount for which a race is contested.

"Race" is a contest between horses at a licensed meeting.

"Required Days Off" horses restricted from racing for a specified number of days will start their days the day of the scheduled race.

"Restricted Area" is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

"Result" is that part of the official order of finish used to determine the pari-mutuel payout of pools for each individual contest.

"Rules" are the Rules of the Delaware Harness Racing Commission.

"Satisfactory Charted Line" is one that meets the standards at the track at which a horse participates.

"Scoring" is the preliminary practice given to horses after the post parade and prior to being called to line up for the start of a race by the official starter.

"Scratch" is the act of withdrawing an entered horse from a contest after the closing of entries.

"Simulcast" is the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

"Split Sample Laboratory" is a facility approved by the Commission to test split samples.

"Stakes Race" is a race which will be contested in a calendar year subsequent to the closing of nominations.

"Sulky" is a dual wheel racing vehicle with dual shafts not exceeding the height of the horse's withers. Shafts must be hooked separately on each side.

"Totalisator" is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payoff prices to patrons at a pari-mutuel wagering facility.

"Tubing" is the administration of any substance via a naso-gastric tube.

Rule 3.0

3.2 State Steward/Judges

3.2.1. General Authority

3.2.2.1 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.

3.2.2.2 The State Steward and judges shall enforce these rules and the racing laws of the State of Delaware.

3.2.2.3 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.

3.2.2.4 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.

3.2.2.5 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.

3.2.2.6 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 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, ~~objection and complaint~~ made to them. They shall maintain a record of all protests, ~~objections and complaints~~. 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.

1 DE Reg. 501 (11/01/97)

2 DE Reg. 1243 (01/01/99)

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.

4 DE Reg 336 (8/1/00)

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.

2 DE Reg. 1244 (01/01/99)

4 DE Reg 336 (8/1/00)

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.

Rule 4.0

4.0 Associations

4.1 General Duty

4.1.1 An association, its officers, directors, officials and employees shall ~~abide by and enforce~~ comply with the Act and the rules and orders of the Commission, the State Steward and judges.

4.1.2 An association may request an exemption from a requirement in this chapter to utilize new technology or innovative construction or design of the racetrack facilities. The Commission may grant an exemption if the Commission determines that:

4.1.2.1 the association's proposal substantially satisfies the purpose of the requirement; and

4.1.2.2 the exemption is in the best interests of the race horses, the racing industry and the citizens of

Delaware.

4.4 Operations

4.4.1 Security

4.4.1.1 An association conducting a race meeting shall maintain security controls over its premises. Security controls are subject to the approval of the Commission.

4.4.1.2 An association may establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meeting are licensed as required by these rules.

4.4.1.3 An association shall prevent access to and shall remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized.

4.4.1.4 Unless otherwise authorized by the Commission, an association shall provide continuous security in the stable area during all times that horses are stabled on the grounds. An association shall require any person entering the stable area to display valid credentials issued by the Commission or a visitor's pass issued by the association. An association shall provide security fencing around the stable area in a manner that is approved by the Commission.

4.4.1.5 On request by the Commission, an association shall provide a list of the security personnel, including the name, qualifications, training, duties duty station and area supervised by each employee.

4.4.1.6 Each day, the chief of security for an association shall deliver a written report to the State Steward regarding occurrences on association grounds relating to harness horse racing on the previous day. Not later than 24 hours after an incident occurs requiring the attention of security personnel, the chief of security shall deliver to the State Steward a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved.

4.4.2 Fire Prevention

4.4.2.1 An association shall develop and implement a program for fire prevention on association grounds. An association shall instruct employees working on association grounds of the procedures for fire prevention.

4.4.2.2 No person shall:

4.4.2.2.1 smoke in stalls, feed rooms or under shed rows;

4.4.2.2.2 burn open fires or oil and gas lamps in the stable area;

4.4.2.2.3 leave unattended any electrical appliance that is plugged-in to an electrical outlet.

4.4.2.2.4 permit horses to come within reach of electrical outlets or cords;

4.4.2.2.5 store flammable materials

such as cleaning fluids or solvents in the stable area; or

4.4.2.2.6 lock a stall which is occupied by a horse.

4.4.2.3 An association shall post a notice in the stable area which lists the prohibitions outlined in 4.4.2.2.1 - 4.4.2.2.6 above.

4.4.3 Insect and Rodent Control

An association and the licensees occupying the association's barn area shall cooperate in procedures to control insects, rodents or other hazards to horses or licensees.

4.4.4 Complaints

4.4.4.1 An association shall designate a location and provide personnel who shall be readily available to the public to provide or receive information.

4.4.4.2 An association shall promptly notify the Commission of a complaint regarding:

4.4.4.2.1 an alleged violation of the Act or a rule of the Commission;

4.4.4.2.2 an alleged violation of ordinances or statutes;

4.4.4.2.3 accidents or injuries; or

4.4.4.2.4 unsafe or unsanitary conditions for patrons, licensees or horses.

4.4.5 Ejection and Exclusion

An association may eject or exclude a person for any lawful reason. ~~An association shall immediately notify the State Steward and the Commission in writing of any person ejected or excluded by the association.~~

Rule 5.0

5.2 Owners

5.2.1 Licensing Requirements for Owners

5.2.1.1 Each person who has an ownership or beneficial interest in a horse is required to be licensed.

5.2.1.2 An applicant for an owner's license shall own or lease a horse which is eligible to race, registered with the racing secretary and under the care of a trainer licensed by the Commission. An owner shall notify the stewards/judges of a change in trainer of his/her horse. A horse shall not be transferred to a new trainer after entry.

5.2.1.3 ~~The provisions of 5.1.3~~ 5.1.4, notwithstanding, a horse owner of at least 14 years of age may apply for an owner's license a person younger than 14 years of age may apply for an owner's license, provided that no licensed owner younger than 14 years of age will be permitted paddock access at any licensed association. If younger than 18 years of age, an applicant for an owner's license shall submit a notarized affidavit from his/her parent or legal guardian stating that the parent or legal guardian expressly assumes responsibility for the applicant's financial, contractual and other obligations relating to the applicant's participation in racing.

5.2.1.4 If the Commission or its designee has

reason to doubt the financial responsibility of an applicant for an owner's license, the applicant may be required to complete a verified financial statement.

5.2.1.5 Horses not under lease must race in the name of the bona fide owner. Each owner shall comply with all licensing requirements.

5.2.1.6 The Commission or its designee may refuse, deny, suspend or revoke an owner's license for the spouse or member of the immediate family or household of a person ineligible to be licensed as an owner, unless there is a showing on the part of the applicant or licensed owner, and the Commission determines that participation in racing will not permit a person to serve as a substitute for an ineligible person. The transfer of a horse to circumvent the intent of a Commission rule or ruling is prohibited.

5.2.2 Licensing Requirements for Multiple Owners

5.2.2.1 If the legal owner of any horse is a partnership, corporation, limited liability company, syndicate or other association or entity, each shareholder, member or partner shall be licensed as required in 5.1.1 of this section.

5.2.2.2 Each partnership, corporation, limited liability company, syndicate or other association or entity shall disclose to the Commission all owners holding a five percent or greater beneficial interest, unless otherwise required by the Commission.

5.2.2.3 Each partnership, corporation, limited liability company, syndicate or other association or entity which includes an owner with less than a five percent ownership or beneficial interest shall file with the Commission an affidavit which attests that, to the best of their knowledge, every owner, regardless of their ownership or beneficial interest, is not presently ineligible for licensing or suspended in any racing jurisdiction.

5.2.2.4 To obtain an owner's license, an owner with less than a five percent ownership or beneficial interest in a horse shall establish a bona fide need for the license and the issuance of such license shall be approved by the Commission.

5.2.2.5 Application for joint ownership shall include a designation of a managing owner and a business address. Receipt of any correspondence, notice or order at such address shall constitute official notice to all persons involved in the ownership of such horse.

5.2.2.6 The written appointment of a managing owner or authorized agent shall be filed with the United State Trotting Association or Canadian Trotting Association and with the Commission.

5.2.3 Lease Agreements

A horse may be raced under lease provided a completed breed registry or other lease form acceptable to the Commission is attached to the certificate of registration and on file with the Commission. The lessor and lessee shall be licensed as horse owners. For purposes of issuance of eligibility certificates and/or transfers of ownership, a lease

for an indefinite term shall be considered terminable at the will of either party unless extended or reduced to a term certain by written documentation executed by both lessor and lessee.

1 DE Reg. 502 (11/01/97)

5.2.4 Racing Colors

Drivers must wear distinguishing colors, and shall not be permitted to drive in a race or other public performance unless, in the opinion of the judges/stewards, they are properly dressed, their driving outfits are clean and they are well groomed. During inclement weather conditions, drivers must wear rain suits in either of their colors or made of a transparent material through which their colors can be distinguished.

5.3 Trainers

5.3.1 Eligibility

5.3.1.1 A person shall not train horses, or be programmed as trainer of record at extended meetings, without first having obtained a trainer license valid for the current year by meeting the standards for trainers, as laid down by the United State Trotting Association, and being licensed by the Commission. The "trainer of record" shall be any individual who receives compensation for training the horse. The holder of a driver's license issued by the United States Trotting Association is entitled to all privileges of a trainer and is subject to all rules respecting trainers.

5.3.1.2 Valid categories of licenses are:

5.3.1.2.1 "A," a full license valid for all meetings and permitting operation of a public stable.; and

5.3.1.2.2 "L," a license restricted to the training of horses while owned by the holder and/or his or her immediate family at all race meetings.

5.3.1.3 If more than one person receives any form of compensation, directly or indirectly, for training the horse, then the principal trainer or trainers must be listed as "trainer of record". It shall be a violation for the principal trainer or trainers of a horse not to be listed as "trainer of record", and, if such unlisted principal trainer or trainers are licensees of the Commission, then he, she or they shall be subject to a fine and/or suspension for such violation. In addition, it shall be a violation for a person who is not the principal trainer of the horse to be listed as "trainer of record", and such person shall be subject to a fine and/or suspension for such violation. Principal trainers and programmed trainers shall be equally liable for all rule violations. For purposes of this rule, the Steward and judges shall use the following criteria in determining the identity of the principal trainer or trainers of a horse:

5.3.1.3.1 The identity of the person who is responsible for the business decisions regarding the horse, including, but not limited to, business arrangements with and any payments to or from owners or other trainers, licensed or otherwise, veterinarians, feed companies, hiring and firing of employees, obtaining workers' compensation

or proof of adequate insurance coverage, payroll, horsemen's bookkeeper, etc.;

5.3.1.3.2 The identity of the person responsible for communicating, or who in fact does communicate, with the racing secretary's office, stall manager, association and track management, owners, etc. regarding racing schedules and other matters pertaining to the entry, shipping and racing of the horse;

5.3.1.3.3 The identity of the person responsible for the principal conditioning of the horse;

5.3.1.3.4 The identity of the person responsible for race day preparation including, but not limited to, accompanying the horse to the paddock or ship-in barn, selection of equipment, authority to warm up the horse before the public, discussion with the driver of race strategy, etc.; and

5.3.1.3.5 The identity of the person who communicates on behalf of the owner with the Steward, judges and other Commission personnel regarding the horse, including regarding any questions concerning the location or condition of the horse, racing or medication violations, etc.

1 DE Reg. 505 (11/01/97)

5.3.2 Trainer Responsibility

5.3.2.1 A trainer is responsible for the condition of horses entered in an official 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.

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

5.3.2.3 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.

5.3.3 Other Responsibilities

A trainer is responsible for:

5.3.3.1 the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

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

5.3.3.3 ensuring that fire prevention rules are

strictly observed in the assigned stable area;

5.3.3.4 providing a list to the Commission of the trainer's employees on association grounds and any other area under the jurisdiction of the Commission. The list shall include each employee's name, occupation, social security number and occupational license number. The Commission shall be notified by the trainer, in writing, within 24 hours of any change;

5.3.3.5 the proper identity, custody, care, health, condition and safety of horses in his/her charge;

5.3.3.6 disclosure of the true and entire ownership of each horse in his/her care, custody or control;

~~5.3.3.7 training all horses owned wholly or in part by him/her which are participating at the race meeting;~~

5.3.3.8 registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

5.3.3.9 ensuring that, at the time of arrival at a licensed racetrack, each horse in his/her care is accompanied by a valid health certificate which shall be filed with the racing secretary;

5.3.3.10 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/provincial law and for filing evidence of such negative test results with the racing secretary;

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

5.3.3.12 immediately reporting the alteration of the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

5.3.3.13 promptly reporting to the Presiding Judge, racing secretary and the State veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

5.3.3.14 promptly notifying the State veterinarian of any reportable disease and any unusual incidence of a communicable illness of any horse in his/her charge;

5.3.3.15 promptly reporting the death of any horse in his/her care on association grounds to the State Steward or judges and the State veterinarian and compliance with the rules in Chapter 8 governing post-mortem examinations;

5.3.3.16 maintaining a knowledge of the medication record and status of all horses in his/her care;

5.3.3.17 immediately reporting to the State Steward and the State veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

5.3.3.18 representing an owner in making

entries and scratches and in all other matters pertaining to racing;

5.3.3.19 horses entered as to eligibility and allowances claimed;

5.3.3.20 ensuring the fitness of a horse to perform creditably at the distance entered;

5.3.3.21 ensuring that his/her horses are properly prepared and equipped;

5.3.3.22 presenting his/her horse in the paddock at a time prescribed by the Presiding Judge before the race in which the horse is entered;

5.3.3.23 personally attending to his/her horses in the paddock and supervising the preparation thereof, unless excused by the Paddock Judge;

5.3.3.24 attending the collection of a urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so; and

5.3.3.25 notifying horse owners upon the revocation or suspension of his/her trainer's license. Upon application by the owner, the State Steward may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

5.3.4 Restrictions on Wagering

A trainer shall only be allowed to wager on his/her horse or entries to win or finish first in combination with other horses.

5.3.5 Substitute Trainers

If any licensed trainer is to be absent from the association grounds where his/her horse is programmed to race the Presiding Judge shall be immediately notified and at that time a licensed substitute trainer, acceptable to the Presiding Judge, shall be appointed to assume responsibility for the horse(s) racing during the absence of the regular trainer. The name of the substitute trainer shall appear on the program if possible.

7.0 Rules of the Race

7.1 Declarations and Drawing

7.1.1 Declarations

7.1.1.1 Unless otherwise specified in the conditions, the declaration time shall be as follows:

7.1.1.1.1 Extended pari-mutuel meetings, 9:00 a.m.

7.1.1.1.2 All other meetings, 10:00 a.m.

7.1.1.2 The time when declarations close will be considered to be local time at the track where the race is being contested.

7.1.1.3 No horse shall be permitted to start in more than one race on any one racing day. Races decided by more than one heat are considered a single race.

7.1.1.4 The association shall provide a locked box with an aperture through which declarations shall be deposited.

7.1.1.5 The Presiding Judge shall be in charge of the declaration box.

7.1.1.6 Just prior to opening of the box at extended pari-mutuel meetings where futurities, stakes, early closing or late closing events are on the program, the Presiding Judge shall check with the racing secretary to ascertain if any declarations by mail, telegraph, facsimile machine or otherwise, are in the office and not deposited in the entry box, and shall see that they are declared and drawn in the proper event. At other meetings, the Presiding Judge shall ascertain if any such declarations have been received by the speed superintendent or racing secretary of the fair, and shall see that they are properly declared and drawn.

7.1.2 Drawing

7.1.2.1 The entry box shall be opened at the advertised time by the Presiding Judge, who shall ensure that at least one horseman or an official representative of the horsemen is present. No owner or agent for a horse with a declaration in the entry box shall be denied the privilege of being present. Under the supervision of the Presiding Judge, all entries shall be listed, the eligibility verified, preference ascertained, starters selected and post positions drawn. If it is necessary to reopen any race, public announcement shall be made at least twice and the box reopened to a definite time.

7.1.2.2 Subject to Commission approval, at non-extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges, or by a person designated by the Presiding Judge, for whose acts and conduct Presiding Judge shall be wholly responsible. If a substitution is made as herein provided, the name and address of the associate judge(s) or person so substituting shall be entered in the Judges' Book.

At extended meetings in the event of the absence or incapacity of the Presiding Judge, the functions enumerated above may be performed by one or more associate judges who shall have been designated by the Presiding Judge, prior to the start of the meeting, in the form of a written notice to the Commission and to the association conducting the meeting. A record shall be kept in the Judges' Book showing the name of the individual who performed such functions on each day of the meeting.

7.1.2.3 In races of a duration of more than one dash or heat at pari-mutuel meetings, the judges may draw post positions from the stand for succeeding dashes or heats.

7.1.2.4 Declarations by mail, telegraph, facsimile machine or telephone actually received and evidence of which is deposited in the box before the time specified to declare in, shall be drawn in the same manner as the others. Such drawings shall be final. Mail, telegraph, facsimile machine and telephone declarations must state the name and address of the owner or lessee; the name, color,

sex, sire and dam of the horse; the driver's name and racing colors; the date and place of last start; a current summary, including the number of starts, firsts, seconds, thirds, earnings and best winning time for the current year; and the event or events in which the horse is to be entered.

7.1.2.5 Failure to declare as required shall be considered a withdrawal from the event.

7.1.2.6 After declaration to start has been made no horse shall be withdrawn except by permission of the judges. A fine, not to exceed \$500, or suspension may be imposed for withdrawing a horse without permission, the penalty to apply to both the horse and the party who violates the regulation.

7.1.2.7 Where the person making the declaration fails to honor it and there is no opportunity for a hearing by the judges, this penalty may be imposed by the commission representative.

7.1.2.8 Where a horse properly declared is omitted from the race by error of the association, the race shall be redrawn; provided, however, that the error is discovered prior to the publication of the official program.

7.1.2.9 In the event there are two tiers of horses, the withdrawing of a horse that has drawn or earned a position in the front tier shall not affect the position of the horses that have drawn or earned positions in the second tier, except as provided for in handicap claiming races. Whenever a horse is drawn from any tier, horses on the outside move in to fill up the vacancy. When there is only one trailer, it may start from any position in the second tier. When there is more than one trailer, they must start from inside any horse with a higher post position.

7.1.3 Qualifying Races

7.1.3.1 Qualifying races and starting gate schooling shall be held according to the demand as determined by the Presiding Judge or State Steward.

7.1.3.2 Qualifying standards shall be set at each track by the racing secretary and the judges. These may vary at different times of the year to accommodate weather and the class of horse available. Standards for trotters will be two seconds slower than pacers.

7.1.3.3 At all extended pari-mutuel meetings declarations for overnight events shall be governed by the following:

7.1.3.3.1 Before racing at a chosen gait, a horse must go a qualifying race at that gait under the supervision of a licensed judge and acquire at least one charted line by a licensed charter. In order to provide complete and accurate chart information on time and beaten lengths, a standard photo finish shall be in use.

7.1.3.3.2 Any horse that fails to race within thirty (30) days of its last start must go a qualifying race as set forth in a) above. However, at any race meeting this period can be extended up to sixty (60) days upon receiving approval of the Commission. The time period allowed shall

be calculated from the date of the last race to and including the date of declaration. Horses entered and in to go in a race or races which are canceled due to no fault of their own, shall be considered to have raced in that race, and no start shall be counted for date preference purposes.

7.1.3.3.3 When a horse has raced at a charted meeting and then gone to meetings where the races are not charted the information from the uncharted lines may be summarized including each start and consolidated in favor of charted lines to include a charted line within the last thirty (30) days before the horse is permitted to race. The consolidated line shall carry date, place, time, driver, finish, track condition and distance.

7.1.3.3.4 The judges may permit a horse to qualify by means of a timed workout consistent with the time of the races in which he will compete in the event adequate competition is not available for a qualifying race.

7.1.3.3.5 When, for the purpose of qualifying the driver, a horse is declared in to race in a qualifying race, its performance shall be applicable to the horse's eligibility to race and the chart line shall be notated to indicate driver qualifying.

7.1.3.3.6 If a horse takes a win race record in either a qualifying race or a matinee race, such record must be prefaced with the letter "Q" wherever it appears, except in a case where, immediately prior to or following the race, the horse taking the record has been submitted to an approved urine, saliva or blood test. It will be the responsibility of the Presiding Judge to report the test on the Judges' Sheet.

7.1.3.4 Any horse regularly wearing hobbles shall not be permitted to be declared to race without them and any horse regularly racing without hobbles shall not be permitted to wear hobbles in a race without first having qualified with this equipment change. In addition to the foregoing, any horse regularly wearing hobbles and which is not on a qualifying list or Stewards' List, is allowed one start without hobbles in a qualifying race; and this single performance shall not affect its eligibility to race with hobbles in a subsequent event to which it is declared.

7.1.3.5 In their discretion the judges may require a horse to qualify for any reason; provided, however, that a horse making a break in each of two consecutive races may not be required to qualify if the breaks were solely equipment breaks and/or were caused solely by interference and/or track conditions.

7.1.3.6 A horse must qualify if:

7.1.3.6.1 it does not finish for reasons other than interference or broken equipment.

3 DE Reg 1520 (5/1/00)

7.1.3.7 A charted line containing only a break or breaks caused by interference or an equipment break shall be considered a satisfactory charted line.

7.1.3.8 The judges shall use the interference

break mark only when they have reason to believe that the horse was interfered with by another horse or the equipment of another horse.

7.1.3.9 If qualifying races are postponed or canceled, an announcement shall be made to the participants as soon as the decision is made.

7.1.4 Coupled Entries

When the starters in a race include two or more horses owned by the same person, or trained in the same stable or by the same management, they shall be coupled as an "entry", and a wager on one horse in the entry shall be a wager on all horses in the "entry"; provided, however, that when a trainer enters two or more horses in a stake, early closing, futurity, free-for-all or other special event under bona fide separate ownership, such horses may, at the request of the association, made through the State Steward, and with the approval of the Commission, be permitted to race as separate entries. If the race is split in two or more divisions, horses in an "entry" shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and their post positions shall be drawn by lots. The above provisions shall also apply to elimination heats. The person making the declaration of a horse that qualifies as a coupled entry with another horse entered in the same event shall be responsible to designate the word "entry" on the declaration blank. The Presiding Judge shall be responsible for coupling horses. In addition to the foregoing, horses separately owned or trained may be coupled as an entry where it is necessary to do so to protect the public interest for the purpose of pari-mutuel wagering only; provided, however, that where this is done entries may not be rejected.

7.1.5 Also Eligibles

Not more than two horses may be drawn as also eligibles for a race and their positions shall be drawn along with the starters in the race. In the event one or more horses are excused by the judges, the also eligible horse or horses shall race and take the post position drawn by the horse that it replaces, except in handicap races. In handicap races the also eligible horses shall take the place of the horse that it replaces in the event 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. No horse may be added to a race as an also eligible unless the horse was drawn as such at the time declarations closed. No horse may be barred from a race to which it is otherwise eligible by reason of its preference due to the fact that it has been drawn as an also eligible. A horse moved into the race from the also eligible list cannot be drawn except by permission of the judges, but the owner or trainer of such a horse shall be notified that the horse is to race and it shall be posted at the racing secretary's office. All horses on the also eligible list and not moved in to race by Scratch Time on the day of the race shall be released.

7.1.6 Preference Dates

Preference dates shall be given to horses in all overnight events at extended pari-mutuel tracks in accordance with the following:

7.1.6.1 The date of the horse's last previous start in a purse race is its preference date with the following exceptions:

7.1.6.1.1 The preference date on a horse that has drawn to race and has been scratched is the date of the race from which scratched.

7.1.6.1.2 When a horse is racing for the first time after February 1 in the current year, the date of the first declaration into a purse race shall be considered its preference date.

7.1.6.1.3 Wherever horses have equal preference in a race, the actual preference of said horses in relation to one another shall be determined by ~~lot~~ backdating, up to two starts, the horse having raced closest to the draw having the least preference. If no preference is determined, preference will be determined by lot.

7.1.6.1.4 When an overnight race has been re-opened because it did not fill, all eligible horses declared into the race prior to the re-opening shall receive preference over other horses subsequently declared, irrespective of the actual preference dates, excluding horses already in to go.

7.1.6.2 This rule relative to preference is not applicable at any meeting at which an agricultural fair is in progress. All horses granted stalls and eligible must be given an opportunity to compete at these meetings.

3 DE Reg 433 (9/1/99)

Rule 8.0

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 may impose penalties and disciplinary measures consistent with the recommendations contained in subsection 8.3.2 of this section.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

8.3.1.1 Class 1

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

8.3.1.2 Class 2

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

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

8.3.1.3 Class 3

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

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for

producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

8.3.1.4 Class 4

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

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and antiarrhythmics including:

8.3.1.4.9.1 Cardiac glycosides;

8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propanolol); and

8.3.1.4.9.3 Miscellaneous cardiotonic drugs.

8.3.1.4.10 Topical Anesthetics--agents not available in injectable formulations;

- 8.3.1.4.11 Antidiarrheal agents; and
- 8.3.1.4.12 Miscellaneous drugs including:
 - 8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;
 - 8.3.1.4.12.2 Stomachics; and
 - 8.3.1.4.12.3 Mucolytic agents.

8.3.1.5 Class 5

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

8.3.2 Penalty Recommendations

In the absence of aggravating or mitigating circumstances, the following penalties and disciplinary measures may be imposed for violations of these medication and prohibited substances rules:

8.3.2.1 Class 1--One to five years suspension and at least \$5,000 fine and loss of purse.

8.3.2.2 Class 2-- Six months to one year suspension and \$1,500 to \$2,500 fine and loss of purse.

8.3.2.3 Class 3--Sixty days to six months suspension and up to \$1,500 fine and loss of purse.

8.3.2.4 Class 4

8.3.2.4.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Fifteen to 50 days suspension and up to \$1,000 fine and loss of purse.

8.3.2.4.2 If the substance is detected in a urine sample but not in a blood sample:

8.3.2.4.2.1 And if such detection is the first violation of this chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.4.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.2.4.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 50-day suspension and loss of purse.

3 DE Reg. 1520 (5/1/00)

8.3.2.5 Class 5

8.3.2.5.1 If the substance is detected in a blood sample, or if the substance is detected in any sample in which more than one prohibited substance is detected, or if the substance is detected in a urine sample at a level which, in the opinion of the official chemist, caused interference with testing procedures: Zero to 15 days suspension and up to a \$150 fine and loss of purse.

8.3.2.5.2 If the substance is detected in a

urine sample but not in a blood sample:

8.3.2.5.2.1 And if such detection is the first violation of this Chapter within a 12-month period: Up to a \$250 fine and loss of purse.

8.3.2.5.2.2 And if such detection is the second violation of this chapter within a 12-month period: Up to a \$1,000 fine and loss of purse.

8.3.2.5.2.3 And if such detection is the third violation of this chapter within a 12-month period: Up to a \$1,000 fine and up to a 15-day suspension and loss of purse.

3 DE Reg. 1520 (5/1/00)

8.3.2.6 In determining the appropriate penalty with respect to a medication rule violation, the State Steward or other designee of the Commission may use his discretion in the application of the foregoing penalty recommendations, and shall consult with the State Veterinarian, the Commission veterinarian and/or the Commission chemist to determine the seriousness of the laboratory finding or the medication violation. Where aggravating or mitigating circumstances exist, 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.

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

8.3.2.8 Whenever a trainer is suspended more than

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

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

3 DE Reg. 1520 (5/1/00)

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

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

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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

3 DE Reg 1520 (5/1/00)

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.

1 DE Reg. 923 (1/1/98)

3 DE Reg 1520 (5/1/00)

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)

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.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

4 DE Reg 336 (8/1/00)

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.

3 DE Reg 1520 (5/1/00)

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:

3 DE Reg 1520 (5/1/00)

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

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

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.

3 DE Reg 1520 (5/1/00)

8.3.6 Phenylbutazone (Bute)

8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma.

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

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

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

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

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

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

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

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

3 DE Reg 1520 (5/1/00)

THOROUGHBRED RACING COMMISSION

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

Order

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10103, the Delaware Thoroughbred Racing Commission ("Commission") hereby issues this Order promulgating a proposed amendment to the Commission's Rule 13.01. Following notice of the proposed Rule amendment, the Commission makes the following findings and conclusions:

Summary of the Evidence and Information Submitted

1. The Commission posted public notice of the proposed rule revision in the July 1, 2001 Register of Regulations. The proposal contained a proposed amendment to Rule 13.01. The Rule amendment would permit any owner with a valid/current Delaware license to claim a horse. The Commission accepted written comments from the public on the proposed amendments from July 1, 2001 until July 31, 2001. The Commission received no written comments during this period.

Findings of Fact

2. The public was given notice and an opportunity to provide the Commission with comments in writing regarding the proposed rule amendments. The Commission received no comments about the rule change. The Commission finds that the proposed rule change is in the best interests of racing and will simplify the claiming process for owners.

Conclusions

3. The proposed rule amendment to Rule 13.01 was promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 Del.C. §10103. The Commission deems this rule amendment to be necessary for the effective enforcement of 3 Del.C. Chapter 101 and for the full and efficient performance of the duties thereunder.

4. The Commission concludes that the adoption of the proposed rule is necessary and desirable to ensure the integrity and security of thoroughbred racing in the State of Delaware. The Commission therefore adopts the following rule amendments to Rule 13.01. These rules replace in their entirety the former version of the Rules of the Delaware State Thoroughbred Racing Commission.

5. The effective date of this Order shall be ten (10) days from the publication of this order in the Register of Regulations on October 1, 2001. Attached hereto and incorporated herein in the amended Rule 13.01 marked as

Exhibit A and executed simultaneously this 21st day of August, 2001.

IT IS SO ORDERED this 21st day of August, 2001.

Bernard Daney, Chairman
Duncan Patterson, Commissioner
H. James Decker, Commissioner
Carolyn Wilson, Commissioner

PART 13 -- CLAIMING RACES

13.01 Owners Entitled:

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

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

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

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

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

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

13.02 Claim by Agent:

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

13.03 Claiming Own Horse Prohibited:

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

whom claimed.

13.04 Limits on claims:

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

13.05 Thirty Day Prohibition -- Racing Claimed Horse:

Repealed 8/95.

13.06 Thirty Day Prohibition -- Sale of Claimed Horse:

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

Revised: 7/16/86

13.07 Form of Claim:

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

13.08 Procedure for Claim:

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

Revised: 8/15/95

13.09 Stewards' Duties:

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

13.10 Conflicting claims:

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

13.11 Delivery of Claimed Horse:

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

13.12 Nature and Effect of a Claim:

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

13.13 Prohibited Practices:

No person shall offer or enter into an agreement to claim or not to claim or to attempt to prevent another person from claiming any horse in a claiming race. No person shall attempt, by intimidation, to prevent anyone from running a horse in any claiming race. No Owner or Trainer shall make an agreement with another Owner or Trainer for the protection of each other's horses in a claiming race.

Rule 13.06 Rev. March 1976.

13.14 Invalidation of Claim:

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

13.15 Necessity to Record Lien:

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

13.16 Claiming Privileges -- Eliminated Stable:

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

13.17 Claim Embraces Horse's Prior Engagements:

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

13.18 Caveat Emptor:

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

13.19 Racing Claimed Horse:

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

DEPARTMENT OF EDUCATION

Title 14, DE Admin. Code

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. §122(d))**Repeal of Certification Regulations 303, 315, 316, 317,
318, 359, 366, 367, 369****Order Repealing Rules and Regulations****I. Summary of the Evidence and Information Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to repeal regulations 303, 315, 316, 317, 318, 359, 366, 367, and 369

from the *Regulations of the Department of Education*. All regulations listed concern the requirements for certification of educational personnel. The Professional Standards Board voted, on the recommendation of its Licensure and Certification Criteria Standing Committee, to eliminate certification requirements for non-instructional positions and for individuals who are duly certified or licensed by other Delaware agencies.

Notice of the proposed repeal of regulations was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments. Correspondence was received from the President of the Delaware Speech and Hearing Association indicating no objection to the repeal of regulations 359 and 369.

II. Findings of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to repeal these regulations because elimination of certification requirements for non-instructional positions will provide local boards of education more flexibility in hiring the individuals best suited for the positions and will alleviate the need for the Department of Education to review and process applications for certification for non-instructional positions. This will permit the Department to focus its energies on and allocate its resources to the licensure and certification of instructional personnel in schools. Elimination of certification requirements for individuals who are duly certified or licensed by other Delaware agencies will eliminate redundancy and possible conflict between certification or licensure requirements among agencies.

III. Decision to Repeal the Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude the identified regulations should be repealed. Therefore, pursuant to 14 Del. C. Sections 1203 and 1205(b), the regulations attached hereto as Exhibit "B" are hereby repealed.

IV. Text and Citation

The text of the regulations 303, 315, 316, 317, 318, 359, 366, 367, and 369, attached hereto as Exhibit "B" are repealed, and said regulations shall be deleted from the Regulations of the Department of Education.

V. Effective Date of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware

Register of Regulations.

Approved by the Professional Standards Board the 13th Day of September, 2001:

Charles Michels, Chair,	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michèle Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

For Implementation by the Department of Education:

Valerie A Woodruff, Secretary of Education

It Is So Ordered this 20th Day of September, 2001.

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Robert Gilsdorf
 Mary B. Graham, Esquire
 Valerie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

~~303—Certification Administrative—Assistant Superintendent For Business~~

~~Effective July 1, 1993~~

~~1.0 The following shall be required for the Standard License for a person employed to have a major responsibility in the area of finance/school business:~~

~~1.1 Degree required~~

~~1.1.1 Master's degree from a regionally accredited college plus 30 graduate semester hours and;~~

~~1.2 Experience~~

~~1.2.1 A minimum of three years successful full-time experience as a teacher or school administrator, or other full-time experience in a non-educational setting related to business/business management and;~~

~~1.3 Specialized Professional Preparation~~

~~1.3.1 Master's degree in Education, Educational Administration, Business, Business Administration, Accounting, Public Administration or other closely related business field and;~~

~~1.3.2 Meets the Specialized Professional Preparation for the Standard School Business Manager's License.~~

~~2.0 The following shall be required for the Limited Standard License~~

~~2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public~~

school district, to a person employed in the above position to allow for the completion of the requirements for the Standard certificate in 1.0:

2.1.1 Meets the requirements specified within 1.1, 1.2, 1.3.1 and;

2.1.2 Meets the requirements for a Limited Standard License as stated under the School Business Manager's License.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

315 Certification Manager Of School Bus Transportation

Effective July 1, 1993

1.0 The following shall be required for the Standard License

1.1 Degree required

1.1.1 None. High School Diploma or its Equivalent and;

1.2 Experience

1.2.1 Training or experience deemed appropriate such as bus traffic management, safety management, business management and;

1.3 Specialized Professional Preparation, one course in each of the following areas:

1.3.1 State Budget Procedures/DFMS or School Business Management

1.3.2 Safety

1.3.3 Transportation

1.3.4 Supervision/Personnel Administration.

2.0 The following shall be required for the Limited Standard License

2.1 This license may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a Manager of School Bus Transportation to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

316 Certification Supervisor Of School Bus Transportation

Effective July 1, 1993

1.0 The following shall be required for the Standard License

1.1 Degree required

1.1.1 Bachelor's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Three years experience as a teacher or school

administrator or;

1.2.2 Five years of full time, successful experience in transportation management and;

1.3 Specialized Professional Preparation, one course in each of the following areas:

1.3.1 State Budget Procedures or School Business Management

1.3.2 Safety

1.3.3 Transportation

1.3.4 Supervision/Personnel Administration

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a Supervisor of School Bus Transportation to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard

317 Certification School Business Manager

Effective July 1, 1993

1.0 The following shall be required for the Standard License for any individual employed as a School

Business Manager or occupying any other administrative position with major responsibility for school finance/business.

1.1 Degree required

1.1.1 Bachelor's degree from a regionally accredited college with a major in business administration, accounting, public administration or any other closely related curriculum such as finance or economics and;

1.2 Specialized Professional Preparation

1.2.1 A minimum of one course from each of the following areas:

1.2.1.1 School Business Management

1.2.1.2 School or Business Law

1.2.2 Delaware Financial Management System (DFMS) or State Accounting Procedures

1.2.3 A minimum of two courses chosen from any of the following areas:

1.2.3.1 Intermediate Accounting

1.2.3.2 Finance

1.2.3.3 Facilities Management (including the planning of construction and facilities maintenance)

1.2.3.4 Human Resource Management

1.2.4 Work experience or training outside of the field of education may be accepted in lieu of any of the courses listed in 1.2.3 if such experience is deemed

equivalent. Verification of the experience shall be required and submitted to the Department of Education, Office of Certification, which shall then determine if the documented experience will serve in lieu of coursework.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Business Manager to allow for the completion of the requirements for the Standard License in 1.0:

2.1.1 Meets the requirements specified in 1.1 and;

2.1.2 Meets the requirements in 1.1 with the exception of the DFMS State Accounting Procedure and one course from 1.2.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

~~318 — Certification Manager Of School Food Service Programs~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License

1.1 Degree required

1.1.1 None; High School Diploma or equivalent and;

1.2 Experience

1.2.1 A minimum of three years of successful, full-time (minimum of 15 hours per week) work experience in quantity food production and service or;

1.2.2 Experience validated by completing a Trade Competency Examination as approved by the Department of Education and;

1.3 Specialized Professional Preparation

1.3.1 Associate degree in Food Service Management Technology from a regionally accredited college or;

1.3.2 A high school graduate, and the completion of the six-unit Food Service Training Program under the approval of the Department of Education or;

1.3.3 A high school graduate and verification of training that is equivalent to 1.3.1 or 1.3.2 as evaluated by the Department of Education, Education Associate of School Food Services.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Food Service Manager to allow for the completion of the requirements for the Standard License as listed in 1.0.

2.1.1 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2. with the obligation to complete 1.3.1, 1.3.2 or 1.3.3 within the three year period of the License.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

~~319 — Certification Supervisor Of School Food Service Programs~~

Effective July 1, 1993

1.0 The following shall be required for the Standard License for all full-time supervisors of a school food service program:

1.1 Degree required

1.1.1 Bachelor's degree from a regionally accredited college and;

1.2 Experience

1.2.1 Two years of professional experience or teaching experience in the areas of food, nutrition, or institutional management or;

1.2.2 Successful completion of a Dietetic Internship as approved by the American Dietetic Association or;

1.2.3 Two years of experience in the supervision of quantity food production and service, or related business experience in the area of food, nutrition or institutional management or;

1.2.4 Two years of experience as a manager of a school food service unit or as the assistant manager, if the experience as the assistant occurs after the employee has been working in the school food service unit for at least two years prior to being assigned as Assistant Manager and;

1.3 Specialized Professional Preparation

1.3.1 Completion of the requirements for the Bachelor's degree as stated above to include a major that is at least 30 semester hours, and in one of the following area

1.3.1.1 Business

1.3.1.2 Nutrition

1.3.1.3 Education

1.3.1.4 Institutional Management

1.3.1.5 Child Development

1.3.1.6 Quantity Food Preparation or;

1.3.2 Completion of the requirements of any Bachelor's degree and 30 semester hours in one of the areas listed above, whether or not the coursework is part of the degree program.

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed as a School Food

Service Supervisor to allow for the completion of the requirements for the Standard License in 1.0.

2.2 May be issued to a public school district employee who has met the requirements of 1.1 and 1.2 and;

2.3 Meets the requirements for Limited Standard as stated in the General Regulations in regard to 1.3.1. or 1.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

359 Certification Audiology

Effective July 1, 1993

1.0 The following shall be required for the Standard License.

1.1 Licensed Audiologist from the State of Delaware and;

1.2 Professional Education

1.2.1 Completion of a master's degree program in the area of Audiology.

2.0 Licenses that may be issued for this position include Standard and Limited Standard.

2.1 A Limited Standard License may be issued to an Audiologist holding a temporary license during completion of the Clinical Fellowship Year (CFY).

366 Certification School Occupational Therapist

Effective July 1, 1993

1.0 The following shall be required for the Standard License.

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of a program in occupational therapy approved by the Council of Medical Education of the American Medical Association and the American Occupational Therapy Association and;

1.3 Certification by the American Occupational Therapy Certification Board and;

1.4 A license to practice occupational therapy issued by the State of Delaware and;

1.5 One year experience in a school setting supervised by the district director/ supervisor of special education, or a Level II internship at the undergraduate/graduate level working with children of the type to be served under this License and;

1.6 A minimum of nine semester hours covering the following areas: Introduction/Survey of Exceptional Children, Assessment/Prescription/IEP Development, Applied Behavior Analysis.

2.0 The following shall be required for the Limited Standard License.

2.1 The Limited Standard License is issued for a period

of three years at the request of a Delaware public school district to a person who meets the requirements listed below and who is employed as a School Occupational Therapist to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Requirements in 1.1, 1.2 and 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

367 Certification School Physical Therapist

Effective July 1, 1993

1.0 The following shall be required for the Standard License.

1.1 Bachelor's degree from an accredited college and;

1.2 Completion of a program in physical therapy approved by the American Physical Therapy Association and;

1.3 Licensed as a Physical Therapist in the State of Delaware and;

1.4 One year experience in a school setting or a practicum at the undergraduate/graduate level working with children of the type to be served under this License and;

1.5 Minimum of nine semester hours covering the following areas: Introduction/Survey of Exceptional Children, Assessment/Prescription/IEP Development, Applied Behavior Analysis.

2.0 The following shall be the requirements for the Limited Standard License.

2.1 The limited Standard License may be issued for a period of three years at the request of a Delaware public school to a person who meets the requirements listed below and who is employed as a School Physical Therapist to allow for the completion of the requirements for the Standard License as in 1.0.

2.1.1 Requirements 1.1, 1.2, and 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

369 Certification Speech Language Pathologist

Effective July 1, 2000

1.0 The following shall be required for the Standard License.

1.1 Licensed Speech/Hearing Pathologist in the State of Delaware and;

1.2 Completion of a Master's degree program in the area of speech and hearing pathology.

2.0 The License that may be issued for this position is the Standard License.

**Amendment To Certification Regulations 305, 306, 308,
And 384**

Order Amending Certification Regulations

**I. Summary Of The Evidence And Information
Submitted**

The Professional Standards Board, acting in cooperation and consultation with the Department of Education, seeks the consent of the State Board of Education to amend regulations 305, 306, 308, and 384 of the Regulations of the Department of Education. The amended regulations will also be renumbered to reflect their movement to the Professional Standards Board section of the regulations. All regulations listed concern the requirements for certification of educational personnel. The concurrent elimination of certification requirements for non-instructional positions requires the amendment of the regulations to reflect those changes, as follows:

1535 ~~305~~ Certification Administrative – Administrative Assistant

Delete from 1.2.1 ~~or three years of other related non-educational experience as appropriate to the position~~

Delete from 1.3.1 ~~If assigned to the area of business, the applicant shall meet the minimum requirements as specified for the School Business Manager License.~~

1536 ~~306~~ Certification Administrative – Director

Delete from 1.0 ~~either instructional or non-instructional. When any part of the employee's job assignment involves the supervision of instructional programs, the "Director of Instructional Areas" requirements shall be met. and insert instructional in lieu thereof.~~

Delete 1.2.1 in its entirety

Renumber 1.2.1.1 as 1.2.1.

Renumber 1.2.1.2 as 1.2.2.

Delete 1.2.2 in its entirety, including 1.2.2.1 and 1.2.2.2. Delete from 2.1.2 ~~1.2.1.1 and 1.2.1.2, or 1.2.2.1 or 1.2.2.2 as is appropriate to "Director of Instructional Areas" or Director of Non-Instructional Areas" and insert 1.2 in lieu thereof.~~

1538 ~~308~~ Certification Administrative – Supervisor

Delete from 1.0 ~~instructional or non-instructional. When any part of the employee's job assignment involves the supervision of school instructional programs, the Instructional Supervisor's requirements shall be met.~~

Delete 1.2.1 in its entirety.

Renumber 1.2.1.1 as 1.2.1.

Delete 1.2.2 in its entirety, including 1.2.2.1 and 1.2.2.2.

Delete from 2.1.2 ~~1.2.1 or 1.2.2 as appropriate to Supervisor of Instructional Areas or Supervisor of Non-Instructional areas and,~~ and insert 1.2 in lieu thereof.

1584 ~~384~~ Permits – School, Classroom Aides And Autistic Residential Child Care Specialists

Delete 1.2.1 and 1.2.2

Renumber 1.2.3 as 1.2.1

Renumber 1.2.4 as 1.2.2

Notice of the proposed amendments to the regulations was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings Of Facts

The Professional Standards Board and the State Board of Education find that it is appropriate to revise these regulations because it voted to eliminate certification requirements for certain non-instructional positions. All regulations listed concern the requirements for certification of educational personnel. The concurrent elimination of certification requirements for non-instructional positions requires the amendment of these regulations to reflect those changes.

III. Decision To Amend The Regulations

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that the identified regulations should be amended as reflected above. Therefore, pursuant to 14 Del. C. Sections 1203 and 1205 (b), the regulations are hereby amended. Pursuant to the provisions of 14 Del. C. Section. 122(e), the certification regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

IV. Text And Citation

The text of the regulations 1535, 1536, 1538, and 1584 shall be in the form attached hereto as Exhibit "B," and said regulations shall be cited in the Regulations of the Department of Education.

V. Effective Date Of Order

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

Approved by the Professional Standards Board the 13th Day of September, 2001:

Charles Michels, Chair,	Mary Ellen Kotz, Vice Chair
Patricia Clements	Barbara Grogg
Michèle Hazeur-Porter	Sherie Hudson
Tony Marchio	Mary Mirabeau
John Pallace	Joanne Reihm
Harold Roberts	Karen Schilling Ross
Teresa Schooley	Carol Vukelich
Jacquelyn Wilson	

For Implementation by the Department of Education:

Valerie A Woodruff, Secretary of Education

It Is So Ordered this 20th Day of September, 2001.

Dr. Joseph A. Pika, President
 Jean W. Allen, Vice President
 Robert Gilsdorf
 Mary B. Graham, Esquire
 Valerie Pepper
 Dennis J. Savage
 Dr. Claibourne D. Smith

1535 ~~305~~ Certification Administrative - Administrative Assistant

Effective July 1, 1993

1.0 The following shall be required for the Standard License

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and,

1.2 Experience

1.2.1 A minimum of three years of successful, full-time classroom teaching experience, or three years of administrative experience, ~~or three years of other related non-educational experience as appropriate to the position and,~~

1.3 Specialized Professional Preparation

1.3.1 Specific training or satisfactory experience including an internship and/or fieldwork in the area in which employed. ~~If assigned to the area of business, the applicant shall meet the minimum requirements as specified for the School Business Manager License.~~

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree from an accredited college and,

2.1.1.1 Meets the requirements of 1.2 and,

2.1.1.2 Within six semester hours of meeting the requirements as specified in 1.3.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1536 ~~306~~ Certification Administrative - Director

Effective July 1, 1993

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized instructional areas, ~~either instructional or non-instructional. When any part of the employee's job assignment involves the supervision of instructional programs, the "Director of Instructional Areas" requirements shall be met.~~

1.1 Degree required

1.1.1 aster's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) and,

1.2 Experience

~~1.2.1 Director of Instructional Areas (Schools, Programs, and Staff Development) such as Elementary Education, Secondary Education, Educational Leadership, Curriculum and Instruction, Human Resource Management and specific curricular areas.~~

1.2.1 ~~1.2.1.1~~ A minimum of three years of successful, full-time classroom teaching experience or,

1.2.2 ~~1.2.1.2~~ A minimum of three years of successful, full-time administrative experience in the specific area to be directed, within a school system or,

~~1.2.2 Director of Non-Instructional Areas (School Services) such as Personnel, Administrative Services, Finance and Public Relations, Pupil Services.~~

1.2.2.1 ~~A minimum of three years of successful, full-time classroom teaching experience or,~~

1.2.2.2 ~~A minimum of three years of successful, full-time experience in a field specifically related to the area to be directed and,~~

1.3 Specialized Professional Preparation

1.3.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college(s) with a major in Educational Supervision and Curriculum or Educational Administration or Educational Leadership, or Human Resource Management; and Twenty-one semester hours of graduate level coursework specific to the area to be directed or,

1.3.2 Master's degree in any field plus thirty semester hours of graduate level coursework from a

regionally accredited college(s) to include the following graduate level coursework:

1.3.2.1 A minimum of twenty-one semester hours of graduate level coursework specific to the area to be directed and,

1.3.2.2 A minimum of twenty-one semester hours of graduate level coursework in the area of administration, to include at least one course in each of the following areas:

- 1.3.2.2.1 Curriculum Development and Instruction
- 1.3.2.2.2 Supervision/Evaluation of Staff
- 1.3.2.2.3 School Business Management
- 1.3.2.2.4 School Law/Legal Issues in Education
- 1.3.2.2.5 Human Resource Management
- 1.3.2.2.6 Human Development (to include child/adolescent development)
- 1.3.2.2.7 Organizational Management

(NOTE: Any of the requirements listed in 1.3.1. or 1.3.2 may be met by coursework taken either within or in addition to the Master's degree plus thirty semester hours.)

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years, at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.0.

2.1.1 Master's degree plus thirty semester hours of graduate level coursework from a regionally accredited college; and

2.1.2 Meets all experience requirements in 1.2 ~~1.2.1.1 and 1.2.1.2, or 1.2.2.1 or 1.2.2.2 as is appropriate to "Director of Instructional Areas" or "Director of Non-Instructional Areas";~~ and

2.1.3 Meets the Specialized Professional Preparation requirement in the specialized area 1.3.2.1 and is within six semester hours of meeting the administrative coursework in 1.3.2.1.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1538 208 Certification Administrative - Supervisor

Effective July 1, 1993

1.0 The following shall be required for the Standard License for persons employed to be responsible for the administration of specialized areas, ~~instructional or non-instructional. When any part of the employee's job assignment involves the supervision of school instructional programs, the Instructional Supervisor's requirements shall~~

~~be met:~~

1.1 Degree required

1.1.1 Master's degree from a regionally accredited college and,

1.2 Experience

~~1.2.1 Supervisor of Instructional areas (Schools, Programs and Staff Development) such as Elementary Education, Secondary Education, Educational Leadership, Curriculum and Instruction, Human Resource Management, specific curricular areas.~~

1.2.1 ~~1.2.1.1~~ A minimum of three years of successful, full-time classroom teaching experience in the instructional area to be supervised ~~or~~ and,

~~1.2.2 Supervisor of Non-Instructional Areas (School Services) such as Personnel, Administrative Services, Finance, Public Relations, Pupil Services.~~

~~1.2.2.1 A minimum of three years of successful, full-time classroom teaching experience or;~~

~~1.2.2.2 A minimum of three years of successful, full-time experience in a field specifically related to the area to be supervised;~~

1.3 Specialized Professional Preparation

1.3.1 Master's degree from a regionally accredited college with a major in Educational Supervision and Curriculum and,

1.3.2 Fifteen semester hours of graduate level coursework, specific to the area to be supervised or,

1.3.3 A Master's degree in any field from a regionally accredited college with the following graduate level coursework included within, or in addition to, the degree:

1.3.3.1 A minimum of fifteen semester hours of graduate level coursework in the area to be supervised and,

1.3.3.2 A minimum of fifteen semester hours of graduate level coursework in administration to include one course in each of the following areas:

1.3.3.2.1 Curriculum Development

1.3.3.2.2 Supervision/Evaluation of Staff

1.3.3.2.3 Human Relations

1.3.3.2.4 School Law/Legal Issues

2.0 The following shall be required for the Limited Standard License

2.1 The Limited Standard License may be issued for a period of three years at the request of a Delaware public school district, to a person employed in the above position to allow for the completion of the requirements for the Standard License in 1.1.

2.1.1 Master's degree from a regionally accredited college; and

2.1.2 Meets all requirements in 1.2 ~~1.2.1 or 1.2.2 as appropriate to Supervisor of Instructional Areas or~~

Supervisor of Non-Instructional Areas and,

2.1.3 Within six semester hours of meeting the specific coursework requirements in 1.3.1 and 1.3.2, or within six semester hours of meeting the specific coursework requirements in 1.3.3.1 and 1.3.3.2.

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

1584 384 Permits - School, Classroom Aides And Autistic Residential Child Care Specialists

Effective July 1, 1993

1.0 The following shall be required for a Permit.

1.1 A permit shall be required for all persons employed either full time or part time as a school aide, classroom aide, or autistic residential child care specialist, regardless of funding source (state, federal, local or other funding).

1.1.1 Qualifications include evaluated experience and training that shall emphasize skills relevant to the position as well as giving consideration to unique personal qualifications. Applicants shall be at least 18 years of age.

1.2 Categories of Functions shall include those persons participating in non-teaching activities such as:

~~1.2.1 School Aides assisting in supervision of playgrounds, bus loading, cafeteria, etc.~~

~~1.2.2 Clerical Aides maintaining records, materials, and equipment in school offices, instructional material centers and classrooms.~~

1.2.1 ~~1.2.3~~ Classroom Aides - assisting classroom teachers in activities that support the teaching process, but are under the supervision of the teacher (such as typing stories, putting on wraps, reading stories, locating reference materials, etc.).

1.2.2 ~~1.2.4~~ Autistic Residential Child Care Specialists - Assisting in training functions such as domestic, community, self-care, leisure and behavior management activities.

1.3 Credentials

1.3.1 All persons employed under the Permit Program shall be expected to submit to the district, the same credentials as required of other Licensed employees, including the Health License.

1.4 Job Definition

1.4.1 A school district shall be required to submit a job definition for any person employed as an aide or as an autistic residential child care specialist.

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation 398 Degree Granting Institutions of Higher Education. The amendments are in response to concerns expressed by the Higher Education Commission at the time the regulations were reformatted and readopted. These amendments reflect suggestions made by the Commission. Changes for clarity and accuracy have been made in some sections. In 1.10, Library, Sections 1.10.1-1.10.5 were removed and replaced with a statement that higher education institutions must follow Middle States standards. Section 2.1.2.4 adds the requirement of an on-site visit to Delaware locations before final program approval. Section 2.2 requires that the institution seeking approval cover all expenses incurred by a visiting team. Section 4.11 increases the licensing fee to \$250 due to inflation. Sections 6.0-8.0 are new sections that further define the relationship between the Higher Education Commission and the Department of Education in the approval process

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend this regulation as recommended by the Higher Education Commission in order to improve the identified sections for clarity and accuracy.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions of 14 *Del. C.* §122(e), the regulation hereby amend shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

IV. Text and Citation

The text of the regulation amend hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the *Regulations of 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, in open session at the said Board's regularly scheduled meeting on September 20, 2001. The effective date of this Order shall be ten (10) days

Regulatory Implementing Order

398 Degree Granting Institutions of Higher Education

I. Summary of the Evidence and Information Submitted

from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED this 20th day of September 2001.

Department of Education

Valerie A Woodruff, Secretary of Education

Approved this 20th day of September 2001.

State Board of Education

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

398 Degree Granting Institutions of Higher Education

1.0 Standards for Approval of Post Secondary Institutions

1.1 Purposes and Objectives

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

1.1.1.1 The specific objectives shall be presented in behavioral terms and shall be the basis for future student and program evaluation.

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

1.2 Administrative Organization

1.2.1 The organizational pattern of the institution such as a two-year associate or a four-year baccalaureate or graduate or professional institution, or as a single or multi-purpose institution, shall be clearly defined and shall be related to the purposes of the institution.

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

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

1.2.4 The board shall be moderate in size (between 9 and 25 members) and shall represent different points of

view and interests, be selected from persons interested in the institution, willing to give the time necessary for board matters and be appointed or elected for regular or overlapping terms of office. The large majority of the members should be other than the salaried administrators of the institution.

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

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

1.2.7 There shall be evidence that the administrative staff is aware of its three major functions; selection, supervision and support of faculty; selection and supervision of the students and operation of the facilities for the benefit of faculty and students.

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

1.3 Financial Administration

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

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

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

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

1.3.5 The general aspects of business administration and the principles of accounting and reporting shall adhere to the widely accepted standards published by the National Association of College and University Business Officers (NACUBO), ~~the American Council on Education in the current edition of *College and University Business Administration*.~~

1.4 Student Personnel Program

1.4.1 When appropriate, Aan institution shall provide evidence of an adequate student personnel program, including student activities and a counseling service and shall be directed by a professionally trained person whose

responsibilities embrace the general welfare and discipline of the students.

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

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

1.5 Admission Policies and Procedures

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

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

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

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

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

1.6 Faculty

1.6.1 The number of faculty shall be adequate to serve the projected number of students at an acceptable ratio. Documentation of faculty qualifications in the form of resumes must be available upon request. The institution shall have clearly defined criteria for faculty appointments, incentives for retention, and provisions for in-service growth and development.

1.6.2 There shall be a well planned incentive program designed for retention of faculty. When applicable,

~~Such a program shall include policies on academic freedom, tenure, retirement, pensions, leaves of absence including sabbaticals, sick leave, insurance, and other faculty benefits. There shall be a clear statement of criteria for each rank and the requirements for promotion.~~

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

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

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

1.7 Program

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

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

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

1.8 Graduation Requirements

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

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

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

1.9 Facilities

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

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

1.10 Library

~~1.10.1 The institution shall provide library~~

~~facilities adequate to the effective realization of its stated educational objectives.~~

~~1.10.2 The physical facilities shall be conducive to frequent and effective use of the collections.~~

~~1.10.3 The accommodations shall allow for seating from one fourth to one third of the student body and there shall be space set aside for quiet study and leisure time reading.~~

~~1.10.4 The program shall be administered by a professionally trained library staff adequate in number for the size of the student body.~~

~~1.10.5 The collection of volumes shall meet the standards of the American Library Association.~~

1.10.1 The scope of resources shall follow the Middle States recommendation that the resources must be in reasonable proportion to the needs to be served, but numbers alone are no assurance of excellence. Most important are quality, accessibility, availability, and delivery of resources on site and elsewhere.

~~1.10.6~~ 1.10.2 In the case of the non-Delaware institution offering courses, programs of courses, or degrees in Delaware, library facilities shall be imported on a temporary basis or provided through contractual arrangements ~~with other Delaware institutions~~ so that the material available will provide adequate support to the courses offered.

1.11 Outcomes

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

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

1.12 Catalog and Announcements

1.12.1 The catalogs and all other announcements shall give an accurate description of the actual offerings of the institution and show evidence that the institution is managed by educationally competent and morally responsible persons and shall include specifically:

1.12.1.1 Identification data, such as volume number, and date of publication.

1.12.1.2 Names of the institution, the governing board, and the administrative staff and faculty showing earned degrees and the institutions granting them.

1.12.1.3 A complete calendar for the academic year.

1.12.1.4 A statement of its accredited or approval status.

1.12.1.5 A statement of the origin and objectives of the institution.

1.12.1.6 Admission and graduation policies and requirements.

1.12.1.7 Detailed schedule of all fees and other charges as well as refund policies.

1.12.1.8 Information concerning scholarship funds.

1.12.1.9 Description of location of the institution; buildings, grounds and equipment.

1.12.1.10 List of degrees conferred and requirements for each degree.

1.12.1.11 Outline of each curriculum and a description of each course offered during period covered by the catalog and an indication of courses offered at other times. Descriptions shall indicate prerequisites, if any.

1.12.1.12 Number of weeks of instruction per semester and of class meetings per week.

2.0 Procedures for Securing Approval

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

2.1.1 Recognized Applicant: An institution shall complete the questionnaire, Application to Confer Academic and Honorary Degrees. This material, presented in duplicate, is reviewed by an evaluation team mutually acceptable to the institution and the Department of Education. After the review and a hearing with the Board of Trustees and the administrative staff of the institution, an on-site visitation may be required if the institution is actually in operation. If all the facts gained appear to meet, or show promise of meeting, a significant portion of the standards as stated in the Delaware Standards for Approving Institutions of Higher Education, the institution shall be notified of Recognized Applicant status valid for one or more years. Recognized Applicant status may be extended yearly or may be terminated. Recommendations shall be made for any changes in or additions to the information previously submitted which would be necessary for consideration for Provisional Approval. A two year institution shall request evaluation for Provisional Approval no later than the beginning of the 4th semester; four year institutions, no later than the 7th semester. Institutions offering programs of varying duration shall request evaluation for Provisional Approval in a timeframe appropriate to the length of the program.

2.1.2 Provisional Approval: Following the on-site visit, required for this second level of approval, the team shall recommend to the Secretary of Education that either the institution continue to be recognized only as an Applicant without degree granting status, or it be granted Provisional Approval with the right to confer the degrees requested. Those institutions required to remain on Applicant Status will be informed of the changes and improvements necessary to be eligible for Provisional Status. There is no guarantee

that a Recognized Applicant institution will be given either Provisional or Full Approval. A Recognized Applicant institution may incorporate but its charter shall not include the right to confer degrees.

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

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

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

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

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

2.1.3 Fully Approved institutions shall retain such status for a period of no longer than five years by which time a progress report must be filed with a follow-up visitation required if deemed desirable by the Department of

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

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

2.2 All expenses incurred by a visiting team, ~~with the exception of personnel from publicly supported educational institutions,~~ at any stage in the approval procedures shall be borne by the institution requesting approval. ~~If an institution is located outside of the State of Delaware and is incorporating in Delaware, it shall also pay the expenses of Delaware representative appointed by the State Department of Education if such a visit is deemed necessary.~~

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

3.0 Institutions of Higher Education Application for Degree Granting Authority

3.1 The Applicant Institution shall complete detailed application questionnaires and submit data as requested.

3.2 The Secretary shall appoint an evaluation committee to advise the Secretary and the Applicant Institution from the time of application through the final approval.

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

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

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

3.4 At a time one or two years following the graduation

of the first class from the institution, on an occasion mutually agreed upon by the officials of the institution and the evaluation committee, the institution shall present a third progress report and the committee shall make an on-site visit. In the event that this planned visit is scheduled to occur at approximately the same time as that of a visit from the Commission on Higher Education of the Middle States Association of Colleges and Schools, or another appropriate specialized accrediting agency, it may be recommended to the Secretary of Education that a favorable report by this visiting agency be accepted in lieu of a separate report and on-site visit from the evaluating committee. The recommendation on this occasion may be for final approval of the degree-granting authority of the institution.

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

3.6 Any costs incidental to the evaluation and approval of ~~a an college institution, except the salary of personnel from the publicly supported educational institutions in Delaware,~~ shall be the responsibility of that Applicant Institution.

4.0 Additional Procedures for Approval of Non-Delaware Institutions of Higher Education that Offer Courses, Programs of Courses or Degrees Within the State of Delaware

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

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

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

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

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

4.6 The Institution shall prove that the degree programs conform to the minimum standards established by the

Department of Education for similar institutions operating within the State.

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

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

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

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

4.11 A license fee of ~~\$100.00~~ \$250.00 per out-of-state institution shall be required for each school year of operation. Program duration of a shorter period, such as one semester or one quarter, shall pay a minimum fee of ~~\$50.00~~ \$150.00.

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

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

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

4.14.1 Each applicant for a permit to serve as an agent shall submit with the application a fee in the amount of \$10.00 for the first application. This fee will be required for

each institution represented by any one agent. The fee for renewal of the permit to serve as an agent shall be \$5.00 for each institution represented by the agent. The agent shall present a second application for a permit to serve as agent in conjunction with the application for certification by the second institution that he/she will represent.

4.14.2 Each agent shall apply for a permit each year at the same time that the institution he/she is to represent makes application for a Certificate of Approval. No permit shall be issued for a period of more than twelve calendar months. No agent shall perform the function of his/her assignment and solicit Delaware enrollees in the institution until he/she has been issued the appropriate identification permit.

4.14.3 The revocation of the certification of an institution for any cause shall make invalid all agent permits for that institution.

4.14.4 The discharge or resignation of any agent shall be reported immediately to the Department of Education.

4.14.5 To the extent that any situation warrants the Department of Education shall be responsible for publicizing the discontinuance of any certificate or permit.

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

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

5.0 Institutions of Higher Education, Located In Other States or Territories and Not Offering Programs In-State

5.1 Pursuant to 8 *Del. C.* Section 125, the Division of Corporations of the Delaware Department of State forwards requests for incorporation made by private colleges and universities, located outside of Delaware, and not offering programs in-state, to the Department of Education for approval prior to incorporation.

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

5.1.2 As a matter of comity, the Department of Education will not approve the incorporation of colleges, universities or other institutions offering credit-bearing courses, that have a primary site of operation in another state and do not operate in Delaware, unless the institution already is approved by the state degree granting authority of the state in which it is located, or, in states without a degree granting authority, is accredited by a nationally recognized accrediting agency or association approved by the United States Department of Education. A nationally recognized accrediting agency or association is one that appears on the list published as Nationally Recognized Accrediting Associations, by the Secretary of Education.

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

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

8.0 Institutions shall be required to file annual Integrated Postsecondary Education Data System (IPEDS) reports with the Higher Education Commission.

Regulatory Implementing Order 501 State Content Standards

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation 501 State Content Standards from the *Regulations of the Department of Education* and the regulations on Visual and Performing Arts, Physical Education and Home Economics from the *Handbook for K-12 Education*. (Visual and Performing Arts, II.D.2. Page B-4, III.B.2.b. Page C-3 and IV.3.b., Page D-3) (Physical Education, II.D.5., Page B-5, III.B.2.e., Page C-4, and IV.3.f., Pages D-3 – D-4) (Home Economics, III.B.2.f.).

The amendments are necessary to clearly define the role of the State Content Standards in the district curriculum development process and to provide the requirements for instructional programs in English language arts, mathematics, science, social studies, functional life skills, physical education, visual and performing arts and vocational technical education programs. The amendment creates two separate regulations, 501 State Content Standards and 503 Instructional Program Requirements.

In regulation 501 State Content Standards, all instructional programs must be in alignment with the state content standards. In addition, integration of the content standards within and across the curricula is required as well as keeping instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

In regulation 503 Instructional Program Requirements, the amendments require English language arts, mathematics, science and social studies programs for all public school students in each grade K-8, in addition to the existing high school graduation requirements. The amendments also require the functional life skills curriculum for students who need the program and for participation in other content areas as designated by the student's IEP.

The amendments require that all public school students in each grade 1-8 be enrolled in physical education programs in addition to the credit required for high school graduation.

The amendments require that all public school students in each grade 1-6 be enrolled in visual and performing arts programs and requires the presence of visual and performing arts programs in grades 7-12.

The amendments also require two or more vocational technical programs for grades 7 and 8.

These two revised regulations take the place of previously advertised amendments to the State Content Standards regulation and to previously advertised amended regulations for the visual and performing arts and physical education and a previously advertised amendment to the regulation 525 Requirements for Vocational Technical Education Programs. These regulations are also intended to include charter school students.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend this regulation to clearly define the role of the State Content Standards in the district curriculum development process and to provide the requirements for instructional programs in English language arts, mathematics, science, social studies, functional life skills, physical education, visual and performing arts and vocational technical education programs. The amendment creates two separate regulations, 501 State Content Standards and 503 Instructional Program Requirements.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that

it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulations attached as Exhibit "B" are hereby amended. Pursuant to the provisions of 14 *Del. C.* §122(e), the regulations hereby amended shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

IV. Text and Citation

The text of the regulations amended hereby shall be in the forms attached hereto as Exhibit "B," and said regulations shall be cited in the Regulations of 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, in open session at the said Board's regularly scheduled meeting on September 20, 2001. 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 this 20th day of September 2001.

Department Of Education

Valerie A Woodruff, Secretary of Education

Approved this 20th day of September 2001.

State Board Of Education

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

~~501 State Content Standards~~

~~1.0 State Content Standards~~

~~1.1 Each local school district and each charter school shall provide instructional programs in mathematics, English language arts, science and social studies for all students in grades K-12, except for those students for whom a functional life skills curriculum is appropriate. The instructional programs shall be in alignment with the documents *Mathematics Curriculum Framework, English Language Arts Curriculum Framework, Science Curriculum Framework and Social Studies Curriculum Framework* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.~~

~~See 4 DE Reg. 853 (11/1/00)~~

~~1.2 Each local school district shall provide instructional~~

programs in the visual and performing arts for all students in grades K-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Visual and Performing Arts Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.3 Each local school district shall provide instructional programs in technology education for all students in grades 5-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.4 Each local school district shall provide instructional programs in health and wellness education for all students in grades K-12. The instructional programs shall be in alignment with the document *Delaware Health Education Curriculum Framework and Assessment* as the same may from time to time be amended with the approval of the Secretary and the State Board of Education.

See 4 DE Reg. 850 (10/1/00)

1.5 Each local school district shall provide instructional programs for students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.6 Each local school district that provides additional instructional programs for students in any area of agriscience, business finance and marketing education, foreign language, visual and performing arts and technology education shall align these areas with the applicable state content standards. These program areas shall be in alignment with the documents *Agriscience Curriculum Framework Content Standards*, *Business Finance and Marketing Education Curriculum Framework Content Standards*, *Foreign Language Curriculum Framework Content Standards*, *Visual and Performing Arts Content Standards*, and the *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.7 Each local school district shall provide for the integration of content areas within and across the curricula.

1.8 Each local school district shall keep instructional materials and curricula content current and consistent with the *Guidelines for the Selection of Instructional Materials*.

See 1 DE Reg. 153 (8/1/97)

See 1 DE Reg. 729 (12/1/97)

See 4 DE Reg. 343 (8/1/00)

As Appears in the Handbook for K-12 Education

II. ELEMENTARY EDUCATION

5. PHYSICAL EDUCATION

a. The primary goal of the elementary physical education program is to have students acquire the fundamental skills necessary for their participation in team or group activities, free play, and health-related physical fitness.

b. Classes should be learning laboratories in which students are involved in the important task of learning about themselves and others through movement.

c. The program should be student centered, with a special focus on problem solving and exploratory methods applied to a wide range of activities.

d. Students should have freedom of choice, but be guided by the teacher toward predetermined goals.

e. This suggested time allotment will serve as a basis in the formulation of the daily or weekly schedule depending on the school organization.

Vigorous Physical Activity--

1st and 2nd grade 30 minutes daily

3rd, 4th, 5th and 6th grade 30 minutes daily

f. A major part of physical education should be directed play involving team or group activities, while 30 minutes per week may be supervised free play. Directed play involves selected activities to teach desirable skills while free play is permitting the children a choice of activities under the supervision of the teacher.

III. MIDDLE LEVEL EDUCATION

e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

IV. HIGH SCHOOL

f. Physical Education

(1) Physical education shall be a requirement for any two years during grades nine through twelve with a maximum of 1/2 unit of credit earned per year. Provision for makeup and accumulation of required credit should be provided at the ninth through twelfth grade levels.

(2) Physical education should be offered as an elective for ninth through twelfth grade students.

(3) The high schools may establish their physical education program of instruction within these guidelines:

(a) providing instruction on a five-day week basis for a full semester;

(b) providing instruction for a minimum of three days per week for the entire school year;

(c) providing instruction on a flexible basis equivalent to three instructional periods per week or rotating two periods one semester and three the next semester; and

(d) providing instruction on a variable basis equivalent to 3 instructional classes per week during the school year.

(4) The physical education program should emphasize the concept of lifetime sports and be adapted to both individual and group physical education needs. All schools should conscientiously develop a meaningful elective program in physical education.

(5) In addition to the one unit of credit required for graduation, a student may receive only one unit of elective credit for a maximum total of two credits in physical education.

(a) Objectors must submit to the administrative head of the school an affidavit stating reasons for being excused from this activity.

(b) Pupils may be excused from physical education if they have a certified excuse from a qualified physician or they have objections based on religious beliefs to various rhythmical activity.

As Appears in the *Handbook for K-12 Education*

(From the Elementary Section II)

2. VISUAL AND PERFORMING ARTS (Music, Visual Arts, Theatre and Dance)

a. All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the elementary grades, kindergarten through four.

b. Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated they will be adopted in June, 1997.

(From the Middle Level Section III)

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

f. Home Economics

Program offerings in home economics and technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers.

(From the Secondary Section IV)

b. Visual and Performing Arts (Music, Visual Arts, Theatre, and Dance)

(1) All high schools should provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of all students as well as those students wishing to pursue indepth study or a career in the visual and performing arts.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

501 State Content Standards

1.0 Instructional Programs

1.1 Instructional programs offered in the public schools of Delaware shall be in alignment with the appropriate content standards documents. These documents are: English Language Arts Curriculum Framework, Mathematics Curriculum Framework, Science Curriculum Framework, Social Studies Curriculum Framework, Health Education Curriculum Framework and Assessment, Physical Education Content Standards, Visual and Performing Arts Content Standards, Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Technology Education Curriculum Framework Content Standards, Family and Consumer Sciences Content Standards and the Standards for Functional Life Skills Curriculum.

1.1.1 The content standards documents may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

1.1.2 Integration of the content standards shall be provided for within and across the curricula.

1.1.3 Instructional materials and curricula content shall be kept current and consistent with the Guidelines for the Selection of Instructional Materials.

503 Instructional Program Requirements

1.0 English Language Arts

1.1 Local school districts and each charter school shall provide instructional programs in English Language Arts for each grade K-12.

1.2 All public school students in each grade K-8 shall be enrolled in an English language arts program.

1.3 All public school students in grades 9-12 shall complete the credits in English language arts necessary to graduate from high school.

2.0 Mathematics

2.1 Local school districts and each charter school shall provide instructional programs in mathematics for each grade K-12.

2.2 All public school students in each grade K-8 shall be enrolled in a mathematics program.

2.3 All public school students in grades 9-12 shall complete the credits in mathematics necessary to graduate from high school.

3.0 Science

3.1 Local school districts and each charter school shall provide instructional programs in science for each grade K-12.

3.2 All public school students in each grade K-8 shall be enrolled in a science program.

3.3 All public school students in grades 9-12 shall complete the credits in science necessary to graduate from high school.

4.0 Social Studies

4.1 Local school districts and each charter school shall provide instructional programs in social studies for each grade K-12.

4.2 All public school students in each grade K-8 shall be enrolled in a social studies program.

4.3 All public school students in grades 9-12 shall complete the credits in social studies necessary to graduate from high school.

5.0 Functional Life Skills Curriculum

5.1 Local school districts and each charter school shall provide instructional programs for students for whom a functional life skills curriculum is appropriate.

5.2 Public school students in the Functional Life Skills Curriculum shall participate in health, physical education, visual and performing arts and vocational technical programs as directed by their Individual Education Program (IEP).

6.0 Physical Education

6.1 Local school districts and each charter school shall provide instructional programs in physical education for each grade K-12 with the exception of the James H. Groves High School program.

6.2 All public school students in each grade 1-8 shall be enrolled in a physical education program.

6.3 All public school students in grades 9-12 shall complete the credit in physical education necessary to graduate from high school.

6.4 In addition to the one credit required for high school graduation, only one additional elective credit in physical education may be used to fulfill the graduation requirements.

6.5 The physical education requirements may be waived only for students who have an excuse from a

qualified physician or objections based on religious beliefs. The local school district shall have the authority to grant such waivers.

7.0 Visual and Performing Arts

7.1 Local school districts and each charter school shall provide instructional programs in the visual and performing arts for each grade K-12 with the exception of the James H. Groves High School program.

7.2 All public school students in each grade 1-6 shall be enrolled in a visual and performing arts program.

8.0 Vocational Technical Education

8.1 Local school districts and charter schools, when consistent with the charter school's approved program, shall provide instructional programs in two or more vocational technical education areas in grades 7 and 8.

Regulatory Implementing Order 745 Criminal Background Check for Public School Related Employment

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to readopt the regulation 745 Criminal Background Check for Public School Related Employment found in the appendix of the *Manual for Certification of Professional Public School Personnel*. The regulation remains the same except that it has been reformatted to fit the system used in the document, *Regulations of the Department of Education*. The regulation is required pursuant to 11 *Del. C.* Subchapter VI, §8570 through §8572. The title of the regulation has been changed to Criminal Background Checks for Public School Related Employment in order to reflect the title in the statute.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to readopt this regulation because other than reformatting the regulation and correcting the title the regulation remains the same. The regulation is required by 11 *Del. C.* Subchapter VI §857(i).

III. Decision to Readopt the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to readopt the regulation. Therefore, pursuant to 11 *Del. C.* Subchapter VI §8571(i), the regulation attached

hereto as Exhibit "B" is hereby readopted. Pursuant to the provisions of 14 *Del. C.* §122(e), the regulation hereby readopted shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

IV. Text and Citation

The text of the regulation readopted hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the *Regulations of the Department of Education*.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 11 *Del. C.* Subchapter VI §8571(I), on September 10, 2001. 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 this 10th day of September 2001.

Department of Education

Valerie A Woodruff, Secretary of Education

~~Regulations For School Districts For Background Checks~~

745 Criminal Background Check for Public School Related Employment

1.0 Applicability of Regulations

1.1 Effective July 1, 1994, the following "covered Personnel" shall be required to initiate the criminal background check process:

1.1.1 All final candidates for public school related employment;

1.1.2 All those persons who supply contracted services directly to students of a public school, or those who supply contracted services to a public school which results in regular direct access to children in or through a public school; and

1.1.3 All those persons who have regular direct access to children in or through an extra duty position (also called Extra Pay for Extra Responsibility ["EPER"] position) in public schools whether the person receives compensation or not.

1.2 Notwithstanding the definition of "covered Personnel" in 1.1, the following persons are not subject to these regulations:

1.2.1 Instructors in adult corrections institutions;

1.2.2 Instructors in adult education programs

involving Apprenticeship, Trade Extension, or a vocational general interest programs, or instructors in Adult Basic Education and/or GED programs who do not service students under age 18;

1.2.3 Directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program, Very Special Arts, and/or the Delaware Institute for the Arts in Education; and

1.2.4 Substitute food service workers.

2.0 Procedures for Candidates for Employment or for Persons Providing Services Under a Contract to Obtain a Criminal Background Check

2.1 A final candidate for a covered personnel position in a public school shall be subject to the following procedures:

2.1.1 After notification by a school district that he/she is a final candidate for a covered personnel position, the individual shall present him/herself to State Bureau of Identification personnel at one of the Delaware State Police Troops processing such criminal background checks or at an on-site appointment arranged by the school district. School districts at their option may require an applicant to submit a criminal background check prior to becoming a final candidate.

2.1.2 The candidate shall cooperate in all respects with this criminal background check process, or his/her application cannot be accepted. On completion of the procedure, the candidate will be given a Verification Form of Processing by the State Bureau of Identification, which may be shown to prospective placing districts as proof that the candidate has completed the procedure. The candidate should retain the Verification Form of Processing for his/her records.

2.1.3 The candidate shall have the original of the completed criminal background check sent to one school district. A copy of all information sent to the school district shall be sent by the State Bureau of Identification to the candidate.

2.1.4 As a part of the application for public school related employment or as a part of the contract for services, the candidate shall sign a release form approved by the Department of Education. The release will allow the school district that was sent the original of the completed criminal background check to do the following:

2.1.4.1 Confirm the receipt of that original and disclose its contents to the superintendent or the chief personnel officer of other Delaware school districts considering the person as a candidate,

2.1.4.2 Send the original criminal background

check to the placing school district if the candidate is hired or placed under contract in another Delaware school district,

2.1.4.3 Send any subsequent criminal history information to the person's employing or contracting school district(s).

2.1.5 Each final candidate shall have a determination of suitability made by the school district and forwarded to him/her. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal as in 5.0.

2.1.6 Final candidates for employment or entering into a contract for services may have criminal background checks from other states accepted, if all of the following conditions are met.

2.1.6.1 The criminal background check shall have been conducted within the previous twelve (12) months and include a federal criminal background check;

2.1.6.2 The criminal background check shall be sent directly from the criminal background check agency in the other state to a Delaware school district;

2.1.6.3 A verification from the candidate's most recent employer(s) covering the previous twelve (12) months, stating that the employer knows of no offenses committed by the candidate during that time, shall be sent directly from the candidate's most recent employer(s) to the Delaware school district which was sent the original background check.

2.1.6.4 The out-of-state candidate shall sign a release to allow the school district receiving the out-of-state criminal background check and the reference to confirm their receipt, disclose their contents and forward them, subject to the same disclosure regulations that apply to Delaware criminal background checks.

2.1.7 Except as described herein, all costs associated with obtaining a criminal background check shall be paid for by the person seeking a covered personnel position. School districts may use funds other than state funds to pay for criminal background check costs and may enter into consortia to pay such costs for persons covered by the law who work in more than one school district during the course of the school year.

3.0 Procedures for School Districts for Criminal Background Checks on Candidates for Employment or for Persons Providing Services Under a Contract

3.1 School districts shall require all persons subject to the law and these regulations to complete a release as a part of the application or contract submissions process and, if they become a final candidate for a covered personnel position, to initiate the criminal background check process

prior to entering into the covered personnel position.

3.2 The school district sent the original of a completed criminal background check shall keep the information received in a confidential manner and shall:

3.2.1 If requested by another Delaware school district's superintendent or chief personnel officer and assured that a signed release is on file in the requesting district, confirm the receipt of that original and disclose its contents to the superintendent or the chief personnel officer of the requesting Delaware school district considering the person for hire;

3.2.2 If requested by another Delaware school district's superintendent or chief personnel officer and sent a copy of the signed release on file in the requesting district, send the original criminal background check to the requesting Delaware school district if the candidate is placed in a covered personnel position; and

3.2.3 If sent any subsequent criminal history information on the person hired, placed under contract or assuming an extra duty position in another district or districts, forward such information to that/those school district(s).

3.2.4 School districts may also share and forward the above information with the Department of Education under the same conditions applicable to school districts. The provision shall apply only when the Department of Education is acting in its capacity as an employer, a party to a contract for services or taking on a person in an extra duty position.

3.3 The school district, in accordance with 11 *Del. C.* § 8571(b), (d) and (e), shall make a determination of suitability for employment on each person it requested to initiate the criminal background check process. That determination shall be communicated to the person in writing. If a determination is made to deny a candidate employment based upon the criminal history, he/she shall have an opportunity to appeal for reconsideration as in 5.0.

3.4 When a candidate is finally placed in a covered personnel position the district shall do the following: if the original of the completed criminal background check is not yet in its possession:

3.4.1 Make a written request to the school district that received the original of the completed criminal background check to forward the original copy to the placing district for placement in the employee's or contractor's file. As a part of the request, the placing district shall forward a copy of the release signed by the candidate.

3.4.2 Notify the State Bureau of Identification that the candidate has become covered personnel in the district and is no longer associated with the school district that

received the original of the completed criminal background check.

3.5 A school district may place the candidate in a covered personnel position provisionally in accordance with 11 Del. C. §8571(f); however, the school district shall require the candidate to comply with the provisions described in these regulations, including the requirement to initiate the criminal background check prior to being hired provisionally.

4.0 Length of Validity of Criminal Background Check and Exemption for “Continuous Employment”

4.1 A criminal background check obtained under these regulations shall only be valid for twelve (12) months. If a person is not “continuously employed” by a Delaware school district within that period, the district receiving the original criminal background check need not retain it beyond that time. If the person becomes “continuously employed” by a Delaware school district, the original criminal background check shall be kept for five (5) years, or until sent to an employing school district or the Department of Education.

4.2 Each person who has been “continuously employed” in a public school district shall be exempt from the screening provisions of 11 Del. C. §8571. For the purpose of these regulations pertaining to Delaware school districts, the term “continuously employed,” in 11 Del. C. §8570 (3), shall apply to any person who has worked in a covered personnel position in the same public school district for at least fifteen (15) days in the prior school year. At district option, a full-time person may be exempt upon transfer between public school districts if the person has:

4.2.1 Submitted a criminal background check within the past five years,

4.2.2 No break in service since the date of the check, and

4.2.3 Requests that the records of that check are forwarded from the prior district to the new district prior to entering into a covered personnel position.

4.3 Substitute teachers may be considered to be “continuously employed” when they work fifteen (15) days in any combination of school districts, or ten (10) days in any one school district.

4.4 A person not exempted in 4.2 or 4.3 who is placed in a covered personnel position by another Delaware school district shall comply with 11 Del. C. § 8570, et seq., and these regulations before being hired or providing contracted services. A criminal background check performed within the previous twelve (12) months and held by another school district, and supplied under 2.0 and 3.0 of these regulations is one means of complying with 11 Del. C. § 8570, et seq.,

and these regulations.

5.0 Determination of Suitability and Appeal Process

5.1 A person covered by 11 Del. C. § 8570, et seq., and/or these regulations, shall have the opportunity to respond to a school district regarding any criminal history information obtained prior to a determination of suitability for employment being made. See 11 Del. C. § 8571 (d). Such a response shall be made within ten (10) working days of the person’s receipt of the criminal background check information from the State Bureau of Identification. The determination of suitability for employment shall be made by the school district pursuant to the factors listed in 11 Del. C. § 8571 (d).

5.2 The school district shall communicate the results of the determination of suitability to the person, in writing, within five (5) working days of the receipt of the person’s response to the criminal history information. If a determination is made to deny a person placement in a covered personnel position, based upon the criminal history, the person shall have an opportunity to appeal for reconsideration as in 5.2.1 through 5.2.3.

5.2.1 Appeal shall be initiated by a person notified that he/she is being denied or being terminated from placement in a covered personnel position, pursuant to 11 Del. C. § 8571, by submitting a letter of appeal to the district superintendent within ten (10) working days of the receipt of written notice.

5.2.2 The appeal shall be reviewed by the district superintendent and the person shall be given the right to be heard by the district superintendent within ten (10) working days of the receipt of the letter of appeal.

5.2.3 A written decision shall be rendered by the district superintendent within ten (10) working days of the hearing. A decision made by the district superintendent under this appeal procedure are final, unless the district has made specific provisions for appeal to another entity within the district. The decision may not be appealed to the State Board of Education or to the Department of Education.

6.0 Confidentiality

6.1 All records pertaining to criminal background checks, pursuant to 11 Del. C. § 8570, et seq., and/or these regulations, shall be maintained in a confidential manner including, but not limited to, the following:

6.1.1 Access to criminal background check records, and letter of reference accompanying out-of-state criminal background checks, and determination of suitability shall be limited to the district superintendent and the district chief personnel office and one person designated to assist in

the processing of criminal background checks, who will receive training in confidentiality and be required to sign an agreement to keep such information confidential;

6.1.2 All such records shall be kept in locked, fireproof cabinets;

6.1.3 No information from such records shall be released without the signed approval of and the appropriate signed release of the candidate or person placed in a covered personnel position.

7.0 Penalties: The district superintendent or the district chief personnel officer shall report to the appropriate police authorities evidence of any person who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of 11 *Del. C.* § 8571.

8.0 Subsequent Criminal History Information

8.1 Subsequent criminal history on a person in a covered personnel position shall be sent by the State Bureau of Identification to the district superintendent or district chief personnel officer and shall be used by districts in making a determination about the person's continued suitability for placement in a public school environment.

8.2 If subsequent criminal history information is mistakenly directed to a district other than the current district of covered personnel, the information shall be forwarded immediately to the employing district by the receiving district's superintendent or chief personnel officer.

8.3 If a person is known to be in a covered personnel position in more than one district, the superintendent or chief personnel officer of the district receiving the subsequent criminal history information on that person shall share the information received immediately with the district superintendent or district chief personnel officer of the other school district.

Regulatory Implementing Order
828 Assistance with Medications on Field Trips

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to amend regulation 828 Assistance With Medications on Field Trips. The amendment is necessary in order to reflect changes in 24 *Del. C.* § 1921. The statute now requires "any person who assists students with medications that are self administered during school field trips have completed a Board of Nursing approved training course developed by the Department of

Education". The amended regulation also requires that the parent or guardian sign a statement releasing the "assistant" from liability and eliminates the need to include the prescribing physician's telephone number when sending the medication to the school.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend this regulation because of changes made to the statute because of the passage of S.B.68 requiring the completion of a training course before assisting with medications on field trips.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 *Del. C.* §122, the regulation attached hereto as Exhibit "B" is hereby amended. Pursuant to the provisions 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 fourth 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 in the Regulations of 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 September 10, 2001. 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 this 10th day of September 2001.

Department of Education
Valerie A Woodruff, Secretary of Education

828 Assistance With Medications on Field Trips

1.0 Definitions

"Assist a student with medication," means assisting a student in the self-administration of a medication, provided

that the medication is in a properly labeled container as hereinafter provided. Assistance may include holding the medication container for the student, assisting with the opening of the container, and assisting the student in self-administering the medication. Lay assistants shall not assist with injections. The one exception is with emergency medications where standard emergency procedures prevail in lifesaving circumstances.

“Field trip” means any off-campus, school-sponsored activity.

“Medication” means a drug taken orally, by inhalation, or applied topically, and which is either prescribed for a student by a physician or is an over-the-counter drug which a parent or guardian has authorized a student to use.

“Paraprofessionals” mean teaching assistants or aides.

2.0 Teachers, administrators and paraprofessionals employed by a student’s local school district are authorized to assist a student with medication on a field trip subject to the following provisions:

2.1 Assistance with medication shall not be provided without the prior written request or consent of a parent or guardian. Said written request or consent shall contain clear instructions including: the student’s name; the name of the medication; the dose; the time of administration; ~~and the method of administration; and a statement releasing the assistant from liability.~~ At least one copy of said written request or consent shall be in the possession of the person assisting a student with medication on a field trip.

2.2 The medication shall be in a container which is clearly labeled with the student’s name, the name of the medication, the dose, the time of administration, and the method of administration. If the medication has been prescribed by a physician, it ~~must~~ shall be in a container which meets United States Pharmacopoeia/National Formulary standards and, in addition to the information otherwise required by this section, shall bear the name ~~and telephone number~~ of the prescribing physician, and the name and telephone number of the dispensing pharmacy.

2.3 A registered nurse employed by the school district in which the student is enrolled shall determine which teachers, administrators and paraprofessionals are qualified to safely assist a student with medication. ~~and said nurse shall provide each such person with information designed to acquaint such person with safe practices and procedures in assisting with medication.~~ Each such person shall complete a Board of Nursing approved training course developed by the Delaware Department of Education, pursuant to 24 Del. C. 1921. Said nurse shall complete instructor training as designated by the Department of Education and shall submit a list of successful staff participants to the Department of Education. No person shall assist a student with medication without ~~first acknowledging~~ written acknowledgement that he/she has ~~received and read the information to be provided~~

~~pursuant to this section, completed the course~~ and that he/she understands the same, and will abide by the safe practices and procedures set forth therein.

2.4 Each school district shall maintain a record of all students receiving assistance with medication pursuant to this regulation. Said record shall contain the student’s name, the name of the medication, the dose, the time of administration, the method of administration, and the name of the person assisting.

2.5 Except for a school nurse, no employee of a school district shall be compelled to assist a student with medication. Nothing contained herein shall be interpreted to otherwise relieve a school district of its obligation to staff schools with certified school nurses.

Regulatory Implementing Order 925 Children with Disabilities

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to amend regulation 925 Children With Disabilities. The amendment changes Section 23 by adding a more specific description of the appeal and hearing procedures applicable when the DOE proposes to deny all or part of a Local Education Agency’s application for receipt of federal funds. The proposed change implements the comments received from the Federal Office of Special Education Programs regarding this regulation.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to amend this regulation because the Federal Office of Special Education Programs recommended that these changes be made to the regulation in order to be in compliance with the Federal statute.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C. §122, the regulation attached hereto as Exhibit “B” is hereby amended. Pursuant to the provisions 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 fourth 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 in the *Regulations of 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, in open session at the said Board's regularly scheduled meeting on September 20, 2001. 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 this 20th day of September, 2001.

Department of Education

Valerie A Woodruff, Secretary of Education

Approved this 20th day of September, 2001.

State Board Of Education

Dr. Joseph A. Pika, President

Jean W. Allen, Vice President

Robert J. Gilsdorf

Mary B. Graham, Esquire

Valarie Pepper

Dennis J. Savage

Dr. Claibourne D. Smith

925 Children With Disabilities

23.0 General Supervision of Education for Children with Disabilities: The Department of Education (DOE) shall ensure that each educational program for children with disabilities administered within the State, including each program administered by any other public agency, is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and meets education standards of the State educational agency.

23.1 Documentation of DOE activity in meeting its responsibilities shall be maintained in a manner consistent with effective management procedures. Such documentation shall include, but not be limited to, issues pertaining to:

23.1.1 General Supervision, Cooperative Agreements, Complaint/Due Process Procedures, Compliance Monitoring, Project Coordination, Program Evaluation, Comprehensive System of Personnel Development, Dissemination; and Finance/Administration.

23.2 The DOE shall, through its Comprehensive

Compliance Monitoring System, ensure that each public agency develops and implements an IEP for each of its children with disabilities.

23.3 The DOE shall distribute regulations, sample documents and letters of notification to all agencies (public and non-public) providing services to children with disabilities.

23.4 Nothing in the Individuals with Disabilities Education Act, as amended, or in these regulations shall be construed by any party as permitting any agency of the State to reduce medical or other assistance under, or alter the eligibility requirements of, programs funded in whole or in part through Title V (Maternal and Child Health) or Title XIX (Medicaid) of the Social Security Act, with respect to the provision of a free appropriate public education for children with disabilities within the State.

23.5 Compliance Monitoring: The DOE shall fulfill a minimum of six administrative responsibilities regarding monitoring of programs for children with disabilities. These responsibilities are:

23.5.1 Adoption and use of policies and procedures to exercise general supervision over all educational programs for children with disabilities within the State.

23.5.2 Adoption and use of a method to continuously collect and analyze information sufficient to determine compliance of sub-grantees and other agencies providing services to children with disabilities within the State, and agencies providing services to Delaware children with disabilities in other states, with applicable State and federal program operation requirements.

23.5.3 Adoption and use of a method by which the DOE formally directs that each deficiency identified in program operations be corrected by the appropriate agency.

23.5.4 Adoption and use of a method by which the DOE enforces State and federal legal obligations by requiring written assurances of compliance with such obligations as a condition of a grant or contract; and imposition of appropriate sanctions when a public agency fails or refuses to correct a deficiency. If, after giving reasonable notice and an opportunity for a hearing, the DOE determines that a local school district or other public agency has failed to comply with any requirement in the *Administrative Manual for Special Education Services*, the DOE shall:

23.5.4.1 Make no further payments to the district or agency until the DOE is satisfied that there is no longer any failure to comply with the requirement; or

23.5.4.2 Consider its decision in its review of any application made by the district or agency for IDEA-B payments;

23.5.4.3 Or both.

23.5.5 Any school district or other public agency receiving a notice from the Department of Education under 24.5.4 is subject to public notice provisions as required

under 34 CFR 300.196.

23.5.6 If, through its regular monitoring procedures, complaints, hearing results or other sources of information, there is evidence that the district or agency is making special education placements that are inconsistent with 34 CFR 300.550 (Least Restrictive Environment) or federal regulations, the Department of Education shall review the district or agency's justification for its action and shall assist the district or agency in planning and implementing any necessary corrective action.

23.6 Scope of Department of Education Compliant Monitoring Authority

23.6.1 The Department of Education, acting on behalf of the State Board of Education, shall have the authority to conduct monitoring, including collection and use of both off-site and on-site information.

23.6.2 The State Secretary of Education shall have the authority to compel the correction of deficiencies identified in program operations.

23.6.3 The State Secretary of Education shall have the authority to enforce legal obligations.

23.6.4 Department of Education standards relative to special education and related services shall be applicable to, and binding upon, all education programs for children with disabilities administered within the State.

23.7 The Department of Education Methods of Monitoring shall include:

23.7.1 Written monitoring procedures which cover all aspects of State and federal requirements and which are uniformly applied to all public agencies;

23.7.2 Identification of deficiencies in program operations by collecting, analyzing, and verifying information sufficient to make determinations of compliance/non-compliance with State and federal requirements;

23.7.3 Determination of whether or not each educational program for children with disabilities administered within the State, including private schools in which these children are placed by public agencies, meets educational standards of the Department of Education, the requirements of IDEA, Part B, and where applicable, of Educational General Administrative Requirements (EDGAR).

23.7.4 Use of other information provided to the Department of Education through complaints, hearings and court decisions, evaluation and performance reports, and other formally submitted documents to determine if agencies and programs are in need of specific compliance interventions;

23.7.5 Monitoring the implementation of any compliance agreement and the investigation of the implementation of any orders resulting from the resolution of complaints filed with the Department of Education against the agency being monitored;

23.7.6 Use of off-site review, on-site review, letters of inquiry, and follow-up or verification of specific activities;

23.7.7 Written documentation of each monitoring activity through correspondence and reports;

23.7.8 Specification of a reasonable period of time to complete the analysis of information collected for monitoring or evaluation purposes to identify deficiencies of a program or public agency in meeting State and federal requirements and report such deficiencies to the public agency; and, where applicable, of Educational General Administrative requirements (EDGAR);

23.7.9 Specification of a reasonable period of time for reaching a determination that a deficiency in program operations exists, and for notifying the agency in writing if required;

23.7.10 Requirement of a written notice (for example, monitoring report, letter of findings) that:

23.7.10.1 Describes each corrective action which must be taken, including a reasonable time frame for submission of a corrective action plan;

23.7.10.2 Requires that the corrective action plan provide for: the immediate discontinuance of the violation; the prevention of the occurrence of any future violation; documentation of the initiation and completion of actions to achieve current and future compliance; the timeframe for achieving full compliance; and the description of actions the agency must take to remedy the identified areas of non-compliance.

23.7.11 Specification of a reasonable period of time after receiving a corrective action plan from an agency in which the Department of Education shall determine whether the corrective action plan meets each of the requirements or if additional information is required from the agency;

23.7.12 Specification of a reasonable period of time from the date of the original written notice, in which the Department of Education shall determine that:

23.7.12.1 The agency has submitted an acceptable corrective action plan which complies fully with all of the requirements; or

23.7.12.2 Reasonable efforts have not resulted in voluntary compliance.

23.7.13 That a school district or other public agency be given reasonable notice and an opportunity for a hearing with respect to an identified deficiency.

23.7.13.1 If the school district or other public agency declines a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within ten (10) days.

23.7.13.2 If the Department of Education conducts a hearing, the Department of Education shall reach a final decision of compliance or non-compliance within thirty (30) days after the conclusion of the hearing; or

23.7.13.3 If the Department of Education reaches a final decision of non-compliance (i.e., the school district or other public agency has violated State or federal requirements); the Department of Education shall:

23.7.13.3.1 Make no further payments under Part B to the school district or other public agency until the school district or other public agency submits an acceptable corrective action plan;

23.7.13.3.2 Disapprove any pending school district or other public agency Part B local application, when appropriate;

23.7.13.3.3 Seek recovery of funds, and impose any other sanctions authorized by law.

23.8 Comprehensive System of Personnel Development: The Department of Education shall provide opportunities for all public and private institutions of higher education, and other agencies and organizations, including representatives of individuals with disabilities, parent, and other advocacy organizations in the State which have an interest in the education of children with disabilities, to participate fully in the development, review, and annual updating of the Comprehensive System of Personnel Development.

23.8.1 The Department of Education shall conduct an annual needs assessment to determine if a sufficient number of qualified personnel are available in the State, and to determine the training needs of personnel relative to the implementation of federal and State requirements for programs for children with disabilities.

23.8.2 The results of the annual needs assessment shall be used in planning and providing personnel development programs.

23.8.3 The Department of Education shall implement a Comprehensive System of Personnel Development which includes:

23.8.3.1 The in-service and pre-service training of general and special education instruction, related services, and support personnel. Such training shall include training and technical assistance for ensuring that teachers and administrators in all public agencies are fully informed of their responsibilities in implementing the least restrictive environment requirements and other requirements for special education and related services;

23.8.3.2 Procedures to ensure that all personnel necessary to carry out the provision of special education and related services are qualified and that activities sufficient to carry out the personnel development plan are scheduled;

23.8.3.3 Procedures for acquiring and disseminating to teachers and administrators of programs for children with disabilities significant information derived from educational research, demonstration, and similar projects, and for adopting, where appropriate, promising educational practices and materials.

23.8.4 On-going in-service training programs shall be available to all personnel who are engaged in the education of children with disabilities.

23.8.4.1 These programs shall include: (1) use of incentives which ensure participation by teachers, such as released time, payment for participation, options for academic credit, salary step credit, certification renewal, new instructional materials, and/or updating professional skills; (2) involvement of local staff; and (3) use of innovative practices which have been found to be effective.

23.8.5 The Department of Education shall coordinate and facilitate efforts among the Department of Education, districts and agencies, including institutions of higher education and professional associations, to recruit, prepare, and retain qualified personnel, including personnel from minority backgrounds, and personnel with disabilities.

23.8.6 The Department of Education shall coordinate with each district, agency and/or institution of higher education all responsibilities relative to the gathering of data, training, recruitment and retention as delineated in 34 CFR 300.380.

23.8.7 The Department of Education shall disseminate copies of statutes, regulations, and standards applicable to programs for children with disabilities to each local education agency, institution, the GACEC and organization responsible for carrying out the programs.

23.8.7.1 Such dissemination includes each private school and facility to which a public agency has referred a child with a disability.

23.8.7.2 The Department of Education shall disseminate information on significant knowledge derived from educational research and other sources, promising practices, materials, and technology, proven effective through research and demonstration which may be of assistance to LEAs and other agencies in the improvement of education and related services for children with disabilities.

23.8.7.3 The Department of Education shall be responsible for the following dissemination activities:

23.8.7.3.1 Notice of any changes in statutes, regulations, or standards applicable to programs for children with disabilities shall be issued in writing, with copies to the head of each school district or other public agency, to each supervisor of programs for children with disabilities and to institutions of higher education;

23.8.7.3.2 Regular meetings, at least quarterly, of LEA and other agency supervisors of special education programs;

23.8.7.3.3 Learning Resource System publications relative to current issues and promising practices.

23.9 Finance/Administration

23.9.1 Child Count Procedures: The Department of Education shall specify in writing the procedures and forms used to conduct the annual count of children served.

Such procedures and forms shall conform to 34 CFR 300.750 through 300.755 and written instructions received from the Office of Special Education and Rehabilitative Services (OSERS).

23.9.2 Administration of Funds: Funds for the education of children with disabilities shall be administered pursuant to Title 14 of the *Delaware Code*.

23.9.3 Review of LEA Application: The Department of Education shall develop and use a review sheet to document that all required IDEA-B, EDGAR, and State statutes and regulations have been applied to the review and approval of each LEA Application.

23.9.3.1 Each LEA shall be notified in writing, using a standard format of the status of its Application, i.e., approved, not approved, and any conditions which must be met in order for the Application to be approved.

23.9.3.2 All amendments to an LEA Application shall be reviewed and approved using the same requirements and procedures used for an initial Application.

23.9.3.3 In the event that the Department of Education and the LEA cannot negotiate and effect an approved LEA Application, the Department of Education shall notify the LEA in writing ~~of its right to a hearing and the procedures for obtaining a hearing.~~ of its intent to disapprove all or part of the Application. This notice shall also inform the LEA that it is entitled to a hearing before the Department's final decision to disapprove all or part of the Application, and shall advise the LEA of the procedure for requesting a hearing.

23.9.3.3.1 The LEA shall have thirty (30) days to request a hearing, beginning on the date of the Department's notice to the LEA of its right to a hearing. The request for a hearing must be filed in writing with the Delaware Secretary of Education and shall explain why the LEA believes its Application should be approved. 23.9.3.3.2 The LEA shall have access, at a reasonable time and location, to all of the Department's records pertaining to the Application and to the applications of other LEAs.

23.9.3.3.3 The Department shall schedule and conduct a hearing on the record within thirty (30) days of the Secretary's receipt of a hearing request from the LEA.

23.9.3.3.4 No later than ten (10) days after the hearing, the Department shall issue its written ruling, which shall include findings of fact and the reasons for its decision.

23.9.3.3.5 If the Department determines that its intention to disapprove all or part of the Application was contrary to applicable state or federal law, the Department shall rescind its intent to disapprove the Application and shall issue an approval consistent with the requirements of such law.

23.9.3.3.6 If the Department issues a final

disapproval of all or part of the Application, the LEA may appeal that decision to the Secretary of the United States Department of Education. The LEA must file a notice of appeal with the Secretary of the United States Department of Education within twenty (20) days of the final disapproval of the Delaware Department of Education. A copy of the LEA's federal notice of appeal must be filed with the Delaware Department of Education when it is filed with the United States Secretary of Education.

~~23.9.3.4 If, after a hearing, the district or agency application is found to be unapprovable, the district or agency may appeal this finding to the Secretary, U. S. Department of Education. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the Department of Education of the results of the hearing.~~

~~23.9.3.5 The State shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.~~

23.9.3.6 4 An applicant from a district or agency shall include the following information:

23.9.3.6 4.1 A description of how the applicant will meet the federal requirements for participation of children enrolled in private schools.

23.9.3.6.4.2 The numbers of children enrolled in private schools which have been identified as eligible for benefits under the program.

23.9.3.6.4.3 The basis the applicant used to select the children.

23.9.3.6.4.4 The manner and extent to which the applicant complied with Education Department General Administrative Regulations (EDGAR, January 1, 1996, USDE)

23.9.3.6.4.5 The places and times the children will receive benefits under the program.

23.9.3.6.4.6 The difference, if any, between the program benefits the applicant will provide to public and private school children, and the reasons for the differences.

23.9.4 Recovery of Funds for Misclassified Children: A State audit shall be conducted during the month of October to ascertain that units awarded on September 30 are in full operation on or prior to that date with evidence of services being provided. If, during the audit of State units for the education of children with disabilities, it is discovered that a child has been erroneously classified, this discrepancy will be made known to the local education agency and will also be reported to the proper persons at the Department of Education.

23.9.4.1 The specific procedures used in order

to authenticate the count of children will be found in the *Monitor's Handbook for the September Audit and Site Monitoring*.

23.9.4.2 The local education agency will be notified that its Part B grant award has been reduced by an amount equal to that fiscal year's per child allocation for each child determined to have been misclassified.

23.9.4.3 Should discovery of misclassification occur at a time other than during the audit of State units, such as in the fourth quarter of the Grant, the following year's Grant Award shall be reduced accordingly. The task of identifying children who have been misclassified shall not only during the September 30 audit of State units, but during all other IDEA monitoring and evaluation on-site visits as well.

23.10 Other SEA Responsibilities

23.10.1 Ensure Adequate Evaluation: As a means of ensuring adequate evaluation of the effectiveness of the policies and procedures relative to child identification shall:

23.10.1.1 Incorporate within its Comprehensive Compliance Monitoring System process a series of questions about the Childfind activities which will be asked of special and regular education teachers, administrators, related services personnel, Part H personnel and other public agencies;

23.10.1.2 Systematically review each LEA's application for federal funds to ensure that it contains a complete description of the LEA's child identification process;

23.10.1.3 Annually review the child count data to determine trends and anomalies in the types and numbers of children identified.

**Regulatory Implementing Order
1102 Standards for School Bus Chassis and Bodies
Placed in Production on or after March 1, 2002
(Terminology and School Bus Types Are Those Described
in the National School Transportation Specifications and
Procedures (NSTSP), May 2000)**

I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the approval of the State Board of Education to adopt a new regulation on school bus standards, 1102 Standards for School Bus Chassis and Bodies Placed in Production On or After March 1, 2002 (terminology and school bus type are those described in the National School Transportation Specifications and Procedures (NSTSP), May 2000). This regulation is in addition to regulation 1101 Standards for School Buses and provides a second set of standards that apply to buses manufactured after March 2002. The existing regulation

will remain in effect until the buses that this regulation addresses are out of service.

The existing regulation will have a new name to clarify the differences between the two regulations. The name of regulation 1101 will be changed from Standards for School Buses to 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), but all of the content will remain the same.

It is anticipated that additional regulations will be needed at least every five years as new bus chassis and bodies are put into production and then regulations for out-of-use bus chassis and bodies will be repealed.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on July 19, 2001, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. Findings of Facts

The Secretary finds that it is necessary to adopt this regulation because as new buses are manufactured, the standards change for the new models and separate regulations are needed to guide the design of the newer buses.

III. Decision to Adopt the Regulation

For the foregoing reasons, the Secretary concludes that it is necessary to adopt the regulation. Therefore, pursuant to 14 *Del. C.* §2901, the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provisions of 14 *Del. C.* §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set fourth in Section V. below.

IV. Text and Citation

The text of the regulation adopted hereby shall be in the form attached hereto as Exhibit "B," and said regulation shall be cited in the *Regulations of the Department of Education*.

V. Effective Date Of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* §2901, in open session at the said Board's regularly scheduled meeting on September 20, 2001. 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 this 20th day of September 2001.

Department of Education

Valerie A Woodruff, Secretary of Education
Approved this 20th day of September 2001.

State Board Of Education

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Robert J. Gilsdorf
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 August 2001 issue of the Register at page 290 (5 DE Reg. 290). Therefore, the final regulation is not being republished. Please refer to the August 2001 issue of the Register or contact the Department of Education.**

STATE BOARD OF EDUCATION OF THE STATE OF DELAWARE

Order Adopting Regulations

AND NOW, this 20th day of September, 2001, the State Board of Education having adopted its current *Procedures Manual* in September 1998 and revising it in 2000;

AND the *Procedures Manual* containing the rules of practice and procedure used by the State Board, and a description of the State Board's organization, operations and procedures for obtaining information;

AND the State Board now having considered additional minor revisions to the *Manual*;

AND the adoption of the *Procedures Manual* and revisions to it being exempt from the procedural requirements of the *Administrative Procedures Act* pursuant to 29 *Del.C.* §10113,

THE STATE BOARD OF EDUCATION HEREBY ADOPTS THE *PROCEDURES MANUAL* ATTACHED HERETO AS EXHIBIT "A" EFFECTIVE THE AFORESAID DATE.

State Board Of Education

Dr. Joseph A. Pika, President
Jean W. Allen, Vice President
Robert J. Gilsdorf
Mary B. Graham, Esquire

Valarie Pepper
Dennis J. Savage
Dr. Claibourne D. Smith

State Board of Education Procedures Manual

**September 1998
(Revised: October 11, 2001)**

Legal Basis and Related Issues**Statutory Basis**

The State Board exists pursuant to 14 Delaware Code, §104(a), which states the following:

- (a) The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

Board StructureMembership

In accordance with 14 Delaware Code, §104(a), the State Board is composed of 7 members.

Appointment

In accordance with 14 Delaware Code, §104(a), the State Board members are appointed by the Governor and confirmed by the Senate.

Qualifications

The qualifications for membership on the State Board of Education are specified in 14 Delaware Code, §104(d), which states the following:

- (d) The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: At least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this state; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the Board, the President shall be appointed from the State at large, but the

appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex County.

Terms

The President of the Board serves at the pleasure of the Governor (14 Del. C., §104(a)). The terms for the remaining 6 members are “6 years and until his or her successor qualifies.” (14 Del. C., §104(a)). However, §104(f) provides that the “Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members’ terms expire on a rotating annual basis.”

Compensation

The compensation of State Board members is specified in 14 Delaware Code, §104(h), which states the following:

- (h) The members of the Board shall receive \$100 for each day’s attendance at the meetings of the Board not to exceed 24 days’ attendance in any 1 calendar year; and they shall be reimbursed for the actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

Vacancies

“Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify” (14 Del. C., §104(e)).

Powers, Duties and Responsibilities

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in Delaware Code, Title 14. The general powers are specified in 14 Delaware Code, §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the Code, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

- (b) The State Board of Education shall have powers, duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:
 - (1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives,

which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens’ board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

- (2) Provide the Secretary of Education with advice and guidance on the Department’s annual operating budget and capital budget requests;
- (3) Provide the Secretary of Education with guidance in the preparation of the annual report specified in §124 of this title, including recommendations for additional legislation and for changes to existing legislation;
- (4) Provide the Secretary of Education with guidance concerning the implementation of the student achievement and statewide assessment program specified in §122(b)(4) of this title;
- (5) Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall be established by rules and regulations pursuant to §121 (12) of this title;
- (6) Fix and establish the boundaries of school districts, which may be doubtful or in dispute, or change district boundaries as provided in §§1025, 1026, and 1027 of this title;
- (7) Decide on all controversies involving rules and regulations of local boards of education pursuant to §1058 of this title;
- (8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings pursuant to paragraphs (5), (6), and (7) of this subsection;
- (9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary’s decision was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such

cases, the State Board shall set forth in writing the legal basis for its conclusion;

- (10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such regulations are implemented;
- (11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §§121(16) and/or 122(b)(7).

Conduct of Members

Delaware Code, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of “state agency” (29 Del. C., §5804(10)) and the definition of “honorary state official” (29 Del. C., §5804(13)). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

Conflicts of Interest

Section 5805 details the State’s conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest (29 Del. C., §5805(a)). There are also restrictions on representing another’s interest (§5805(b)); against contracting with the State for goods or services (§5805(c)); or for representing or assisting private enterprise within two years after appointed service (§5805(d)). The code of conduct is further detailed in 29 Delaware Code, §5806.

Financial Disclosure

Subchapter II, Chapter 58, 29 Delaware Code contains the requirements for financial disclosure of public officers. Because State Board of Education members are not included in the definition of “public officer” contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute. However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

Dual Compensation

“There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State” (29 Del. C., §5821(a)). The statute prohibits such individuals from receiving dual compensation for their time. Thus, State

Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

Organization

Officers

President

The Governor shall name the President of the Board who shall serve at his/her pleasure (Delaware Code, §104(a)). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board’s progress toward achieving the goals delineated in the five-year plan (See Vision, Mission, and Goals).

Vice President

The Vice President shall be elected at the annual meeting and shall serve until the next annual meeting or until a successor has been named (14 Delaware Code, §105(a)). The Vice President shall assist the President in the duties of the President’s office, as the President may direct, and shall preside at meetings and appoint members of committees during the President’s absence. In the event of the President’s death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

Executive Secretary

Pursuant to 14 Delaware Code, §104(c):

The Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary

of the State Board.

The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

Legal Counsel

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 Delaware Code, §2504. (In accordance with 29 Delaware Code, §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

Staff Assistance

Section 104(c), 14 Delaware Code, provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title ..." In addition, the annual appropriations act provides funding for a single independent staff person to provide support and policy advice to the State Board of Education.

Committees

Subcommittees of the Board

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

Special Board Committees

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

Other Committees

Under Delaware Code, a member of the State Board must serve on each of the following committees:

- Equalization Committee (14 Del. C., §1707(i))
- Higher Education Commission (Executive Order #97, 1991)

- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware (14 Del. C., §5105)

Traditionally, Board members also serve on numerous external boards and committees at both the State and national level. Examples include the following:

- Delaware School Boards Association Board of Directors
- Delaware School Boards Association Legislative Committee
- Education Consortium
- Committees and study groups of the National Association of State Boards of Education
- Education Task Forces and Committees established by Executive Orders and Legislation.

Committees Appointed by the Secretary of Education

In accordance with 14 Delaware Code, §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

Examples of such committees include the Statewide Student Assessment Committee and the DOE Strategic Planning Committee

New State Board Member Orientation

The State Board of Education is responsible for the orientation of new members to the State Board. A subcommittee of the Board shall be responsible for planning the orientation of new members. The Secretary of Education shall be an ex-officio member of this committee.

Board Member Development

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in organizations such as the National Association of State Boards of Education, Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

Self Evaluation

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board.

As part of the self-evaluation, the Board shall conduct

an annual evaluation in at least the following areas:

- roles and responsibilities of Board members;
- Board operations; and
- progress toward achieving Board goals as delineated in the Board's five-year plan.

The Board may seek the input from others regarding the effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

Consultants

The Board may, within available financial resources, hire consultants as needed. The Board shall formally approve the consultant and fee.

State Board Appropriations

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement requests for expenses for conferences or meetings outside the state must be initiated by the Board president. For other expenditures in excess of \$1,000 Board approval is required.

Meetings

Annual Meeting

Pursuant to 14 Delaware Code, §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

Regular Meetings

Regular meetings of the State Board of Education are held once a month in the Cabinet Room of the John G. Townsend Building, Dover. The meetings are normally scheduled on the third Thursday of each month beginning at 2:00 p.m. but may vary as need dictates.

Special Meetings

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

Executive Sessions

The State Board of Education may meet in executive session for the reasons specified in 29 Delaware Code, §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

Board Meeting Procedures

Public Notice of Meetings

As specified in 29 Delaware Code, §10004(e)(1) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the date, time, and place of the meeting. The notice is posted on the bulletin board outside the Cabinet Room of the Townsend Building, Dover.

In addition, notices of all regular meetings are mailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting Dani Moore at the Department of Education. Telephone 302/739-4603. Fax 302/739-7768. Email: damoore@state.de.us

Agenda Format - Order of Business

The order of business for regular meetings is as follows:

- I. Opening
 - A. Call to Order
 - B. Approval of Agenda
 - C. Approval of Minutes
- II. Formal Public Comment
- III. State Board Business
 - A. Reports/Discussions
 - B. Budget Items
 - C. Other
- IV. Presentations
 - A. Department of Education
 - B. Secretary's Report, Review and Discussion
 - C. Other Presentations
- V. Action Items
 - A. Policy, Rules and Regulations
 - B. Higher Education
 - C. Charter Schools
 - D. Other Action Items
 - E. Appeals and Reviews
- VI. Information Items
- VII. Formal Public Comment (if needed)

Agenda Preparation and Dissemination

Items included on the Board's agenda for regular meetings are recommended jointly by the Policy Analyst to the State Board and the Cabinet of the Department of Education. The final agenda is subject to the approval of the Board President. Any member of the Board may request that an item be placed on the agenda.

Agendas with all background materials are distributed to Board members at least 5 days prior to the meeting.

Board agendas are also distributed to district and state officials and to others on a request basis. _

The State Board Agenda is also posted on the Department of Education Web Site prior to the meeting at www.state.doe.de.us.

Rules of Order

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is determined by the Board President with input from other board members and advice from the Board's legal counsel.

Quorum

Four (4) members of the State Board must be present to conduct the business of the Board (14 Delaware Code, §105(a)).

Voting Method

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

Minutes

As prescribed in 29 Delaware Code, §10004(f) the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Highlights of the State Board meetings are available on the Department of Education Website within 10 days of the State Board meeting at www.state.doe.de.us. Official Board Minutes are posted on the web site within five days of their approval at the subsequent monthly meeting of the Board.

Public Participation at Board Meetings

There are three ways that individuals and groups may address the Board at its regular meetings:

1. An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing, and be submitted to the President of the State Board of Education, John G. Townsend Building, 401 Federal Street, Suite 2, P.O. Box 1402, Dover, DE 19903-1402, at least 20 days prior to the meeting. The decision to include the presentation will be made by the Board President. (Such presentations are included in Section IV.C. of the agenda.)

2. Time will be allocated at the beginning of the meeting (Section II) for individuals or groups to address the State Board. Persons wishing to make comments should

sign up on the appropriate form at least 15 minutes prior to the call to order. Each group should choose one representative to speak and comments should be limited to five minutes. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak.

Normally the Board will not respond to questions or comments at the meeting but will respond in writing to each person or group. Written responses will not be made to persons/groups addressing action items on the agenda.

Appeals and Reviews

The State Board of Education has several responsibilities under the Code to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 Delaware Code, §104(b)(5), (b)(6), (b)(7), and (b)(9). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

Policy Development

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy. Subsection 104(b)(1), 14 Delaware Code states:

- (1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section III.A.), presentations from the Department of Education and the Secretary of Education's Report (Sections IV A. and B., respectively) and

for Board action on policy, rules, and regulations (Section V.).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities to obtain advice and counsel from the board as a whole in keeping with the spirit of the statute quoted above.

Appendix A

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each pertinent section of the Code is paraphrased and annotated. A general description of the powers, duties, and responsibilities can also be found in 14 Delaware Code, §104(b), which is quoted in its entirety in the body of this document.

Advisory Board to the Secretary

The State Board shall participate in meetings of the Advisory Board to the Secretary of Education (14 Del. C., §106).

Alternative Assessments

The State Board of Education must approve any alternative assessment administered pursuant to §151(g) and (h) of Title 14 Del. C.

Approval of Charter Schools

The State Board of Education must approve charter schools authorized by the Department (14 Del. C., §503 and §511(c)). The State Board is also involved in any charter revocation under 14 Del. C., §515 and/or §516.

Approval of Rules and Regulations of the Professional Standards Board

The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective (14 Del. C., §1203). Such rules and regulations cover a number of areas including the following:

1. Qualifications and certification of educators in the public schools (14 Del. C., §1092, §1201, §1230, §1260, §1261, §1264(b), and §3310(4)).
2. Establishment of a special institute for teacher certification (14 Del. C., §1250).
3. Regarding alternative routes for teacher certification (14 Del. C., §1230).
4. Regarding the Delaware Performance Appraisal System II (14 Del. C., §1270).
5. Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements (14 Del. C., §1305(l)).
6. Regarding activities that qualify for Additional

Responsibility Salary Supplements (14 Del. C., §1305(m)).

Approval of Regulations of the Higher Education Commission

The State Board of Education must approve rules and regulations promulgated by the Higher Education Commission before they become effective (14 Del. C., §104(b)(12)).

Approval of Rules and Regulations

The State Board of Education must approve rules and regulations promulgated by the Department of Education before they become effective. Such rules and regulations cover a number of areas including the following:

1. Issuance of certificates and diplomas for the public schools (14 Del. C., §122(b)(3)).
2. Statewide assessment of student achievement and the assessment of the educational attainments of the public school system (14 Del. C., §122(b)(4)).
3. Minimum courses of study for all public elementary schools and public high schools (14 Del. C., §122(b)(5)).
4. Licensing of any institution of higher education, public or private, which is not incorporated in the State or is not established according to Delaware law (14 Del. C., §122(b)(7)).
5. Instruction in driver education in the nonpublic high schools (14 Del. C., §122(b)(13)).
6. Statewide student testing program (14 Del. C., §151).
7. Excusal of educational hour requirements specified in 14 Del. C., §1049(1).
8. Enforcement of school attendance laws (14 Del. C., §122(b)(9) and 10 Del. C., §901(14)).
9. Instruction in driver education during summer months (14 Del. C., §122(b)(13)).
10. Conduct of interscholastic athletics (14 Del. C., §122(b)(14)).
11. Mandatory drug and alcohol educational programs (14 Del. C., §122(b)(16)).
12. Operation of adult education and family literacy programs (14 Del. C., §122(b)(17)).
13. Conduct of the teacher scholarship loan program in critical curriculum areas (14 Del. C., §1106) and the student loan program in critical curriculum areas (14 Del. C., §1108).
14. Concerning the employment of school principals (14 Del. C., §1307(2)).
15. Regarding the employment of school nurses (14 Del. C., §1310(b)).
16. Concerning parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board (14 Del. C., §1332(f)).
17. Relating to related services for handicapped students (14 Del. C., §1716A(c) and §1716A(d)).
18. Regarding truancy and excused absences from

school (14 Del. C., §2706(b)).

19. Governing the design and operation of school buses (14 Del. C., §2901), and the transportation of students of nonpublic nonprofit schools (14 Del. C., §2905).

20. Qualifications and certification of vocational educators in the public schools (14 Del. C., §3310(4)).

21. Regarding the creation and operation of programs designed to serve exceptional students, primarily the disabled (numerous citations throughout 14 Del. C., Chapter 31).

22. Regarding the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system (14 Del. C., §4103).

23. Regarding interstate agreements on the qualifications of education personnel (14 Del. C., §8212).

Approval of Shared School Decision Making Grants

The State Board of Education must approve guidelines for district transition grants for shared decision making (14 Del. C., §803(b)); must approve guidelines for school transition grants (14 Del. C., §805(b); and must approve guidelines for school improvement grants (14 Del. C., §806(a)).

Approval of Vocational Centers

The State Board of Education must approve the creation of vocational-technical centers or schools (14 Del. C., §205).

Committee Appointments

The Secretary of Education must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval (14 Del. C., §103(a)(11)).

Critical Curriculum Areas

The State Board of Education must approve areas, which are to be designated as critical curriculum areas (14 Del. C., §1101); approve academic year programs (14 Del. C., §1104); and approve summer inservice programs (14 Del. C., §1105).

Deciding Certain Controversies

The State Board of Education shall decide without expense to the parties concerned certain controversies and disputes involving the administration of the public school system (14 Del. C., §121(12) and 14 Del. C., §104(b)(5)). Rules and regulations regarding such hearings by the Board are contained in Appendix B.

Deciding Controversies Concerning Local Rules and Regulations

The State Board of Education shall decide controversies

involving rules and regulations of local school boards (14 Del. C., §1058).

Drug/Alcohol Education Programs

The State Board of Education must approve of statewide alcohol/substance abuse programs established and implemented by the Department of Education (14 Del. C., §4116(a)).

Employment of Aides in Autistic Program

The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to employ aides in lieu of teachers in the autistic program (14 Del. C., §1332(e)).

Establishment of Programs for the Disabled

The State Board of Education must approve the establishment of schools, classes or programs for the disabled (14 Del. C., §203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721).

Number and Length of School Days

The State Board of Education must approve a reduction in the number of school days and the length of full workdays for employees of the school system (14 Del. C., 1305(i)(j)).

Reorganization of School Districts

The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts for the same. (14 Del. C., §1025, §1026, §1027, §1028, §1065, §1924, and §1925)

Review of Decisions Regarding Exceptional Students

The State Board of Education may review a variety of decisions made by the Department regarding services to disabled students (numerous citations in 14 Del. C., Chapter 31).

Qualifications of Food Service Managers

The State Board of Education must approve the qualifications of food service managers (14 Del. C., §1332(a)).

School Profiles

The State Board of Education appoints members of the School Profiles Advisory Committee, receives recommendations from the Committee.

Standards for Interpreter/Tutors

The State Board of Education must approve standards prescribed for interpreter/tutors (14 Del. C., §1332(a)).

Statewide Programs for the Disabled

The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program (14 Del. C., §1321(e)(15)a.; to administer a program for the physically impaired (14 Del. C., §1321(e)(16)); the establishment of intensive learning centers (14 Del. C., §1321(e)(17)); and the designation of an administering district for the autistic program (14 Del. C., §1332(a)).

Use of Cash Options in Lieu of Salary Funds

The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State (14 Del. C., §1321(e)(11), §1321(e)(12), §1321(e)(15)b., §1321(e)(16), §1332(d), and §1332(e)).

Use of Special Education Funds

The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision (14 Del. C., §1703(o) and §1716A(h)).

Vacancies on Local School Boards

The State Board of Education appoints interim members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies (14 Del. C., §1054).

Waiver of a Regulation

The State Board may, within 30 days or at its next meeting, deny any waiver of a regulation granted by the Department of Education (14 Del. C., §122(g)(2)).

Waiver of Rules Under School Discipline Programs

The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time (14 Del. C., §1606).

Appendix B **Hearing Procedures And Rules**

RULE MAKING HISTORY: Initial adoption date (see Register of Regulations at www.legis.state.de.us/onlinepublications :

1.0 Scope and Purpose of Rules

The State Board of Education ("the State Board") is authorized by several sections of the Education Code (Title 14 of the Delaware Code) to adopt or approve rules and

regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the Delaware Code), except where specifically exempted by other law.

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the State Board in hearings, appeals, and regulatory proceedings.

2.0 General Provisions

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board's statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct prehearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

2.6 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board ("Executive Secretary") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its

own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11 For purposes of these Rules, unless otherwise specified "day" shall mean a calendar day. "Business day" shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

3.0 De Novo and Other Evidentiary Hearings

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

3.2 Petitions for Hearing

3.2.1 A party may initiate a hearing on matters within the State Board's jurisdiction by delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board's authority to decide the matter.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter.

The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

3.4.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to

rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

3.6 Evidence

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

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for the hearing unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board (14 *Del. C.* '1058)¹, and appeals of decisions of the Delaware Secondary School Athletic Association (DSSAA).

4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 "Decision" shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency's conclusion. "Decision" shall not include policy making or the adoption of rules and regulations of future

1. The State Board of Education has held that local boards of education are not subject to the *Administrative Procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board of Education*, SBE No. 99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No. 00-03 (April 3, 2000).

applicability.

4.3 For purposes of determining the State Board's jurisdiction under Section 1058 of the Education Code, "controversies involving the rules and regulations of the school board" shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student's record has been denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or nonrenewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

4.4 Notice of appeal

4.4.1 A party may initiate an appeal by filing a notice of appeal with the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party's authorized representative), and shall be delivered to the Executive Secretary by registered or certified mail.

4.4.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

4.4.3 The notice of appeal must be postmarked within thirty (30) days of the receipt of the written notice of the decision from which the appeal is taken.

4.4.4 A copy of the notice of appeal shall be sent to the agency which made the decision at the same time the original notice of appeal is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board shall be provided to all parties to the proceeding at the time of filing.

4.4.5 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Secondary School Athletic Association (DSSAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.4.6 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student

disciplinary decision or a decision of DSSAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

4.5 The record on appeal

4.5.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.5.2 The record shall include the agency's written decision, a certified copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a certified, verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

4.5.3 If a certified transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

4.6 Proceedings on appeal

4.6.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.6.2 Written statements of position and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.6.3 The written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

4.6.4 Oral argument

4.6.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of

appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted.

4.6.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.6.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.6.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.6.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

4.7 Standard and Scope of Review

4.7.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.7.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

4.8 State Board Decision

4.8.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date

or the filing of any post argument submissions.

4.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.8.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.9 Student Discipline Appeals

4.9.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.9.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's Administrative Manual for Special Education Services. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.9.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the Administrative Manual for Special Education Services. The State Board of Education will not review such determinations.

5.0 Public Regulatory Hearings

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

5.3 Creation of record of public hearing

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

5.4 Subpoenas

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

5.5 Documents

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

5.6 Witnesses

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in

their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

Note 1: The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve) regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del. C. '105(b)

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature of the Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services initiated proceedings to add new policy to the Division of Social Services Manual, Sections 2002.1.1: regarding case closures for the Cash Assistance Program, Food Stamps Program, and Medical Assistance Programs and in Section 2002.1.2: re-numbered change of address case processing instructions to appear after the policy on case closures; this is a housekeeping change. 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 August, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings of Fact

The Department finds that the proposed changes as set forth in the August, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations regarding case closures and change of address case processing instructions are adopted and shall be final effective October 10, 2001.

September 14, 2001

Vincent P. Meconi, Secretary, DHSS

DSSM 2002.1.1 Case Closures:

For Cash Assistance and Food Stamps:

The Division can terminate benefits if, based on reliable information, the following is true:

- All members of an assistance group/household have died; or
- All members of an assistance group/household have moved from Delaware; or
- DSS mail has been returned by the post office indicating no known forwarding address.

For Medical Assistance:

The Division can terminate benefits for an individual if, based on reliable information, the following is true:

- The member of the assistance group has died; or
- The member of the assistance group has moved from Delaware; or
- DSS mail has been returned by the post office indicating no known forwarding address

DSSM 2002.1.2 Change of Address Case Processing Instructions**DIVISION OF SOCIAL SERVICES**

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

ORDER**Nature Of The Proceedings**

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the above-referenced sections

of the Division of Social Services Manual. Changes are being made in the Food Stamp Program Policies as a result of the following rule: Food Stamp Program: Noncitizen Eligibility, and Certification Provisions of PL 104-193, as amended by PL 104-208, 105-33 and 105-185, Final Rule. This rule implements several provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and amended by the Omnibus Consolidated Appropriations Act of 1997 (OCA), the Balanced Budget Act of 1997 (BBA), and the Agricultural Research, Extension and Education Reform Act of 1998 (AREERA).

Summary Of Changes

- Medicaid only cases closed in Medicaid (due to agreement with HMOs) are not eligible for Emergency Assistance Services.
- Reorganizes policy language regarding citizenship and alien status for ease of reading, clarifies policy on military connection and 40 quarters of coverage eligibility criteria, add non-citizen nationals to list of eligible aliens.
- Adds individuals convicted of drug felonies and time-limited adults to list of non-household members.
- Reorganizes section on authorized representatives for ease of reading, allows authorized representatives to report household changes, requires drug/alcohol center authorized representatives to be prosecuted if drug/alcohol center's authorized representative intentionally misrepresent household circumstances.
- Defines definition of work and good cause for time-limited able-bodied adults, expands the allowable exemptions, and requires the reporting of hours for time-limited adults and counting their income and resources.
- Agency cannot impose additional application requirements as condition of food stamp eligibility.
- Allows filing of applications and signatures by fax or other electronic transmissions, and must encourage households to file application for food stamps when they express concerns about food insecurity.
- Requires agency to provide assistance if there is a question as to the household's refusal of or failure to cooperate.
- Requires workers to explore and resolve incomplete and unclear information with households and to schedule interview for applicants not interviewed the same day they file application in the office.
- Requires agency to give households at least ten days to provide verifications
- Revises verification procedures for alien eligibility
- Requires time-limited able-bodied adults to verify work hours and countable months from other states.

- Allows a statement from a third party that an individual is a US citizen or non-citizen national if normal verifications are not available.
- Requires agency to only disclose information absolutely necessary to get information from collateral contacts, to not disclose that households are applying for food stamps.
- Households who are error prone do not necessarily constitute a lack of verification in order to require a home visit.
- Allows households to supply documents by fax.
- Requires time-limited able-bodied adults' work hours to be verified at recertification.
- Allows agency to deny on the 30th day after application if household misses an interview and does not contact agency to pursue application.
- States if household misses 1st interview, fails to schedule 2nd one or postpones until after 30th day, delay is household's fault.
- Adds individuals disqualified for drug related felony to list of those who cannot be categorically eligible.
- Removes sponsor deeming language and refers to 9081.2.
- Excludes certain diversion payments as income and revises language for energy assistance for ease of reading.
- Allows cost-sharing or spend down expenses incurred by Medicaid as allowable medical expenses, allows well and septic tank maintenance as utility expenses.
- Clarifies the term "initial" month for migrant and seasonal farmworkers.
- Revises guidelines for assigning certification periods, restricts shortening certification periods by using the notice of expiration, allows lengthening certification periods not to exceed 12 months in total.
- Reorganizes section on self-employment income for ease of reading, allows payments on principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods.
- Requires the counting of all the income and resources for individuals disqualified for drug felonies and requires prorating the income and counting the full resources of time-limited able-bodied adults.
- Allows group living arrangement staff to determine whether or not a resident can handle his/her own affairs as far as applying for food stamps, must use food stamps for food prepared and served to those residents who participate in FS.
- Revises definition of sponsored alien.
- Reorganizes section on sponsor deeming for ease of reading and sponsor deeming is not used for ineligible sponsored aliens.

- Revises the rule about the reduction of public assistance benefits to allow for the ban on increasing the food stamps to end when the public assistance case closes.
- Requires time-limited able-bodied adults to report changes in work hours when decreased below 20 hours per week.
- Sets procedures for handling delays in processing recertifications, no proration of benefits if verification period extends past end of certification period.

Summary Of Text Added At The Time The Final Order Is Issued

9082 Reduction of Public Assistance Benefits [273.1.1(j)]

- Supplemental Security Income (SSI) should not have been included. It is not considered a means-tested program for the purposes of this provision.
- Sanctions will not apply to closed cases. The phrase "third permanent sanction" was used instead of "closed cases" because some sanctions are not third strikes.

and

9042.2 Categorically Eligible Households

- Food and Nutrition Services has clarified that households are not considered categorically eligible if any individuals are disqualified for IPVs (Intentional Program Violators).

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 August, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the August, 2001 Register of Regulations should be adopted, as herein revised.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Food Stamp Program are adopted, as herein revised, and shall be final effective October 10, 2001.

September 14, 2001

Vincent P. Meconi, Secretary, DHSS

6002 Eligibility

Delaware residents may participate in the Emergency Assistance Program if:

1) Individual/Family is in receipt of or eligible for the following:

- a. Public Assistance receiving households (DABC, GA, SSI);
- b. 1931; Grant/Payment related Medicaid (DABC/GA/SSI) including Transitional, and Prospective Medicaid*; and
- c. Poverty-related Pregnant Women, Infants and Children Medicaid*;
- e. Poverty-related children's Medicaid; and
- ed. General Assistance Recipients who do not get Medicaid*.

* Due to a special arrangement with the Managed Care Organizations (MCO), individuals may receive a Medicaid card from their MCO for up to six months after they are closed in Medicaid. These individuals are not eligible for the Emergency Assistance Program.

OR

2) A. Family has children at risk of removal or removed from their home due to, or suspected at risk of, abuse or neglect; or

3) B. Family has children removed from, or at risk of removal from, the community.

9007.1 Citizenship and alien status ~~Citizens and Qualified Aliens~~ (273.4)

Household members meeting citizenship or alien status requirements ~~Citizens and qualified aliens~~

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

1. Persons born in the 50 states and the District of Columbia, Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands. Children born outside the United States are citizens if at least one of the ~~both~~ parents is a ~~are~~ citizens;

2. Naturalized citizens or a United States non-citizen national (person born in an outlying possession of the United States, like American Samoa or Sawin's Island, or whose parents are U. S. non-citizen nationals.

3. Individuals who are:

(A) An American Indian born in Canada who possesses at least 50 per centum of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act (INA) apply;

(B) A member of an Indian tribe as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act which is recognized as eligible for the special programs and services provided by the U. S. to Indians because of their status as Indians;

(C) Lawfully residing in the U. S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to U. S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975;

(i) The spouse or surviving spouse of such Hmong or Highland Laotian who is deceased, or

(ii) An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 22; an unmarried child under the age of 18 or if a fulltime student under the age of 22 of such a deceased Hmong or Highland Laotian provided that the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent prior to the child's 18th birthday.

~~3-4. Individuals who are~~ The following aliens are eligible indefinitely due to being:

(A) lawfully admitted for permanent residence (LPR) who can be credited with 40 quarters of work as determined under Title II of the Social Security Act, including qualifying quarters of work not covered by Title II of the Social Security Act, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of an alien during their marriage if they are still married or the spouse is deceased. A spouse cannot get credit for quarters of coverage of a spouse when the couple divorces before a determination of eligibility is made. If a determination of eligibility has been made based on the quarters of coverage of a spouse, and the couple later divorces, the alien's eligibility continues until the next recertification. At that time, eligibility is determined without crediting the alien with the former spouse's quarters of coverage. (Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter. A parent's or spouse's quarter is not creditable if the parent or spouse received any Federal means-tested benefits or actually received food stamps in that quarter. If an alien earns the 40th quarter of coverage before applying for food stamps or any other Federal means-tested benefit in that same quarter, all that quarter toward the 40 qualifying quarters total.);

(B) lawfully in US on 8/22/96 and is now under 18 years of age;

(C) lawfully in US on 8/22/96 and is now receiving disability disabled or blind (~~Must be receiving~~ payments listed under DSSM 9013.1);

(D) lawfully in US and 65 or older on 8/22/96 (born on or before 8/22/31).

(E) An alien with one of the following military connections:

(i) A veteran who was honorably discharged for reasons other than alien status, who fulfills the minimum active-duty service requirements of 38 U.S.C. 5303A(d), including an individual who died in active military, naval or air service;

(ii) A veteran includes an individual who served before July 1, 1946, in the organized military forces of the Government of the Commonwealth of the Philippines while such forces were in the service of the Armed forces of the U. S. or in the Philippine Scouts, as described in 38 U.S.C. 107;

(iii) An individual on active duty in the Armed Forces of the U.S. other than for training; or

(iv) The spouse and unmarried dependent children (legally adopted or biological) of a person described above in (i) through (iii), including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried child for the purposes of this section is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday.

~~military connection (veteran, active duty, spouse, and children) as defined below;~~

~~Aliens who are lawfully residing in any state and are:~~

~~a-) Veterans honorably discharged for reasons other than alienage, and who fulfills the minimum active-duty service requirements of 24 months or the period for which the person was called to active duty, including military personnel who die during active duty service;~~

~~b-) Individuals on active duty, other than active duty for training; or~~

~~e-) Spouses and/or any unmarried dependent children of #a or #b, and or the unremarried surviving spouse of an individual who is deceased if the marriage lasted for at least one year, or was married before the end of a 15-year time span following the end of the period of military service in which the injury or disease was incurred, or married for any period of time if a child was born of the marriage or was born before the marriage;~~

~~4.5. The following aliens are eligible to participate in~~

~~the Food Stamp program with a seven-year (7) time limit:~~

~~(A) refugees admitted under section 207 of the INA Act;~~

~~(B) asylees admitted and granted asylum under section 208 of the INA Act;~~

~~(C) aliens whose deportation or removal has been withheld under section 241(b)(3) and 243 (h) of the INA Act.~~

~~(D) Cuban and Haitians admitted under section 501(e) of the Refugee Education Act of 1980; and~~

~~(E) Amerasians admitted under Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998.~~

~~The seven-year (7) time limit begins from the date they obtained their alien status, (was granted asylum, was admitted as a refugee, from the date the deportation or removal was withheld).~~

~~5-6. An alien who has been battered or subjected to extreme cruelty in the U. S. by a spouse or a parent or by a member of the spouse or parent's family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered. A battered spouse or battered child, or parent or child of a battered person with a petition pending under 203(a)(1)(A) or (B) or 244(a)(3) of INA.~~

~~Only eligible if a veteran or on active duty in U.S. armed forces (or spouse or unmarried dependent child of veteran or person on active duty) or lawfully in US on 8/22/96 and under 18 years of age; lawfully in US on 8/22/96 and disabled or blind; or lawfully in US and 65 or older on 8/22/96.~~

~~6. The following aliens may be eligible even if they are not qualified aliens and may be eligible for an indefinite period of time:~~

~~- Certain Hmong or Highland Laotians, and spouse and children. Many are admitted as refugees.~~

~~- American Indians born in Canada to which section 289 of INA applies, and members of Indian tribe as defined in section 4(e) of Indian Self-Determination and Education Assistance Act. (Cross border Indians)~~

9013.2 Non-Household Members

[273.1(b)]

For the purposes of defining a household under the provisions of this section, the following individuals will not be included as a member of the household unless specifically included as a household member under the special definition at DSSM 9013.1. If not included as a member of the household under the special definition, such individuals will not be included as a member of the household for the purpose of determining household size, eligibility or benefit level. The income and resources of such individuals will be handled in accordance with DSSM 9077. The following

individuals (if otherwise eligible) may participate as separate households:

- 1) Roomers to whom a household furnishes lodging, but not meals, for compensation.
- 2) Live-in attendants who reside with a household to provide medical, housekeeping, child care or similar personal services.
- 3) Other individuals who share living quarters with the household, but who do not customarily purchase food and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent, but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.

Some household members are ineligible to receive Program benefits under the provisions of the Food Stamp Act (such as certain aliens and certain students). Others may become ineligible for such reasons as being disqualified for committing an intentional Program violation or refusing to comply with a regulatory requirement. These individuals must be included as a member of the household for the purpose of defining a household under the definition in DSSM 9013.1. However, such individuals must not be included as eligible members of the household when determining the household's size for the purpose of comparing the household's monthly income with the income eligibility standard or assigning a benefit level by household size. The income and resources of such individuals will be handled in accordance with DSSM 9076. These individuals are not eligible to participate as separate households.

Ineligible individuals include the following:

- 1) Ineligible students who do not meet the eligible student requirement of DSSM 9010.
- 2) Ineligible aliens who do not meet the citizenship or eligible alien status requirements of DSSM 9032 or the eligible sponsored alien requirements of DSSM 9081.
- 3) Individuals disqualified for intentional Program violation per DSSM 2023.
- 4) Individuals disqualified for failure to provide a SSN per DSSM 9032.1.
- 5) Individuals who do not attest to their citizenship or alien status as required on the Form 100 application form.
- 6) Individuals found guilty of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive the multiple benefits at the same time per DSSM 2024.
- 7) Individuals who are fleeing prosecution or custody for a felony or probation/parole violators per DSSM 2025.
- 8) Individuals convicted of trafficking food stamps of \$500 or more per DSSM 2026.
- 9) Individuals ineligible due to work requirements per DSSM 9018.
- 10) Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027.

11) Individuals ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.

9016 Authorized Representatives

~~{273.1(f)}~~ [273.2(n)]

~~{274.5}~~

~~The head of household, spouse, or any other responsible member of the household may designate an authorized representative to act on behalf of the household in:~~

- ~~Making application for the Program,~~
- ~~Obtaining benefits, and/or~~
- ~~Using benefits at authorized firms.~~

~~An authorized representative may be designated to obtain coupons. The designation should be made at the time the application is completed so that the name of the authorized representative appears on the ID card. The authorized representative for coupon issuance may be the same individual designated to make application for the household or may be another individual. Even if a household member is able to make application and obtain benefits, encourage the household to name an authorized representative for obtaining coupons in case of illness or other circumstances which might result in an inability to obtain benefits.~~

~~Ensure that authorized representatives are properly designated. The name of the authorized representative should appear in the casefile.~~

Representatives may be authorized to act on behalf of a household in the application process, in obtaining food stamp benefits, and in using food stamp benefits.

9016.1 Do Not Limit the Number of Households an Authorized Representative May Represent Application processing and reporting.

~~In the event employers, such as those employing migrant/seasonal farmworkers, are designated as authorized representatives or that a single authorized representative has access to a large number of authorization documents or coupons, exercise caution to assure that:~~

- ~~Each household has freely requested the assistance of the authorized representative,~~
- ~~The household's circumstances are correctly represented,~~
- ~~The household is receiving the correct amount of benefits, and~~
- ~~The authorized representative is properly using the benefits.~~

~~Unless DSS determines that no other representative is available, the following persons should not serve as authorized representatives:~~

- ~~DSS employees involved in the eligibility determination,~~
- ~~Employees of authorized food firms and meal services that are authorized to accept food coupons.~~

An individual disqualified for fraud cannot serve as an authorized representative during the period of disqualification unless the individual is the only adult in the household and DSS is unable to arrange for another authorized representative. Make a case-by-case determination as to whether these individuals are needed to:

- Apply on behalf of the household;
- Obtain coupons for the household, and
- Use the household's coupons to purchase food.

In the event that the only adult living with a household is classified as a non-household member per DSSM 9013.2, that individual may serve as an authorized representative for the minor household members.

Drug or alcohol treatment centers must receive and spend the food stamp benefits for food prepared by and/or served to the participating center residents.

The head of a group living arrangement acting as the authorized representative for the residents can either receive and spend the resident's benefits for food prepared by and/or served to each eligible resident, or allow each resident to spend all or any portion of the benefits on his/her own behalf. Do not authorize meal providers for the homeless as authorized representatives.

Inform applicants that a nonhousehold member may be designated as the authorized representative for application processing purposes. The authorized representative may carry out household responsibilities during the certification period such as reporting changes in the household's income or other circumstances. Inform the household that the household will be held liable for any overissuances that results from erroneous information given by the authorized representative.

A nonhousehold member may be designated as an authorized representative for the application process provided that the person is an adult who is sufficiently aware of relevant household circumstances. The authorized representative designation must be made in writing by the head of the household, the spouse, or another responsible member of the household. DSSM 9016.4 contains more restrictions on who can be designated an authorized representative.

Residents of drug or alcohol treatment centers must apply and be certified through the use of authorized representatives in accordance with DSSM 9078.1.

Residents of group living arrangements have the option to apply and be certified through the use of authorized representatives in accordance with DSSM 9078.2.

9016.2 Emergency Authorized Representatives Obtaining food stamps benefits.

A household may designate an emergency authorized representative to obtain the household's allotment when none of the persons specified on the ID card are available.

A document with the signature of the emergency

authorized representative and the signature of the household member named on the ID card is required. The household member's signature designates the emergency authorized representative and attests to the signature of the emergency authorized representative. The designation may be on the ATP document or on a separate form. Do not require the household to travel to a DSS office to execute an emergency designation.

The emergency authorized representative must present a separately written and signed statement from the head of the household or his/her spouse authorizing the issuance of the certified household's food stamps to the authorized representative. The emergency representative must sign the written statement from the household and present the statement and the household's ID card to obtain the allotment. A separate written designation is required each time an emergency representative is authorized.

The cashier at the issuing bank will compare the signatures on the ATP and on the ID card. If they do not match, benefits will not be issued. The cashier will record the serial number of the ID card on the ATP.

If the ID card appears to be mutilated or altered, coupons will not be issued until the household obtains a replacement ID card from the Division.

Periodically, the State Office will conduct reviews to determine that these authorized representatives are handling coupons or ATP's in conformance with these regulations.

An authorized representative may be designated to obtain benefits. Encourage households to name an authorized representative for obtaining benefits in case of illness or other circumstances which might prevent the household from obtaining their benefits. The name of the authorized representative must be recorded in the household's case record and on the food stamp identification (ID) card.

The authorized representative for obtaining benefits may or may not be the same individual designated as an authorized representative for the application process or for meeting reporting requirements during the certification period.

When a household needs someone to obtain their food stamp benefits for a particular month, the household may designate an emergency authorized representative. The emergency authorized representative is designated to obtain the household's allotment when none of the persons specified on the ID card are available.

Form 105, Emergency Authorized Representative Designation Form, is used by the household to designate an emergency authorized representative. DSS will fill out and send the Emergency Authorized Representative Designation Form to the client when requested. Do not require households to come into the office to get the Emergency Authorized Representative Designation Form.

The designated emergency authorized representative

must present the form that contains the signature of the household member on the ID card and the signature of the emergency authorized representative and the food stamp ID card to the food stamp issuance site. The form must be signed by both the household member and the designated emergency authorized representative before going to the issuance site. A separate written designation is required each time an emergency representative is authorized.

The issuance site teller will compare the signatures on the Emergency Authorized Representative Designation Form and on the ID card. If they do not match, benefits will not be issued. If the ID card appears to be mutilated or altered, coupons will not be issued until the household obtains a replacement ID card from the Division.

9016.3 Drug Addict, Alcoholic Treatment Centers and Group Homes as Authorized Representatives Using benefits.
[273.1(f)(2)]

Narcotic addicts or alcoholics who regularly participate in a drug or alcoholic treatment program on a resident basis and disabled or blind residents of group living arrangements who receive benefits under Title II and Title XVI of the Social Security Act may elect to participate in the Food Stamp Program.

The residents of drug or alcoholic treatment centers must apply and be certified for Program participation through the use of an authorized representative who is an employee of and designated by the publicly operated community mental health center or the private non-profit organization or institution that is administering the treatment and rehabilitation program.

All of the residents of the group living arrangements do not have to be certified either through an authorized representative or individually in order for one or the other method to be used.

The center will receive and spend the coupon allotment for food prepared by and/or served to the addict or alcoholic and will be responsible for complying with the requirements set forth in DSSM 9078.

Residents of group living arrangements must either apply and be certified through use of an authorized representative employed and designated by the group living arrangement or apply and be certified on their own behalf or through an authorized representative of their own choice. The group living arrangement will determine if any resident may apply for food stamps on his/her own behalf. The determination should be based on the resident's physical and mental ability to handle his/her own affairs.

If the residents are certified on their own behalf, the coupon allotment may either be returned to the facility to be used to purchase food for meals served either communally or individually to eligible residents; used by eligible residents to purchase and prepare food for their own consumption; and/or to purchase meals prepared and served by the group

living arrangement. The group living arrangement is responsible for complying with the requirements set forth in DSSM 9078.

If the group living arrangement has its status as an authorized representative suspended by FNS (see DSSM 9078) residents applying on their own behalf will still be able to participate if otherwise eligible.

A household may allow any household member or nonmember to use its ID card and benefits to purchase food or meals, if authorized, for the household. Drug or alcohol treatment centers and group living arrangements which act as authorized representatives for residents of the facilities must use food stamp benefits for food prepared and served to those residents participating in the Food Stamp Program, except when residents leave the facilities as provided in DSSM 9078.1.

9016.4 Restrictions on designations of authorized representatives. Applying to Authorized Representatives
[273.1(f)]
[274.5(a)]

DSS must restrict the use of authorized representatives for purposes of application processing and obtaining food stamp benefits as follows:

1. DSS employees who are involved in the certification and/or issuance processes and retailers that are authorized to accept food coupons may not act as authorized representatives without the specific written approval of the Operations Administrator and only if the Operations Administrator determines that no one else is available to serve as an authorized representative.

2. Individuals disqualified for an intentional Program violation cannot act as authorized representatives during the period of disqualification unless the individual disqualified is the only adult member of the household able to act on its behalf and the agency has determined that no one else is available to serve as authorized representative. In this case it will be determined whether the authorized representative is needed to apply on behalf of the household, or to obtain benefits on behalf of the household, coupons, and to use coupons. Each of these duties will be examined separately and only those duties which cannot be performed by the household or a qualified authorized representative will be assigned to the disqualified member of the household.

3. Homeless meal providers may not act as authorized representatives for homeless food stamp recipients. A "homeless meal provider" is a public or private nonprofit establishment (e.g., soup kitchen, temporary shelter) approved by DHSS, that feeds homeless persons.

4. If DSS determines that an authorized representative has knowingly provided false information about household circumstances or has made improper use of coupons, it may disqualify that person from being an authorized representative for up to one year. DSS will send written

notification to the affected household(s) and the authorized representative 30 days prior to the date of disqualification. The notification must specify the reason for the proposed action and the household's right to request a fair hearing. This provision is not applicable in the case of drug and alcoholic treatment centers and those group homes that act as authorized representatives for their residents. However, drug and alcohol treatment centers and the heads of group living arrangements that act as authorized representatives for their residents, and which intentionally misrepresent households circumstances, may be prosecuted under applicable Federal and State statutes for their acts.

There is no limit on the number of households an authorized representative may represent.

In the event that employers, such as those that employ migrant or seasonal farmworkers, are designated as authorized representatives or if any one authorized representative has access to a large number of coupons ATP's, caution should be exercised to assure that the household has freely requested the assistance of the authorized representative, the household's circumstances are correctly represented, and the household is receiving the correct amount of benefits. ~~DSS should make sure, and~~ that the authorized representative is properly using the coupons.

Any suspected improper use should be reported to the Chief Social Service Administrator, ~~Policy and Program Development Implementation~~ Unit, who will in turn report the circumstances to FNS for investigation.

9018.2 Time limit for Able-bodied Adults Work Requirement for Able-Bodied Adults Without Dependents Effective November 22, 1996

Individuals are ineligible to continue to receive food stamps if, during the preceding 36-month period they received food stamps at least three (3) months (consecutive or otherwise) while they did not either:

- work at least 20 hours per week (averaged monthly which means 80 hours a month); or
- participate in a work program at least 20 hours per week (averaged monthly); or
- ~~participates in and complies in a work supplementation program; or~~ work and participate in a work program for any combination of hours that totaled 20 hours per week; or
- participate and comply in a workfare program.

Definitions

Work is defined as:

- Work in exchange for money;
- Work in exchange for goods or services (in-kind work);
- Unpaid work, which is verified; or
- Any combination of the above definitions.

~~paid or non-paid employment, including volunteer work.~~

Qualifying work programs include programs under:

- ~~Workforce Investment Act Job Training and Partnership Act (JTPA);~~
- Trade Adjustment Assistance Act; or
- Employment and Training (except for job search or job search training programs).

Good Cause

If the individual would have worked an average of 20 hours per week but missed some work for good cause, the individual shall be considered to have met the work requirements if:

- the absence from work is temporary; and
- the individual retains his or her job.

Good cause shall include circumstances beyond the individual's control, such as:

- illness;
- illness of another household member requiring the presence of the member;
- a household emergency; or
- the unavailability of transportation.

Exemptions

Individuals are exempt from this work requirement if ~~he or she~~ the individual is:

- Under 18 or over 50 years of age; (The month after an individual turns 18 will be the first month the individual must start meeting the work requirements. The month an individual turns 50 years of age will start the exemption.)
- Medically certified as physically or mentally unfit for employment, ~~which requires a medical form; A person is medically certified as physically or mentally unfit for employment if he or she:~~
 - Is receiving temporary or permanent disability benefits issued by governmental or private sources,
 - Is obviously mentally or physically unfit for employment; or
 - Provides a statement from a physician, physician's assistant, nurse, nurse practitioner, designated representative of the physician's office, a licenses or certified psychologist, a social worker, or any other medical personnel, that he or she is physically or mentally unfit for employment;
- A parent (natural, adoptive, or step) ~~or other household member with responsibility for a dependent child under the age of 18. (The exemption for non-parents will require a statement about the responsibility).~~ of a household member under age 18, even if the household member who is under 18 is not eligible for food stamps;
- Is residing in a household where a household member is under age 18, even if the household member who is under 18 is not eligible for food

stamps;

- Is pregnant (any trimester); or
- Is otherwise exempt from work requirement under DSSM 9018.3.

Regaining Eligibility

Individuals denied eligibility under this work requirement, or who would have been denied under this work requirement if they had reapplied, can regain eligibility if during a 30-day consecutive period the individual:

- works (paid or non-paid) for 80 hours or more;
- participates in and complies with a work program, as described above, for 80 hours or more; or
- participates in and complies in a work supplementation program; any combination of work and participation in work program for a total of 80 hours; or
- participates in a workfare program, or
- becomes exempt.

Individuals who regain eligibility based on the requirements above will remain eligible as long as they meet the above requirements.

Individuals who lose their employment or cease participation in work or work supplementation programs may continue to receive food stamps for up to three (3) consecutive months beginning from the date DSS is notified that work has ended.

The only remaining cure during the 36-month period is for the individual to:

- comply with the work requirements of this section; or
- to become exempt under other provisions of the requirement.

Treatment of Income and Resources

The income and resources of an individual made ineligible due to the time limit shall be handled according to DSSM 9076.2.

Benefits Received Erroneously

If an individual subject to the time limit receives food stamp benefits erroneously, consider the benefits to have been received unless or until the individual pays it back in full.

Verification

Verification is handled according to DSSM 9032.16 and DSSM 9038.

Reporting Requirements

Individuals subject to the time limit must report changes in work hours below 20 hours per week, averaged monthly.

Any work performed in a job that was not reported will

be counted as work when determining countable months.

Countable Months

Countable months are months during which an individual receives food stamps for the full benefit month while not:

- exempt;
- meeting the work requirements;
- receiving prorated benefits.

9027 Application Processing

[273.2(a)]

DSS will provide timely, accurate, and fair service to applicants and recipients of the Food Stamp Program. DSS will not impose additional application or application processing requirements as a condition of eligibility.

The application process includes filing and completing an application form, being interviewed, and having certain information verified. Prompt action will be taken on all applications and food stamp benefits retroactive to the period of application will be provided to those households that have completed the application process and have been determined eligible. Expedited service will be available to households in immediate need.

9028 Filing an Application

[273.2(c)]

Households must file a food stamp application by submitting the form to a certification office either in person, through an authorized representative, by fax or other electronic transmission, or by mail, or by completing an on-line electronic application. Applications signed through the use of electronic signature techniques or applications containing a handwritten signature and then transmitted by fax or other electronic transmission are acceptable. DSS must document the date the application was filed by recording the date of receipt at the local office.

The length of time DSS has to deliver benefits is calculated from the date the application is filed in the food stamp claim office designated to accept the household's application, except when a resident of a public institution is jointly applying for SSI and food stamps prior to his/her release from an institution in accordance with DSSM 9015. Certify residents of public institutions who apply for food stamps prior to their release from the institution in accordance with DSSM 9039 or DSSM 9041, as appropriate. The date received will be documented on the application.

Each household has the right to file, and should be encouraged to file an application form on the same day it contacts any food stamp office during office hours and expresses interest in obtaining food stamps or expresses concerns which indicate food insecurity. in the project area in which it resides. Mail an application form the same day households request food stamp assistance either by

telephone or written notice. Advise the household that it does not have to be interviewed before filing the application and may file an incomplete application form as long as the form contains the applicant's name and address, and the signature of a responsible household member or the household's authorized representative. Where there is more than one certification office in a project area, any office must accept applications when filed, but must subsequently refer the household to the proper office for the eligibility determination. Mail applications received in the wrong office to the correct office the same day.

Applications filed at incorrect office locations are considered filed and the receiving office will forward the application to the correct office. If the household is eligible for expedited services, the receiving office will fax the application and proof of identity to the correct office and alert the office by phone about the fax. The correct office will issue the expedited benefits and, if necessary, schedule an appointment for an interview.

When a resident of an institution is jointly applying for SSI and food stamps prior to leaving the institution, the filing date of the application to be recorded by DSS on the application is the date of release of the applicant from the institution.

Have application forms readily accessible to potentially eligible households in each regional office and provide them to those groups and organizations involved in outreach efforts. DSS will provide a means for applicants to immediately begin the application process with name, address, and signature by having applicants complete and sign a copy of the on-line Referral for Assistance or the first page of the hard-copy application. Households that complete an on-line electronic application in person have the opportunity to review the information that has been recorded electronically and to receive a copy for their records.

When a household contacts the wrong certification office in person or by telephone, the household will be given the address and phone number of the correct office. The office contacted in person will provide the household an opportunity to file an application that same day. The office will forward the application to the correct office the same day. If the household has mailed its application to the wrong certification office, forward it to the proper office on the same day.

Provide each household at the time of application for (re)-certification with a notice (Form 105) that informs the household of the verification requirements the household must meet as part of the application process. The notice must also inform the household of the Division's responsibility to assist the household in obtaining required verification provided the household is cooperating as specified in DSSM 9029.

9029 Household Cooperation

[273.2(d)]

To determine eligibility, the application form must be completed, the household or its authorized representative must be interviewed, and certain information on the application must be verified. If the household refuses to cooperate in completing this process, the application will be denied at the time of refusal.

To be denied, the household must refuse to cooperate, not merely fail to cooperate or be unable to do so. For a determination of refusal to be made, the household must be able to cooperate, but clearly demonstrate that it will not take actions that it can take and that are required to complete the application process.

The household shall be determined ineligible if it refuses to cooperate in any subsequent review of its eligibility. A subsequent review of eligibility includes, but is not limited to, reviews generated by reported changes, applications for recertifications, reviews of cases certified under disaster food stamp procedures and current eligibility reviews conducted by Audit and Recovery Management Services (ARMS). Benefits will not be terminated for refusal to cooperate with ARMS investigations of past eligibility.

Once denied or terminated for refusal to cooperate, the household may reapply but will not be determined eligible until it cooperates. If there is any question as to whether the household has merely failed to cooperate, as opposed to refused to cooperate, the household should not be denied, and DSS shall provide assistance.

The household may voluntarily withdraw its application at any time prior to the determination of eligibility. Such action will be documented in the case record to include the reason for withdrawal and that contact was made with the household to confirm the withdrawal. Advise the household of its right to reapply at any time.

Do not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. Do not consider individuals identified as non-household members in DSSM 9013 as individuals outside the household.

9030 Interviews

[273.2(e)]

Households must have a face-to-face interview with an eligibility worker at initial certification and at least once every 12 months thereafter, unless the face-to-face interview has been waived. DSS must inform applicants that the face-to-face interviews will be waived for hardship situations. Hardship conditions include, but are not limited to: being elderly or disabled, illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an office interview.

DSS may not require a household to report for an in-office interview during their certification period although

they may request a household to do so.

Interview may be conducted at the food stamp office or other mutually acceptable location, including a household residence. Interviews conducted at the household's residence must be scheduled in advance.

~~All applicant households, including those submitting applications by mail, must have a face-to-face interview in a certification site with a qualified eligibility worker, prior to initial certification and all recertifications.~~

The head of household, spouse, any other responsible member of the household, or an authorized representative may be interviewed. Advise the households of their rights and responsibilities during the interview, including the appropriate processing standard and the responsibility to report changes. The interview will be conducted as an official and confidential discussion of household circumstances and will be limited strictly to facts that relate directly to food stamp eligibility criteria. The applicant's right to privacy will be protected during the interview.

The eligibility worker must explore and resolve with the household any unclear and incomplete information.

Waive the office interview if requested by any household which is unable to appoint an authorized representative and which has no household member able to come to the food stamp office because they are elderly or disabled, have transportation difficulties, are working, or similar hardships. Determine if the transportation difficulties or other similar hardship warrants a waiver of the office interview and document in the case record why a request for a waiver was granted or denied.

Waiver of the face-to-face interview does not exempt the household from the verification requirements nor should it affect the length of the households' certification period.

However, special verification procedures may be used such as substituting a collateral contact in cases where documentary evidence would normally be required.

Households for whom the office interview is waived will be offered either a telephone interview or a home visit. Home visits will be scheduled in advance with the household.

DSS will schedule an interview for all applicant households who are not interviewed on the day they submit their applications. All interviews will be scheduled as promptly as possible to ensure eligible households receive an opportunity to participate within 30 days after the application is filed. If the household does not appear for the first interview, reschedule an interview only one time unless the household requests a further appointment.

Applicant and participant households which are unable to obtain certification services without missing time from work must be given appointments for such services.

The applicant may bring any person he or she chooses to the interview.

9031 Definition of Verification

[273.2(f)]

Verification is the use of third party information or documentation to establish the accuracy of statements on the application.

DSS must give households at least 10 days to provide required verifications.

~~9032.2 Alien Status~~

~~{273.2(f)(1)(ii)}~~

~~1. Based on the application, determine if members identified as aliens are eligible aliens, as defined in DSSM 9007, by requiring that the household present verification for each alien member.~~

~~2. Aliens admitted for legal permanent residence specified in DSSM 9007 must present an Immigration and Naturalization Service (INS) form I-151 or I-551 or such other documents which identify the alien's immigration status and which the Division determines are reasonable evidence of the alien's immigration status; or~~

~~3. Aliens granted refugee asylee status, or parolee specified in DSSM 9007 must present an INS form I-94, "Arrival-Departure Record," or other documents which identify the alien's immigration status and which the Division determines are reasonable evidence of the alien's immigration status; or~~

~~4. Aliens not able to furnish Form I-151, I-551, or I-94 specified in DSSM 9007 must present other documentation such as, but not limited to, a letter, notice of eligibility, or identification and which clearly identifies that the alien has been granted legal status in one of those categories.~~

~~5. If an alien is unable to provide any INS document at all (not even an INS form I-94), then the Division has no responsibility to offer to contact INS on the alien's behalf. DSS' responsibility exists only when the alien has an INS document that does not clearly indicate eligible or ineligible alien status.~~

~~Do not contact INS to obtain information about the alien's correct status without the alien's written consent.~~

~~6. Offer to contact INS when an alien has an INS document that does not clearly indicate eligible or ineligible alien status. When an alien does not present an INS document, the Division has no obligation to offer to contact INS. However, when accepting non-INS documentation determined to be reasonable evidence of the alien's immigration status [See DSSM 9032.2 (2), (3), and (4)], photocopy the document and transmit the photocopy to the SAVE Point-of-Contact person at State Office for forwarding to INS for verification. Pending such verification, do not delay, deny, reduce, or terminate the individual's eligibility for benefits on the basis of the individual's immigration status. The alien applicant's written consent is not needed to transmit the photocopy to INS.~~

~~7. Provide alien applicants with a reasonable~~

~~opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity allows at least ten (10) days from the date of DSS' request for an acceptable document. When DSS accepts non-INS documentation as specified in DSSM 9032.2 (2), (3), and (4) and fails to provide any alien applicant with a reasonable opportunity as of the 30th day following the date of application, provide the household with benefits no later than 30 days following the date of application if the household is otherwise eligible.~~

~~8. Except as specified in (7) above and DSSM 9033, the alien applicant whose status is questionable is ineligible until the alien provides acceptable documentation. The income and resources of the ineligible alien shall be treated as specified in DSSM 9076.2.~~

9032.2 Alien Eligibility

A. DSS must verify the eligible status of applicant aliens. If an alien does not wish DSS to contact INS to verify his or her immigration status, DSS will give the household the option of withdrawing its application or participating without that member.

The following information may be relevant to the eligibility of some aliens: date of admission or date status was granted; military connection; battered status; if the alien was lawfully residing in the United States on August 22, 1996; membership in certain Indian tribes; if the person was age 65 or older on August 22, 1996; if a lawful permanent resident can be credited with 40 qualifying quarters of covered work and if any Federal means-tested public benefits were received in any quarter after December 31, 1996; or if the alien was a member of certain Hmong or Highland Laotian tribes during a certain period of time or is the spouse or unmarried dependent of such a person. DSS must verify these factors if applicable to the alien's eligibility.

The SSA Quarters of Coverage History System (QCHS) is used to verify whether a lawful permanent resident has earned or can receive credit for a total of 40 qualifying quarters. The QCHS may not show all qualifying quarters because SSA records do not show current year's earnings and in some cases the last year's earnings, depending on the time of the request. Sometimes an applicant may have work from uncovered employment that is not documented by SSA, but is countable toward the 40 quarters test. In both cases the individual, rather than SSA, will need to provide the evidence needed to verify the quarters.

B. An alien is ineligible until acceptable documentation is provided unless:

1. DSS has submitted a copy of a document provided by the household to INS for verification. Pending such verification, DSS cannot delay, deny, reduce, or terminated the individual's eligibility for benefits on the

basis of the individual's immigration status; or

2. The applicant of DSS has submitted a request to SSA for information regarding the number of quarters of work that can be credited to the individual, SSA has responded that the individual has fewer than 40 quarters, and the individual provides documentation from SSA that SSA is conducting an investigation to determine if more quarters can be credited. DSS will certify the individual pending the results of the investigation for up to 6 months from the date of the original determination of insufficient quarters; or

3. The applicant or DSS has submitted a request to a Federal agency for verification of information which bears on the individual's eligible status. DSS will certify the individual pending the results of the investigation for up to 6 months from the date of the original request for verification.

C. DSS must provide alien applicants with a reasonable opportunity to submit acceptable documentation of their eligible alien status as of the 30th day following the date of application. A reasonable opportunity is at least 10 days from the date of DSS's request for an acceptable document. When DSS fails to provide an alien applicant with a reasonable opportunity as of the 30th day following the date of application, DSS must provide the household with benefits no later than 30 days following the date of application, provided the household is otherwise eligible.

D. DSS must verify a household member's citizenship or status as a non-citizen national. DSS will accept participation in another program as acceptable verification if verification of citizenship or non-citizen national was obtained for that program. If the household cannot obtain acceptable verification, DSS must accept a signed third-party statement, under penalty of perjury, which indicates a reasonable basis for personal knowledge that the member in question is a U. S. citizen or a non-citizen national.

9032.16 Additional verification for able-bodied adults without dependents (ABAWD)

A. Hours worked – individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

B. Countable months in another State – for individuals subject to the ABAWD provisions, DSS must verify the number of countable months an individual has used in another State if there is an indication that the individual participated in that State.

9033 Verification of Questionable Information

[273.2(f)(2)]

Eligibility factors other than those listed in DSSM 9032 will be verified only if questionable and if they affect a

household's eligibility or benefit level.

Questionable information is information inconsistent with statements made by the applicant, with other information on the application or previous applications, or with information received by the agency. Procedures described below will apply when one of the following eligibility factors is questionable:

When expenses claimed by the household for purposes of determining allowable program deductions (per DSSM 9060) or those otherwise reported during the certification interview (e.g., car payments, credit card bills) exceed declared income, ask the household to verify how such expenses were paid. New applicants must satisfactorily explain past management. Possible methods to verify payments are as follows:

Income Source	Type of Verification
Loans and gifts	Statement from lender
Sale of personal property	Receipt from sale
Exchange of services/ in-kind benefits	Statement from landlord, etc.
Gambling proceeds	Lottery tickets
Odd jobs	Note from employer

Benefits may be authorized if the following conditions are met:

a) A new household provides a satisfactory explanation of past management including any verification that is reasonably available to the household.

b) A participating household satisfactorily verifies factors of past management. Verification must be from the month(s) immediately preceding certification/recertification.

Additionally, households where management has been questionable will be notified that they will be responsible for verifications of all cash outflow at times of recertification if management continues to appear questionable.

A. Household Composition. Verify factors affecting the composition of a household, if questionable. Individuals who wish to be a separate household from those with whom they reside will be responsible for proving a claim that they are a separate household to the satisfaction of the Division.

Individuals who claim to be a separate household from those with whom they reside based on the various age and disability factors for determining separateness will be responsible for proving a claim of separateness in accordance with DSSM 9032.11.

B. Citizenship. The household must provide acceptable verification for any member whose U.S. citizenship is questionable.

A claim to citizenship may be considered questionable if:

1) The claim of citizenship is inconsistent with statements made by the applicant or with other information on the application or on previous applications.

2) The claim of citizenship is inconsistent with

information received from another source.

3) The individual does not have a Social Security Number.

When a household's statement that one or more of its members are U.S. citizens or has the status as a non-citizen national is questionable, ask the household to provide acceptable verification. Acceptable forms of verification include birth certificates, religious records, voter registration cards, certificates of citizenship or naturalization provided by INS, such as identification cards for use of resident citizens in the United States (INS form I-179 or INS form I-197), or U.S. passports. Participation in the DABC Program will also be considered acceptable verification if verification of citizenship or non-citizen national status was obtained for that program. If the above forms of verification cannot be obtained and the household can provide a reasonable explanation as to why verification is not available, accept a signed statement from a third party indicating a reasonable basis for personal knowledge someone who is a U.S. citizen which declares, under penalty of perjury, that the member in question is a U.S. citizen or non-citizen national. The signed statement must contain a warning of the penalties for helping someone commit fraud, such as: "If you intentionally give false information to help this person get food stamps, you may be fined, imprisoned, or both."

The member whose citizenship or non-citizen national status is in question will be ineligible to participate until proof of U.S. citizenship or non-citizen national status is obtained. Until proof of U.S. citizenship or non-citizen national status is obtained, the member whose citizenship or non-citizen national status is in question will have his or her income, less a prorata share, and all of his or her resources considered available to any remaining household members as set forth in DSSM 9076.2.

C. Deductible expenses. If obtaining verification for a deductible expense may delay certification, advise the household that its eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. This provision also applies to the allowance of medical expenses per DSSM 9032. Shelter costs would be computed without including the unverified components. The standard utility allowance will be used if the household is entitled to claim it and has not verified higher actual costs.

If the expense cannot be verified within 30 days of the date of application, determine the household's eligibility and benefit level without providing a deduction of the unverified expense. If the household subsequently provides the missing verification, redetermine the household's benefits, and provide increased benefits, if any, in accordance with the timeliness standards in DSSM 9085. If the expense could not be verified within the 30-day processing standard because the Division failed to allow the

household sufficient time per DSSM 9040 to verify the expense, the household will be entitled to the restoration of benefits retroactive to the month of application, provided that the missing verification is supplied in accordance with DSSM 9040. If the household would be ineligible unless the expense is allowed, the household's application will be handled as provided in DSSM 9040.

9034.2 Collateral Contacts

A collateral contact is a verbal confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. Select a collateral contact if the household fails to designate one or designates one that is unacceptable to the Division.

Examples of acceptable collateral contacts are employers, landlords, social service agencies, migrant service agencies, and neighbors of the household who can be expected to provide accurate third party verification.

When talking with collateral contacts, DSS will disclose only the information that is absolutely necessary to get the information being sought. DSS will avoid disclosing that the household has applied for food stamps, nor should they disclose any information supplied by the household, especially information that is protected by DSSM 1003, or suggest that the household is suspected of doing any wrong doing.

If the Division designates a collateral contact, no contact will be made without providing prior written or oral notice to the household. At the time of this notice, inform the household that it has the following options:

1. Consent to the contact;
2. Provide acceptable verification in another form; or
3. Withdraw the application.

If the household refuses to choose one of these options, its application will be denied in accordance with the normal procedures for failure to verify information.

Systems of records to which DSS has routine access are not considered collateral contacts and, therefore need not be designated by the household.

Examples are the Beneficiary Data Exchange (BENDEX) and the State Data Exchange (SDX) and records of another agency where a routine access agreement exists (such as records from DOL Unemployment Compensation section).

9034.3 Home Visits

Home visits may be used as verification only when documentary evidence is insufficient to make a firm determination of eligibility or benefit level, or cannot be obtained, and the home visit is scheduled in advance with the household.

Home visits are to be used on a case-by-case basis

where the supplied documentation is insufficient. Even though a household fits a profile of an error-prone household, it does not constitute lack of verification, therefore a homes visit in this case would not be appropriate. DSS will assist household in obtaining sufficient verification in accordance with DSSM 9305.1 prior to a referral for a home visit by ARMS.

9035.1 Responsibility of ~~for~~ Obtaining Verification

The household has the primary responsibility for providing documentary evidence to support ~~its income statements on the application~~ and to resolve any questionable information. DSS will assist the household in obtaining this verification provided the household is cooperating as defined in DSSM 9029. Households may supply documentary evidence in person, through the mail, by fax or other electronic device, or through an authorized representative. Do not require the household to present verification in person at the food stamp office. Accept any reasonable documentary evidence provided by the household. Be primarily concerned with how adequately the verification proves the statements on the application.

Whenever documentary evidence is insufficient to make a firm determination of eligibility or benefit level or cannot be obtained, require a collateral contact or a home visit in accordance with DSSM 9034.3. Rely on the household to provide the name of any collateral contact. The household may request assistance in designating a collateral contact. DSS is not required to use a collateral contact designated by the household if the collateral contact cannot be expected to provide an accurate third-party verification. When the collateral contact designated by the household is unacceptable, either designate another collateral contact, ask the household to designate another collateral contact, or provide an alternative form of verification or substitute a home visit. DSS is responsible for obtaining verification from acceptable collateral contacts.

9038 Verification Subsequent to Initial Certification

[273.2(f)(8)]

A. Recertification - Verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. Do not verify income if the source has not changed and if the amount is unchanged or has changed by \$25 or less unless the information is incomplete, inaccurate or inconsistent. Do not verify total medical expenses or actual utility expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate or inconsistent.

Verify any changes in the legal obligation to pay child support, the obligated amount, and the amount of

actual payments made to nonhousehold members for households eligible for the child support deduction. Verify unchanged child support payments only if questionable.

Verify newly obtained Social Security Numbers at recertification according to procedures outlined in DSSM 9032.5.

Other information, which has changed, may be verified at recertification. Do not verify unchanged information unless the information is incomplete, inaccurate or inconsistent.

For individuals who are satisfying the ABAWD work requirements by working, by combining work and participation in a work program, or by participating in a work or workfare program that is not operated or supervised by the State, the individuals' work hours shall be verified.

9039.3 Denying the Application

Households that are found to be ineligible must be sent a notice of denial as soon as possible but not later than 30 days following the date the application was filed. If the household has failed to appear for a ~~two~~ scheduled interviews and has made no subsequent contact with DSS to express interest in pursuing the application, send the household a notice of denial on the 30th day following the date of application. The household must file a new application if it wishes to participate in the program.

In cases where DSS was able to conduct an interview and request all of the necessary verification on the same day the application was filed, and no subsequent requests for verification have been made, DSS may also deny the application on the 30th day if the Division provided assistance to the household in obtaining verification when required per DSSM 9035.1, but the household failed to provide the requested verification.

9040 Delays in Processing

[273.2(h)]

If the agency does not determine a household's eligibility and provide an opportunity to participate within 30 days following the date the application was filed, the agency will take the following action:

A. Determining Cause - The agency must have taken the following actions before a delay is considered the fault of the household:

1. For households that failed to complete the application form: offered or attempted to offer assistance in its completion.

2. For households with members who failed to register for work: informed the household of the need to register for work, determined if the household members are exempt from work registration, and given at least ten (10) days to do so.

3. In cases where verification is incomplete, DSS must have provided the household with a statement of

required verification (Form 105) and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification.

A delay is considered the fault of the household if the household has failed to complete the application process even though DSS has taken all action required to assist the household. DSS must have taken the following actions before a delay can be considered the fault of the household:

· For households that have failed to complete the application form, offer, or attempt to offer, assistance in its completion.

· Where verification is incomplete, provide assistance as required in DSSM 9035. Allow the household sufficient time to provide the missing verification. Sufficient time is at least ten (10) days from the date of the initial request for the particular verification that was missing.

4. For households that have failed to appear for an interview, DSS must have attempted to reschedule the initial interview within 30 days following the date the application was filed. If the household fails to schedule a second interview, or the ~~However, if the household has failed to appear for the first interview and a subsequent interview is postponed at the household's request or cannot otherwise be rescheduled until after the 20 days but before the 30th day following the date the application was filed, the household must appear for the interview, bring verification, and register members for work by the 30th day; otherwise, the delay will be the fault of the household. If the household has failed to appear for the first interview, fails to schedule a second interview, and/or the and a subsequent interview is postponed at the household's request until after the 30th day following the date the application was filed, the delay will be the fault of the household. If the household has missed both scheduled interviews and requests another interview, any delay will be the fault of the household.~~

B. Determine Fault of the Household

1. If by the 30th day the agency cannot take any further action on the application due to the fault of the household, send a notice of denial. If the household takes the required action within 60 days of the date the application was filed, reopen the case without requiring a new application.

2. The household is not entitled to benefits for the month of application when the delay was the fault of the household.

C. Determine Fault of DSS

1. Whenever a delay during the initial 30-day period is agency fault, take immediate corrective action. Notify the household of any action it must take to complete the application. If verification is lacking, hold the application pending for only 30 days following the date of the initial request.

2. Do not deny the application if DSS caused the delay. Instead, notify the household by the 30th day

following the date the application was filed that its application is being held pending.

3. If the household is found to be eligible during the second 30-day period, the household will be entitled to benefits retroactive to the month of application. If, however, the household is found to be ineligible, deny the application.

D. Delays Beyond 60 Days

1. If DSS is at fault for not completing the application process by the end of the second 30-day period, and the case file is otherwise complete, continue to process the original application until an eligibility determination is reached. If the household is determined eligible, and DSS was at fault for the delay in the initial 30 days, give the household benefits retroactive to the month of application. However, if the initial delay was the household's fault, give the household benefits retroactive only to the month following the month of application. Use the original application to determine the household's eligibility in the months following the 60-day period.

2. If DSS is at fault for not completing the application process by the end of the second 30-day period, but the case file is not complete enough to reach an eligibility determination, deny the case and notify the household to file a new application. If the case is denied, advise the household of its possible entitlement to benefits lost as a result of DSS caused delays in accordance with DSSM 9011. If DSS were also at fault for the delay in the initial 30 days, the amount of benefits lost would be calculated from the month of application. If, however, the household was at fault for the initial delay, the amount of benefits lost would be calculated from the month following the month of application.

3. If the household is at fault for not completing the application process by the end of the second 30-day period, deny the application and require the household to file a new application. As DSS has chosen to hold an application pending only until 30 days following the date of the initial request for the particular verification that was missing, if the verification is not received by that 30th day, immediately deny the application. A notice of denial need not be sent if the notice of pending status informed the household that it would have to file a new application if verification was not received within 30 days of the initial request. The household will not be entitled to any lost benefits, even if the delay in the initial 30 days was the fault of DSS.

9042.2 Categorically Eligible Households

Any household in which all members receive or are authorized to receive DABC/GA and/or SSI benefits are considered eligible for food stamps because of their status as DABC/GA and/or SSI recipients unless the entire household is institutionalized as defined in DSSM 9015 or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp

benefits prior to their release from the institution in accordance with DSSM 9015 are not categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. Consider the individuals categorically eligible. At such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in DSSM 9032 because of PA/SSI status are the resource, gross and net income limits, Social Security Number information, sponsored alien information and residency. If any of the following factors are questionable, verify that the household which is considered categorically eligible:

- Contains only members that are DABC/GA or SSI recipients (as defined in DSSM 9042);
- Meets the household definition in DSSM 9013.1;
- Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for DABC/GA or SSI purposes; and
- Includes no persons who have been disqualified.

Households that receive zero benefits will continue to be considered as authorized to receive benefits from the appropriate agency. Assume categorical eligibility at recertification in the absence of a timely redetermination. If a recertified household is subsequently terminated from DABC/GA benefits, follow the procedures in DSSM 9089 as appropriate.

Under no circumstances will any household be considered categorically eligible if any member of that household is disqualified for:

- An intentional Program violation in accordance with DSSM 2023;
- ~~misrepresenting identity or residence in order to receive multiple food stamp benefits per DSSM 2024;~~
- ~~Being a fleeing felon, a parole violator, or a probation violator per DSSM 2025;~~
- ~~Being convicted of trafficking food stamp benefits of \$500 or more per DSSM 2026;~~
- ~~Failure to comply with the work requirements in DSSM 9018; or~~
- ~~The head of the household is disqualified for failure to comply with the work requirements in DSSM 9018; or~~
- ~~Any member of that household is ineligible due to a conviction for a drug related felony per DSSM 2027.~~

These households are subject to all food stamp eligibility and benefit provisions and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

Do not include any person as a member in any household which is otherwise categorically eligible if that person is:

- An ineligible alien as defined in DSSM 9007;
- Ineligible under the student provisions in DSSM 9010; or
- Institutionalized in a non-exempt facility as defined in DSSM 9015.

For the purposes of work registration, apply the exemptions in DSSM 9018 to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in DSSM 9018.

9057 Unearned Income

[273.9(b)(2)]

Unearned income includes, but is not limited to:

7. ~~For households containing sponsored aliens (as defined in DSSM 9081), unearned income also includes that amount of the monthly income of an alien's sponsor and the sponsor's spouse (if living with the sponsor) that has been deemed to be that of the alien unless the sponsored alien is otherwise exempt from this provision in accordance with DSSM 9081. Actual money paid to the alien by the sponsor or the sponsor's spouse would not be considered income to the alien unless the amount paid exceeds the amount attributed. The amount paid that actually exceeds the amount attributed would be considered income to the alien in addition to the amount attributed to the alien.~~

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.

9059 Income Exclusions

[273.9(c)]

Only the following items will be excluded from household income and no other income will be excluded:

H. Money received in the form of a non-recurring lump sum payment.

These include, but are not limited to: income tax refunds, rebates or credits; retroactive lump sum Social Security, SSI, public assistance, railroad retirement benefits, or other payments; lump sum insurance settlement; or refunds of security deposits on rental property or utilities. TANF payments made to divert a family from becoming dependent on welfare may be excluded as a nonrecurring lump-sum payment if the payment is not defined as assistance. (All DABC diversion payments are excluded.) These payments will be counted as resources in the month received unless specifically excluded from consideration as a resource by other federal laws.

Payments of large retroactive SSI benefit amounts are required to be made in installments for SSI recipients. These SSI retroactive lump sum installments are excluded from income.

Earned Income Tax Credit (EITC) payments, whether

paid in advance or made as tax refunds, are considered to be non-recurring lump sum payments.

~~K. Payments or allowances made for the purpose of providing energy assistance under any Federal Law, (LIHEAP), including HUD and FMHA (Farmers Home Administration) reimbursements, are excluded as income.~~

~~Federal or State one-time assistance for weatherization or emergency repair or replacement of heating or cooling devices are also excluded as income.~~

K. Energy assistance as follows:

(a) Any payments or allowances made for the purpose of providing energy assistance under any Federal law other than part A of Title IV of the Social Security Act, including utility reimbursements made by the Department of Housing and Urban Development and the rural Housing Service, or

(b) A one-time payment or allowance applied on an as-needed basis and made under a Federal or State law for the costs of weatherization or emergency repair or replacement of an unsafe or inoperative furnace or other heating or cooling device. A down payment followed by a final payment upon completion of the work will be considered a one-time payment for the purposes of this provision.

9060 Income Deductions

C. Excess Medical Deductions - That portion of unreimbursed medical expenses in excess of \$35 per month, excluding special diets, incurred by any household member who is 60 years of age or over or disabled as defined in DSSM 9013.1. Spouses or other persons receiving benefits as a dependent of the SSI or disability and blindness recipient are not eligible to receive this deduction, but persons receiving emergency SSI benefits based on presumptive eligibility are eligible for this deduction.

Allowable medical costs include: Medical and dental care including psychotherapy and rehabilitation services provided by a licensed practitioner or other qualified health professional, hospitalization, outpatient treatment, nursing home care (including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the State).

Prescription drugs and over-the-counter medication when approved by a licensed practitioner or other qualified health professional. Also the cost of medical supplies and sick room equipment (including rental costs) are deductible (when approved by a licensed practitioner or other health professional). Health and hospitalization insurance are deductible, but health and accident insurance policies such as income maintenance or death or dismemberment policies are not deductible.

Any Medicare premiums, cost-sharing or spend down expenses incurred by Medicaid recipients, dentures, hearing aids and prosthetics are deductible as well as the

costs of securing and maintaining a seeing eye or hearing dog including dog food and veterinary bills. Eyeglasses prescribed by a physician skilled in eye disease or by an optometrist and the reasonable costs of transportation and lodging to obtain medical treatment or services are deductible.

Reasonable transportation and lodging costs to obtain medical treatment or services are limited to costs incurred in order to obtain such treatment. These costs are to be verified. Reasonable costs of transportation include, but are not limited to, trips to the doctor, dentist, to fill prescriptions for medicine, dentures, hearing aids or eye glasses. Allowance for mileage in privately owned vehicles should be standard in a State. As for lodging costs, eligibility workers should use good judgement in determining the reasonableness of such costs based on the area and average costs.

Maintaining an attendant, homemaker, home health aide, housekeeper, or childcare services necessary due to age, infirmity, or illness are deductible costs. In addition, an amount equal to the one-person coupon allotment shall be deducted if the household furnishes the majority of the attendant's meals. The allotment allowed shall be the amount in effect at the time of initial certification, and will not be updated until the time of the next scheduled recertification. If a household incurs attendant care costs that could qualify under both the medical deduction and dependent care deduction, the costs shall be treated as a medical expense.

F. Shelter Costs - Monthly shelter costs in excess of 50% of the household's income after all other deductions in A, B, and C above have been allowed. The shelter deduction must not exceed the maximum excess shelter deduction limit. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the maximum excess shelter deduction.) This is applicable unless the household contains a member who is age sixty (60) or over, or disabled per DSSM 9013.1. Such households will receive an excess shelter deduction for the monthly costs that exceeds 50% of the household's monthly income after all other applicable deductions.

Shelter costs will include only the following:

1) Continuing charges for the shelter occupied by the household, including rent, mortgages, condo and association fees, or other continuing charges leading to the ownership of the shelter such as loan repayments for the purchase of a mobile home, including interest on such payments. A mortgage is defined as any loan that uses the house as collateral.

Households required to pay the "last month's rent" along with the first month's rent before they can move into the dwelling can claim both amounts in the month that the household is billed.

For example, a client rents an apartment in

January and must pay January's and the next December's rent in January. Both rental amounts can be used for January's food stamp budget. A rent deduction would not be allowed in December since it was paid in January.

Households required to pay a security deposit before they move into a dwelling cannot claim the deposit as a shelter cost.

For example, a client rents a home and must pay a \$450 security deposit and the first month's rent before she moves in. The security deposit will be refunded when she moves out if the home is in good condition. She cannot claim the deposit as a shelter cost for food stamp purposes.

2) Property taxes, State and local assessments and insurance on the structure itself, but not separate costs for insuring furniture or personal belongings. If separate insurance costs for furniture or personal belongings are not identified, use the total.

3) The costs of:
fuel for heating;
electricity or fuel used for purposes other than heating or cooling;
water;
sewerage;
well installation and maintenance;
septic tank system installation and maintenance;
garbage and trash collection;
all service fees for one telephone, including, but not limited to basic service fees, subscriber line charges, relay center surcharges, 911 fees, and taxes; and
fees charged by the utility provider for initial installation of the utility.

One time deposits cannot be included.
actual charges for heating and cooking fuel; cooling and electricity; water and sewer; garbage and trash collection fees; the basic fee for one telephone, including tax on the basic fee; and fees charged by the utility provider for installation of the utility. One time deposits are not included as shelter costs.

4) The standard heat allowance will be available only to households which incur heating costs separately and apart from their rent or mortgage including residents of rental housing who are billed on a monthly basis by their landlords for actual usage as determined through individual metering. The standard heat allowance is available to households receiving indirect energy assistance payments.

A household living in a public housing unit or other rental housing unit which has central utility meters and charges the household only for excess utility costs is not permitted to use either standard allowance. Such households may claim the actual verified utility expenses which it does pay separately. Households should be advised of this option at each (re)certification.

Two annualized utility allowances are offered:

The basic allowance is available to households that do not pay for heat, but incur costs that include electricity and fuel for purposes other than heating, water, sewerage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. ~~yet incur costs for a major utility such as electricity or cooking fuel.~~

The heat allowance is available to households with heating costs. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the standard utility allowances.)

Permit households to switch between their actual utility costs and the appropriate utility standard at the time of recertification. Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.

If the household is billed separately for only telephone, water, sewer, or garbage collection fees (any one or more of these), the household is not entitled to claim either standard utility allowance.

If one of these households is billed for a telephone, the standard telephone allowance will be used (for these households only and regardless of their actual cost). In addition, these households may claim the actual utility expenses (water, sewer, or garbage) for which they are billed separately from rent or mortgage payments. (Refer to the current October Cost-of-Living Adjustment Administrative Notice for the telephone allowance.)

Prorating the SUA

When households live with and share utility expenses with other individuals or households, whether they are participating in the Food Stamp Program or not, the agency will prorate the standard utility allowances based on the number of households sharing the utility costs.

The following are examples of prorating the SUA:

Two (2) households share a residence. They both contribute towards the utility costs. The food stamp household pays \$50 towards the costs each month. The food stamp household is entitled to one-half of the SUA.

A food stamp household shares an apartment and utilities with another individual. The food stamp household pays two-thirds of the utility costs. The household is entitled to one-half of the SUA.

Three (3) households share a residence and utility expenses. The food stamp household pays a different amount each month based on the amount of the costs. The food stamp household is entitled to a one-third proration of the SUA.

~~5)4)~~ The shelter costs of the home if not occupied by the household because of employment away from home, illness or abandonment caused by a natural disaster or casualty loss. For costs of a home vacated by the household

to be included in the household's shelter costs, the household must intend to return to the home; the current occupants of the home, if any must not be claiming the shelter costs for food stamp purposes; and the home must not be leased or rented during the absence of the household.

~~6)5)~~ Charges for the repair of the home which was substantially damaged or destroyed due to a natural disaster such as a fire or flood. Shelter costs will not include charges for repair of the home that have been or will be reimbursed by private or public relief agencies, insurance companies, or from any other source. Repairs, other than those due to natural disasters, do not count as a deduction, even when tenants must pay for them or be evicted.

9061.1 Determination of Eligibility and Benefit Levels

A household's eligibility will be determined for the month of application by considering the household's circumstances for the entire month of application.

Base a household's benefit level for the initial month of certification on the day of the month it applies for benefits. Applicant households consisting of residents of a public institution who apply jointly for SSI and food stamps prior to release from the public institution in accordance with DSSM 9015 will have their eligibility determined for the month in which the applicant household was released from the institution.

Base a household's benefit level for the initial months of certification on the day of the month it applies for benefits. Provide benefits from the date of application to the end of the month unless the applicant household consists of residents of a public institution. For households which apply for SSI prior to their release from a public institution, base the benefit level for the initial month of certification on the date of the month the household is released from the institution and provide the household benefits from the date of the household's release from the institution to the end of the month. Using a 30-day calendar month, households will receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of a month will be treated as though it applied on the 30th of the month. Migrant and seasonal farmworkers will receive a full allotment for the month of application when the household has participated in the Food Stamp Program within 30 days prior to the date of application. When certifying such a household, use the first day of the month as the start date.

To determine the amount of the prorated allotment, use the Food Stamp Allotment Proration Table provided by FNS. Allotments of less than \$10 will not be issued for the initial month.

The term "initial month" means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the case of

migrant and seasonal farmworker households, the term "initial month" means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 1 month during which the household was not certified for participation.

Those households which are certified using the expedited service procedures in DSSM 9041 , and which apply for benefits after the 15th of the month, will be certified for benefits prorated from the day of application to the end of the application month and also for the following month. Benefits for the second full month following the month of application shall not be issued until all postponed verification is provided to DSS.

Do not prorate benefits for migrant/seasonal farmworker households that have participated in the Food Stamp Program within 30 days prior to the date of application.

If an application is held pending beyond 30 days and if the delay is the fault of the household, the first month for which an allotment will be issued to the household will be the month following the month of application. This allotment will be prorated from the date eligibility is established by the household.

9061.2 Application for Recertification

Determine eligibility for recertification based on circumstances anticipated for the certification period starting the month following the expiration of the current certification period.

Base the level of benefits on the same anticipated circumstances. ~~If an application for recertification is submitted after the household's certification period has expired, consider that application an initial application and prorate benefits for that month in accordance with DSSM 9061.1.~~ If a household, other than a migrant or seasonal farmworker household, submits an application after the household's certification period has expired, that application shall be considered an initial application and benefits shall be prorated. If a household's failure to timely apply for recertification was due to an agency error causing a break in participation, follow the procedures in DSSM 9091.8. In addition, if the household submits an application for recertification prior to the end of its certification period but is found ineligible for one first month following the end of the certification period, then the first month of a subsequent participation will be considered an initial month. Conversely, if the household submits an application for recertification prior to the end of its certification period and is found eligible for the first month following the end of the certification period, then that month will not be an initial month.

9068 Certification Periods

[273.10(f)]

Certification periods means the period of time within

which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility will be established only upon a recertification based upon a newly completed application, an interview and verification. Under no circumstances will benefits be continued beyond the end of a certification period without a new determination of eligibility. The first month of the certification period will be the first month for which the household is eligible to participate.

The certification periods for all households shall not exceed 12 months.

~~GUIDELINES FOR ASSIGNING CERTIFICATION PERIODS~~

~~12-month certification periods are assigned to households when:~~

- ~~- Households consist entirely of elderly or unemployable persons with stable income like Social Security, SSI, pension and/or disability benefits; and~~
- ~~- Households receive their primary source of income from self-employment or regular farm employment with the same employer.~~

~~7-month certification periods are assigned to households when:~~

- ~~- Households receiving DABC/GA and FS so that the food stamp recertification period expires the month after the cash assistance redetermination date.~~

~~6-month certification periods are assigned to households when:~~

- ~~- Households have stable income such as, but not limited to, pensions, social security, SSI, in-state unemployment compensation, workman's compensation, child support paid through DCSE, and on-going DABC/GA households, and there is little likelihood of major changes in income, deductions and household composition;~~

- ~~- Households consist of ABAWD individuals, because the system will close the case after three months if not meeting the work rules;~~

- ~~- Households claiming a child support deduction have a record of regular child support payments or child support arrearage payments to nonhousehold members.~~

~~3-month certification periods are assigned to households when:~~

- ~~- Households have unstable circumstances, such as households receiving child support payments directly from the absent parent, households receiving out-of-state unemployment compensation, households with an unemployed adult who was employed within 12 months prior to the date of application, households with zero (0) income, households with expenses that exceed income, and all households with earned income;~~

- ~~- Households claiming a child support deduction have a record of irregular child support payments or child support arrearage payments to nonhousehold members;~~

- Homeless households receive their benefits at a P.O. Box;
- Households receive their benefits at the local office; and

Households have been closed due to the New Hire Match and they come in verifying they are no longer working.

Households eligible for the child support deduction shall have the following certification periods:

- Households with no record of regular child support payments or payments of arrearages shall be certified for no more than 3 months.
- Households with a record of regular child support payments or payments of arrearages shall be certified for no more than six months.

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.

9068.2 Shortening Certification Periods

Do not end a household's certification period earlier than its assigned recertification period unless DSS receives information that the household has become ineligible. Loss of cash assistance or change in employment status is not sufficient in and of itself to shorten a certification period. Close or adjust the household's benefits according to DSSM 9085 in response to reported changes. Do not use the Notice of Expiration to shorten a certification period.

9068.3 Lengthening Certification Periods

A household's certification period may be lengthened after it has been assigned as long as the total months of certification do not exceed 12 months.

Households whose certification is lengthened must be informed of the new certification ending date with a notice containing the same information as the notice of eligibility.

9074 Self-Employment Income

[273.11(a)]

If the annual support for a household is derived from self-employment, the income must be annualized over a 12-month period. The income will be annualized even if it is received in a shorter period of time during the year.

However, if the averaged annualized amount does not accurately reflect the household's actual circumstances because the household has experienced a substantial increase or decrease in business, calculate the self-employment income or anticipated earnings. Do not calculate self-employment income on the basis of prior income (e.g., income tax returns) when the household has experienced a substantial increase or decrease in business.

The monthly net self-employment income will be added to any other earned income received by the household. The total monthly earned income less the 20 percent earned income deduction, will then be added to all monthly unearned income received by the household.

Wages paid to the self-employed owner of the business is counted in addition to any profit from the business whether incorporated or not.

If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, offset such losses against any other countable income in the household. Losses from farm self-employment are offset in two phases:

- Offsetting against non-farm self-employment.
- Offsetting against the total of earned and unearned income.

For the purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of \$1,000 or more from the farming enterprise.

Compute the standard deduction, dependent care, and shelter costs in accordance with DSSM 9060 and subtract to determine the monthly net income of the household.

Prorate net losses from the self-employment income of a farmer over a year as described above.

Income received from operation of a commercial boarding house will be also annualized if it provides the annual support of a household. If the household does not operate a commercial boarding house, but does have income from boarders, this income will not be annualized since it does not provide the annual support for a household. Refer to DSSM 9074.

For example, farmers receive their annual income in a short period of time. The income is from self-employment and should be averaged over a 12-month period even if there is other income in addition to the self-employment income.

After annualizing and determining the household's monthly net income, if eligible, the household may elect the option of having its benefit level determined by using either the same net monthly income that was used to establish eligibility or by unevenly prorating the household's total net income to more closely approximate the time when the income is actually received. Naturally, the net income used in any one month cannot exceed the maximum monthly income eligibility standards for the household's size.

Households who derive their self-employment income

from a farming operation and who incur irregular expenses to produce such income should annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

9074.1 Changes in Self-Employment Income

Self-employment income which is received on a monthly basis but which represents a household's annual support will normally be averaged over a 12-month period. If, however, the average amount does not accurately reflect the household's actual monthly circumstances because the household has experienced a substantial increase or decrease in business, calculate the self-employment income based on anticipated earnings.

9074.2 Self-Employment Income Which Cannot Be Annualized

Self-employment income which is to meet the needs of the household for part of a year will be averaged over the time the income is intended to cover.

For example, vendors who work only in the summer and use other sources of income during the rest of the year will have their self-employment income averaged over the summer months only. Self-employment income which has been in existence for less than a year will be calculated by using the income for the period in which the business has been in operation, and the monthly amount projected for the coming year.

However, if the business has been in operation for such a short time that there is insufficient information to make a reasonable projection, the household may be certified for less than a year until the business has been in operation long enough to base a longer projection.

9074.3 Capital Gains

Capital gains will be included in the household's income. Capital gains are the proceeds from the sale of permanent assets such as machinery, property used in the self-employment enterprise, or other durable goods. The gain will be calculated in the same manner as a gain calculated for Federal income tax purposes except that the gain should not be reduced by 50% as it would be for Federal income tax purposes.

9074.4 Allowable Costs of Producing Self-Employment Income

Allowable costs include, but are not limited to, the identifiable costs of labor, stock, raw material, seed and fertilizers, interest paid to purchase income producing property, insurance premiums, and taxes paid on income producing property.

1. Do not allow the following items as cost of producing self-employment income:

- a) Payments on principal of the purchase price of

real estate, capital assets, equipment, machinery, and other durable goods;

- b) Net losses from previous periods;
- e) Federal, State, and local income taxes, money set aside for retirement purposes and other work-related personal expenses, as these expenses are accounted for by the earned income deduction specified in DSSM 9060; and
- d) Depreciation.

9074.5 Certification Periods for Self-Employed Households

Households that receive their annual support from self-employment and have no other source of income may be certified for up to 12 months. Assign the initial certification period to allow the household to move into an appropriate annual cycle such as the filing of the income tax, or the time when the household receives all or the majority of its annual income.

For households with other sources of income or whose self-employment is intended to cover less than a year, the certification period should be appropriate for the circumstances.

9074.6 Households With Boarders

[273.11(b)]

Persons paying a reasonable amount for room and board will be excluded from the household when determining the household's eligibility and benefit level. The income of households owning and operating a commercial boarding house will be handled as described in DSSM 9074-9074.4. For all other households, the payments from boarders, except foster care boarders as defined in DSSM 9013.3, will be treated as self-employment income. This income will include all direct payments for room and meals, including contributions for part of the household's shelter expenses. Shelter expenses paid directly to someone outside the household will not be counted as income to the household.

9074.7 Costs of Doing Business

The cost of doing business will not exceed the payment the household receives from the boarder for lodging and meals. The cost of doing business will be deducted from the income received from boarders in the following amount:

- 1) The cost of the maximum food stamp allotment for a household size equal to the number of boarders;
- 2) The actual documented cost of providing room and meals if the cost exceeds the appropriate maximum food stamp allotment. Only separate and identifiable costs for room and meals may be used.

9074.8 Deductible Expenses

The net income from self-employment will be added to the other earned income and the earned income deduction will be applied to the total. Shelter costs the household

actually incurs, even if the boarder contributes to the household for part of the household's shelter expenses, will be computed to determine if the household will receive a shelter deduction. However, the shelter costs will not include any shelter expenses paid directly by the boarder to a third party, such as to the landlord or utility company.

9074.9 Income From Daycare

Households who have income from day care can select one of the following methods of determining the cost of meals provided to individuals:

- 1) Actual verified costs of meals; or
- 2) Current reimbursement amounts used in the Child and Adult Care Food Program.

9075 Procedure for Calculating Income Which Can Be Annualized to Reflect Monthly Calculations

1) Add all gross self-employment (including capital gains) for the period of time over which the self-employment income is determined.

2) Subtract the total cost of producing the income.

3) Divide the income by the number of months over which the income will be averaged.

4) For those households whose self-employment income is not averaged but is instead calculated on an anticipated basis, add any capital gains the household anticipates it will receive in the next 12 months, starting with the date the application is filed, and divide this amount by 12. This amount shall be used in successive certification periods during the next 12 months, except that a new average monthly amount shall be calculated over this 12-month period if the anticipated amount of capital gains changes. Add the anticipated monthly amount of capital gains to the anticipated monthly self-employment income, and subtract the cost of producing the self-employment income. The cost of producing the self-employment income will be calculated by anticipating the monthly allowable costs of producing the self-employment income.

9074.1 Calculate a household's self-employment income as follows:

(1) Averaging self-employment income.

(i) Average the income over the period the income is intended to cover, even if the household receives income from other sources. If the averaged amount does not accurately reflect the household's current circumstances, calculate the self-employment income on the basis of anticipated earnings, not prior earnings.

(ii) For self-employment that has been in existence for less than a year, average the income over the period of time the business has been in operation. Project that monthly amount for the coming year.

(2) Determining monthly income from self-employment.

(i) For the period of time over which the self-employment income is determined, add all gross self-employment income (actual or anticipated) and capital gains, exclude the costs of producing the self-employment income, and divide the remaining amount of self-employment income by the number of months over which the income will be averaged. This amount is the monthly net self-employment income. Add the monthly self-employment income to any other earned income received by the household to determine the total monthly earned income.

(ii) If the cost of producing self-employment income exceeds the income derived from self-employment as a farmer, such losses must be prorated according to (a)(1) of this section, and then offset against countable income to the household as follows:

(A) Offset farm self-employment losses first against other self-employment income.

(B) Offset any remaining farm self-employment losses against the total amount of earned and unearned income after the earned income deduction has been applied.

(3) Capital Gains

Calculate the proceeds from the sale of capital goods or equipment in the same manner as a capital gain for Federal income tax purposes.

Count the full amount of the capital gain as income for food stamps even if only 50 percent of the proceeds from the sale of capital goods or equipment is taxed for Federal income tax purposes.

If the self-employment income is calculated on an anticipated basis, count the amount of capital gains the household anticipates receiving during the months over which the income is being averaged.

9074.2 Allowable costs of producing self-employment income.

(1) Allowable costs of producing self-employment income include, but are not limited to:

The identifiable costs of labor;

stock;

raw material;

seed and fertilizer;

payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

interest paid to purchase income-producing property;

insurance premiums; and

taxes paid on income-producing property.

(2) The following items are not allowable costs of doing business:

net losses from previous periods;

Federal, State and local income taxes, money set aside for retirement purposes, and other work-related

personal expenses like transportation to and from work. (Work-related personal expenses are covered under the 20 percent earned income deduction.)

depreciation; and

any amount that exceeds the payment a household receives from a boarder for lodging and meals.

(3) Calculate the costs of producing self-employment income using the actual costs according to (b)(1) or determine self-employment expenses as follows:

For income from day care, use the current reimbursement amounts used in the Child and Adult Care Food Program.

For income from boarders, other than those in commercial boarding houses or from foster care boarders, use the maximum food stamp allotment for a household size that is equal to the number of boarders.

For income from foster care boarders, refer to DSSM 9013.1.

Calculation I – Gross Income

~~(a) Anticipated capital gains for 12-month period beginning with date of application.~~

~~(b) + Anticipated gross self-employment income.~~

~~(c) = Gross self-employment income.~~

Calculation II – Costs of Operations

~~(a) Gross allowable costs of operation.~~

~~(b) + Gross depreciation.~~

~~(c) = Total cost of operation.~~

Calculation III – Net Self-employment Income

~~(a) Gross self-employment income.~~

~~(b) – Total cost of operation.~~

~~(c) Divided by 12~~

~~= Net monthly self-employment income.~~

9076 Treatment of Income and Resources of Certain Non-Household Members

[273.11(c)]

During the period of time that a household member cannot participate because (s)he:

- Is an ineligible alien;
- Is ineligible because of disqualification for an intentional Program violation;
- Is ineligible because of disqualification for or refusal to obtain or provide an SSN;

or

- Is ineligible for failing to sign the application attesting to his/her citizenship or alien status;
- Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time per DSSM 2024 ;
- Is ineligible for being a fleeing felon or probation/

parole violator per DSSM 2025;

- Is ineligible for being convicted of trafficking food stamps of \$500 or more per DSSM 2026;

- Is ineligible due to work requirements per DSSM 9018;

- : Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027; or

- : Individuals ineligible due to the time limit for Able-bodied Adults without Dependents per DSSM 9018.

Exception:

~~The income and resources of ineligible individuals because of the able-bodied adults without dependents work requirement (ABAWDS) are not counted towards any remaining household members.~~

Determine the eligibility and benefit level of any remaining household members in accordance with the procedures outlined in this section.

9076.1 Intentional Program Violation, Felony Drug Conviction, or Fleeing Felon Disqualifications, or Work Requirement Sanctions

Determine as follows the eligibility and benefit level of any remaining household members of a household containing individuals determined ineligible because of the disqualifications or sanctions listed below:

- Is ineligible because of disqualifications for an intentional Program violation;

- Is ineligible because of having made a fraudulent statement or misrepresentation to the identity and/or place of residence in order to receive multiple benefits at the same time;

- Is ineligible for being a fleeing felon or probation/parole violator;

- : Individuals who are ineligible because of a drug-related felony conviction per DSSM 2027; or

- Is ineligible for being convicted of trafficking food stamps of \$500 or more.

1) Income, resources and deductible expenses - the income and resources of the ineligible household member(s) continue to count in their entirety, and the entire household's allowable earned income, standard, medical, dependent care, child support payment, and excess shelter deductions continue to apply to the remaining household members.

2) Eligibility and benefit level - the ineligible member is not included when determining the household's size for the purpose of:

a) Assigning a benefit level to the household;

b) Comparing the household's monthly income with the income eligibility standards; or

c) Comparing the household's resources with the resource eligibility limits. Ensure that no household's coupon allotment is increased as a result of the exclusion of one or more household members.

9076.2 SSN disqualification and ineligible ABAWDs, ~~Ineligible Alien or Failure to Attest to Citizenship or Alien Status~~

Determine as follows the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible:

- ~~For being an ineligible alien;~~
- Because of disqualification for refusal to obtain or provide an SSN; or
- : Because of meeting the time limit for able-bodied adults without dependents.

- ~~For failing to attest to citizenship or alien status.~~

1) Resources - The resources of such ineligible members continue to count in their entirety to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining members. This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members.

3) Deductible expenses - The earned income deduction applies to the prorated income earned by such ineligible members, which is attributed to their households. That portion of the household's allowable child support payment, shelter, and dependent care expenses which are either paid by or billed to the excluded members, will be divided evenly among the household's members including the ineligible members. All but the ineligible member's share is counted as a deductible child support payment, shelter, or dependent care expense for the remaining household members.

4) Eligibility and benefit level - Such ineligible members will not be included when determining their household's size for the purposes of:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- c) Comparing the household's resources with the resource eligibility limits.

9076.3 Ineligible alien.

Determine as follows the eligibility and benefit level of remaining household members of a household containing individuals determined ineligible:

- : For being an ineligible alien.

1) Resources - The resources of such ineligible members continue to count in their entirety to the remaining household members.

2) Income - Count a prorata share of the income of such ineligible members as income to the remaining

members. This prorata share is calculated by first subtracting the allowable exclusions from the ineligible member's income and dividing the income evenly among the household members, including the ineligible members. All but the ineligible member's share is counted as income for the remaining household members.

3) Deductible expenses - The earned income deduction applies to the prorated income earned by such ineligible members, which is attributed to their households. That portion of the household's allowable child support payment, shelter, and dependent care expenses which are either paid by or billed to the excluded members, will be divided evenly among the household's members including the ineligible members. All but the ineligible member's share is counted as a deductible child support payment, shelter, or dependent care expense for the remaining household members.

4) Eligibility and benefit level - Such ineligible members will not be included when determining their household's size for the purposes of:

- a) Assigning a benefit level to the household;
- b) Comparing the household's monthly income with the income eligibility standards; or
- d) Comparing the household's resources with the resource eligibility limits.

~~9076.3~~ 9076.4 Reduction or Termination of Benefits Within the Certification Period

Whenever an individual is determined ineligible within the household's certification period, determine the eligibility or ineligibility of the remaining household members based, as much as possible, on information in the case file:

a) Excluded for Intentional Program Violation Disqualification - If a household's benefits are reduced or terminated within the certification period because one of its members was excluded because of disqualification for intentional Program violation, notify the remaining members of their eligibility and benefit level at the same time the excluded member is notified of his or her disqualification. The household is not entitled to a notice of adverse action, but may request a fair hearing to contest the reduction or termination of benefits, unless the household has already had a fair hearing on the amount of the claim as a result of a consolidation of the administrative disqualification hearing with the fair hearing.

b) Disqualified or determined ineligible for reasons other than intentional Program violation. ~~SSN disqualification, ineligible alien or work requirement sanction~~ - If a household's benefits are reduced or terminated within one certification period for reasons other than an intentional Program violation disqualification, because one or more of its members is an ineligible alien, or is ineligible because (s)he was disqualified for refusal to obtain or provide an SSN, issue a notice of adverse action in

accordance with DSSM 9006, informing the household of the ineligibility, the reason for the ineligibility, the eligibility and benefit level of the remaining members and the action the household must take to end the ineligibility.

9078.2 Residents of Group Living Arrangements (GLA) Who Receive Benefits Under Title II or Title XVI of the Social Security Act

Disabled or blind residents of a group living arrangement who are covered under the Food Stamp Act's definition of a disabled person in DSSM 9013.1, (b through k) may voluntarily apply for the Food Stamp Program. ~~If these~~ The GLA must determine if a resident may apply on his or her own behalf based on the resident's physical and mental ability to handle his or her own affairs. Residents may apply through the use of the facility's authorized representative per DSSM 9016.1. Their eligibility will be determined as one-person households. ~~If the~~ Residents can apply on their own behalf or through an authorized representative of their choice. Certify these residents using the same provisions that apply to all other households.

Prior to certifying any residents for food stamps, verify that the group living arrangement is authorized by FNS or is certified by DHSS and that the center is a nonprofit organization.

Shelter and Medical Expenses for Group Home Residents

Room and medical costs, which can be separately identified, are allowable shelter and medical expenses. Normally the group home will identify the part of the payment that is being charged for separate costs.

If the amount the resident pays for room and meals is combined into one amount, the amount which exceeds the food stamp maximum allotment for a one-person household can be allowed as an identified shelter expense.

For example, a resident is charged \$350 a month for room and meals. If the maximum food stamp allotment is \$120 for a one-person household, then \$120 is subtracted from the \$350 monthly charge. The remainder \$230 is allowed as the shelter cost.

If more than one resident applies as part of the same food stamp household, the food stamp maximum allotment amount for a one-person household would be deducted from the room and board payment for each person.

For example, two residents apply as one food stamp household. They each pay \$350 a month for room and meals. If the maximum food stamp allotment for one-person household is \$120, each resident has the \$120 amount subtracted from the \$350 payment. The remainder \$230 for each person is used for the shelter costs, a \$460 monthly room charge.

Some group homes charge a basic rate for room and board and they have higher rates depending on the amount of medical care that may be needed. In such instances, if a

person is charged a higher rate, the basic rate minus the food stamp maximum allotment amount for a one-person household may be used to determine the shelter costs for that person, and the difference between the basic rate and the higher rate may be determined to be medical costs.

For example, a resident is charged a higher rate of \$500 a month for room, meals and medical care. If the maximum food stamp allotment for one-person households is \$120, the \$120 is subtracted from the basic rate of \$350 which leaves \$230 for the shelter cost. The \$350 basic rate is subtracted from the \$500 higher rate to determine the medical costs of \$150.

If the amount paid for medical and shelter costs cannot be separately identified, no deduction is allowed for the costs.

These procedures apply to residents making their own payments and to those instances where a protective payee is handling the payments but is using the resident's own funds.

Each group living arrangement shall provide DSS with a list of currently participating residents on a periodic basis. This list will include a statement signed by a responsible center official attesting to the validity of the list. DSS will conduct periodic random on-site visits to assure the accuracy of the list and that the Division's records are consistent and current.

Processing standards, processing of changes and recertifications and household rights are the same as in DSSM 9078.1 when the facility acts as the resident's authorized representative.

If the resident has made application on his/her own behalf, the household is responsible for reporting changes per DSSM 9085 . If the group living arrangement is acting as authorized representative, the group living arrangement must notify DSS of all changes and must return any household's benefit which is received after the household has left the group living arrangement.

When the household leaves the facility, the group living arrangement either acting as an authorized representative or retaining use of the coupons on behalf of the residents will provide residents with their ID card. The departing household will receive its full allotment if issued and if no coupons have been spent on behalf of that individual household. These procedures are applicable at any time during the month. If the coupons have already been issued and any portion spent on behalf of the individual, and the household leaves the facility prior to the 16th day of the month, the facility will provide the household with its ID card and one-half of its monthly allotment. If the household leaves on or after the 16th of the month and the coupons have already been issued and used, the household does not receive any coupons. If a group of residents have been certified as one household and have returned the coupons to the facility to use, the departing residents will be given a prorata share of one-half of the household's allotment if

leaving prior to the 16th of the month, and will be instructed to obtain ID cards. Once the resident leaves, the group living arrangement no longer acts as his/her authorized representative.

The group living arrangement will, if possible, provide the household with a change report form and will advise the household to return the form to the appropriate DSS office within ten (10) days.

If a resident or a group of residents apply on their own behalf and if they retain use of their own coupons, they are entitled to keep the coupons when they leave. If a group of residents have applied as one household, a prorata share of the remaining coupons will be provided to any departing household members. The group living arrangement will, if possible, provide the household with a change report form and will advise the household to return the form to the appropriate DSS office within ten (10) days. The group living arrangement will return to DSS any coupons not provided to departing residents at the end of each month. These returned coupons will include those not provided to departing residents because they left on or after the 16th of the month or they left prior to the 16th and the facility was unable to provide them with coupons.

The same provisions applicable to drug and alcoholic treatment centers in DSSM 9078.1 regarding misrepresentation or fraud and overissuances and institutional disqualification also apply to group living arrangements when acting as an authorized representative. A resident applying on his/her own behalf will be responsible for overissuances as would any other household.

The group living arrangement may purchase and prepare food to be consumed by eligible residents on a group basis if residents normally obtain their meals at or from a central location. If residents purchase and/or prepare food for home consumption, the group living arrangement will ensure that each resident's food stamps are used for meals intended for that resident. If the resident retains use of his/her own coupon allotment, coupons may be used either to purchase meals prepared by the facility or to purchase food to prepare meals for their own consumption.

9081.1 Definition

"Sponsored alien" means an alien for whom a person has executed an affidavit of support [INS Form I-864 or I-864A] on behalf of the alien according to section 213A of the INA, those aliens lawfully admitted for permanent residence into the United States as described in DSSM 9032.2.

"Sponsor" means a person who executed an affidavit(s) of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission into the United States as a permanent resident.

"Date of entry" or "Date of admission" means the date established by the Immigration and Naturalization Service as

the date the sponsored alien was admitted for permanent residence.

9081.2 Deeming of Sponsor's Income and Resources as ~~That of the Sponsored Alien~~

DSS will consider the income and resources of the sponsor and the sponsor's spouse towards the sponsored alien only if the sponsored alien is an eligible alien according to DSSM 9007.1. DSS will deem the income and resources of sponsor and the sponsor's spouse, if he or she has executed INS Form I-864 or I-864A, as the unearned income and resources of the sponsored alien.

~~The gross income and the resources of a sponsor and the sponsor's spouse (if living with the sponsor) will be deemed to be the unearned income and resources of a sponsored alien. The spouse's income and resources will be counted even if the sponsor and spouse were married after signing the agreement.~~

The deeming of the sponsor's income and resources shall continue to apply to an alien until ~~the alien has:~~

- The alien has become a United States citizen through naturalization; or
- The alien is credited with ~~Worked~~ 40 qualifying quarters of coverage during which time the alien did not receive any Federal means-tested public welfare benefit, or
- The sponsor dies.

~~Whenever an alien is required to reapply for benefits, DSS shall review the income and resources deemed to the alien as follows:~~

The income and resources of sponsors and sponsor's spouses are deemed as follows:

1. The monthly income of the sponsor and sponsor's spouse deemed to be that of the alien will be the total monthly earned and unearned income (including income exclusions provided for in DSSM 9059) of the sponsor and the sponsor's spouse (if living with the sponsor) at the time the household containing the sponsored alien member applies or is recertified, reduced by:

(A) A 20 percent earned income amount for that portion of the income determined as earned income of the sponsor and the sponsor's spouse.

(B) An amount equal to the monthly gross income eligibility limit for a household equal in size to the sponsor, the sponsor's spouse, and any other person who is claimed or could be claimed by the sponsor or the sponsor's spouse as a dependent for Federal income tax purposes.

~~the appropriate earned income amount for that portion of income determined as earned income of the sponsor and the sponsor's spouse.~~

2. If the alien has already reported gross income information on his/her sponsor due to DABC's sponsored alien rules, that income amount may be used for FSP

deeming purposes. ~~However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien, will be limited to the earned income amount in DSSM 9060. However, limit the allowable reductions to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien to amounts listed above in # 1 in this section.~~

3. Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount attributed to the alien under paragraph ~~A~~1 above. Only the amount paid that actually exceeds the amount deemed would be considered income to the alien.

4. Resources of the sponsor and the sponsor's spouse to be deemed to be that of the alien will be the total amount of their resources as determined in accordance with DSSM 9045 reduced by \$1,500.

~~D) The amount of income and resources deemed to be that of the sponsored alien in accordance with paragraphs A and C of this Section will be considered in determining the eligibility and benefit level of the household of which the alien is a member.~~

5. If a sponsored alien can demonstrate to the Division's satisfaction that his/her sponsor sponsors other aliens, then the income and resources deemed under the provisions of paragraph ~~A and C~~ 1 and 4 of this Section will be divided by the number of such aliens that apply for or are participating in the program.

Exempt aliens:

The deeming of sponsor income in steps 1-5 above do not apply to:

1. An alien who is a member of his or her sponsor's food stamp household;

2. An alien who is sponsored by an organization or group as apposed to an individual;

3. An alien who is not required to have a sponsor under the Immigration and Nationality Act, such as a refugee, a parolee, an asylee, or a Cuban or Haitian entrant;

4. A battered alien spouse, alien parent of a battered child, or child of a battered alien, for 12 months after a determination is made that the battering is substantially connected to the need for benefits, and the battered individual does not live with the batterer. After 12 months, do not deem the batterer's income and resources if the battery is recognized by a court or the INS and had a substantial connection to the need for benefits, and the alien does not live with the batterer.

The eligible sponsored alien's responsibilities are as follows:

1. The eligible sponsored alien is responsible for obtaining the cooperation of the sponsor and for providing

the information and documentation necessary to calculate deemed income and resources at application and reapplication.

2. The eligible sponsored alien is responsible for providing the names and other identifying factors of other aliens for whom the alien's sponsor has signed an affidavit of support.

3. The eligible sponsored alien is responsible for reporting the required information about the sponsor and the sponsor's spouse should the alien obtain a different sponsor during the certification period. The alien must also report any change in income should the sponsor and the sponsor's spouse change, lose employment, or die during the certification period.

~~F) If the alien reports that (s)he has changed sponsors during the certification period, then recalculate deemed income and resources based on the required information about the new sponsor and sponsor's spouse. Handle the reported change in accordance with DSSM 9085 and DSSM 2002, as appropriate. If an alien loses his/her sponsor and does not obtain another, the deemed income and resources of the previous sponsor will continue to be attributed to the alien until such time as the alien obtains another sponsor: or the alien becomes U. S. citizen; or the alien works 40 qualifying quarters of coverage. In the event of the death of a sponsor, deemed income and resources of the sponsor are no longer attributed to the alien.~~

Awaiting verification.

Until the alien provides information or verification needed to calculate deemed income and resources, the sponsored alien is ineligible for benefits. DSS will determine the eligibility of any remaining household members.

The income and resources (excluding the deemed income and resources of the alien's sponsor and the sponsor's spouse) of the ineligible alien will be counted according to DSSM 9076.2.

If the sponsored alien refuses to cooperate in providing information or verification, other adult members are responsible for providing the information or verification required.

Once the information or verification is received, DSS will act on the information as a reported change in household size according to DSSM 9085.

If the same sponsor is responsible for the entire household, the entire household is ineligible until the household provides the needed sponsor information or verification.

DSS will assist aliens in obtaining verification.

9082 Reduction of Public Assistance Benefits Failure to Comply With Another Assistance Program's

Requirements

[273.11(kj)]

Do not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program (such as but not limited to DABC, ~~GA~~ or ~~SSI~~) have been decreased (reduced, suspended or terminated) due to failure to perform an action required under the assistance program or for fraud, comply with a requirement of the program that imposed the benefit decrease. This does not apply to food stamp work sanctions under DSSM 9021. Under no circumstances can the food stamp benefits be allowed to increase.

Actions not considered a failure to perform for this rule include:

- Reaching a time limit for time-limited benefits;
- Having a child that is not eligible because of family cap;
- Failing to reapply or complete the application process for continued assistance under another program;
- Failing to perform an action that the individual is unable to perform; or
- Failing to comply with a purely procedural requirement.

A procedural requirement which would not cause a sanction is a step that an individual must take to continue to receive benefits in the assistance program such as providing verification of circumstances.

A substantive requirement, which would cause a sanction, is a behavioral requirement in the assistance program designed to improve the well-being of the recipient family, such as participating in job search activities.

The following conditions apply:

1. The rule applies to individuals who fail to perform a required action while receiving assistance.
2. The rule does not apply to individuals who fail to perform a required action at the time the individual initially applies for assistance.
3. The rule applies to individuals who fail to perform a required action during an application for continued benefits as long as there is no break in participation.
4. The individual must be certified for food stamps at the time of the failure to perform a required action for this rule to apply.
5. Assistance benefits shall be considered reduced if they are decreased, suspended, or terminated.
6. If the means-tested assistance program, like SSI, fails to verify an individual's failure to perform a required action, this rule will not apply and DSS will not be held responsible as long as DSS made a good faith effort to get the information.
7. DSS, not the individual, is responsible for obtaining information about sanctions from other programs and changes in those sanctions.
8. The rule applies for the duration of the reduction in

the assistance program and cannot continue beyond the sanction of the assistance program.

9. When a ~~final~~ DABC case ~~[closes]~~ ~~reaches the third permanent sanction~~, the food stamp sanction will be removed because the family is no longer eligible for assistance.

10. DSS must restore lost benefits if it is later discovered that the reduction in the public assistance was not appropriate.

11. DSS must act on changes which are not related to the assistance violation and that would affect the household's benefits.

1. This provision must be applied to all applicable cases. If DSS is not able to get necessary information from another means tested welfare program, such as SSI, DSS shall not be held responsible for noncompliance as long as DSS made a good faith effort to obtain the information.

2. Do not reduce, suspend, or terminate a household's current food stamp allotment amount when the household's benefits under another applicable assistance program have been decreased due to an intentional failure to comply with a requirement of that program.

3. Adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another Federal, State or local welfare or public assistance means tested program.

4. Changes in household circumstances which are not related to a penalty imposed by another Federal, State, or local welfare or public assistance means tested program shall not be affected by this provision.

Child Support disregard checks being withheld, or portions being recouped, because of a client caused overpayment owed to DCSE do count as income for food stamp purposes. Amounts being withheld or recouped because of agency caused overpayments do not count as income for food stamp purposes.

9085 Reporting Changes

[273.12]

Certified households are required to report the following changes in circumstances:

- Changes in the sources of or in the amount of gross unearned income of more than \$25, except changes in the public assistance grants. Since DSS has prior knowledge of all changes in the public assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;
- Changes in the amount of gross earned income will be reported as follows:
 - a) New source of employment, or
 - b) Changes in the hourly rate or salary of current

employment, or

c) Changes in employment status from part-time to full-time or full-time to part-time.

- All changes in household composition, such as the addition or loss of a household member;
- Changes in residence and the resulting changes in shelter costs;
- The acquisition of a licensed vehicle not fully excludable under DSSM 9051 ;
- When cash on hand, stocks, bonds, and money in a bank account or savings institution reach or exceed a total of \$2,000; ~~and~~
- Changes in the legal obligation to pay child support; and
- Changes in work hours that bring an ABAWD individual below 20 hours per week, averaged monthly.

Certified households must report changes within ten (10) days of the date the change becomes known to the household.

An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview. Changes, as provided in this Section, which occur after the interview but before the date of the notice of eligibility, must be reported by the household within ten (10) days of the date of the notice.

Only the reporting requirements in this Section and no other reporting requirements can be imposed by the Division.

9091 Recertification

[273.14]

No household may participate beyond the expiration of the assigned certification period without a determination of eligibility for a new period. Households must apply for recertification and comply with the interview and verification requirements per DSSM 9030 and DSSM 9038.

The joint processing requirements in DSSM 9042 for DABC and/or General Assistance households continue to apply to applications for recertifications.

9091.1 Notice of Expiration

All households must be provided with a notice of expiration at the end of its certification prior to the start of the last month of its certification period.

When a household is certified for one month or when the certification action is not completed until the second month of a two-month certification, provide a notice of expiration at the time of certification. All other households must be provided a notice of expiration at least one day before the last month, but no earlier than the next to the last month of the certification period.

The form for notifying a household of the expiration of its certification must contain the following information:

A) The date the current certification period ends.

B) The date by which the household must file an application for certification to receive uninterrupted benefits.

Households certified for one month or certified in the second month if a two-month certification period shall be provided a notice of expiration at the time of certification. All other households must be provided a notice of expiration before the first day of the last month of the certification period.

The notice of expiration (Form 310) contains the following information:

A. The date the current certification period ends.

B. The date by which the household must file an application for recertification to receive uninterrupted benefits.

C. The consequences of failure to comply with the notice of expiration,

D. The household's right to request an application and have DSS accept an application as long as it is signed and contains a legible name and address.

E. The household's right to file the application by mail or through an authorized representative.

F. The address of the office where the application must be filed.

G. The household's right to request a fair hearing.

H. The fact that any household consisting only of SSI applicants or recipients is entitled to apply for food stamp recertification at an office of the Social Security Administration.

I. Notice that the household must appear for any interview scheduled on or after the date the application is timely filed in order to receive uninterrupted benefits.

J. Notice that the household is responsible for rescheduling any missed interview and for providing required verification information.

9091.2 Application Form

All households must complete an application form in order for DSS to obtain all information needed to determine eligibility and benefits for a new certification period. A household's signature and date is required at all recertifications regardless of the type of application used. The type of application used can be updating the online version, completing a long version hardcopy, completing the short review form, or updating an initial long version hardcopy application. The recertification process can only be used for households which apply before the end of their current certification period except for the provisions under DSSM 9091.8.

9091.3 Interview

A face-to-face recertification interview will be held with a member of each applying household or its authorized representative at least once every 12 months for households

~~certified for 12 months or less. Face-to-face interviews can be waived per DSSM 9030, and for households that have no earned income if all the members are elderly or disabled. DSS will conduct a telephone interview or a home visit for households for whom the office interview is waived.~~

~~The interview may be scheduled prior to the application being filed, provided that the household's application is not denied at that time for failure to appear for the interview. Schedule the interview on or after the date the application was filed if the interview has not been previously scheduled, or the household has failed to appear for any interviews scheduled prior to this time and has requested another interview.~~

Schedule the interview so that the household has at least ten (10) days after the interview in which to provide verification before the certification period expires. If a household misses a scheduled interview, send the household a notice of missed interview. If the household misses its scheduled interview and requests another interview, schedule a second interview.

~~If the household does not appear for any interview scheduled, do not initiate any further action.~~

9091.4 Verification

Information provided by the household shall be verified according to DSSM 9038. Inform households of what required verification must be provided and of the date by which the verifications must be returned. The household has ten (10) calendar days to provide required verification. Households whose eligibility is not determined by the end of the current certification period due to the time period allowed for returning verifications shall receive their benefits, if eligible, within five (5) working days after the household submits the missing verification and benefits cannot be prorated.

9091.5 Timely Application for Recertification

A household submitting a timely application for recertification and meeting all other processing steps in a timely manner has a right to receive uninterrupted benefits.

Households reporting required changes in circumstances that are certified for one month or certified in the second month of a two-month certification period shall have 15 days from the date the notice of expiration is received to file a timely application for recertification.

Other households reporting required changes in circumstances that submit applications by the 15th day of the last month of the certification period shall be considered to have made a timely application for recertification.

For households consisting only of SSI applicants or recipients who apply for food stamp recertification at SSA offices according to DSSM 9043, an application shall be considered filed for normal processing purposes when the signed application is received by the SSA office.

Households which timely reapply do not lose their right to uninterrupted benefits for failure to submit any requested verification prior to the date the household submits a timely application for recertification.

9091.6 Timely Processing

Provide uninterrupted benefits to any household determined eligible after the household has:

1. Timely filed an application,
2. Attended an interview, unless waived per DSSM 9030, and
3. Submitted all necessary verification within the ten (10) day timeframe.

Notify households that were certified for one month or certified for two months in the second month of the certification period and have met all required application procedures of their eligibility or ineligibility. Provide eligible households an opportunity to receive benefits no later than 30 calendar days after the date the household received its last allotment.

Other households that have met all application requirements shall be notified of their eligibility or ineligibility by the end of their current certification period. Provide households determined eligible an opportunity to participate by the household's normal issuance cycle in the month following the end of its current certification period.

Any household not determined eligible in sufficient time to provide for issuance in that timeframe due to the time period allowed for submitting any missing verification must receive an opportunity to participate, if eligible, within five (5) working days after the household supplies the missing verification.

9091.7 Delayed Processing Caused by DSS

~~Households which have submitted an application for recertification in a timely manner but, due to a DSS error, are not determined eligible in sufficient time to provide for issuance of benefits by the household's next normal issuance date shall receive an immediate opportunity to participate after being determined eligible. Restore lost benefits to any household unable to participate for the month following the expiration of the certification period because of such error.~~

If an eligible household files an application before the end of the certification period but DSS does not complete the recertification process within the 30 days after the date of application, continue to process that case and provide a full month's allotment for the first month of the new certification period.

9091.8 Delayed Processing Caused by the Household

~~If a household does not submit a new application by the end of the certification period, the case is closed for failure to recertify and a notice is sent to the household.~~

~~If an application is submitted after the certification~~

~~period expires, it shall be treated the same as an application for initial certification according to DSSM 9061.1 and subject to proration of benefits.~~

~~Do not prorate benefits for households which receive a notice of expiration at the time of certification and which are otherwise eligible if they file their applications for recertification by the filing deadline in the notice of expiration.~~

~~A household which submits an application by the filing deadline but does not appear for an interview scheduled after the application has been filed, or does not submit verification within the required timeframe, loses its right to uninterrupted benefits.~~

~~If the household loses its right to uninterrupted benefits due to such failures but is otherwise eligible after correcting such failures, provide benefits within 30 days after the date the application was filed.~~

~~Denials, including those for failure to appear for an interview after the application has been filed or who fail to provide missing verifications timely, will be sent by the end of the current certification period or within 30 days after the application was filed as long as the household has had adequate time for providing the missing verification.~~

~~If the household files an application by the end of the certification period, but fails to take a required action, deny the application at the end of 30 days. The household has 30 days after the end of the certification period to complete the process and have its application treated as an application for recertification.~~

- ~~• If the household takes the required action before the end of the certification period, reopen the case and provide a full month's benefits for the initial month of the new certification period.~~
- ~~• If the household takes the required action after the end of the certification period but within 30 days after the end of the certification period, reopen the case and provide benefits retroactive to the date the household takes the required action.~~

~~If the household files an application within 30 days after the end of the certification period, the application shall be considered an application for recertification. Prorate benefits from the date of the application. If a household's application for recertification is delayed beyond the first of the month of the new certification period due to agency error, prorate the benefits from the date of the new application and then restore benefits back to the date the household's certification period should have started if not for the agency error.~~

9091.9 Expedited Service for Recertification

Do not apply expedited service provisions of DSSM 9041 to households that apply for recertification before the end of its current certification period.

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Medicaid/Medical Assistance Programs initiated proceedings to implement new policy and amend policies to implement changes to the Division of Social Services Manual, Sections 14100.6, 14105, 14120, 14900, 15500 through 15511 and 30405. New policy at DSSM 14120 addresses eligibility of inmates and new policy at DSSM 15500 provides Medicaid eligibility to a new group, titled, The Breast and Cervical Cancer Group. DSSM 14900 is being amended to add this new eligibility group. Remaining policy changes relate to what constitutes a redetermination of eligibility (DSSM 14100.6); unverified social security number (DSSM 14105); and, redetermination requirements for the Delaware Prescription Assistance Program (DSSM 30405). 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 August, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

Findings Of Fact:

The Department finds that the proposed changes as set forth in the August, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Programs are adopted and shall be final effective October 10, 2001.

September 14, 2001

Vincent P. Meconi, Secretary, DHSS

14120 Inmate of a Public Institution

An individual who is an inmate of a public institution is not eligible.

An inmate of a public institution is a person who is living in a public institution. A public institution is a facility that is under the responsibility of a governmental unit or over which a governmental unit exercises administrative control. This control can exist when a facility is actually an organizational part of a governmental unit or when a governmental unit exercises final administrative control, including ownership and control of the physical facilities and grounds used to house inmates. Administrative control can also exist when a governmental unit is responsible for the ongoing daily activities of a facility; for example, when facility staff members are government employees or when a governmental unit, board, or officer has final authority to hire and fire employees. Privately supported institutions that are not under the control of a governmental unit do not meet the definition of a public institution.

An individual is an inmate and is not eligible when he or she is serving time for a criminal offense or is confined involuntarily awaiting trial, criminal proceedings, penal dispositions, or other involuntary detention determinations and is living in:

- (a) a State or Federal prison
- (b) jail
- (c) a detention facility
- (d) a wilderness camp under governmental control
- (e) a halfway house under governmental control
- (f) any penal facility.

The following individuals are not inmates of a public institution and may be eligible:

1. An individual who is voluntarily living in a public institution after his or her case has been adjudicated and other living arrangements are being made (such as a transfer to a community residence).
2. An individual who is sent to a privately supported institution as an alternative to a detention or prison sentence.
3. Infants living with the inmate in the public institution
4. Parolees
5. Probationers
6. Individuals living in a halfway house that is not under governmental control

15500 Breast and Cervical Cancer Group

The Breast and Cervical Cancer Prevention and Treatment Act of 2000 adds a new optional categorically needy eligibility group at Section 1902(a)(10)(A)(ii)(XVIII) for uninsured women under age 65 who are identified through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and are in need of treatment for breast or cervical cancer, including pre-cancerous conditions and early stage cancer.

The Breast and Cervical Cancer Group (BCC) is

implemented with the earliest effective date of October 1, 2001.

15501 General Eligibility Requirements

The Medicaid rules at DSSM 14000 apply to this group.

15502 Age Requirement

The woman must be under age 65. If a woman turns age 65 during her period of coverage, her eligibility terminates. Exception: If the woman is an inpatient in a hospital when she turns age 65, her eligibility will continue until she is discharged from the hospital.

15503 Screening Requirement

The woman must have been screened for breast or cervical cancer under the CDC Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and found to need treatment for either breast or cervical cancer (including a pre-cancerous condition).

A woman is considered to have met the screening requirement if she comes under any of the following three categories:

1. CDC Title XV funds paid for all or part of the costs of her screening services.
2. The woman is screened under a state Breast and Cervical Cancer Early Detection Program in which her particular clinical service has not been paid for by CDC Title XV funds, but the service was rendered by a provider and/or an entity funded at least in part by CDC Title XV funds; the service was within the scope of a grant, sub-grant or contract under that State program; and the State CDC Title XV grantee has elected to include such screening activities by that provider as screening activities pursuant to CDC Title XV.
3. The woman is screened by any other provider and/or entity and the state CDC Title XV grantee has elected to include screening activities by that provider as screening activities pursuant to CDC Title XV.

15504 Needs Treatment Requirement

The woman must need treatment for breast or cervical cancer. The woman meets this requirement when it is the opinion of the woman's treating health professional that the diagnostic test following a breast or cervical cancer screen indicates that the woman is in need of cancer treatment services. These services include diagnostic services that may be necessary to determine the extent and proper course of treatment, as well as treatment itself.

Based on the physician's plan-of-care, a woman who is determined to require only routine monitoring services for a pre-cancerous breast or cervical condition (such as breast examination and mammograms) is not considered to need treatment.

15505 Uninsured Requirement

The woman must be uninsured. The woman is not eligible if she has:

- a) Medicaid or is eligible under any of the Mandatory Categorically Needy coverage groups. The mandatory groups include Section 1931, Transitional or Prospective, IV-E Foster Care, IV-E Adoption Assistance, Low Income Pregnant Woman or Child, SSI, or Deemed SSI.
- b) Medicare
- c) comprehensive health insurance
- d) CHAMPUS

15505.1 Definition of Comprehensive Health Insurance

Comprehensive health insurance is a benefit package comparable in scope to the "basic" benefit package required by the State of Delaware's Small Employer Health Insurance Act at Title 18, Chapter 72 of the Delaware Code. To be considered comprehensive health insurance, the benefits package must cover hospital and physician services, laboratory and radiology and must include coverage for the treatment of breast and cervical cancer.

A woman is not considered to have comprehensive health insurance when she is not actually covered for treatment of breast or cervical cancer. For example, a woman who has comprehensive health insurance but is in a period of exclusion (such as a preexisting condition exclusion) for treatment of breast and cervical cancer. Also, if a woman exhausts her lifetime limit on benefits under the insurance (including treatment for breast and cervical cancer), she is not considered to have coverage.

A woman who has comprehensive health insurance that has limits on benefits (such as limits on the number of outpatient visits per year) or high deductibles, is not eligible under this group.

15506 Financial Eligibility

There are no income or resource limits for this group.

15507 Application Process

Women must complete an application that will be used to determine both presumptive eligibility and final eligibility for Medicaid. Presumptive eligibility is a temporary eligibility determination that will provide expedited Medicaid coverage to women in this group during the application processing period. This special application processing procedure will facilitate the prompt enrollment and immediate access to services for women who are in need of treatment for breast or cervical cancer. An applicant can be determined presumptively eligible when DSS receives verification that she has been screened for breast or cervical cancer under CDC and needs treatment.

If the information on the application indicates that she may be eligible under one of the mandatory categorically

needy groups, DSS will first make a determination of presumptive eligibility under the BCC group. Verification of factors of eligibility for the mandatory group (such as income) are postponed. Postponed verifications must be provided within 30 days from the date of receipt of the application. The verifications that were postponed are required to determine final eligibility for Medicaid. Presumptive eligibility continues until a final eligibility determination is completed. If the required verifications are not provided, eligibility is terminated.

If the information on the application indicates that the woman is not eligible under one of the mandatory categorically needy groups, DSS will make a final determination of eligibility under the BCC group provided all verification requirements are met.

15508 Eligibility Period

Eligibility may begin up to three months prior to the month of application (but no earlier than October 1, 2001), provided the woman meets all eligibility requirements during those prior three months including having been screened and found to need treatment for breast or cervical cancer.

Eligibility continues as long as the woman is receiving treatment for breast or cervical cancer, is under age 65, and is uninsured.

A woman is not limited to one period of eligibility. A new period of eligibility and coverage can begin each time a woman is screened under the CDC program, has been found to need treatment for breast or cervical cancer, and meets the other eligibility requirements.

15509 Coverage

A woman eligible under this group is entitled to full Medicaid coverage. Coverage is not limited to treatment of breast and cervical cancer. There is no managed care enrollment under this group. Medicaid benefits will be provided on a fee-for-service basis.

15510 Termination of Eligibility

Eligibility under this group terminates when the woman:

- a) attains age 65
- b) acquires comprehensive health insurance
- c) is no longer receiving treatment for breast or cervical cancer
- d) no longer meets the general eligibility requirements at DSSM 14000.

15511 Redetermination of Eligibility

An annual redetermination of eligibility must be completed as required at DSSM 14100.6.

14100.6 Redetermination Of Eligibility

Eligibility for continued Medicaid coverage must be

redetermined at least annually. A redetermination is a re-evaluation of a recipient's continued eligibility for medical assistance. In a redetermination, all eligibility factors are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. Failure to complete and return a DSS application form will result in termination of eligibility. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.

Eligibility must be promptly redetermined when information is received about changes in a recipient's circumstances that may affect his eligibility. Some changes in circumstances can be anticipated. A redetermination of eligibility must be made at the appropriate time based on those changes. Examples are: Social Security changes, receipt of Child Support, return to work, etc.

Medicaid coverage should not terminate without a specific determination of ineligibility. The individual may be eligible under another category of Medicaid. For example, when an individual loses eligibility because of termination from cash assistance, such as SSI, we must make a separate determination of Medicaid eligibility. Medicaid must continue until the individual is found to be ineligible.

Medical assistance will be terminated when DSS is notified by the recipient that he or she no longer wants coverage.

14105 Social Security Number

Each individual applying for Medicaid must furnish his or her Social Security number (SSN). If the individual cannot furnish a SSN, he or she must provide proof of application for one before Medicaid can be approved. This verification of application is usually in the form of a signed receipt or computer printout from the Social Security Administration.

Acceptable documentation of SSN includes a Social Security card, a Social Security award letter, a NUMIDENT, a pay stub, a W-2 form, a driver's license, or an unemployment claim card. If the individual is unable to provide proof of his or her number but can furnish one, the application will be processed using the number the individual has given. The SSNs of individuals who are opened on DCIS are submitted to the Social Security Administration for verification through the Income and Eligibility Verification Systems (IEVS). When a SSN is returned from SSA as unverified, DSS is required to pursue the unverified information with the applicant/recipient. If the individual refuses to cooperate in resolving the unverified SSN, medical assistance will be terminated. If the individual claims he or she cannot cooperate for reasons beyond his or her control, obtain documentation of the individual's inability to cooperate or medical assistance will

be terminated.

Any individual whose income will be considered when determining eligibility for the applicant will be asked to furnish his or her SSN on the application. When the SSN of a financially responsible individual is voluntarily furnished and is included in the case record, IEVS matching will be performed on this individual.

Verification of the SSN, either through IEVS or acceptable documentation, must be obtained by the first redetermination of eligibility.

14900 Enrollment In Managed Care

On May 17, 1995, Delaware received approval from the Health Care Financing Administration for a Section 1115 Demonstration Waiver that is known as the Diamond State Health Plan. The basic idea behind this initiative is to use managed care principles and a strong quality assurance program to revamp the way health care is delivered to Delaware's most vulnerable populations. The Diamond State Health Plan is designed to provide a basic set of health care benefits to current Medicaid beneficiaries as well as uninsured individuals in Delaware who have income at or below 100% of the Federal Poverty Level (FPL). The demonstration waiver will mainstream certain Medicaid recipients into managed care to increase and improve access to medical service while improving cost effectiveness and slowing the rate of growth in health care costs.

The majority of the Medicaid population receiving non institutional services will be enrolled into the Diamond State Health Plan. Recipients in the cash assistance programs (TANF/AFDC, SSI, and GA) as well as the TANF/AFDC-related groups, SSI-related groups, and poverty level groups will be included in the managed care program. The following individuals cannot enroll in Diamond State Health Plan:

- a. Individuals entitled to or eligible to enroll in Medicare
- b. Individuals residing in a nursing facility or intermediate care facility for the mentally retarded (ICF/MR)
- c. individuals covered under the home and community based waivers
- d. non lawful and non qualified non citizens (aliens)
- e. individuals who have CHAMPUS
- f. individuals eligible under the Breast and Cervical Cancer Group

30405 Redetermination of Eligibility

A redetermination of eligibility must be completed by ~~July~~ June 30 of each year. If an individual's initial coverage begins in April, May, or June, a redetermination will not be required until ~~July~~ June of the following year. A redetermination is a re-evaluation of a recipient's continued eligibility for DPAP coverage. In a redetermination, all

eligibility factors are re-examined to ensure that the recipient continues to meet eligibility requirements. When a redetermination is due, the recipient is required to complete and return a new DSS application form. Failure to complete and return a DSS application form will result in termination of eligibility. A redetermination is complete when all eligibility factors are examined and a decision regarding continued eligibility is reached.

DPAP coverage will be terminated when the Contractor or DSS is notified by the recipient that he or she no longer wants coverage.

DIVISION OF SOCIAL SERVICES

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

ORDER

Nature Of The Proceedings:

The Delaware Department of Health and Social Services ("Department") / Division of Social Services / Food Stamp Program initiated proceedings to amend policies to implement policy changes to the following section of the Division of Social Services Manual: Section 7004.3. This change sets criteria for determining when a claim of \$125 or less is not established. 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 August, 2001 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by August 31, 2001 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule

Findings Of Fact:

The Department finds that the proposed changes as set forth in the August, 2001 Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations related to the Food Stamp Program Collection and Management of Food Stamp Claims are adopted and shall be final effective October 10, 2001.

September 14, 2001

Vincent P. Meconi, Secretary, DHSS

7004.3 DABC and/or GA Food Stamp Households [273.12(f)]

DABC and/or GA households have the same reporting requirements as any other food stamp households. Whenever an DABC and/or GA household reports a change, adjustments must be made in the household's eligibility status or allotment for the months determined appropriate given the household's budgeting cycle.

Notify households whenever their benefits are altered as a result of changes in the DABC and/or GA benefits, ~~or whenever the food stamp certification period is shortened to reflect changes in the household's circumstances. If the certification period is shortened, the household's certification period must not end any earlier than the month following the month in which DSS determines that the certification period should be shortened, allowing adequate time to send a notice of expiration and for the household to timely reapply.~~ If the DABC and/or GA benefits are terminated but the household is still eligible for food stamp benefits, advise household members of food stamp work registration requirements, if applicable, as their First Step registration exemption no longer applies.

Whenever a change results in the reduction or termination of a household's DABC and/or GA benefits within its food stamp certification period, and DSS has sufficient information to determine how the change affects the household's food stamp eligibility and benefit level, take the following actions:

- If a change in household circumstances requires both reduction or termination in the DABC and/or GA payment and a reduction or termination in food stamp benefits, issue a single notice of adverse action for both the DABC and/or GA and food stamp actions. If the household requests a fair hearing within the period provided by the notice of adverse action, continue the household's food stamp benefit on the basis authorized immediately prior to sending the notice. If the fair hearing is requested for both programs' benefits, conduct the hearing according to DABC and/or GA procedures and timeliness standards. The household must reapply for food stamp benefits if the food stamp certification period expires before the fair hearing process is completed. If the household does not appeal, make the change effective in accordance with the procedures in DSSM 9085.2.
- If the household's food stamp benefits will be

increased as a result of a reduction or termination of DABC and/or GA benefits, the household's food stamp benefits must continue at the previous basis. If the household does not appeal, make the change effective in accordance with the procedures specified in DSSM 9085.2, except calculate the time limits for action from the date the DABC and/or GA notice of adverse action period expires.

Whenever a change results in the termination of a household's DABC and/or GA benefits within its food stamp certification period, and DSS does not have sufficient information to determine how the change affects the household's food stamp eligibility and benefit level (such as when an absent parent returns to a household, rendering the household categorically ineligible for DABC and/or GA, and DSS has no information on the income of the new household member), take the following action:

1) Where a DABC and/or GA notice of adverse action has been sent, wait until the household's notice of adverse action period expires or until the household requests a fair hearing, whichever occurs first. If the household requests a fair hearing and its DABC and/or GA benefits are continued pending the appeal, the household's food stamp benefits will be continued at the same basis.

2) If an DABC and/or GA notice of adverse action is not required, or the household decides not to request a fair hearing and continuation of its DABC and/or GA benefits, send the household a Form 105 requesting the verification needed to determine the household's continued food stamp eligibility notice of expiration and that it must reapply if it wishes to continue to participate. Explain to the household that its certification period will expire at the end of the month following the month the notice of expiration is sent and that it must reapply if it wishes to continue to participate. Explain to the household that its certification period is expiring because of changes in its circumstances that may affect its food stamp eligibility and benefit level. Give the household at least ten (10) days to provide the necessary verifications. Take the necessary action to adjust or terminate the food stamps based on the rules regarding processing reported changes per DSSM 9085.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**

Statutory Authority: 7 Delaware Code,
Chapter 70 (7 Del.C. Chp. 70)

**Regulations Governing Delaware's Coastal Zone
Prepared by
The Delaware Department of Natural Resources and
Environmental Control
for
The Coastal Zone Industrial Control Board
May 11, 1999**

In accordance with the orders of the Superior Court of the State of Delaware in and for Sussex County, C.A. No. 99C-05-037 dated August 1, 2001, and the Superior Court of the State of Delaware in and for New Castle County, C.A. No. 99C-05-270-CHT, dated August 13, 2001, the Regulations Governing Delaware's Coastal Zone are amended as follows:

Preamble

These regulations have been developed to accomplish two key goals. They have been designed to promote improvement of the environment within the Coastal Zone while also providing existing and new industries in Delaware's Coastal Zone with the flexibility necessary to stay competitive and to prosper – all while adhering to the edicts and nuances of one of the most original and innovative environmental and land use statutes in the world.

Delaware's Coastal Zone Act was passed in 1971 and provides to the Secretary of the Department of Natural Resources and Environmental Control and the Coastal Zone Industrial Control Board the authority to promulgate regulations to carry out the requirements contained within the Act. For numerous reasons, regulations were never adopted and implementation of Coastal Zone Act was left to an undefined and informal process that frustrated industry and environmentalist alike. That frustration further polarized the debate over the original intention of the Act and what the focus of any regulations should be.

Finally, 25 years after passage of the Act, the negative implications of not having regulations came to outweigh the contentiousness of the debate. An advisory committee of dedicated Delawareans was then convened and, after eighteen months of oftentimes difficult debate, came to consensus agreement on how to embody the linked goals of industry flexibility and environmental improvement. The committee's agreements were memorialized in a Memorandum of Understanding between all participants. That MOU was founded on consensus, respect and necessity

and it was used as a basis for these regulations.

A. Authority

1. These regulations are promulgated pursuant to authority granted to the Secretary and the State Coastal Zone Industrial Control Board by Section 7005(b) and (c) of the Coastal Zone Act, 7 Del. C., Chapter 70.

B. Applicability

1. The Coastal Zone Act program and these regulations are administered by the Delaware Department of Natural Resources and Environmental Control pursuant to 7 Del. C. Section 7005(a).

2. These regulations apply to areas within the Coastal Zone as defined by 7 Del. C. Chapter 70. A map of the coastal zone appears in Appendix A of these regulations.

3. These regulations specify the permitting requirements for existing non-conforming uses already in the coastal zone and for new manufacturing uses proposing to locate within Delaware's coastal zone.

C. Definitions

Many terms which appear in these regulations are defined in the Coastal Zone Act as shown in Appendix E. Terms not defined in the Act shall have the following meanings:

1. "Administratively Complete" means a coastal zone permit application or status decision request that is signed, dated, and contains, in the opinion of the Secretary, substantive responses to each question, a sufficient offset proposal, if applicable, and includes the appropriate application fee and all enclosures the applicant has referenced in the application.

2. "Board" means the State Coastal Zone Industrial Control Board.

3. "Bulk Product" means loose masses of cargo such as oil, grain, gas and minerals, which are typically stored in the hold of a vessel. Cargoes such as automobiles, machinery, bags of salt and palletized items that are individually packaged or contained are not considered bulk products in the application of this definition.

4. "Certify" means the applicant is attesting, by affirmation, that all the data and other information in the application is true and accurate.

5. "Department" means the Delaware Department of Natural Resources and Environmental Control.

6. "Docking Facility" means any structures and/or equipment used to temporarily secure a vessel to a shoreline or another vessel so that materials, cargo, and/or people may be transferred between the vessel and the shore, or between two vessels together with associated land, equipment, and structures so as to allow the receiving, accumulating, safekeeping, storage, and preparation of cargoes for further shipment, and administrative maintenance purposes directly related to such receiving, accumulating, safekeeping, storage, and preparation of

cargoes for further shipment.

7. "Environmental indicator" means a numerical parameter which provides scientifically-based information on important environmental issues, conditions, trends, influencing factors and their significance regarding ecosystem health. Indicators inherently are measurable, quantifiable, meaningful and understandable. They are sensitive to meaningful differences and trends, collectible with reasonable cost and effort over long time periods, and provide early warning of environmental change. They are selected and used to monitor progress towards environmental goals.

8. "Footprint" means the geographical extent of non-conforming uses as they existed on June 28, 1971 as depicted in Appendix B.

9. "Port of Wilmington" means those lands contained within the footprint shown in Appendix B of these regulations.

10. "Potential To Pollute" means the proposed use has the potential to cause short and long term adverse impacts on human populations, air and water quality, wetlands, flora and fauna, or to produce dangerous or onerous levels of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors as determined in the applicant's Environmental Impact Statement accompanying the permit application. The Department will consider mitigating controls and risk management analysis reports from the applicant in evaluating a proposed use's potential to pollute. The Department shall consider probability of equipment failure or human error, and the existence of backup controls if such failure or error does occur, in evaluating an applicant's potential to pollute.

11. "Public Recycling Plant" means any recycling plant or industrial facility whose primary product is recycled materials and which is owned and operated by any city, town, county, district or other political subdivision.

12. "Public Sewage Treatment Plant" means any device and/or system used in conveyance, storage, treatment, disposal, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, which systems are under the jurisdiction of a city, town, county, district or other political subdivision.

13. "Recycle" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the form of raw materials other than fuel for producing heat or power combustion.

14. "Research And Development Activity" means those activities in which research and development substances are used in quantities that are not greater than reasonably necessary for the purposes of scientific experimentation or product or process development. The

research and development substances must either be the focus of research and development itself, or be used in the research and development activity focusing on another chemical or product. research and development includes synthesis, analysis, experimentation or research on new or existing chemicals or products. Research and development encompasses a wide range of activities which may occur in a laboratory, pilot plants or commercial plant, for testing the physical, chemical, production, or performance characteristics of a substance, conducted under the supervision of a technically qualified individual. Research and development is distinct from ongoing commercial activities which focus on building a market for a product rather than just testing its market potential. General distribution of chemical substances or products to consumers does not constitute research and development.

15. "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

16. "Vessel" means any ship, boat or other means of conveyance that can transport goods or materials on, over, or through water.

17. "Voluntary Improvements" means improvements, for example, in emissions reductions, habitat creation and spill prevention -- provided that each is definite and measurable and which were made by a facility without any federal or state requirement to do so.

D. Prohibited Uses

The following uses or activities are prohibited in the Coastal Zone:

1. Heavy industry use of any kind not in operation on June 28, 1971.

2. Expansion of any non-conforming uses beyond their footprint(s) as depicted in Appendix B of these regulations.

3. Offshore gas, liquid, or solid bulk product transfer facilities which were not in operation on June 28, 1971.

4. The conversion of an existing unregulated, exempted, or permitted facility to a heavy industry use.

5. Bulk product transfer facilities and pipelines which serve as bulk transfer facilities that were not in operation on June 28, 1971.

6. The conversion or use of existing unregulated, exempt, or permitted docking facilities for the transfer of bulk products.

7. The construction, establishment, or operation of offshore gas, liquid, or solid bulk product transfer facilities which were not in operation on June 28, 1971.

8. Individual pipelines or sets of pipelines which are not associated with a use that obtains a permit but which meet the definition of bulk product transfer facilities.

9. Any new tank farm greater than 5 acres in size not associated with a manufacturing use is prohibited as a

new heavy industry use.

E. Uses Not Regulated

The construction and/or operation of the following types of facilities and/or activities shall be deemed not to constitute initiation, expansion or extension of heavy industry or manufacturing uses under these regulations:

1. The raising of agricultural commodities or livestock.

2. Warehouses or other storage facilities, not including tank farms.

3. Tank farms of less than five acres.

4. Parking lots or structures, health care and day care facilities, maintenance facilities, commercial establishments not involved in manufacturing, office buildings, recreational facilities and facilities related to the management of wildlife.

5. Facilities used in transmitting, distributing, transforming, switching, and otherwise transporting and converting electrical energy.

6. Facilities used to generate electric power directly from solar energy.

7. The repair and maintenance of existing electrical generating facilities providing such repair or maintenance does not result in any negative environmental impacts.

8. Back-up emergency and stand-by source of power generation to adequately accommodate emergency industry needs when outside supply fails.

9. The continued repair, maintenance and use of any non-conforming bulk product transfer facility where that facility transfers the same products and materials, regardless of the amount of such products or materials, as those transferred on June 28, 1971.

10. Bulk product transfer operations at dock facilities owned by the Diamond State Port Corp. (DSPC), or acquired by the DSPC at any time in the future, and which are located within the Port of Wilmington as shown in Appendix B.

11. Docking facilities used as bulk product transfer facilities located on privately owned lands within the Port of Wilmington which have been granted a status decision extending the bulk product transfer exemption prior to the effective date of these regulations.

12. Docking facilities which are not used as bulk product transfer facilities.

13. Any pipeline that originates outside the Coastal Zone, traverses the Coastal Zone without connecting to a manufacturing or heavy industry use and terminates outside the Coastal Zone.

14. Maintenance and repair of existing equipment and structures.

15. Replacement in-kind of existing equipment or installation of in-line spares for existing equipment.

16. Installation and modification of pollution

control and safety equipment for nonconforming uses within their designated footprint providing such installation and modification does not result in any negative environmental impact over and above impacts associated with the present use.

17. Any facilities which have received, prior to the promulgation of these regulations, a status decision which provided an exemption for the activity in question.

18. Research and development activities within existing research and development facilities.

19. Any other activity which the Secretary determines, through the status decision process outlined in Section G of these regulations, is not an expansion or extension of a non-conforming use or heavy industry use.

[20. Public Sewage Treatment Plants subject to regulation by the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et.seq. and/or the Delaware Environmental Protection Act, 7 Del. C., Chapter 60.]

F. Uses Requiring a Permit

The following uses or activities are permissible in the Coastal Zone by permit. Permits must be obtained prior to any land disturbing or construction activity.

1. The construction of pipelines or docking facilities serving as offshore bulk product transfer facilities if such facilities serve only one on-shore manufacturing or other facility. To be permissible under these regulations, the materials transferred through the pipeline or docking facilities must be used as a raw material in the manufacture of other products, or must be finished products being transported for delivery.

~~**[2. Any public sewage treatment plant or public recycling plant.]**~~

[2. Any recycling plant or sewage treatment plant not excluded by Section E(20) of the Regulations.]

3. Any new activity, with the exception of those listed in Section E of these regulations proposed to be initiated after promulgation of these regulations by an existing heavy industry or a new or existing manufacturing facility that may result in any negative impact on the following factors as found in 7 Del. C., Section 7004 (b):

- a) Environmental impact, including but not limited to, items H.2.a through H.2.j of these regulations.
- b) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.
- c) Aesthetic effect, such as impact on scenic beauty of the surrounding area.
- d) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.
- e) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters,

effect on recreational areas and effect on adjacent residential and agricultural areas.

f) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

G. Requests For Status Decisions

1. Any person wishing to initiate a new activity or facility may request a status decision to determine whether or not the activity or facility is a heavy industry.

2. A person whose proposed activity is not exempted as specified in Section E above may request of the Secretary a status decision to determine whether or not the proposed activity requires a Coastal Zone permit under the Act or these regulations.

3. Status decision requests must be in writing on a form supplied by the Secretary and shall include, at a minimum, the following:

- a) Name, address and contact person for the activity or facility under consideration.
- b) Site of proposed activity marked on a map or site plan.
- c) A detailed description of the proposed activity under consideration.
- d) An impact analysis of the proposed project on the six (6) criteria contained in Section F.3 (a-f) above.

4. Any new manufacturing facility or research and development facility proposed to be sited in the Coastal Zone shall apply for a status decision.

5. The Secretary may, if he has cause to suspect an activity within the confines of the Coastal Zone is prohibited or should receive a permit under these regulations, request of the person undertaking that activity to apply for a status decision as described in this section. Failure of the person to respond to the Secretary's request shall subject said person to enforcement procedures as contained in the Act and/or Section R of these regulations.

6. Upon receipt of an administratively complete request for a status decision, the Secretary shall publish a legal notice as prescribed in Section N of these regulations advising the public of the receipt of the request and allowing 10 business days for interested persons to review the request and provide the Secretary with input on whether a permit should be required of the applicant.

7. The Secretary shall then, within an additional 15 business days, determine whether or not a permit will be required and notify the applicant in writing of his determination. The Secretary shall publish that determination as a legal notice as prescribed in Section N of these regulations.

H. Permitting Procedures

Application Contents

The applicant shall complete and submit to the Secretary three (3) identical copies of the Coastal Zone permit application. The application will be on a form

supplied by the Secretary and will contain, at a minimum:

a) A certification by the applicant that the information contained with the application is complete, accurate and truthful.

b) Evidence of local zoning approval as required by section 7004 (a) of the Act.

c) An Environmental Permit Application Background Statement as required under 7 Del. C. Chapter 79, if applicable.

d) An Environmental Impact Statement as described in Section H.2 of these regulations.

e) A description of the economic effects of the proposed project, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs and the amount of tax revenues potentially accruing to State and local government.

f) A description of the aesthetic effects of the proposed project, such as impact on scenic beauty of the surrounding area.

g) A description of the number and type of supporting facilities required and the impact of such facilities on all factors listed in this section.

h) A description of the effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

i) A statement concerning the project or activity's consistency with county and municipal comprehensive plans.

j) An offset proposal if required under Section I.1.a of these regulations.

H.2 Environmental Impact Statement

An environmental impact statement must be submitted with the Coastal Zone permit application and must contain, at a minimum, an analysis of the following:

a) Probable air, land and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error. In addition, the applicant shall provide a statement concerning whether, in the applicant's opinion, the project or activity will in any way result in any negative environmental impact on the Coastal Zone.

b) An assessment of the project's likely impact on the Coastal Zone environmental goals and indicators, when available. Coastal Zone environmental goals and indicators shall be developed by the Department after promulgation of these regulations and used for assessing applications and determining the long-term environmental quality of the Coastal Zone. In the absence of goals and indicators, applicants must meet all other requirements of this section.

c) Likely destruction of wetlands and flora and fauna.

d) Impact of site preparation on drainage of the area in question, especially as it relates to flood control;

e) Impact of site preparation and facility operations on land erosion;

f) Effect of site preparation and facility operation on the quality and quantity of surface and ground water resources,

g) A description of the need for the use of water for processing, cooling, effluent removal, and other purposes;

h) The likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and/or obnoxious odors,.

i) The effect of the proposed project on threatened or endangered species as defined by the regulations promulgated by the State or pursuant to the Federal Endangered Species Act, and,

j) The raw materials, intermediate products, byproducts and final products and their characteristics from material safety data sheets (MSDS's) if available, including carcinogenicity, mutagenicity and/or the potential to contribute to the formation of smog.

H.3 Application Review Process

a) The Department reserves the right to request further relevant information after receipt of an application and prior to the application being deemed administratively complete. The Secretary shall notify the applicant by certified mail when the application is deemed administratively complete.

b) In assessing an application, the Secretary shall consider how the proposed project will affect the six criteria cited in the Act, including direct and cumulative environmental impacts, economic effects, aesthetic effects, number and type of supporting facilities and their anticipated impacts on these criteria, effect on neighboring land uses, and compatibility with county and municipal comprehensive plans.

c) The Secretary shall also consider any impacts the proposed activity may have on the Department's environmental goals for the Coastal Zone and the environmental indicators used to assess long-term environmental quality within the zone.

d) Prior to public hearing, the Secretary shall provide a written assessment of the project's likely impact on the six criteria listed in Section H.1 above and make available the preliminary determination of the sufficiency of the offset project as required in Section I of these regulations. The Secretary's report will be provided to the applicant and interested citizens prior to the public hearing and made a part of the record.

e) Upon receipt of an administratively complete application and completion of the Secretary's assessment as required in Section H.3.d above, the Secretary shall issue a public notice as prescribed in Section N of these regulations and hold a public hearing in accordance with hearing procedures described in Section O of these regulations.

f) Within 90 days of receipt of an administratively complete application, not counting the day the application became administratively complete, the Secretary shall reply to the request for a Coastal Zone act permit either granting the permit, denying the permit or granting the permit but with special conditions. The Secretary shall state the reasons for his decision.

g) The permit decision shall be sent to the applicant by certified mail and shall be noticed as prescribed in Section N of these regulations. If no appeal is received within the 14-day appeal period following the date of publication of the legal notice, the decision becomes final and no appeal will be accepted.

I. Offset proposals

Offset Proposal Requirements

a) Any application for a Coastal Zone permit for an activity or facility that will result in any negative environmental impact shall contain an offset proposal. Offset proposals must more than offset the negative environmental impacts associated with the proposed project or activity requiring a permit. It is the responsibility of the applicant to choose an offset project that is clearly and demonstrably more beneficial to the environment in the Coastal Zone than the harm done by the negative environmental impacts associated with the permitting activities themselves.

b) All applicants, are required to more than offset the negative impacts of the project or activity that is the subject of the application for a Coastal Zone permit. Applicants who have undertaken past voluntary improvements may be required to provide less of an offset than applicants without a similar record of past achievements.

c) The Secretary shall give preference to offset projects that are within the Coastal Zone, that occur in the same environmental medium as the source of degradation of the environment, that occur at the same site as the proposed activity requiring a permit and that occur simultaneously with the implementation of the proposed activity needing an offset.

d) Offset proposals should be well-defined and contain measurable goals or accomplishments which can be audited by the Department.

e) Within 30 days of receipt of an application, the Secretary shall make a preliminary determination as to whether the proposed offset commitment is sufficient. If the offset commitment is deemed not to be sufficient, the applicant will be informed that his application is not administratively complete and the Secretary shall request another offset proposal.

f) Where an offset project in itself requires one or more permits from a program or programs within DNREC, the Secretary shall issue the Coastal Zone Permit only after all applicable permit applications for offsetting

projects have been received and deemed administratively complete by DNREC.

1.2 Offset Proposal Contents

The applicant may provide whatever materials or evidence deemed appropriate in order to furnish the Secretary with the information necessary for him to determine the adequacy of the offset proposal. The applicant must provide, at a minimum, the following information:

a) A qualitative and quantitative description of how the offset project will more than offset the negative impacts from the proposed project as provided by the applicant pursuant to Section H.2.a of these regulations.

b) How the offset project will be carried out and in what period of time.

c) What the environmental benefits will be and when they will be achieved.

d) How the offset will impact the attainment of the Department's environmental goals for the Coastal Zone and the environmental indicators used to assess long-term environmental quality within the zone.

e) What, if any, negative impacts are associated with the offset project.

f) What scientific evidence there is concerning the efficacy of the offset project in producing its intended results.

g) How the success or failure of the offset project will be measured in the short and long term.

1.3 Enforcement Of Offset Proposals

a) Coastal Zone permits shall be approved contingent upon the applicant carrying out the proposed offset in accordance with an agreed upon schedule for completion of the offset project. Said schedule will be included in the Coastal Zone permit as an enforceable condition of the permit.

b) Should a Coastal Zone permit applicant fail to receive, within 180 days of issuance of the Coastal Zone permit, any and all permits required to undertake an offset project, the applicant, except for good cause shown by the applicant for additional time, will be required to submit an entirely new application for the activity, including all submissions listed in Section H above, additional permit fees and a new proposed offset project.

J. Withdrawal Of and Revisions To Applications

1. An applicant may withdraw his request for a status decision or Coastal Zone permit at any time by submitting a written request, signed by the original applicant, to the Secretary. The Secretary shall provide public notice of the applicant's withdrawal request and the Secretary's action on the request for withdrawal. In the case of such withdrawal there shall be no refund of the application fee paid. Once publicly noticed, the decision is final and cannot be reversed by the applicant or the Secretary.

2. Once public notice announcing a public

hearing is advertised according to Section N of these regulations, no revisions to any application will be permitted beyond those allowed in Section J.3 below. In the event an applicant finds cause to make substantive revisions to an application after publication of the notice, the applicant will be required to submit a new application, including an additional application fee, an offset project and any other required application submissions as specified under Section H of these regulations.

3. A new application is not required for changes which can be incorporated into the original application where such changes will not significantly affect the nature of the project first proposed and which will not significantly increase the Department's review and evaluation of the application originally submitted. Such changes must be submitted in writing prior to publication of the legal notice announcing the public hearing.

4. If the Secretary receives information which he believes may significantly alter the scope of the project, he may require the applicant to submit a new application to reflect the altered nature of the project.

K. Permit Transfers

1. Coastal Zone permits may be transferred in cases of real estate transfer, corporate mergers and acquisitions or other actions whereby ownership of the activity or facility changes. Permit transfers shall require a written request of the Secretary and shall be processed within 60 days of receipt of a request for transfer.

L. Abandoned Uses

1. Any existing facility which is determined to be abandoned shall not be reinstated except as otherwise provided in the Act.

2. Involuntary shutdown of a facility shall not be deemed abandonment or a loss of the facility's non-conforming use status if the Secretary can determine that the owner had no intention to abandon the use.

3. In determining whether or not the cessation of the use is temporary or an abandonment, factors such as, but not limited to, status of environmental permits and/or business licenses, maintenance of machinery and structures, owner presence and involvement to some degree in reinstating the use, and the duration of cessation shall be considered.

4. When, after investigation, the Secretary makes a preliminary determination that an existing use may be abandoned, he shall notify the owner/operator in writing, by registered mail, that he intends to declare the use abandoned. The owner/operator shall have sixty days from the receipt of said notice to demonstrate that there is or was no intention to abandon the use and when operation of the use will resume.

5. Within 120 days from the date of receipt by the owner/operator of the notice of abandonment, the Secretary shall render a decision of abandonment of the facility taking

into consideration the response, if any, received from the owner/operator and shall give reasons therefore.

6. The Secretary shall issue a public notice of the decision, which decision may be appealed in accordance with the provisions of Section P of these regulations and 7 Del C. Section 7007.

M. Public Information

1. All correspondence, permit applications, offset proposals and any other supporting materials submitted by applicants or materials prepared by DNREC are subject to Delaware's Freedom of Information Act (29 Del C., Chapter 100) and the Department's FOIA policy.

N. Public Notification

1. At a minimum, the Secretary shall notify the public by legal notice when the following events occur:

- a) The receipt of a request for status decision.
- b) The decision by the Secretary of a status decision request.
- c) The decision by the Secretary to consider a facility/use as abandoned.
- d) The receipt of an application for a Coastal Zone Permit.
- e) The scheduling of all public hearings.
- f) The decision on all permit applications.
- g) The withdrawal of an application by the applicant.

h) The receipt of a request for a permit transfer as specified in Section K.1.

2. All legal notices shall appear in one newspaper of statewide circulation and a second newspaper of local circulation in the county in which the proposed project is located. The Secretary will make every effort to publish legal notices on either Wednesdays or Sundays but may publish on other days when schedules require more expeditious handling of legal notices.

3. The Secretary shall also maintain a direct mail program whereby interested citizens may subscribe, free of charge, to a service where copies of all legal notices will be mailed directly to citizens. The Secretary shall advertise this service on an annual basis and renew subscriptions from interested citizens as requested. Failure of the Secretary to mail notices in a timely and accurate fashion shall not be cause for appeal of any action or decision of the Secretary.

O. Public Hearings

1. All public hearings shall be held in the county in which the proposed project is to be located and within a reasonable proximity to the proposed project site.

2. The date, location, time and a brief description of the project shall be published at least twenty (20) days prior to the date of the hearing. A copy of the hearing notice shall be mailed to the applicant.

3. A written transcript of the hearing shall be made for the Department.

4. All hearings shall be conducted in accordance

with the Delaware Administrative Procedures Act (29 Del. C. Chapter 101).

P. Appeals

P.1 Appeals of Decisions of the Secretary

a) Any person aggrieved by any permit or other decision of the Secretary under the Act may appeal same under Section 7007 of the Act and this section of the regulations.

b) Receipt of an appeal does not serve to stay the activity or approval in question.

c) Applicants must file notice of appeal with the Board within 14 days following announcement by the Secretary of his decision. The day after the date of the announcement shall be considered the beginning date of the 14-day appeal period.

d) The date at which a notice of appeal is considered to have been filed shall be the date the Board receives the notice of appeal at the Dover Office of the Secretary of DNREC, 89 Kings Highway, Dover, Delaware, 19901. Should the end date of the 14-day filing period fall on a Saturday, Sunday, or legal holiday, the ending date of the appeal period shall be 4:30 p.m. of the next working day.

e) It is the responsibility of the applicant to insure that the appeal is received at the Secretary's office within the appeal period.

f) If no appeal is received within 14 days following the date of the publication of the legal notice, the decision becomes final and no appeal will be accepted.

P.2 Procedures for Appeals Before the Coastal Zone Industrial Control Board

a) A majority of the total membership of the Board less those disqualifying themselves shall constitute a quorum. A majority of the total membership of the Board shall be necessary to make a final decision on an appeal of a status decision or permit request.

b) The Board shall publish a notice of the hearing as prescribed in 29 Del. C. Chapter 101, Section 10122 at least 20 days prior to the hearing.

c) The Board must process and rule on the appeal in accordance with 29 Del. C., Chapter 101, Subchapter III.

P.3 Appeals of Decisions of the Coastal Zone Industrial Control Board

a) Any person aggrieved by a final order of the Board as provided for in 29 Del C., Subsection 10128, may appeal the Board's decision to Superior Court in accordance with 29 Del C Subsection 10142. The Secretary may also appeal any decision of the Board as any other appellant.

b) The appeal shall be filed within 30 days of the day the notice of decision is mailed.

c) Appeals to Superior Court shall be carried out as specified in 29 Del. C., Chapter 101.

Q. Fees

1. The Secretary shall charge an application fee for Coastal Zone status decisions and permits as found in the

Department's fee schedule as approved by the General Assembly.

2. Interested parties shall be entitled, at no charge, to copies of Coastal Zone Act status decisions and permit applications, provided such applications are not unreasonably bulky.

3. The applicant shall bear the costs of all public hearing notices, and the preparation of public hearing transcripts for the Department in addition to the application fee charged by the Department. Anyone desiring a typed transcript of the hearing must acquire their copy directly from the court reporter.

R. Enforcement

1. In cases of non-compliance with these regulations or the provisions of 7 Del. C. Chapter 70, the Secretary may revoke any permit issued pursuant to these regulations or exercise other enforcement authorities provided for in the Act.

2. If an applicant fails to carry out any offset project in accordance with the schedule outlined in their permit, the Secretary may take any enforcement action he deems appropriate, including revocation of the Coastal Zone permit.

S. Severability

1. If, at any time, provisions within these regulations relating to Sections E and I are invalidated by a court of law, the entire regulation shall become null and void with the exception of the footprints for non-conforming uses shown in Appendix B and the public notice provisions of Section N of these regulations.

2. If, at any time, provisions other than those relating to requirements in Sections E and I are invalidated by a court of law, then only those particular provisions will become null and void and all other provisions will remain operational.

**Appendix A
Map of the Coastal Zone**

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**Appendix B
Footprints of Nonconforming Uses**

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APPENDIX C

DNREC Guidance For Implementation and Interpretation of the Regulations Governing Delaware's

Coastal Zone

A. Introduction

1. These regulations are built around two linked goals as developed by Governor Carper's Coastal Zone Regulatory Advisory Committee. This committee met in late 1996, through 1997 and culminated their work in early 1998 with signing of the Memorandum of Understanding that formed the basis for these regulations. These regulations are designed to ensure environmental improvement in the Coastal Zone while at the same time providing industry with the needed flexibility to remain competitive in a global marketplace.

2. In order to meet these two goals, a regulatory process comprised of regulatory exemptions, permitting requirements and offset provisions has been developed. This regulatory process has been designed so that each nonconforming use and new manufacturing uses can add new products, change existing products, increase production capacity, add new processes and modify existing processes or do any other activity so long as these activities are: 1) undertaken in a way that assures environmental improvement in the Coastal Zone; and 2) undertaken in such a way that they meet the six criteria outlined in the Coastal Zone Act.

3. For a more thorough explanation of the deliberations of the Advisory Committee and the foundation upon which these regulations are built, the reader is referred to the final Memorandum of Understanding dated March 19, 1998, and which is available in the offices of the Department at 89 Kings Highway, Dover, Delaware.

4. The following guidance is made available to interested citizens and applicants to better understand how these regulations will be interpreted and implemented by the Department. This guidance is, however, not a regulation and does not have the force of law. In the event of a conflict between this guidance and the regulations, the regulations will prevail.

B. Guidance in determining whether a permit is required

1. When a business wants to conduct an activity that may be one of the activities exempted from the permitting process as outlined in Section E, but the business is unsure of its determination, then the company may choose to seek a status decision from the Secretary rather than proceeding with filing a Coastal Zone permit application.

2. The Advisory Committee recommended that DNREC establish a tiered system of Coastal Zone Act permitting and emphasized that such a system would promote efficiency to the permitting process by tailoring the extent of regulatory review to the expected impacts of the proposed project. Under the tiered approach outlined in the MOU, an industry would have been required to obtain a Coastal Zone Act permit only in those instances when a proposed new manufacturing facility, or a change in the

operations of a heavy industrial or manufacturing facility, may have a negative impact on one or more of the six criteria cited in the Act.

3. These regulations have maintained that provision, however, they have removed the concept of a tiered system and in its place created essentially two levels of review. The first are activities that are clearly exempted from regulation because they have no environmental consequence, they are exempted in the Act or they were seen by the advisory committee to be activities that simply shouldn't require a permit. The second level is the full Coastal Zone act permit where any negative impact on the six criteria will trigger the permit requirement. In cases where the applicant is unsure of the impact or how their activity will be viewed by the Department, they may apply for what has historically been -- and will continue to be -- called the "status decision".

C. Environmental Goals and Indicators

1. DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU, a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. The indicators will serve several important purposes. First, they will assist DNREC in developing a more accurate picture of the environmental quality of the Coastal Zone, and measuring trends in this quality over time. Second, they will assist DNREC and project applicants by providing a means for evaluating the potential impacts of proposed changes in facility operations and proposed offsets on the Coastal Zone environment.

2. DNREC is responsible for defining, prioritizing, and making a matter of public record the set of goals and indicators for assessing the environmental quality in the Coastal Zone. Once goals for Coastal Zone have been established, DNREC will select a detailed set of indicators for use in assessing the quality of the environment as measured against those goals, and to monitor progress over time.

3. DNREC will periodically review and reissue the Coastal Zone environmental indicators (perhaps bi-annually). As conditions in the Coastal Zone change, and scientific methods for tracking and analyzing these changes evolve, it may be necessary to add or change some indicators, or drop others. It may also be necessary to reprioritize them as some parameters of environmental health improve and others decline. DNREC's periodic review of the indicators will allow for these kinds of adjustments to be made.

4. DNREC's process for developing and prioritizing the indicators will include opportunities for formal public review and comment. To ensure that the public has opportunities to provide input into the development and any subsequent revision of the

environmental indicators, the Advisory Committee recommended that DNREC establish an Environmental Indicator Technical Advisory Committee (EITAC).

5. A substantial proportion of the members of the EITAC should be technical experts. The Committee should also include representatives of various stakeholder groups, for example, heavy industry and manufacturing in the Coastal Zone, industry outside the Coastal Zone, agricultural interests, environmental advocacy groups and labor. EITAC meetings should be public and any reports generated by the Committee should be made available to the public.

D. Principles for Assessing an Application

1. Any negative environmental impact associated with a proposed project will have to be more than offset, thus assuring continuing improvement in the Coastal Zone environment. The Secretary will only grant Coastal Zone permits in those cases where the overall environmental impacts of the total application, both positive and negative, assure improvement in the quality of the environment in the Coastal Zone.

2. Therefore, activities proposed for a Coastal Zone permit which would measurably increase air emissions, water discharges, or would cause negative impacts on the Coastal Zone environment, shall include provisions for net environmental improvement of the Coastal Zone environment. These environmental improvements may be part of the permitted activity itself or realized through an enforceable offset proposal that will be implemented by a date agreed to by the company and DNREC.

3. DNREC will develop within 12 months of the ratification of the Coastal Zone Act MOU, a set of Coastal Zone environmental goals and appropriate environmental indicators which will highlight the most significant environmental challenges to the Coastal Zone. These indicators will be "prioritized" in accordance with their significance to achieving the Coastal Zone environmental goals. These prioritized indicators will provide Coastal Zone permit applicants a good idea of which types of future offset investments will yield the greatest environmental benefit and will allow a determination of which investments are most cost-effective. These indicators should also provide the rational basis for permit decisions that involve offset proposals.

E. Evaluation of Offset Proposals

1. Although offsets within the Coastal Zone, in the same environmental medium and at the same site are preferred, there will be circumstances when offsets outside the Coastal Zone, in other media, or at another site within the zone provide greater environmental benefit or otherwise make sense, and will be considered by the Secretary.

2. While it is the applicant's responsibility to fully describe an offset proposal in the Environmental Impact Statement, it is the Secretary's responsibility to carefully

assess whether the applicant's offset proposal will more than offset negative impacts of the project, and thus ensure environmental improvement in the Coastal Zone.

3. The Secretary shall make decisions on applicants' status decision requests and environmental impact assessments, in writing, based on all of the expected environmental impacts of the total project on the health of the Coastal Zone, including both positive and negative impacts. Impacts may be related to air and water emissions, or they may be related to other factors such as the viability of wildlife habitat, the protection of wetlands, or the creation or preservation of open space. The Secretary will develop and use a set of prioritized environmental indicators as a tool for assisting these determinations as discussed elsewhere in this guidance.

4. The Secretary shall consider likely cumulative impacts of proposed activities on the environment and the relevant environmental indicators. The Secretary shall also give consideration to the potential for negative cumulative impacts in situations where cross-media offsets are proposed.

5. In addition, the Secretary will give more weight to offset proposals that: 1) have established track records and are likely to succeed from a technical standpoint; and 2) will produce beneficial effects that are verifiable.

6. If an applicant includes in its permit application evidence of past voluntary environmental improvements and/or investments made prior to the time of application, DNREC will consider this history of environmental performance in determining the magnitude of the required offsets for the proposed project (with the understanding that the total project must assure improvement in the quality of the environment in the Coastal Zone).

7. The Secretary will also consider the applicant's ability to carry out such improvements as evidenced by its compliance history. Compliance with environmental standards and enforcement histories of facilities is not in itself a factor in determining the required magnitude of the potential offset project, but will be used by DNREC in gauging the applicant's ability to carry out the offset project with a minimum of supervision.

8. All offset projects must be incorporated into the Coastal Zone permit as an enforceable condition of the permit. Since some of the benefits of "flexibility" are achieved immediately upon issuance of a permit (i.e. permission to proceed), and most benefits of "environmental improvement" are achieved over time, the permit itself must include well-defined and measurable commitments or accomplishments which are independently auditable by the Department, and available to the public via the Freedom of Information Act (FOIA). DNREC will also include inspection, reporting and/or notification obligations in the permit depending on the company's compliance record and

the nature of the offset project.

9. In cases where an applicant fails to receive all required offset permits within 180 days and must therefore show good cause why a new permit application should not be required, good cause shall mean, but not be limited to, delays on the part of DNREC or other permitting authorities that could otherwise not have been expected and are considered by the Secretary to be extraordinary.

F. Guidance regarding activities within the Port Of Wilmington

1. All proposed manufacturing uses within the footprint of the Port of Wilmington are not in any way exempted from permitting requirements and must apply for and be issued a Coastal Zone Act permit if otherwise applicable.

2. Proposed uses within the Port of Wilmington which constitute heavy industry uses are prohibited.

3. The regulations do not prohibit or restrict activities involving containerized, palletized, or otherwise confined materials at any location within the Diamond State Port Corp. Bulk products, once off-loaded within the designated area, may be stored, transported, or otherwise used throughout the Port, subject to all other appropriate local, state and federal statutory and regulatory provisions.

4. The MOU negotiated by the Advisory Committee goes to some length to define the area that is the Port of Wilmington, some of which area is actually owned by the Diamond State Port Corporation. Regardless of the definition of the Port, it is nonetheless the equivalent of a "footprint" as that term is used to define other areas of industrial activity within the Zone. Therefore the definition of the Port as negotiated in the MOU is not repeated within the definitions section of these regulations but is rather transformed into a map or footprint similar to the other non-conforming industrial uses found in Appendix B of the regulation.

5. The current boundary of the Port of Wilmington is the area beginning at the intersection of the right of way of US Route I-495 and the southern shore of the Christina River; thence southward along said I-495 right of way until the said I-495 right-of-way intersects the Reading Railroad Delaware River Extension; thence southeast along the said Reading Railroad Delaware River Extension to its point of intersection with the Conrail Railroad New Castle cutoff; thence southward along the Conrail Railroad New Castle cutoff until it intersects the right of way of U.S. Route I-295; thence eastward along said I-295 right of way until the said I-295 right of way intersects the western shore of the Delaware River; thence northward along the western shore of the Delaware River as it exists now to the confluence of the Christina and Delaware Rivers; thence westward along the southern shore of the Christina River to the beginning point of the intersection of the said I-495 right of way and the Southern shore of the Christina River.

G. Coastal Zone Report

1. To ensure that the public is kept fully informed about the regulatory process under the Coastal Zone Act and about the quality of the Coastal Zone generally, the Secretary will issue a report twelve months after the regulations are promulgated, and every twenty-four months thereafter. The report will include:

a) A description of progress towards environmental goals developed by DNREC for the Coastal Zone;

b) Information on the general trends in the environmental indicators, in the form of narrative text as well as charts and graphs that will be easily understandable to a lay reader;

c) A list of permits issued, a brief description of the status of activities under those permits, and a review of selected existing permits and actual versus projected environmental benefits; and

d) A description of the cumulative impacts of permitted activities on the environmental indicators.

Appendix D

Permitting Flow chart

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Appendix E

Delaware's Coastal Zone Act

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DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

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

**Secretary's Order No.: 2001-A-0030
Amendments to Low Enhanced Inspection and
Maintenance
Program (Regulation No. 31)
State Implementation Plan Revision**

**Date of Issuance: September 4, 2001
Effective Date of the Amendment: October 11, 2001**

I. Background

On Wednesday, July 25, 2001, a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to Regulation 31 of the Regulations Governing the Control of Air Pollution. These provisions involve minor revisions to Delaware's Vehicle Inspection and Maintenance Program, in an attempt to add some technical clarifications to previous amendments, to reflect inspector disciplinary rules that will be covered under State Merit Rules, and to add onboard diagnostics checks as a replacement for tail pipe test, pressure test, and emission control system check for light duty 1996 model year and newer vehicles. Written comments were received from Judith Katz, Director of the Air Protection Division, Region 3 of the Environmental Protection Agency (EPA), from Stephen B. McDonald, Director, Government Affairs of the Specialty Equipment Market Association (SEMA), and from Mr. Wallace L. Kremer (a concerned member of the public), all of which will be addressed below. AQM responded to these comments in three separate memoranda to the Hearing Officer, dated August 2, 2001. 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 his report and recommendation in the form of a Hearing Officer's Report to the Secretary dated August 28, 2001, and that memorandum 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 amendments to Regulation No. 31, including reasoned responses to the various comments and has, where necessary, proposed minor changes to satisfy EPA concerns. In addition, the record will show that the following findings have been made:

1. Proper notice of the hearing was provided as required by law.
2. AQM will make minor changes to the Regulation to provide a description of what information the vehicle inspection report will provide, which will reflect EPA's comments in this matter.
3. AQM will insert a note into Appendix 6(a)(9) confirming that the list of readiness code exceptions included will be updated periodically. Furthermore, the aforementioned model and model year vehicle readiness exceptions that EPA indicated were not in the existing Appendix will be added. These actions are sufficient to address EPA questions on those issues.
4. AQM's rationale with respect to rejecting SEMA's suggestion to revise the proposed language to only fail vehicles if after-market device(s) cannot be removed to allow the test plug to be inserted is well founded, and does

not operate unfairly for reasons set forth in AQM's response on this issue.

III. Order

It is hereby ordered that the proposed amendments to Regulation No. 31, including those revisions suggested by AQM, be promulgated in final form in accordance with the customary statutory procedure.

IV. Reasons

These amendments will update and provide technical clarification of the Department's existing I & M program with minor changes, and will reflect inspector disciplinary rules that will be covered under State Merit Rules, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

Nicholas A. DiPasquale
Secretary

Low enhanced Inspection and Maintenance Program Regulation No. 31

Section 1 - Applicability.

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

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

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

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

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

(d) The legal authority for implementation of the LEIM Program is contained in 7 Del.C. Chapter 60, §6010(a). Appendix 1 (d) contains the letter from the State of Delaware, Secretary of the Department to EPA Regional Administrator, W. Michael McCabe committing to continue the I/M program through the enforcement of this regulation

out to the attainment year and remain in effect until the applicable area is re-designated to attainment status and a Maintenance Plan is approved by the EPA. 7 Del. C. Chapter 60, §6010(a) does not have a sunset date.

(e) Requirements after attainment.

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

(f) Definitions

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

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

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

College: The Delaware Technical and Community College

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

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

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

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

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

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

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

Failed Motor Vehicle: Any motor vehicle which does

not comply with applicable exhaust emission standards, evaporative system function check requirements and emission control device inspection requirements during the initial test or any retest.

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

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

GPM: Grams per mile (grams of emissions per mile of travel).

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

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

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

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

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

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

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

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

Official Inspection Station: All official Motor Vehicle

Inspection Stations located in New Castle and Kent counties, operated by, or under the auspices of, the Division.

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

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

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

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

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

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

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

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

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

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

Section 2 -Low Enhanced I/M Performance Standard.

(a) On-road testing:

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

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

The performance standard shall include inspection of all 1996 and newer light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems with the exception of the five most recent model years, and

repair of malfunctions or system deterioration identified by or affecting OBD systems. (see Section 6)

Section 3 - Network Type And Program Evaluation.

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

(1) Network type: Centralized testing.

(2) Start date: January 1, 1995

(3) Test frequency: Biennial testing.

(4) Model year coverage: Idle and two-speed idle test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks with the exception of the five most recent model years.

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

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

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

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

Maximum exhaust dilution measured at no less than 6% CO plus carbon dioxide (CO₂) on all tested vehicles (as described in Appendix B of the EPA Rule).

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

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

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

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

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

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

thereafter. Milestones for NO_x shall be the same as for ozone..

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

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

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

(c) Program Evaluation

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

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

Section 4 - Test Frequency And Convenience.

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

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

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours

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

Section 5 - Vehicle Coverage.

(a) Subject Vehicles

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

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

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

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

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

(4) Vehicles which are operated on Federal installations located within an emission inspection shall be tested, regardless of whether the vehicles are registered in the emission inspection jurisdiction. This requirement applies to all employee owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the LEIM program for reimbursement of the costs of tests provided for agency vehicles, at the discretion of the

Director. The installation manager shall provide documentation of proof of compliance to the Director. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the Director, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

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

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

(iii) Another method approved by the Director.

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

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

(b) Exemptions

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

(1) Vehicles manufactured and registered as kit cars

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

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

(4) All motorcycles and mopeds

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

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

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

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

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

(e) Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions

include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

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

Section 6 -Test Procedures And Standards.

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

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

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

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

(4) Vehicles shall be rejected from testing, as covered in this section, if the exhaust system is missing or

leaking, or if the vehicle is in an unsafe condition for testing.

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

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

(7) Emission control device inspection.

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

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

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

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

(b) Test standards

(1) Emissions standards.

HC, CO, CO+CO₂ (or CO₂ alone), emission standards shall be applicable to all vehicles subject to the LEIM program and repairs shall be required for failure of any standard regardless of the attainment status of the area.

(i) Steady-state short tests.

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

(2) Visual equipment inspection standards performed by the Motor Vehicle Technician.

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

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

(i) Vehicles shall fail the OBD test if:

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

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

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

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

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

(c) Applicability.

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

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

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

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

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

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

Section 7 - Waivers And Compliance Via Diagnostic Inspection.

(a) Waiver issuance criteria.

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

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

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

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

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

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

Index for the preceding calendar year differs from the Consumer Price Index for 1989.

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

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

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

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

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

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

(b) Compliance via diagnostic inspection.

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

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

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

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

Section 8 - Motorist Compliance Enforcement.

(a) Registration denial.

Registration denial enforcement (See Appendix 8 (a), the Systems Requirement Definition for the Registration

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

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

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

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

(i) Expiration date of the registration;

(ii) Unambiguous vehicle identification information; and

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

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

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

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

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

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

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

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

with the registration and inspection requirements.

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

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

Section 9 - Enforcement Against Operators And Motor Vehicle Technicians.

(a) Imposition of penalties

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

(b) Legal authority.

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

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

Section 10 - Improving Repair Effectiveness.

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

Section 11 - Compliance With Recall Notices.

[Reserved]

Section 12 – On-Road Testing.

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

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

Section 13 - Implementation Deadlines.

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

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

APPENDICES

APPENDIX 1 (d)

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

June 1, 1998

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

Dear Mr. McCabe:

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

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

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

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

Please feel free to contact Darryl Tyler, Program Administrator of the Air Quality Management Section at (302) 739-4791, if you should have any questions.

Sincerely,
Christophe A. G. Tulou
Secretary

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

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

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

**APPENDIX 3(c)(2)
VMAS™ TEST PROCEDURES**

General Requirements

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

- (i) Model Year
- (ii) Manufacturer
- (iii) Model name
- (iv) Body style

- (v) Number of cylinders
- (vi) Engine displacement

Alternative computerized methods of selecting dynamometer test conditions, such as VIN de-coding, may be used.

(2) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure shall be recorded continuously during the transient test, or as a single set of readings if taken less than 4 minutes prior to the transient driving cycle.

(3) Restart. If shut off, the vehicle shall be restarted as soon as possible before the test and shall be running at least 30 seconds prior to the transient driving cycle.

(4) During the entire VMASTM testing procedure the vehicle shall be operated by a certified Motor Vehicle Technician (herein called inspector) and the vehicle owner or operator shall be asked to wait in a specified area during the test.

Pre-inspection and Preparation

(1) Accessories. All accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) shall be turned off by the inspector, if necessary.

(2) Traction Control and Four-Wheel Drive (4WD). Vehicles with traction control systems that cannot be turned off shall not be tested on two wheel drive dynamometers. Vehicles with 4WD that cannot be turned off shall only be tested on 4WD dynamometers. If the 4WD function can be disabled, then 4WD vehicles may be tested on two wheel drive dynamometers.

(3) Leaks. The vehicle shall be inspected for exhaust leaks. Audio assessment while blocking exhaust flow, or measurement of carbon dioxide or other gases, shall be acceptable. Vehicles with leaking exhaust systems shall be rejected from testing.

(4) Operating Temperature. The vehicle temperature gauge, if equipped and operating, shall be checked to assess temperature. If the temperature gauge indicates that the engine is well below (less than 180(F) normal operating temperature, the vehicle shall not be fast-failed and shall get a second-chance emission test if it fails the initial test for any criteria exhaust component. Vehicles in overheated condition shall be rejected from testing.

(5) Tire Condition. Vehicles shall be rejected from testing if tire cords, bubbles, cuts, or other damage are visible. Vehicles shall be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected if they do not have reasonably sized tires. Vehicle tires shall be visually checked for adequate pressure level. Drive wheel tires that appear low shall be inflated to approximately 30 psi, or to tire side wall pressure, or manufacturer's recommendation. The tires of vehicles being tested for the purposes of program evaluation under the Code of Federal Regulations Title 40 §51.353(c) shall have their tires inflated to tire side

wall pressure.

- (6) Ambient Background. [RESERVED]
- (7) Sample System Purge. [RESERVED]

Equipment Positioning and Settings

(1) Purge Equipment. If an evaporative system flow meter purge test is to be performed:

- (i) The purge flow meter shall be connected in series between the evaporative canister and the engine.
- (ii) All hoses disconnected for the test shall be reconnected after a purge flow test is performed.

(2) Roll Rotation. The vehicle shall be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires shall be dried if necessary to prevent slippage during the initial acceleration.

(3) Cooling System. The use of a cooling system is optional when testing at temperatures below 50(F). Furthermore, the hood may be opened at the state's discretion. If a cooling system is in use, testing shall not begin until the cooling system is positioned and activated. The cooling system shall be positioned to direct air to the vehicle cooling system, but shall not be directed at the catalytic converter.

(4) Vehicle Restraint. Testing shall not begin until the vehicle is restrained. Any restraint system shall meet the requirements of the Code of Federal Regulations Title 40, §85.2226(a)(5)(vii). The parking brake shall be set for front wheel drive vehicles prior to the start of the test. The parking brake need not be set for vehicles that release the parking brake automatically when the transmission is put in gear.

(5) Dynamometer Settings. Dynamometer power absorption and inertia weight settings shall be automatically chosen from an EPA-supplied electronic look-up table which will be referenced based upon the vehicle identification information obtained in Code of Federal Regulations Title 40, §85.2221(a)(1). Vehicles not listed shall be tested using default power absorption and inertia settings in the latest version of the EPA I/M Look-up Table, as posted on EPA's web site: www.epa.gov/orcdizux/im.htm

(6) Exhaust Collection System. The exhaust collection system shall be positioned to insure complete capture of the entire exhaust stream from the tailpipe during the transient driving cycle. The system shall meet the requirements of §85.2226(b)(2) in the Code of Federal Regulations Title 40,.

Vehicle Conditioning

- (1) Queuing Time. Not applicable
- (2) Program Evaluation. Vehicles being tested for the purpose of program evaluation under Section 3 (c) (2) shall receive two full VMAS emission tests (i.e., a full 240 seconds each). Results from both tests and the test order shall be separately recorded in the test record. Emission

scores and results provided to the motorist may be from either test.

(3) Discretionary Preconditioning.

(i) Any vehicle may be preconditioned by maneuvering the vehicle on to the dynamometer and driving the 94 to 239 second segment of the transient cycle in § 85.2221(e)(1) Code of Federal Regulations Title 40,. This method has been demonstrated to adequately precondition the vast majority of vehicles (SAE 962091). Other preconditioning cycles may be developed and used if approved by the Administrator of the USEPA.

(4) Second-Chance Purge Testing. Not applicable

Vehicle Emission Test Sequence

(1) Transient Driving Cycle. The vehicle shall be driven over the following cycle:

Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)	Time (sec)	Speed (mph)
0	0.0	40	17.7	80	32.2	120	18.1	160	33.5	200	56.7
1	0.0	41	19.8	81	32.4	121	18.6	161	36.2	201	56.7
2	0.0	42	21.6	82	32.2	122	20.0	162	37.3	202	56.3
3	0.0	43	23.2	83	31.7	123	20.7	163	39.3	203	56.0
4	0.0	44	24.2	84	28.6	124	21.7	164	40.5	204	55.0
5	3.0	45	24.6	85	25.1	125	22.4	165	42.1	205	53.4
6	5.9	46	24.9	86	21.6	126	22.5	166	43.5	206	51.6
7	8.6	47	25.0	87	18.1	127	22.1	167	45.1	207	51.8
8	11.5	48	25.7	88	14.6	128	21.5	168	46.0	208	52.1
9	14.3	49	26.1	89	11.1	129	20.9	169	46.8	209	52.5
10	16.9	50	26.7	90	7.6	130	20.4	170	47.5	210	53.0
11	17.3	51	27.5	91	4.1	131	19.8	171	47.5	211	53.5
12	18.1	52	28.6	92	0.6	132	17.0	172	47.3	212	54.0
13	20.7	53	29.3	93	0.0	133	17.1	173	47.2	213	54.9
14	21.7	54	29.8	94	0.0	134	15.8	174	47.2	214	55.4
15	22.4	55	30.1	95	0.0	135	15.8	175	47.4	215	55.6
16	22.5	56	30.4	96	0.0	136	17.7	176	47.9	216	56.0
17	22.1	57	30.7	97	0.0	137	19.8	177	48.5	217	56.0
18	21.5	58	30.7	98	3.3	138	21.6	178	49.1	218	55.8
19	20.9	59	30.5	99	6.6	139	22.2	179	49.5	219	55.2
20	20.4	60	30.4	100	9.9	140	24.5	180	50.0	220	54.5
21	19.8	61	30.3	101	13.2	141	24.7	181	50.6	221	53.6
22	17.0	62	30.4	102	16.5	142	24.8	182	51.0	222	52.5
23	14.9	63	30.8	103	19.8	143	24.7	183	51.5	223	51.5
24	14.9	64	30.4	104	22.2	144	24.6	184	52.2	224	50.5
25	15.2	65	29.9	105	24.3	145	24.6	185	53.2	225	48.0
26	15.5	66	29.5	106	25.8	146	25.1	186	54.1	226	44.5
27	16.0	67	29.8	107	26.4	147	25.6	187	54.6	227	41.0
28	17.1	68	30.3	108	25.7	148	25.7	188	54.9	228	37.5
29	19.1	69	30.7	109	25.1	149	25.4	189	55.0	229	34.0
30	21.1	70	30.9	110	24.7	150	24.9	190	54.9	230	30.5
31	22.7	71	31.0	111	25.2	151	25.0	191	54.6	231	27.0
32	22.9	72	30.9	112	25.4	152	25.4	192	54.6	232	23.5
33	22.7	73	30.4	113	27.2	153	26.0	193	54.8	233	20.0
34	22.6	74	29.8	114	26.5	154	26.0	194	55.1	234	16.5
35	21.3	75	29.9	115	24.0	155	25.7	195	55.5	235	13.0
36	19.0	76	30.2	116	22.7	156	26.1	196	55.7	236	9.5
37	17.1	77	30.7	117	19.4	157	26.7	197	56.1	237	6.0
38	15.8	78	31.2	118	17.7	158	27.3	198	56.3	238	2.5
39	15.8	79	31.8	119	17.2	159	30.5	199	56.6	239	0.0

(2) Driving Trace. The inspector shall follow an

electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace shall be of sufficient magnification and adequate detail to allow accurate tracking by the inspector/driver and shall permit anticipation of upcoming speed changes. The trace shall also clearly indicate gear shifts as specified in paragraph (3) and Table B below.

(3) Shift Schedule. To identify gear changes for manual shift vehicles, the driving display presented to the inspector/driver shall be designed according to the following shift schedule and prominently display visual cues where the inspector/driver is required to change gears:

Shift Sequence (gear)	Speed (miles per hour)	Approximate Cycle Time (seconds)
1 - 2	15	9.3
2 - 3	25	47.0
De-clutch	15	87.9
1 - 2	15	101.6
2 - 3	25	105.5
3 - 2	17.2	119.0
2 - 3	25	145.8
3 - 4	40	163.6
4 - 5	45	167.0
5 - 6	50	180.0
De-clutch	15	234.5

Gear shifts shall occur at the points in the driving cycle where the specified speeds are obtained. For vehicles with fewer than six forward gears the same schedule shall be followed with shifts above the highest gear disregarded.

Automatic shift vehicles with overdrive or fuel economy drive modes shall be driven in those modes.

(4) Speed Excursion Limits. Speed excursion limits shall apply as follows:

(i) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(ii) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(iii) Vehicle speed excursions beyond tolerance limits given in items a. and b. above are acceptable provided that each such excursion is not more than 2 seconds in duration.

(iv) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(v) [Reserved : Criteria that shall allow limited excursions of speed higher than the prescribed upper limit in paragraphs (i) through (iii)]

(vi) A transient emissions test shall be void and the vehicle retested if the speed excursion limits prescribed by paragraphs (i) through (iii) are exceeded, except in the event

that computer algorithms, developed by the Department, determine that the conditions of paragraphs (v) and (vi) are applicable. Tests may be aborted if the speed excursion limits are exceeded.

APPENDIX 4(a)
SECTIONS FROM DELAWARE CRIMINAL AND
TRAFFIC LAW MANUAL

Penalties For Non-compliance Of Vehicle Registration
21 Del.C. 21, §§ 2115, 2116

§ 2115

"No person shall:

(1) Operate or, being the owner of any motor vehicle, trailer or semitrailer, knowingly permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the Department and unexpired registration plate or plates, subject to the exemptions allowed in this title, or under temporary or limited permits as otherwise provided by this title;

(2) Display or cause or permit to be displayed or have in possession any registration card, number plate or registration plate, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered;

(3) Lend to, or knowingly permit the use by, one not entitled thereto any registration card, number plate or registration plate issued to the person so lending or permitting the use thereof;

(4) Fail or refuse to surrender to the Department upon demand any registration card, number plate or registration plate which has been suspended, canceled or revoked as provided in this title;

(5) Use a false or fictitious name or address in any application for the registration or inspection of any vehicle, or for any renewal or duplicate thereof, or for any certificate or transfer of title, or knowingly make a false statement, knowingly conceal a material fact or otherwise commit a fraud in any such application;

(6) Drive or move or, being the owner, cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or which is equipped in any manner in violation of this title, but the provisions of this title with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable;

(7) Own or operate any qualified motor vehicle as defined under the International Registration Plan, as authorized in Chapter 4 of this title, not properly displaying an apportioned plate with required registration credentials,

or operate a qualified motor vehicle without having in that person's possession a trip permit registration as authorized in §2103(6) of this title. Any person who violates this subsection shall, for the first offense, be fined not less than \$115 nor more than \$345, and for each subsequent offense not less than \$345 nor more than \$575. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less, which fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the gross weight at the time of the offense or the maximum legal limit for such vehicle.

(8) Do any act forbidden or fail to perform any act required under this chapter. (36 Del. Laws, c. 10, § 25; 40 Del. Laws, c. 38, § 10; Code 1935, § 5563; 43 Del. Laws, c. 244, § 14; 21 Del. C. 1953, § 2115; 49 Del. Laws, c. 220, § 21; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 202, § 2.)

Revisor's note.—Section 3 of 70 Del. Laws, c. 202, effective July 10, 1995, provides: "If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable."

Effect of amendments.—70 Del. Laws, c. 202, effective July 10, 1995, inserted present (7) and redesignated former (7) as (8)."

§ 2116

"(a) Whoever violates this chapter shall, for the first offense, be fined not less than \$10 nor more than \$100 or be imprisoned not less than 30 days nor more than 90 days or both. For each subsequent like offense, the person shall be fined not less than \$50 nor more than \$200 or imprisoned not less than 90 days nor more than 6 months or both, in addition to which any person, being the operator or owner of any vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle and any load thereon shall be fined at a rate double that which is set forth in this subsection and be imprisoned as provided herein or both. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less; which fine shall be suspended, if within 5 days of the offense the court is presented with a valid registration card for the gross weight at the time of the offense for the maximum legal limit for such vehicle.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, whoever violates §2115(1)(5) of this title shall, for the first offense, be fined not less than \$50 nor more than \$200, be imprisoned not less than 30 days nor

more than 90 days, or be penalized by both fine and imprisonment. For each subsequent like offense, such person shall be fined not less than \$100 nor more than \$300, be imprisoned not less than 90 days nor more than 6 months, or be penalized by both fine and imprisonment.

(2) Any owner or operator of a vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle, and any load thereon, and who violates § 2115(1)(5) of this title, shall be fined at a rate double that which is set forth in this subsection, or be imprisoned as provided herein, or be both fined and imprisoned. In addition, such person shall also be fined an amount which is equal to the costs of registering the vehicle either at its gross weight at the time of the offense, or at the maximum legal limit, whichever is less. Such fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the actual gross weight of the vehicle at the time of the offense.

(c) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(d) For any violation of the registration provisions of § 2102 or § 2115 of this subchapter and in absence of any traffic offenses relating to driver impairment the violator's copy of the traffic summons shall act as that violator's authority to drive the vehicle involved by the most direct route from the place of arrest to either the violator's residence or the violator's current place of abode. (36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, §§ 10, 11; Code 1935, § 5570; 21 Del. C. 1953, § 2116; 59 Del. Laws, c. 332, §§ 1, 2; 64 Del. Laws, c. 207, § 2; 69 Del. Laws, c. 307, §§ 1, 3, 4)."

Appendix 5 (a)

DIVISION OF MOTOR VEHICLES POLICY ON OUT-OF-STATE RENEWALS

The following is the Division's policy for accomplishing a registration renewal on a vehicle located outside the State of Delaware when the vehicle owner is unable to return the vehicle for inspection prior to the renewal date. Vehicles located within a 200 mile radius of a Division of Motor Vehicles facility will be inspected at a division inspection station prior to renewal. All other vehicles may be renewed by accomplishing the following procedures:

(1) (Refer all inquiries on out-of-state renewal to the Dover Correspondence Office (739-3147). Normally, customers will be provided the out-of-state renewal package by the Dover Administrative Office Correspondence Section. Lane locations may provide the renewal package to walk-in customers, but the completed paperwork must be mailed to Dover for processing.

(2) When all documents are completed and the vehicle has passed inspection, copies of the Application for Out-of-

State Registration and the inspection report (MV Form 210(a)) will be provided to Dover Lane (Tom Kersey) and DNREC Air Quality Section (Phil Wheeler).

(3) Tom Kersey or his designated representative will load the inspection information on the MV210(a) form into the computer system. The MV210(a) form will be saved for two years by the Dover lane.

(4) When the inspection information has been loaded, Tom Kersey will send a Vehicle Inspection Report to Dover Correspondence, the renewal can be completed and the registration card and plate sticker can be mailed to the customer.

(5) All documents will be saved by the Registration Correspondence Section for two years.

(6) Random audit procedures: Correspondents prior to renewing selected vehicles will call the inspection station and inspector shown on the MV210(a) form. One out of every ten vehicles will be selected to verify the vehicle was inspected. The verification will be conducted prior to sending copies to DNREC and Dover lane. Indicate on the bottom of Page 2 of the form the date and time of verification and the name of the person performing the verification. Sandy Tracy will be in charge of the verification and selection process.

Appendix 5 (f)

New Model Year Clean Screen

BACKGROUND

Delaware's revised I/M State Implementation Plan (SIP) commits the State to implementing a clean screen program to help reduce lines during peak inspection periods. Delaware previously enacted a provision to use the low emitter profile model (LEP) to clean screen vehicles at the lanes during peak inspection periods. During off-peak periods, all vehicles that show up for inspection would be tested. Currently, however, the LEP clean screen program has not been implemented, and long lines are a problem during certain times. The main reason for not implementing the LEP clean screen program is the complexity of integrating the LEP program into the existing information system. The low emitter profile has been replaced in this regulation with a new model year clean screen exemption that will in effect exempt during one calendar year, approximately another 9,200 vehicles from the major portion of the emissions testing program. This provision will reduce inspection volume by about 18% when it is activated.

It is important to note that the vehicle ages under this provision will be six, seven and eight model years old according to the definition in model year exemption in Section 1(f). Under the low emitter profile a clear distribution of exemptions of each model year was defined by the regulation. The provisions of Section 5 (f) does not require a definite distribution of any one of the six, seven or

eight years old model years to be exempt. It is expected that, because it will be a random arrival of vehicles into the lanes, the number of each model year exempted will be proportional in number to the actual fleet size of each applicable model year. That is, the distribution should be no more than 24% of the number of vehicles in each model year when considering the cap of 14,000 vehicle years being eligible to be clean screened.

EMISSION IMPACTS OF NEW MODEL YEAR CLEAN SCREEN

Restricting clean screen to only the above vehicles cannot result in greater emissions than including all the clean screen candidates identified by the LEP. To further confirm that this approach would not cause problems with compliance with Delaware’s revised I/M SIP, the exemptions were modeled with MOBILE5b. Unlike the use of Radian’s LEP model, this approach does not need to be modeled with the Clean Screen Credit Utility. This alternative option – expanding model year exemptions during peak periods – would have less impact on the emission reduction credits for Delaware’s I/M program than the LEP Clean Screen program presented in Delaware’s I/M SIP that has already been approved by EPA. Table 1 presents the impact of the alternative clean screen program, assuming it’s in operation for 24% of the inspections. As shown, on-demand model year exemptions would provide more emission reductions than the program Delaware has committed to in its SIP.

Table 1.

Estimated Impact of New Model Year Clean Screen Program

Scenario	MOBILE5b Emission Factor (grams/mile) 1999 Evaluation Year		
	Exhaust	Evap	Total
No IM	0.928	0.781	1.709
Existing 5 model year exemption, TSI + pressure	0.759	0.679	1.438
8 model year exemption TSI + pressure	0.796	0.704	1.532
New Model Year Clean Screen – 8 model years TSI + pressure –24% of the time when needed to reduce the volume at the inspection lanes.	0.768	0.685	1.453

TSI - Two speed idle test.

**APPENDIX 6(a)
IDLE EMISSIONS TEST PROCEDURES**

The on-site test inspection of motor vehicles uses the ESP FICS 4000 - Bar 90 computerized Emission Analyzer which will require minimal time to complete the inspection procedure.

GENERAL TEST PROCEDURES

1. If the inspection technician observes a vehicle having coolant, oil, excess smoke or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted the vehicle shall be rejected from the testing area. The inspection technician is prohibited from conducting the emissions test until the defects are corrected.

2. The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the parking brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle’s tires.

3. The inspection technician advises the owner to turn off all vehicle accessories.

4. The inspection technician enters the vehicle registration number (tag) or the vehicle identification number into the BAR 90 system. This information is electronically transmitted to the Division of Motor Vehicle’s database. The system will also identify for each vehicle entered into the BAR 90 system whether the vehicle is eligible for a clean screen exemption. ~~Only under certain conditions determined by the vehicle services chief or his designee will those vehicles eligible for the clean screen exemption be excuse from any exhaust emissions test for the current two year test cycle. In no case shall the number of vehicles exempt in any one calendar year, under the clean screen procedures, exceed 40% of the total number of vehicles subject to the requirements of Regulation 31. The clean screen procedures or methodology is described in Appendix Y.~~

5. If the vehicle registration number is in the database, the following information will be transmitted to and verified by the inspection technician:

- a. Vehicle make
- b. Vehicle Year
- c. Vehicle Model
- d. Vehicle Body Style
- e. Vehicle fuel type and
- f. other related information

6. The inspection technician will verify this information and verify the last five characters of the Vehicle Identification Number (VIN) prior to beginning the emission

test.

7. If the vehicle's identification number is not on the database, the R.L. Polk VIN Package shall be automatically accessed. This VIN package will return the following information to the inspection technician who, in turn will verify the returned information:

- a. Vehicle make
- b. Vehicle Year
- c. Vehicle Model
- d. Vehicle Body Style
- e. Vehicle fuel type

8. The DMV System will identify and require an emission inspection on all eligible vehicles meeting the State's criteria for an emission inspection. Once the vehicle information has been verified and accepted, the system will prompt the inspection technician to place the analyzer test probe into the tailpipe. The technician connects the tachometer lead to the vehicle's spark plug and verifies that the idle RPM is within the specified range. If the RPM exceeds the allowed range the vehicle is rejected and not tested. The technician will insert the probe at least 8 inches into the exhaust pipe. Genuine dual exhaust vehicles will be tested with a dual exhaust probe. Once the probe has been placed into the exhaust pipe the test will begin. The test process is completely automatic, including the pass/fail decision.

9. If the vehicle has been identified as requiring a completed Vehicle Inspection Repair (VIRR) Report Form prior to reinspection, the inspection technician will review the form for completeness and, if applicable, record into the system the Certified Emission Repair Technician's (CERT) number or Certified Manufacturer's Repair Technician (CMRT) number before the retest.

TWO SPEED IDLE TEST PROCEDURES

1. Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

2. Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in Appendix 3 (a)(7) and the measured value for HC and CO. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

3. Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO₂ (CO+ CO₂) falls

below six percent of the total concentration of CO plus CO₂ or the vehicle's engine stalls at any time during the test sequence.

4. Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with dual exhaust systems will be sampled accordingly.

5. The test will be immediately terminated upon reaching the overall maximum test time.

6. Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(i) The first-chance test will consist of an idle mode followed by a high-speed mode.

(ii) The second-chance high-speed mode, as described will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(i) The vehicle will be tested in as-received condition with the transmission in neutral or park, the parking brake actuated (or chocked) and all accessories turned off. The engine shall appear to and is assumed to be at normal operating temperature.

(ii) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe(s) will be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(iv) The measured concentration of CO plus CO₂ (CO + CO₂) will be greater than or equal to 6% of the total concentration.

(c) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the conditions specified above are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(d) First-chance idle mode. The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The maximum idle mode length will be 30 seconds (mt=30) elapsed time. The pass/ fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode

terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in Appendix 3 (a)(7)

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of d (i) are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(e) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode. The mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (e) (i) and (ii) below. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(i) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have

elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (A) (III) or (e) (i) (A) (IV), above, are not satisfied by an elapsed time of 180 seconds (mt=180).

(B) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (B) (I), (e) (i) (B) (III) or e (i) (B) (IV), above, is satisfied by an elapsed time of 180 seconds

(mt=180).

(ii) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in paragraph (e) (i), above, will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of paragraphs (e) (ii)(A)(I) or (e) (ii)(A)(II), above, is satisfied.

(B) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values are less than or equal to the applicable standards listed Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of paragraphs (e) (ii)(B)(I) or (e) (ii)(B)(II) is satisfied.

(f) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero (mt=0) and a second chance idle mode will commence. The second-chance idle mode

will have an overall maximum mode time of 30 seconds (mt=30). The test will consist on an idle mode only.

(i) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in paragraph (f) (iii) below. The maximum second-chance idle mode length will be 30 seconds (mt=30) elapsed time.

(iii) The pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds (mt=30) if, prior to that time, the criteria of paragraph (f)(iii)(A), above, are not satisfied and the measured values during the time period between 25 and 30 seconds (mt=25-30) are less than or equal to the applicable short test standards listed Appendix 3 (a)(7).

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of paragraphs (f) (iii)(A) or (f)(iii)(B), above are satisfied by an elapsed time of 30 seconds (mt=30).

**SINGLE SPEED IDLE TEST
From 40 CFR 51 Appendix B to Subpart S
Test Procedures**

(I) Idle Test

(a) General requirements

(1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode based on a comparison of the short test standards contained in Appendix C to this subpart, and the measured value for

HC and CO as described in paragraph (I)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO₂ falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence.

(1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (I)(d) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO₂ shall be greater than or equal to six percent.

(c) First-chance test. The test timer shall start (tt=0) when the conditions specified in paragraph (I)(b)(2) of this appendix are met. The first-chance test shall have an overall maximum test time of 145 seconds (tt=145). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described under paragraph (I)(c)(2) of this appendix. The maximum mode length shall be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(c)(2)(i) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(c)(2)(i), (ii) and (iii) of this appendix is satisfied by an elapsed time of 90 seconds (mt=90). Alternatively, the vehicle may be failed if the provisions of paragraphs (I)(c)(2)(i) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(v) Optional. The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(d) Second-chance test. If the vehicle fails the first-chance test, the test timer shall reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds (tt=425). The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) Preconditioning mode. The mode timer shall start (mt=0) when the engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode.

(i) Ford Motor Company and Honda vehicles. The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if

necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (I)(d)(2)(iii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time (mt=90).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the idle mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(d)(2)(iii)(A) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), measured values are less than or equal to the applicable short test standards described in paragraph (I)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(d)(2)(iii)(A), (d)(2)(iii)(B), and (d)(2)(iii)(C) of this appendix

(E) Are satisfied by an elapsed time of 90 seconds (mt=90)

APPENDIX 6(a)(5)

Vehicle Emission Repair Report Form

This document may be reviewed during normal business hours (8:30 am - 4 PM) Monday through Friday at the Air Quality Management Section Office, 156 South State Street, Dover. For more information call Philip Wheeler at 302/739-4791

APPENDIX 6 (a)(8)

EVAPORATIVE SYSTEM INTEGRITY (PRESSURE) TEST

ESP Alternative Pressure Test

The EPA has defined an evaporative pressure test that involves removing hoses from the charcoal canister. An alternative, less intrusive test technique has been developed

by ESP. The EPA pressure test is performed by removing the gas tank fuel vapor vent line from the charcoal canister and pressurizing the gas tank through this line with nitrogen gas. The pressure in the gas tank is then monitored for two minutes and if the pressure drops below a specified level, the vehicle is failed. The canister is often difficult to access and the vent hoses difficult to remove and replace. The alternative test consists of pressurizing the gas tank from the gas tank filler neck instead of the canister. The gas cap is removed and replaced by a gas cap adapter through which the fuel tank is filled with nitrogen gas. The vent hose is clamped at the canister, the gas tank is pressurized and the pressure in the tank monitored for two minutes. Clamping the hose rather than removing it is less likely to lead to breakage or hoses left disconnected, reducing the liability arising from the test procedure. The gas cap is tested on a test rig where the gas cap can be pressurized on its own. Removing the gas cap and pressurizing the tank from the filler neck has the following advantages:

Half of the leaks in the gas tank occur in the gas cap. On those vehicles where the canister and vent lines are inaccessible, 50% of the emissions reduction available from the evaporative system integrity check can be achieved by just testing the gas cap. Testing the gas cap separately allows leaking gas caps to be identified. The customer can be recommended to replace the gas cap rather than pay to have the leak.

The test is less intrusive as the vapor line to the charcoal canister is clamped off rather than a repair station isolate the cause of removed. On some vehicles the vapor line can be reached even when the canister, itself is inaccessible. The gas tank can be more rapidly pressurized through the large filler neck opening than from the canister as the vapor line to the tank typically has a narrow orifice in the line. This is particularly important when pressurizing the large vapor space in nearly empty gas tanks. The more rapid pressure test potentially increases the throughput of the lane. The ESP method will result in a 50% time saving in the fill time or approximately 30 seconds. The 30 second time saving in the multi-position lane will result in a lane throughput increase of one to two vehicles per hour.

The ESP Alternative Pressure Test is a more accurate test because it compensates for the volume of vapor space. During the development of this technique, ESP discovered that differences in fuel level in the gas tank can result in an order of magnitude change in test results. ESP's alternative approach is designed to compensate for the pressure drop change of the vapor space condition. Without the ESP method of testing, it is expected that errors of omission and commission will result. The variability of the test results derived from the EPA prescribed method will result in problems such as, customer complaints for "Ping-Pong" effects and general public dissatisfaction with the program. To further reduce the problem of ping-ponging, ESP has

developed a pressure drop table for repair stations, that will enable the repair technicians to perform the pressure test with a much higher degree of correlation to the centralized test.

Procedures for Evaporative System Integrity (Pressure) Test

(a) General Requirements

(1) Pressure Test. The on-vehicle pressure tests shall be performed after any tailpipe emission test. Vehicles receiving a pressure test will also be given a gas cap leak test.

(2) Controlling Test Variability. The pressure test shall be conducted in a manner that minimizes changes in temperature, since pressure measurements are affected by changes in the vapor space temperature. Volume compensation for the pressure test is not required, but the vapor space volume will affect the pressure decay measurement. Excessive fuel vapor pressure, although not controllable at the time of test, may affect the accuracy and repeatability of the result.

(b) Pre-inspection and Preparation

(1) Visual Inspection - Canister. The evaporative canister(s) shall be visually checked to the degree practical. A missing or obviously damaged canister(s) shall fail the visual evaporative system check.

(2) Visual Inspection - System. The evaporative system hoses shall be visually inspected for the appearance of proper routing, connection, and condition, to the degree practical. If any evaporative system hose is misrouted, disconnected, or damaged, the vehicle shall fail the visual evaporative system check.

(3) Visual Inspection - Gas Cap. If the gas cap is missing, obviously defective, or the wrong style cap for the vehicle, the vehicle shall fail the visual inspection.

(c) Fuel Inlet Pressure Test

(1) Equipment Set-up. The vapor vent line(s) from the gas tank to the canister(s) shall be clamped off as close to the canister(s) as practical without damaging evaporative system hardware. Dual fuel tanks shall be checked individually if the complete vapor control system can not be accessed by pressurizing from the fill pipe interface of only one fuel tank. The proper adapter shall be selected.

(2) Starting Pressure. The gas tank shall be pressurized to 14 ± 0.5 inches of water.

(3) Stability. Pressure stability shall be monitored for a period of 10 seconds prior to the start of the pressure decay measurement. One definition of stability is a loss of no more than 5 inches of water over a 10 second period when the initial pressure is 14 ± 1 inches of water. If the loss of pressure in 10 seconds exceeds this value, two more attempts shall be made to reach stability. Failure to achieve stability likely indicates the presence of a large leak and therefore failure of the pressure test.

(4) Volume Compensation. Pressure decay measurements are affected by the vapor volume in the fuel tank. Volume-compensated pressure decay measurements are presently not required. By design, flow comparator or flow measurement methods do not require volume corrections.

(5) Pressure Monitoring. Close the pressure source and measure the loss in pressure over a 120 second interval. Fast-pass determinations may be made using the equations in 40 CFR §85.2205(d)(2)(ii).

(6) Clamp Removal. Remove the clamp on the vapor line and carefully relieve pressure and remove the adapter used to supply pressure to the vapor space.

(d) Gas Cap Test

(1) Cap Installation. The fuel cap, or caps, shall be removed from the fuel inlet(s) and installed on a portable or bench test rig using the adapter appropriate for the gas cap as specified in 40 CFR §85.2227(d)(1)(ii).

(2) Leak Measurement. The gas cap leak rate shall be measured and compared against a 60 cc/min at 30 in. water flow standard. Pressure decay measurement using instruments with a 1 liter head space shall be made from an initial pressure of 28 inches of water and be compared against a loss of 6 inches of water in 10 seconds.

(3) Cap Replacement. The fuel cap(s) shall be replaced on the fuel inlet and tightened appropriately.

APPENDIX 6(a)(9) ON-BOARD DIAGNOSTIC TEST PROCEDURE OBD II TEST PROCEDURE

Introduction

The Delaware Analyzer System (DAS) shall include the hardware and software necessary to access the onboard computer systems on 1996 and newer vehicles, determine OBDII readiness, and recover stored fault codes using the SAE standardized link. The analyzer shall be designed to guide the inspector-mechanic through the OBDII inspection sequence for a particular vehicle, and record the results.

(a) OBD Inspection Sequences: The following subparagraphs describe the OBDII inspection. The display monitor will guide the inspector through the required steps.

(1) The vehicle's front occupants will be asked to step out of the vehicle or moved to one of the other passenger seats. The analyzer will prompt the inspector to perform the OBDII check on all passenger vehicles and light-duty trucks model years covered in Section 2 – "Low Enhanced I/M Performance Standard"

(2) The inspector will initiate an official test by scanning or manually inputting the required vehicle and owner information into the station manager.

(3) The inspector will visually examine the instrument panel to determine if the MIL illuminates when the ignition key is turned to the "key on, engine off"

(KOEO) position. This portion of the test procedure is also known as the "bulb check." Enter this information into the station manager.

(4) The inspector will locate the vehicle's data link connector (DLC) and, with the key in the off position, plug a scan tool into the connector.

(5) The inspector will start the vehicle's engine and visually check MIL illumination under the "key on, engine running" (KOER) condition. The inspector will perform the scan of the vehicle's on-board diagnostics system.

(6) Scan will determine:

(i) Vehicles readiness status

(ii) MIL status (whether commanded on or off), and

(iii) Diagnostic Trouble Codes (DTCs) for those vehicles with MILs commanded on.

(b) Inspection results will be automatically recorded.

(1) Failed vehicles: vehicle owners will get a detailed inspection report from the inspector that will indicate the diagnostic trouble codes that have been set [leading to the inspection failure] in the vehicle's on-board computer. (Criteria for a failure of the OBD II test is given in Section 6 (b) (3).)

(2) Vehicles with unset readiness: owners with vehicles with more than two unset readiness codes for model years 1996-2000 or one unset readiness code for model years 2001 and newer will be given a failure with a Anot ready for testing@ result on their printed vehicle inspection report. Owners will be required to return to the inspection facility for a retest as soon as the readiness codes requirements of Section 6 (b) (3) are met. The vehicle owners will be given information concerning the readiness codes in their vehicle's on-board computer and advised accordingly before the vehicle is retested.

(3) An exception from the readiness codes requirements of Section 6 (b) (3) may be given for vehicles who have been given an initial test and are being retested after repairs have been performed. A repair receipt including evidence of a diagnostic scan and dated either on the same date as the initial test or some date thereafter will be considered adequate for establishing proof of repair for retests purposes only. The retest procedure for OBD will be performed according to the provisions in this appendix.

(4) An exception from the readiness codes requirements of Section 6 (b) (3) may be given for the following vehicles by model and year. [This list may be updated as warranted by new information provided by the USEPA]. The vehicles are, but not limited, to the following:

(i) 1996 Chrysler vehicles - Vehicles may clear readiness at key-off. Vehicles should be tested normally. If vehicles are found to be "Not Ready," they should be referred to a qualified service provider so the OBD

software can be updated.

(ii) 1996 - 1998 Mitsubishi vehicles - These vehicles may have a high degree of "Not Ready" for catalyst monitor due to a "trip based" design. Mitsubishi has provided driving cycles in its service information to allow monitors to operate. These vehicles should be scanned for MIL illumination without regard to readiness status.

(iii) 1996 Nissan vehicles and 1997 Nissan 2.0 liter 200SX - These vehicles may have a high degree of "Not Ready" for catalyst and evaporative monitors due to a "trip based" design. Nissan has provided driving cycles in its service information to allow monitors to operate. These vehicles should be treated as other non-problematic vehicles. Nissan Technical Service Bulletin #NTB98-018, February 18, 1998.

(iv) 1996-98 Saab vehicles - These vehicles may have a high degree of "Not Ready" for catalyst and evaporative monitors due to a "trip based" design. Saab has provided driving cycles in its service information to allow monitors to operate. These vehicles should be treated as other non-problematic vehicles.

(v) 1996 Subaru vehicles - Vehicles will clear readiness at key-off. There is no reprogramming available for this line of vehicles. These vehicles should be scanned for MIL illumination without regard to readiness status. Subaru Technical Service Bulletin #11-49-97R.

(vi) 1997 Toyota Tercel and Paseo - Vehicles will never clear the evaporative monitor to "Ready." At this time no fix is available. Vehicles should be scanned using remaining readiness monitors as described for non-problematic vehicles.

(vii) 1996 Volvo 850 Turbo - Vehicles will clear readiness at key-off. There is no reprogramming available for this line of vehicles. These vehicles should be scanned for MIL illumination without regard to readiness status. Volvo Technical Service Bulletin #SB 2-23-0056.

(viii) 1996-98 Volvo vehicles (excluding 850 Turbo) - These vehicles may have a high degree of "Not Ready" for catalyst and evaporative monitors due to a "trip based" design. Volvo has provided driving cycles in its service information to allow monitors to operate. These vehicles should be treated as other non-problematic vehicles. Volvo Technical Service Bulletin #SB 2-23-0056.]

APPENDIX 7(a)

EMISSION REPAIR TECHNICIAN CERTIFICATION PROCESS

Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a

certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation. The cost of such repairs must total no less than \$200. Under the policy developed by the Department, a Certified Emission Repair Technician may be certified as trained to do repairs on all makes of vehicles or vehicles of a specific manufacturer. Auto repair technicians seeking to become certified under Regulation 31 have the following options in attaining the certification:

1. All those applying for certification can "test out" and gain certification without further emission repair training as provided by the College or Auto Manufacturer or other training organization. The "test out" process is administered by the College as follows:

- Applicants without L1 ASE (Automobile Service Excellence) certification must first take the Fundamental Inspection Repair System Training final exam. Those achieving a score of 75% or better are eligible to take the Delaware Emission Education Program certification exam.
- Applicants achieving a score of 75% or better on the certification exam will become certified on all makes of vehicles. Applicants with L1 ASE certification can test out by taking the Delaware Emission Education Program certification exam ONLY.

2. The testing procedure discussed above will determine what, if any, training is needed for applicants seeking certification.

- Technicians scoring below 75% on the Fundamental Inspection Repair System Training final exam must take a 60 hour fundamental emission repair training course provided by the College.
- Those completing the 60 hour program and scoring 75% or better on the final exam can advance into a 40 hour class which is the next level of training, or attempt to test out and take the certification exam, scoring 75% or better to become certified.
- Technicians scoring below 75% on the Delaware Emission Education Program certification exam must take a 40 hour emission repair training course provided by the College and then score 75% or better on the final exam to become certified.

3. Technicians who are L1 ASE certified and who have approved manufacturer's emission repair training will be certified for each make of vehicle of each manufacturer that the technician was trained to do emission repairs. The procedure for certification is as follows:

- The Department will evaluate each of the

manufacturers OEM Emissions Path to determine if it meets a reasonable minimum standard. This evaluation must contain proof that the manufacturer's course work clearly covers the Delaware I/M regulation (e.g. waiver process, etc.)

- Candidate manufacturer technician submits: His/her transcript from the manufacturer on courses taken and passed and; Proof of ASE L1 certification to the Department.
- Candidate manufacturer technician takes and passes a Delaware-specific short test which is intended to test the candidate on the Delaware regulation, any specifics on waivers that should be known, and general questions on vehicle repair.
- The Department and the Division issues manufacturing-specific certification with clearly marked authority on the certificate.

APPENDIX 8 (a)

Registration Denial System Requirements Definition April 30, 1997

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Edited by: Cheryl Roe - DMV

Version 1.1

Section I, Management Summary

Goals and Objectives

Improved Customer Service, Convenience and Control:

1. Implement Bar Coding interface to the Title and Registration function.
2. Design an interface between Registration Renewal and Titles to the Registration Denial system that will enable the State of Delaware to obtain an improved rating through Cleaner Air.
3. Design a Temporary tag tracking system.
4. Design an automated Waiver/Override system.
5. Design a Repair Facility and Repair Technician tracking system.
6. Design improved data inquiry capabilities and distribute to necessary customers.

Improved Personnel Training and System On-Line Help:

1. On-Line Help Training within each of the applications.
2. On-Line Training through specialized system testing.
3. Improved Operating Procedures.

Improved System Security and Flexibility:

1. System Security

- Override system parameter changes based on functionality.
- Override system parameter changes based on specific fields.
- Improved tracking of transactions, personnel and dates.
- Improved reporting to DMV management.

1. Provide additional facilities for trouble shooting and problem investigation capabilities.

Flexibility and Responsiveness to External Requirements:

1. Ability to create and maintain the registration denial tables.
2. Maintain tracking history information for the following functions:
 - Temporary and Window Sticker inventory
 - Temporary Tag history
 - Window Sticker history
 - Vehicle Inspection history
 - Lane Inspector history
 - Waiver history
 - Override history
 - Repair Facility and Repair Technical history
 - Registration Notices
 - External Agency history
 - Audit request history

Improved Business Control Over the System:

1. Operators:
 - Tighter control over the issuance of registration notices, vehicle inspections, registration renewal, title and registration denial, temporary tags and waivers.
 - Improved controls over the issuance of window stickers.
 - Better customer service through the offering of inspection overrides and the tracking of external agency vehicle inspections.
 - Provide for the tracking of Certification of all Lane Inspectors and the Re-Certification.

1. Transactions:
 - Add on-line Waiver, Override, Vehicle Inspections, Temporary tags and Window Stickers.

1. Auditing:
 - Reduction of the number of vehicles being renewed without an inspection.
 - Reduction of the number of multiple temporary tags being issued to the same vehicle owners.
 - Identification of missing temporary tags and window stickers from DMV inventory.
 - Decrease the number of false inspection readings.

- Decrease the number of external agency vehicles traveling the Delaware highways without receiving vehicle inspections.
- Increase inspection accountability through more accurate vehicle inspection testing.
- Increase reporting accuracy to the Environmental Protection Agency.

Improved System Functionality:

1. Title and Registration Denial:
 - Improved editing on title and registration application.
 - Design interface between vehicle inspections, temporary tags and waivers.
1. Linkage to mainframe MVALS database:
 - Information transfer from vehicle inspection database.
 - Information transfer from temporary tags, window stickers and the title and registration database.
 - Information transfer of registration denial data to DNREC and EPA.
 - Control the issuance of temporary tags though lot range controls.
 - Control the temporary tag inventory through the delivery and distribution of temporary tags.
1. Bar Code interface on title and registration cards.
2. Automation and change to reports:
 - Provide on-line tracking of inspectors by location, date and time.
 - Provide an inventory control system enabling the Division to review temporary tags and window stickers.
 - Provide Title and Registration clerks the ability to review active and historical inspection results on-line.
 - Provide an interface to the Title and Registration application to effectively associate a vehicle inspection with a specific registration and deny access until the vehicle has been successfully approved.
 - Provide inspector information of a specific registration in association with a vehicle inspection.
 - Provide on-line reporting activity by specific testing, location, time and inspector on a weekly, monthly and fiscal basis.
 - Provide the ability to track vehicle repairs and associate them with the proper vehicle registration.
 - Track overrides that are associated with a vehicle inspection.
 - Provide on-line access to inspection results data to the Department of Natural Resources and Environmental Control.
 - Provide the ability to select specific inspection

information and print specific analysis reports.

- Provide the ability to create on-line reports to EPA on a weekly, monthly and fiscal basis.
- Provide customers with notification of inspection 90 days prior to the expiration date.
- 1. External Agency Vehicle Identification
 - Provide the ability to identify/track external agency vehicles being operated in Delaware.
 - Provide the ability to ensure the external agency vehicles have complied with the Federal standards.
 - Provide the ability to automatically send and receive vehicle inspection information.
 - Provide the ability to report inspection result to the Environmental Protection Agency.

Project Scope

This document does not include portions of the project already in progress or being addressed by other selected DMV vendors such as Environmental Systems Products, Inc. (ESP). It centers on the mainframe application development and maintenance that must be completed to support the requirements of the project. It assumes the vehicle inspection information to be correct and residing in the databases already established for the Registration Denial project and that ESP has provided OIS with complete and detailed technical documentation of the database content, data manipulation, calculations and report specifications. The State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal Environmental Protection Agency (EPA) in January 1997 for review and approval. This scope most certainly will be subject to change based upon the EPA review and their findings.

Background:

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile source air pollution. Of all highway vehicles it appears that, passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency is attempting to achieve major emission reductions from these transportation sources. Until the development and commercialization of cleaner burning engines and fuels are successful, the main source of air pollution reduction will come from the proper maintenance of the vehicles during customer use.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle drive ability, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV system without change. Failing vehicles will require repair and re-testing until they pass or receive a vehicle waiver from DMV management.

Project Scope:

DMV has suggested that the project be designed and implemented in phases. Phasing the project installation makes a great deal of sense since many of the components of the entire project are still not totally defined. DMV's recommendation is:

Phase I:

- Create database images to store the ESP information.
- Test ESP system and database content.
- Analyze database content and verify accuracy.
- Install Phase I into production and begin accumulating EPA information.

Phase II:

- Design, code and test Registration Renewal Denial.
- Design, code and test a new (summary) Vehicle Waiver system.
- Design, code and test a new Inspection Results Override system.
- Design, code and test new rules for Registration and Title Denial.
- Design, code and test a new temporary tag extension tracking system.
- Design, code and test preliminary DMV management reports.
- Test on-line access to MVALS by DNREC personnel at their site locations.
- Add bar coding to the registration card print.
- Implement Phase II into production.

Phase III:

- Design, code and test Title Denial.
- Design, code and test inspection results database "time remaining" routines for:

- Registration Renewal Denial.
- Registration Renewal Notices.
- Title Denial.
- Add bar coding to the Title form.
- Implement Phase III into production.

Phase IV:

- Design, code and test reporting for DNREC and EPA auditing.
- Test on-line access to MVALS reports by DNREC personnel at their site locations.
- Design, code and test a new inventory control system for window stickers.
- Implement Phase IV into production.

Phase V:

- Design, code and test DAFB vehicle tracking system.
- Design, code and test Federal vehicle tracking system. (PV, PO, etc.)
- Implement Phase V into production.

Phase VI:

- Design, code and test a new Certified Repair Technicians system.
- Design, code and test a new Certified Lane Technicians system.
- Design, code and test a new (detail) Waiver system.
- Create special files and/or downloads and reports to assist the DAFB in their conversion efforts.
- Design, code and test the identification and reporting of covert vehicles.

Phase I:

The Registration Denial project centers around an automated vehicle inspection system (installed by ESP) and subsequent customer permission to title or renew a registration in the State of Delaware. The new ESP system will replace the need to issue inspection cards and the associated manual inspection card tracking systems currently in place. Instead, the new system will record the information results and data of a physical vehicle inspection in databases locally on the lane PC server and remotely at OIS on the IBM mainframe. The mainframe databases will be the final residence of the data and those databases will be used for all system decisions and reporting. That database information will be used by the MVALS programs to determine if the vehicle is in compliance with Federal and Delaware codes and laws governing legal vehicle registration. If the vehicle passes all of the inspection tests, it becomes eligible to legally travel Delaware roadways. Inspection results are related to the vehicle and applicable for 2 years.

The inspection results database and supporting databases must be mapped back to the reporting

requirements of DMV management, DNREC and EPA in this phase to be absolutely positive all of the informational contents are present. Inconsistencies in the mapping may require modifications to the ESP data capture.

Phase II:

The vehicle will be rejected by MVALS if it does not pass all the inspection criteria. In this case, a temporary (60 day) tag may be issued to give the customer time to correct the detected problems with the vehicle. The design will incorporate tracking and reporting on the temporary tags after the time of issuance. When a vehicle is rejected, the customer may elect to repair the deficiency and attempt to pass the inspection again. Vehicle repairs may be made by a Certified Technician or by the customer. If the vehicle continues to fail the inspection but does not decrease measured emissions by set percentage guidelines, DMV may elect to issue an inspection waiver based upon established rules, limitations and customer expenditure amounts. A vehicle summary of waiver expenditure information for this inspection period must be recorded and tracked in a new database by vehicle. This new database must be read during the registration renewal process, for all failing vehicles, to be sure a current record exists prior to allowing the vehicle to be legally registered. A vehicle waiver overrides the most recent inspection result. It is related to a vehicle and effective for 2 years. The waiver and inspection results databases must be accessible to DNREC personnel for inquires using MVALS.

At times DMV management may elect to override the results of an inspection and permit the vehicle legal registration without further inspections by the lane technicians. The system must permit management to override the vehicle inspection result record with a passing grade. When an override is granted, the system must record the new (overridden) information and track who, when and why the override was given. The new record will be stored in the inspection results database along with information about the operator, date and time. An override reason must be supplied before the record is written to the database. Override capability and permissible override categories must be controlled by an external means to permit DMV management to modify who can override inspection results and what can be modified.

Upon a successful inspection or if the results were overridden or a waiver is issued, a registration renewal card containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

Phase III:

When a vehicle is titled in the State of Delaware, it must also comply with safety and emission tests prior to becoming registered. The titling system must be modified to access the

new inspection results database to make the appropriate decisions. Vehicle titling must be modified to parallel the upgrades installed into the registration renewal system. It must apply all of the same rules, waiver conditions and override capabilities. A title containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

After a vehicle has been renewed or titled and successfully passed inspection, or granted a waiver, the customer has the option to choose a renewal period of 6 months, 1 year or 2 years. Since inspection results and waivers are valid for 2 years, the system must determine the amount of time remaining on the inspection based upon the renewal period chosen by the customer. This algorithm must be incorporated in the registration renewal, registration renewal notification and title systems.

Phase IV:

DMV management, DNREC and the Federal EPA require reports to be generated from the data captured on the inspection results database. DMV management requires specific counts of vehicles, the types of tests that are performed and the results and percentages of the testing. They will also require management reports and online inquires to monitor the inspection system performance, database contents and results. DNREC and the Federal EPA reporting requirements are normally completed on an annual arrangement and require reports concerning; the numbers and types of tests, vehicle breakdowns by make and year, first test and re-test results, information about the testing facilities and the results of both covert and overt audits.

DNREC must be permitted access to the inspection results and waiver databases through an on-line function that will be created within the MVALS application. This function will allow DNREC to review the inspection results and (summary) waiver information on all vehicles. To insure DMV is in compliance with the Federal regulations, DNREC will be given the capability to order printed reports on-line from MVALS concerning the inspection results and waiver information.

Tracking and re-calling certified lane technicians is definitely going to be another new responsibility of the Division. DMV must track all State inspectors requiring testing and re-certification in order to comply with the new Federal EPA regulations. Reports on this activity must be submitted to the Federal EPA on an annual basis.

Phase V:

In addition to the normal vehicle registration activity occurring for Delaware citizens, with the new EPA requirements, DMV must inspect approximately 10,000 additional vehicles owned by; the (non-military) Federal Government, the military and military personnel from the Dover Air Force base (DAFB). The majority of these vehicle

inspections will be on personally owned vehicles (POV) from the DAFB. The DAFB presents a unique opportunity to DMV because POV's are normally not registered in Delaware. Delaware does not require out of state vehicles to be inspected. However, with the new federal regulations, DMV is required to ensure that vehicles residing within the jurisdiction are in compliance with the state-regulated inspection program. This now includes all non-military Federally owned vehicles and vehicles stationed at federal military sites throughout the state even if they are not registered in Delaware. Notifying, tracking and re-calling (test failures) POV's will require cooperation and coordination with DAFB motor pool and security personnel. Additional software and databases may be required to assist in a successful implementation.

Phase VI:

As stated previously, the State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal EPA in January 1997 for review and approval. This phase is subject to change based upon the EPA review and their findings. The following tasks are not definite requirements but may become so after the EPA has made their final decision.

Certified repair technician information is currently being gathered and retained by the Delaware Technical Community College. DMV would like access to the information to enable them to incorporate the data into the motor vehicle inspection reports that will be produced on failed inspections. Tracking reports will include the number of vehicles passing and failing by Certified Technician and the repairs performed by the technician on each vehicle. DMV may require the information to be downloaded from DTCC or if that is not possible, they may have need to maintain the information in duplicity.

When a vehicle is titled or renewed in the State of Delaware, the Division must comply with the security requirements established by the EPA. It requires the Division to track and report all stickers issued to vehicles that have passed the inspection program. It will be necessary to track a history of these documents when being issued, re-issued and/or replaced.

In Phase II, summary waiver information is going to be stored in a new database to assist in tracking vehicle waivers that are issued. It is planned that DNREC will retain the detail backup paperwork and copies necessary to comply with the Federal regulations. If DNREC requires DMV to record the details of a waiver, the system must be modified to comply. Waiver details would include recording the place of purchase, the line items purchased for repair and the individual amounts of each.

If additional programming or design support is required to assist the DAFB or other Federal agencies in meeting their schedules and requirements, DMV may supply resources to assist in the effort. The agencies requiring assistance may require reports, file downloads and programming expertise to expeditiously complete their commitment.

DNREC is currently handling all assignments and identification of covert vehicles. If they require assistance in this effort or require DMV to specially track them in the MVALS system, additional design and programming will be required. Reports on the activity of the covert vehicles would also be required.

Exclusions:

Not included in the scope of this project are:

- Data capture, recording, tracking and reporting of repair facilities.
- Special demarcation of Kent and Sussex county boundaries.
- Design or software programming to handle identification of covert and overt vehicles.
- Purchase of software for bar code printing.
- Covert vehicle identification and reporting issues.
- Vehicle manufacture notification requirements.

I accept this Project Scope as written and agree on the contents within.

Approved by:

Michael Shahan, Director of Motor Vehicles

Approved by:

Jack Eanes, DMV Chief of Vehicle Service

Approved by:

Cheryal Roe, DMV Systems Administrator

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Management Overview

Background

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile-source air pollution. Of all highway vehicles, it appears that passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency (EPA) is attempting to achieve major emission reductions from these transportation sources. Until the automotive manufacturers develop and commercialize cleaner-burning engines and

fuels, the main source of air pollution reduction will derive from the proper maintenance of the vehicles during customer use. The contents of this System Requirement Definition are subject to change based upon EPA review of the Delaware State Implementation Plan (SIP) and their findings.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle performance, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important inspection data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV titling and registration systems without change. Failing vehicles will require repair and re-testing until they pass inspection or receive a vehicle waiver from DMV management. All subsequent action, beginning with the initial inspection test – such as re-test inspection results, waivers, and overrides – will be recorded by the system.

The Project Scope document refers to six implementation phases within the development process of this project. Those six phases translate into six high-level requirement specifications categories. It is important to understand that the six requirement categories do not all directly relate to the six installation phases. Part or all of each requirement category will be implemented to establish the six-phase approach for implementation. The categories defined in the System Requirements Definition document are:

1. System Control - This section of the requirements document encompasses system rule file maintenance, new temporary tag and window sticker inventory file maintenance, and certified lane technician maintenance. All of the functions within this design category must be implemented before the system can become operational.

2. Vehicle Inspection - This corresponds to Phase I of the Project Scope and must be implemented in its entirety before other components may be installed that depend on the Inspection Result data produced. The requirements document refers to, but does not detail, the client/server system developed by ESP. Since this document was developed after the ESP design, it only addresses utilization of the data produced. Additional information regarding the design of the system can be located in the ESP design document.

3. Vehicle Registration - The requirements described under this section cover registration renewal, vehicle titling,

temporary tag distribution, window sticker distribution, inspection result verification/handling, and vehicle repair tracking. All of the components in this section must be implemented before the system can go online. Registration renewal will be the first section to be implemented, with the title section to follow. To support either section, temporary tag distribution, window sticker distribution, and inspection result overrides and waivers must be installed. The certified repair facility and technician tracking components may be installed after the system becomes operational.

4. External Agency - External agencies are vehicles that are not registered with the State of Delaware. Examples of these are: Dover Air Force Base motor pools and civilian vehicles; Postal Service vehicles; Reserved Armed Forces vehicles; etc. Identification of these vehicles will not be as straightforward as the vehicles registered in Delaware because DMV does not keep records for them today. The Clean Air Act requires those vehicles to comply with the EPA emission standards as long as they continue to operate in Delaware. This section addresses the requirements and how to accomplish them. As each agency is introduced to the system, new program components may be required. Each agency may be processed differently than the previous, based upon their technical capabilities. DMV will strive to develop a standardized approach and demand adherence from all external agencies. The components described in this section are required before introducing the first external agency to the system.

5. Audit Reporting - Requirements for three auditing techniques have been identified: standard auditing reports and functions; special auditing functions; and auditing as required by DNREC. Auditing the system on a periodic basis – daily, weekly, etc. – is considered a standard procedure. Reports and screens will be programmed to run automatically for all of the standard auditing procedures. Special audits and DNREC (overt and covert) audits will be discussed and will permit flexibility in selection and formatting of the information. Registration Denial data transfer to local PCs will also be an option.

6. Information Inquiry - The components in this section represent additional inquiry functions required to view the new information. Three separate areas have been defined as requiring access to the information: DMV, the State Police, and DNREC. Each will share many of the same inquiry components with "information blocks" applied when information is required by one agency and not the other. System rules will be developed to control the information selection and screen displays. Portions of this section will be required as the initial system is installed. Advanced inquiry facilities will be identified and included as the detail system specifications are developed.

The following paragraphs supply additional detail in reference to the above system requirement categories. If more detail is required, please refer to Section II - Data

Requirements and Section III - Process Requirements located later in this document.

System Control

The requirements described in this section are designed to keep the inventory files and system rules updated and in control of the system. Currently there are five separate processes defined:

1. The Registration Denial Rule Maintenance process will permit DMV management to maintain all of the associated rules concerning the Registration Denial system. Rules pertain to system variables that actually "drive" the system decision-making process. Externalizing the rules permits more flexibility and better overall control of the system by DMV.

2. A Temporary Tag Inventory maintenance system will be developed to control the acquisition and distribution of all temporary tags. The maintenance system will allow control of and accounting for each temporary tag distributed by DMV. Control begins when new inventory is received. It will be tracked until the vehicle to which the tag was assigned is purged from the DMV files. The inventory and temporary tag history files will be closely related.

3. A Window Sticker inventory control system will permit similar control (as in the case of temporary tags) over the window stickers issued by DMV. The maintenance system will allow control of and accounting for each window sticker distributed by DMV. A vehicle window sticker history file will be incorporated with the present DMV title file.

4. The Certified Lane Technician maintenance system will allow DMV to track and record information about their lane technician employees. Information such as certification test results, re-certification results, and demographic data will be retained and reported.

5. The last new maintenance system planned will track Certified Repair Facilities and associated Certified Repair Technicians. The system will permit maintenance and reporting of repair facilities employing certified repair technicians and their certification test results.

Vehicle Inspection

This section describes the physical vehicle inspection that normally occurs for every registered vehicle in Delaware. The process is completed prior to a vehicle being titled, and then (normally) every 2 years after for registration renewals. The entire process occurs at the inspection lane(s) and is conducted at various checkpoints within. The ESP system controls the events that occur during the inspection process and helps ensure that each station checkpoint records the appropriate results. The results of each checkpoint test will be recorded and stored in the ESP station manager

computer and then transmitted to the OIS mainframe in Dover, Delaware, for permanent storage and retention. ESP handles all pass and fail parameters, anti-tampering verification and recording, permissible limits of the test, and calculating the 10% reduction in emission gases from the initial inspection for waiver processing. ESP also issues the final pass or fail grade for the vehicle.

Vehicle Registration

The normal DMV administrative "life cycle" of a vehicle is described in this section. It begins when the vehicle is purchased and titled in the State of Delaware. Under normal circumstances, a vehicle will undergo an inspection to initiate this process. However, most new vehicles purchased in the state are exempt from an initial inspection. During the vehicle "life cycle," it may be issued a temporary tag, window sticker, or a waiver for emissions; or the inspection test results may be overridden by DMV management. As the next vehicle-registration renewal period nears, a registration renewal notice is printed and sent to the customer. That notice prompts the owner to bring the vehicle to DMV for an inspection and registration renewal. The process (Notice, Inspection, Renewal) continues as long as the vehicle ownership does not change and the vehicle remains in Delaware. The major new portions of the Vehicle Registration component for Registration Denial are:

Temporary Tags -

Once a vehicle is issued a temporary tag, the paperwork flows into DMV for recordkeeping. A clerk will enter the temporary tag information into the computer using a new temporary tag data-entry program. The program will complete a stolen vehicle check as is currently done while adding a title. A record will be added to the Temporary Tag History file for that (X) tag number. That record will then be available for inquiry by DMV and law enforcement. It can be found by entering the VIN or the (X) temporary tag number. The record will remain linked to the vehicle by VIN until the vehicle is purged from the DMV files. As the record is being recorded in the Temporary Tag History file, the temporary tag number will be consumed from the Temporary Tag Inventory file. Temporary tags are not tracked by today's system and will be valuable new information for DMV and law enforcement agencies. The introduction of this system will be completely new to DMV.

Window Stickers -

After a vehicle is titled or renewed, it will be assigned a new window sticker. The current processes will be modified to assign the next available window sticker to the vehicle from the clerk's inventory. As a safety precaution the clerk must enter the window sticker number, and the program will verify the number against the available window stickers in

the clerk's inventory. If the number is not found, a window sticker override will be permitted. A reason for the override must be supplied by the clerk. The program will consume the window sticker from the clerk's inventory and add the information to the Window Sticker History file. The Window Sticker History will remain on the DMV files for a minimum of one inspection cycle. Replacement window sticker issuance and fee collection will be made available on the Cash Collection miscellaneous menu. Window sticker inventories, distribution, and tracking are new processes to DMV.

Title Vehicle -

Vehicle titling is required by law, and all vehicles owned by Delaware residents traveling the highways must be titled. The title function encompasses several functions today, such as adding, correcting, and transferring titles. All of the functions used by the title section will be affected by the changes being made for the Registration Denial project. Titling can only occur after the vehicle has passed all of the inspection tests required of the particular vehicle class. There are a few exceptions, such as the fact that a vehicle may be permitted an override (and pass) of a failed test by DMV management. Or, a vehicle may receive a waiver if it meets the vehicle repair expense limits and obtains a ten percent emission reduction measured from the initial test. A window sticker must also be issued to the vehicle.

The Correct Title function permits the title clerk to correct information on the Title file that may have been entered incorrectly during the title add function. New features must be included in the program to calculate the remaining time left on an inspection and restrict expiration date modification to the last day of that inspection. Additionally, extensions beyond that inspection date will not be permitted by the program without another inspection. The program will require the capability to assign a new window sticker without regard to inspection dates, although the Correct Title function for a tag change will not issue a new window sticker. The window sticker stays with the vehicle in all cases.

The Transfer Title function permits the title clerk to transfer vehicle title and associated information from one owner to another. Transfers occur anytime vehicle ownership changes for any reason. Expiration dates cannot be transferred to another vehicle. In all cases, a vehicle expiration date remains with the vehicle, not the tag.

The introduction of inspection result verification and handling, window sticker inventories and distribution, waivers, and overrides are new concepts that will be introduced to DMV with the installation of this system.

Waiver Process -

This process allows a clerk, or DMV management, to store vehicle waiver repair information into the system for a

specific vehicle. The system will record the waiver information and retain links to the Inspection Results, Title, and Certified Technician files. Those linked files will be used for tracking and reporting the effectiveness of repair technicians and the waiver information permitted by DMV. The waiver information will be validated by the Title and Registration Renewal systems. When present and within the confines of the rules set by DMV, the vehicle will be permitted to proceed through the system without a passing inspection record. Waivers may be entered directly from the Titles and Registration Renewal screens or through an administrative function. The repair facility and repair technician information completing the vehicle repairs must be present in their respective files before a waiver can be entered. The repair facility and technician information may only be modified by DMV supervisors and above. Recording and verifying this information via computer is a completely new function to DMV.

Override Function -

This function will be used by DMV management (and selected supervisors) and permit them to perform four major functions against the Inspection Result file. It will allow:

1. Adding an Inspection Result record to the file. This will only be permitted when the ESP system is down and vehicle inspections revert back to the Bar 84 technique. This function will be extremely secure and verified each time a new entry is attempted.

2. Modification of the Inspection Result content. This is the function normally known as an override. The function will be restricted to particular DMV personnel, and even those permitted will have data-level restrictions. Overrides will be permitted on a case-by-case level and normally restricted to only safety item failures.

3. Transferring Inspection Results from one registration to another. This option will be used when the lane technician makes a mistake while entering the vehicle identification information. When a mistake has been made, the inspection results will be logged under the wrong registration. The customer will not be permitted to continue through the process unless the mistake is rectified. The system will track the transfer (from and to) information and create another record for the proper vehicle. The original inspection record will not be included in any statistical reporting.

4. Deleting individual Inspection Result records from the file. This is a very rarely used, but required, function to delete an inspection result record from the file. This option will be used when an inspection result record was created (Option #1 above) under the wrong registration. The record will be marked for deletion, but it will not be physically deleted from the file until the proper authorization is given by DMV management. This function will be highly secured

and available only to those that absolutely require the function.

Daily auditing reports will be produced by the system and distributed to DMV management for all of the above functions. All of the functions listed above are completely new to DMV.

Renewal Notice -

This process will be modified to produce additional customer notices for one-year renewal and State Police inspection requests. It will examine the Titles and Inspection Results files to identify the vehicles whose registrations are about to expire. It will determine if the vehicle requires an inspection or just a registration renewal. It will also find vehicles that have been requested to report to DMV for a special inspection by the State Police. While processing the selected records, it will determine if a vehicle must receive an inspection or if the current inspection is valid for the vehicle registration renewal. Vehicles that have been inspected within the last year may renew their registration for one additional year without another inspection. All the requirements of the owner to obtain a registration renewal will be printed on the renewal notice. The two-year inspection rule applies in all cases and will be printed on the notice. The reporting changes are modifications to the current process. Adding a maintenance program to update vehicles stopped by the State Police is a new requirement of DMV.

Registration Renewal -

The registration renewal process will be modified to verify the inspection results file before permitting a renewal. As in the title process, a renewal will only occur after the vehicle has passed all of the inspection tests required for a particular vehicle class, or it was permitted an override (and pass) of a failed inspection, or a waiver was issued. A waiver requires proof of repair expenses and a ten percent emission reduction from the initial inspection before a renewal may be issued. The renewal process updates the current title record in the Title file. Once the title record is updated, the system prints a 2-D bar code on the updated registration card and issues the next available window sticker from the clerk's inventory. If the vehicle does not pass the inspection, a temporary tag will be issued, without a window sticker, by the registration clerk. Temporary tag issuance will be accessible through the renewal screen. As with the title functions, inspection result verification and handling, window sticker and temporary tag inventories, waivers, and overrides are new concepts to the registration clerks.

External Agency (Unregistered Vehicles)

This process is designed to permit DMV to identify and test vehicles stationed in Delaware that are owned by

external agencies and not registered in Delaware (such as those owned by the DAFB, the postal service, and other federal motor pools). Those vehicles must be identified and tested to be sure they are in compliance with the federal emission standards. It is the responsibility of the individual agency to perform the follow-up to ensure that all vehicles are, and remain, in compliance. The system design for this function will incorporate:

- automatically receiving and loading the vehicle and owner information into a database that will be used by ESP;
- using the information to inspect and test the vehicle (ESP);
- recording the test results and subsequent re-test results;
- providing the Inspection Results data to the external agency in either a report or an online inquiry so that notices may be forwarded by the agency;
- and reporting vehicles inspected and statistical information.

The introduction of this system will be completely new to DMV.

Audit Reporting

This process will match the Title, Inspection Result, and at times the Vehicle Audit Information files and create reports about the information. Specific calculations and formats will be determined as the design process continues. External rules will be used to control the processing. All of the following components are new to DMV:

Standard Audit Reports - The reports will be standard reports that will run unattended periodically and produce the necessary reporting and audit information. The reports will be designed in conjunction with DMV management to support the information required by DNREC and the EPA. Some of the reports will be written as part of the Phase II installation since EPA will require reports before the system will be fully installed.

Specialized Audit Reports - The reports will be specialized (by data selection, not report format or content) processes that will run to produce the necessary reporting and audit information. Special reports may be produced from the Inspection Result, Repair Facility, Technician, Waiver, and inventory files. All reports will be designed with DMV management to support any special requirements of DNREC and the EPA.

Covert Audit Reports - These reports, like the specialized reports, will be specific processes (by data selection, not report format or content) that will run to produce the necessary reporting and audit information. An automated process will be created to allow DNREC the ability to access and report the contents of the Title and

Inspection Result files. The audit function is a direct responsibility of DNREC. Additional functionality will be created as DNREC defines the requirements. All reports will be designed with DNREC management in support of the information they require.

Information Inquiry

There will be a great deal of new information created by the Registration Denial system. That new information will be accessible by DMV, the State Police, and DNREC, and they will require new systems to permit online inquiries into the data. Modifications will also be required to current systems to provide access to the data without writing new inquiry systems. Access to allow specific personnel permission to view the information will be granted based on security levels and new rules set up in the system. Changes include modification to the current Delaware State Police (CICS) processes to permit inquiry and viewing of the new data captured by DMV. The current DMV inquiry systems will be modified to access the new data and display the information for the requester.

APPENDIX 9 (a)

ENFORCEMENT AGAINST OPERATORS AND INSPECTORS

Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action. (Subject to change as the result of future union negotiations)

~~ARTICLE 8 - DISCIPLINARY ACTION~~

~~8.1 The Employer agrees that any disciplinary action up to and including dismissal shall be taken only for just cause.~~

~~8.2 Employee suspensions shall not exceed 30 calendar days except under the following circumstances: a court action is pending in the matter which led to the suspension; as a result of an arbitration award; or as a result of a grievance settlement involving a dismissal action where arbitration is pending.~~

~~8.3 Monetary fines shall not be imposed as a disciplinary measure.~~

~~8.4 Prior to the implementation of a dismissal action, employees shall be notified in writing that such action is being considered and provided the reasons for the proposed action.~~

~~8.41 Employees shall be entitled to a pre-termination hearing, provided they submit a written request for such hearing to the Division Director and State Deputy Director for Labor Relations within 5 work days of receiving the above referenced notification. The employee may be~~

suspended without pay during this period.

~~8.42 The pretermination hearing shall be held within a reasonable time after the employee has requested such hearing in compliance with 8.41.~~

~~8.43 Pretermination hearings shall be informal meetings for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why dismissal may not be justified or too severe a penalty.~~

~~8.44 Prior to implementing a suspension without pay, the Employer shall follow the notification requirements set forth in 8.4.~~

~~8.5 Employees shall be entitled to a presuspension meeting with the Employer prior to the implementation of the suspension, provided they make a written request for such meeting to the Division Director within 5 working days after receiving the notice.~~

~~8.51 The presuspension meeting shall be held within a reasonable time after the employee has requested such meeting in compliance with 8.5.~~

~~8.52 The pre-suspension meeting shall be an informal meeting for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why the proposed suspension may not be justified or too severe a penalty.~~

~~8.6 Employees may be accompanied by a Union representative at any meeting/hearing held under this Article.~~

~~8.7 Any employee failure to comply with the requirements set forth in 9.41 and 9.5 shall be treated as a waiver of any rights set forth in this Article.~~

~~8.8 Disciplinary documentation shall not be cited by the Employer in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.~~

State of Delaware Merit Rules

CHAPTER 15 EMPLOYEE ACCOUNTABILITY

15.1 Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. "Just cause." means that management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

15.2 Employees shall receive a written reprimand where appropriate based on specified misconduct, or where a verbal reprimand has not produced the desired improvement.

15.3 Prior to finalizing a dismissal, suspension, fine or demotion action, the employee shall be notified in writing that such action is being proposed and provided the reasons for the proposed action.

15.4 Employees shall receive written notice of their entitlement to a predecision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency's designated personnel representative within 15 calendar days from the date of notice. employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

15.5 The predecision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with 15.4.

15.6 Predecision meetings shall be informal meetings to provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

15.7 Fines of not more than 10 days pay may be imposed, provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

DIVISION OF FISH & WILDLIFE

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

Order No. 2001-FW-0031

Order

Summary of Evidence and Information

Pursuant to due notice 5 **DE Reg**, 402-404, (08/01/01) the Department of Natural Resources and Environmental Control proposed new shellfish regulations to govern the seasons, locations for landing oysters, the type and amount of harvesting gear, the minimum size of oysters and an annual quota of oysters allowed to be harvested. The Department also proposed to strike shellfish regulations no longer applicable to public tonging grounds and licensing oyster vessels to transfer oysters from the State's natural oyster beds to leased shellfish grounds.

Senate Bill 185 (Chapter 21, 7 Del. C.) was enacted on July 9, 2001. This act authorized the harvest of oysters from the State's natural oyster beds for direct sale. It also withdrew the transfer of oysters from the State's natural oyster beds to leased shellfish grounds. It also authorized the Department of Natural Resources and Environmental Control to adopt shellfish regulations pertaining to the harvest of oysters.

A public hearing was conducted on August 23, 2001 to hear testimony and evidence on proposed shellfish regulations to control the harvest of oysters from the State's natural oyster beds.

Finding Of Facts

- Senate Bill 185 was enacted on July 9, 2001 to authorize the harvest of oysters from the State's natural oyster beds for direct sale.
- §2106, 7 Del. C. authorizes the Department to adopt shellfish regulations pertaining to the harvest of oysters from the State's natural oyster beds.
- There is, at times, harvestable amount of oysters on the State's natural oyster beds.
- There is, at times, a high incidence of oyster mortality on the State's natural oyster beds due to oyster disease; i.e. MSX and Dermo.
- The transfer of oysters from the State's natural oyster beds to leased shell fish grounds is no longer permitted.
- Public tonging areas for oysters are no longer authorized.
- Waterman support the harvest of oysters from the State's natural beds for direct sale.
- The Department supports the harvest of oysters from the State's natural oyster beds for direct sale.
- There is no consensus among watermen interested in harvesting oysters from the State's natural oyster beds as to the opening and closing dates for seasons subsequent to 2001.
- The landing areas of oysters taken from the State's natural oyster beds must be controlled for enforcement of tagging requirements.
- Large oyster dredges will damage oysters if not used efficiently while harvesting oysters.
- §2105 (a), 7 Del. C. requires oyster harvesting fees be prepaid on or before dates established by the Department.
- §2105 (f), 7 Del. C. stipulates that oyster harvest tags are not transferable.

Conclusions

- The Department should open the 2001 harvest of oysters from the State's natural oyster beds on November 1, 2001 and close on December 31, 2001.
- Subsequent year oyster harvesting seasons should be established after the conclusion of the 2001 harvest in order for people involved in this fishery to gain some experience with the better times for marketing oysters.
- The Department should allow the landing of oysters taken from the State's natural oyster grounds at public or private docks in the general areas of Leipsic, Port Mahon, Bowers Beach and Cedar Creek.
- Oyster harvesting gear should be limited in dimension to minimize the damage to oysters.
- The minimum size of oysters harvested from the State's natural oyster beds should allow for adequate harvest prior to disease mortalities.
- Eligible participants in the harvest of oysters from the State's natural oyster beds must commit to their participation by prepaying oyster harvesting fees on or before precise dates.
- For enforcement purposes, oyster harvest tags should not be on a vessel in the absence of the person to whom said tags were issued by the Department.
- The 2001 annual oyster harvest quota should be based on the best scientific data from the October surveys by the Department.

Order

It is hereby ordered, this 5th day of September, in the year 2001, that Shellfish Regulations S-7(b), S-9, S-11, S-13 and S-37, a copy of which is attached here to, are amended to be stricken and new shellfish regulations S-63, S-65, S-67, S-69, S-71, S-73 and S-75, copies of which are attached hereto, are adopted pursuant to §2106, 7 Del. C. and are supported by the Department's findings of fact from evidence and testimony received. This Order shall be effective on October 10, 2001.

Nicholas A. DiPasquale, Secretary of the Department of Natural Resources and Environmental Control

S-7 NATURAL OYSTER BEDS - LOCATION

(a) "Natural oyster beds" shall mean those shellfish grounds located to the North of the "East Line" in Delaware Bay and River and shellfish grounds located upstream of the entrances of all tributaries entering the Delaware River and Delaware Bay under the jurisdiction of the State.

~~(b) The Department shall designate specific natural oyster beds that will be open for taking seed oysters on specific dates prior to April 1, in any given year.~~

S-9 OYSTERS — PUBLIC TONGING AREAS — LOCATION

(a) "Public tonging areas for oysters" shall mean those shellfish grounds located in the Delaware Bay approximately two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay and more specifically described as plotted on the Delaware Bay Chart No. 12304 22nd edition, published by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington D.C., November, 1975 with Loran C overprinted as follows:

CORNER LOCATION LORAN READING

- | | |
|---------------------|-----------------|
| 1. Northwest Corner | 9930 Y-52260.91 |
| | 9930 Z-70042.54 |
| 2. Northeast Corner | 9930 Y-52259.36 |
| | 9930 Z-70043.20 |
| 3. Southwest Corner | 9930 Y-52262.10 |
| | 9930 Z-70043.80 |
| 4. Southeast Corner | 9930 Y-52260.65 |
| | 9930 Z-70043.95 |

S-11 OYSTERS — PUBLIC TONGING AREAS — SEASON

(a) It shall be unlawful for any person to harvest oysters from the public tonging area located in the Delaware Bay two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay at any time other than September 1 through April 30 next ensuing for each year.

Note: It is unlawful for any person to harvest oysters from any public tonging areas unless said person has a valid public oyster tonging license.

S-13 OYSTERS — DAILY TAKE LIMITS — PUBLIC TONGING AREA

It shall be unlawful for any person to take more than fifteen (15) bushels of oysters in any one (1) day from the oyster public tonging grounds.

S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FROM NATURAL OYSTER BEDS

(a) The owner of a vessel which was previously licensed in Delaware to harvest and/or transplant oysters from natural oyster beds or from leased shellfish ground in Delaware Bay may directly apply to the Department for a license for said vessel to harvest and/or transplant oysters from the natural oyster beds or from leased shellfish grounds within the jurisdiction of the State.

(b) The owner of a vessel which was not previously licensed to harvest oysters in Delaware and is to be used for transplanting oysters from natural oyster beds in Delaware Bay to leased shellfish grounds in Delaware Bay, must submit an application for said vessel license to the Department that will first be reviewed by the Council on Shellfisheries for their determination as to whether or not:

(1) The legal and equitable owner is a Delaware resident or a corporation whose principal place of business is located within Delaware prior to January 1, 1990 or a Delaware corporation incorporated after January 1, 1990 with its principal place of business in Delaware and whose legal and equitable owners are Delaware residents; and;

(2) the profits from the operation of said vessel will help to preserve and improve the Delaware shellfish industry; and;

(3) the vessel to be licensed will remain exclusively in Delaware's shellfish industries for a period of at least sixty (60) months.

Based upon these criteria, the Council on Shellfisheries shall then recommend approval or disapproval for issuing an oyster harvesting license for said vessel within ten (10) calendar days of receipt of the application provided that there is no regularly scheduled council meeting between the date of the application and the beginning of the oyster transfer season. The Department, upon receiving a recommendation from the Council on Shellfisheries, shall decide whether or not to issue an oyster harvesting license for the vessel for the forthcoming oyster transfer season.

(c) The owner of a vessel which was not previously licensed to harvest and/or transplant oysters in Delaware and said vessel is only to be used to harvest oysters from leased shellfish grounds may directly apply to the Department and receive a vessel license to harvest oysters from leased shellfish grounds within the jurisdiction of this State.

S-63. OYSTER HARVESTING SEASONS

(a) It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds in the year 2001 except during the period beginning at sunrise on November 1, 2001 and ending at sunset on December 31, 2001.

~~[(b) It shall be unlawful for any person to harvest or to attempt to harvest oysters from the State's natural oyster beds, in any calendar year other than the year 2001, except during the period beginning at sunrise on April 1 or the Monday thereafter if April 1 is a Sunday, and ending at sunset on December 31 or the preceding Saturday if December 31 is a Sunday.]~~

S-65. OYSTER LANDING AREAS

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

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

S-67. OYSTER HARVESTING GEAR

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

oyster beds with any gear other than an oyster dredge that measures no more than 52 inches in length along the tooth bar.

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

(c) It shall be unlawful for any person to harvest oysters or attempt to harvest oysters from the State's natural oyster beds with more than two oyster dredges overboard at the same time.

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

S-69. OYSTER MINIMUM SIZE LIMIT

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

S-71. OYSTER HARVESTING CONTROL DATES

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

1. He/she has obtained a valid oyster harvesting license.

2. He/she has indicated in writing to the Department no later than ~~[10 days prior to the opening date of the annual oyster harvesting season]~~ [4:30 PM on October 22, 2001] that he/she will participate in ~~said annual~~ [the 2001] harvest of oysters.

3. He/she pays the annual oyster harvest fee of \$1.25 per bushel for his/her individual allotment of oysters on or before ~~[the opening date of said annual harvest of oysters]~~ [4:30 PM on November 1, 2001]

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

S-73. OYSTER HARVESTING LICENSEE

REQUIREMENTS

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

S-75. OYSTER HARVEST QUOTA

The oyster harvest quota for 2001 is 24, 795 bushels.

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER NINETEEN**

RE: DELAWARE STATE POLICE

WHEREAS, questions have been raised as to the fairness of employment, discipline and promotion policies at the Delaware State Police; and

WHEREAS, a mechanism is needed to thoroughly investigate the climate at the Delaware State Police and to ensure full cooperation by the Delaware State Police with any future Delaware State Senate investigations;

I, RUTH ANN MINNER, GOVERNOR OF THE STATE OF DELAWARE, HEREBY ORDER ON AUGUST 17, 2001:

1. The Director of State Personnel is directed to undertake an investigation of the working conditions at the Delaware State Police. This investigation shall include:

a. Findings as to the compliance of the Delaware State Police with Executive Order No. 10, signed January 30, 2001.

b. Findings as to the working conditions and organizational culture for women and minorities at the Delaware State Police, and conditions that might impede women and minorities from remaining with the State Police and advancing through the ranks of the State Police.

c. Recommendations for changes at the State Police that could result in improvements in the state's ability to retain qualified State Troopers.

2. All state employees, including but not limited to members, employees, and officers of the Delaware State Police, are directed to fully and promptly comply with any requests made by the Director of State Personnel for access to persons, records, or other information in connection with the investigation I have ordered in paragraph 1 of this order.

3. The Director of State Personnel is directed to report her findings and recommendations to me and the Secretary of Public Safety by December 1, 2001.

4. All employees, officers and members of the Delaware State Police are directed to fully and promptly comply with any requests for information by the legislature of the State of Delaware or any formally constituted committee of that legislature. To the extent that any employee, officer or member seeks to withhold information on the basis that it is confidential or privileged, he or she shall do so only after receiving express permission to withhold that information from my office, and he or she shall explain to the legislature what information is being withheld

and the specific reason that it is being withheld.

5. No employee, officer or member of the Delaware State Police shall be disciplined, punished, reprimanded, or sanctioned in any fashion as a consequence of providing information to the legislature of the State of Delaware or any formally constituted committee of that legislature.

6. No employee, officer or member of the Delaware State Police who has provided information in a public forum to the legislature of the State of Delaware or any formally constituted committee of that legislature shall be transferred, demoted, or otherwise have his or her employment status changed unless my office and the Secretary of Public Safety has been provided with prior notice of such impending change.

7. Any failure by any employee, member or official of the Delaware State Police to comply with the terms of this Order shall be considered an act of direct insubordination and shall be subject to the discipline associated with such acts.

8. None of the directives in this order waive any of the existing obligations of the Delaware State Police to comply with existing state and federal laws and regulations. If any member of the Delaware State Police perceives any direct conflict between this Order and any existing state or federal law or regulation, said conflict shall be brought to my attention in writing immediately and will be resolved by my office.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Secretary of State

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER TWENTY**

**RE: STATE EMPLOYEES' CHARITABLE
CAMPAIGN**

WHEREAS, the employees of the State of Delaware have demonstrated their generosity and commitment to the support of charitable health and welfare causes; and

WHEREAS, it is in the best interest of the State to provide a single annual campaign with minimal disruption to the work and services that our state employees provide to the residents of our State; and

WHEREAS, it is impossible to allow every nonprofit organization to conduct a campaign, but it is reasonable to

establish guidelines and procedures to establish a single, combined annual campaign; and

WHEREAS, it is a worthy endeavor to encourage state employees to contribute to charitable organizations within Delaware.

NOW, THEREFORE, I, RUTH ANN MINNER, by virtue of the authority vested in me as Governor of the State of Delaware do hereby declare and order the following:

I. Continuation of the State Employees' Charitable Campaign.

The State of Delaware shall henceforth continue to conduct an annual combined charitable solicitation campaign (hereinafter referred to as the "Campaign") to provide its employees with the opportunity to make charitable contributions either through direct payment or payroll deduction.

II. Criteria for Selection.

An organization must meet the following criteria in order to participate in the Campaign:

A. Foundation, Umbrella Organization, or Individual Organization.

An organization may be a foundation, an umbrella organization, or an individual organization.

1. A foundation means a not-for-profit organization that makes grants to other organizations. Such a foundation must meet the other criteria for selection as set forth herein.

2. An umbrella organization means an organization that meets the other criteria for selection as set forth herein and that serves as the administrative agency for at least four nonprofit organizations, each of which meets the other criteria for selection as set forth herein. An approved umbrella organization shall certify that each of its participating organizations meets the criteria for selection as set forth herein. The certification shall apply only for purposes of the Campaign. The documentation supporting the certification of an individual organization under an umbrella organization shall be provided to the State Employees' Charitable Campaign Steering Committee (hereinafter referred to as the "Steering Committee") upon request. An organization may not affiliate with more than one umbrella organization for purposes of the Campaign.

3. An individual organization means an organization that meets the other criteria for selection as set forth herein and that is not affiliated with a foundation or an umbrella organization.

B. Health and Welfare Purpose.

An organization must be organized and operated for the purpose of rendering, or materially or financially supporting the rendering of, services to benefit the health and welfare of residents of the State Of Delaware, including,

but not limited to:

1. Delivery of health care to ill or infirm individuals;

2. Education and training of personnel for the delivery Of health care to ill or infirm individuals;

3. Health research for the benefit of ill or infirm individuals;

4. Delivery of education, training, and care to physically and mentally handicapped individuals;

5. Education of individuals who, without assistance, would not be able to afford it;

6. Treatment, care, rehabilitation, and counseling of juvenile delinquents, persons convicted of crimes, persons who abuse drugs or alcohol, persons who are victims of family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

7. Relief for victims (including non-residents of Delaware) of crime, war, casualty, famine, natural disasters, and other catastrophes or emergencies;

8. Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, and preparation and delivery of meals, educational opportunities, and job training;

9. Legal aid services that are provided without unlawful discrimination to needy, poor, and indigent individuals solely because such individuals cannot afford legal counsel;

10. Protection of families that, on account of poverty, indigence, emergency, or other adversity, are in need of family, child care, or maternity services, child or marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

11. Relief for needy, poor, and indigent infants and children (including orphans), including the provision of adoption services;

12. Relief for needy, poor, and indigent adults and the elderly;

13. Assistance, consistent with the mission of the state agency or facility involved, to members of its staff or service, who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs; or

14. Lessening of the burdens of government with respect to the provision of any of the foregoing services.

C. Established Physical Presence in State.

An organization must have an established physical presence in the State of Delaware, either in the form of an office or service facility which is staffed at least fifteen hours a week, or by making available its staff through scheduled appointments with Delaware residents or businesses at least fifteen hours a week.

D. Charitable Status.

An organization shall hold and maintain a currently valid designation from the Internal Revenue Service as a section 501(c)(3) organization, and be eligible to receive tax-deductible contributions under Section 170 of the Internal Revenue Code. A copy of the Internal Revenue Service designation letter shall be submitted with the application.

E. Nondiscrimination.

An organization shall have a policy and demonstrate a practice of nondiscrimination on the basis of race, color, religion, sex, age, national origin, or physical or mental handicap, applicable to staff employment, and to memberships on its governing board.

F. Annual Report.

An organization shall prepare an annual report or report to the general public on an annual basis, which shall include a full description of the mission, target population, activities, objectives, and achievements of the organization and the names of its chief administrative personnel. Organizations with an annual budget of less than \$100,000 shall not be required to prepare an annual report, but must submit a copy of the Form 990, which they file with the Internal Revenue Service, with the Steering Committee.

G. Limit on Administrative and Campaign Costs.

Each foundation, umbrella organization, and individual organization shall submit a statement certifying that its management, general, and fundraising expenses are not in excess of twenty-five percent (25%) of total revenue. If such costs are in excess of the percentage of total revenue established above, an organization shall provide an explanation and documentation that its actual expenses for those purposes are reasonable and appropriate under the circumstances. The Steering Committee, established in Section III of this Order, shall decide that such excess is acceptable or shall require the organization to come within the percentage cap within a certain time period.

H. Fundraising Practices.

The publicity and promotional activities of a foundation, an umbrella organization and its constituent organizations, or an individual organization must be based upon the actual program and operations of the entity and must be truthful, nondeceptive, and consumer-oriented. Fundraising practices must assure: protection against unauthorized use of the organization's contributors' list; no payment of commissions, kickbacks, finder fees, percentages, or bonuses for fundraising; that no mailing of unsolicited tickets or commercial merchandise with a request for money in return will occur; and that no general telephone solicitations will be conducted. This requirement shall apply only to those activities connected with the Campaign.

I. Voluntary Board of Directors.

An organization shall be directed by an active, voluntary board of directors, which serves without

compensation, holds regularly scheduled meetings, and exercises effective administrative control. If the board of directors is not located in Delaware, there must be a local board comprised of Delaware citizens, which advises the board of directors with respect to Delaware activities.

J. Accounting Standards.

An organization shall adopt and employ the Standards of Accounting and Financial Reporting for voluntary Health and Welfare Organizations from the American Institute of Certified Public Accountants ("AICPA") and provide for an annual external audit by an independent, certified public accountant. Organizations with an annual budget of less than \$100,000 shall not be required to submit to an independent audit, but must submit a copy of the Form 990, which they file with the Internal Revenue Service with the Steering Committee.

K. Establishment of Organization.

An organization must have been in operation in Delaware for at least three years before application in order to demonstrate a reasonable degree of continuity and economical, effective, and efficient operation.

L. Organizations Deemed Not Eligible.

The following organizations are not eligible to participate in the State Campaign:

1. Those with partisan political and propaganda programs;
2. Those with programs which exist solely to advocate particular religious or ethical beliefs; and
3. Those which do not promote health and welfare.

III. Establishment and Appointment of the State Employees' Charitable Campaign Steering Committee.

A. The Steering Committee is hereby established and shall consist of eight members who shall be state employees and who shall be appointed to serve at the pleasure of the Governor. Of the members appointed, there shall be at least one employee from each of the three counties. In addition, one of the appointees shall be an employee who is represented by one of the unions under which the employees of the State are organized; one shall be an employee of the Department of Finance recommended by the Secretary of Finance; one shall be a representative from the Governor's staff; and one shall be a representative of the Lieutenant Governor's staff.

B. The Governor shall appoint the chairperson of the Steering Committee.

C. Four members of the Steering Committee shall constitute a quorum. A simple majority vote of a quorum of voting members shall be required for the Steering Committee to take formal action. A representative of the organization, which serves as administrator for the program, shall attend the meetings of the Steering Committee, but shall not be a voting member.

D. Meetings of the Steering Committee shall be open

to the public in accordance with state law, including to representatives of the approved and participating foundations, umbrella, and individual organizations.

E. The Steering Committee shall elect annually one of its members to serve as Secretary for the Committee and to record the proceedings of the Committee's meetings. In the absence of the Secretary, the Chairperson shall designate an Acting Secretary.

IV. Responsibilities of the Steering Committee.

A. The Steering Committee shall have the following duties, responsibilities, and authority:

1. Develop all necessary schedules, policies, and procedures to implement this Executive Order;
2. Develop, receive, and review applications for participation in the Campaign by foundations, umbrella organizations, and individual organizations;
3. Approve eligible foundations, umbrella organizations, and individual organizations for participation in the Campaign;
4. Select the administrator for the Campaign in accordance with the procedures set forth at Section VI;
5. Oversee the management of the Campaign;
6. Recruit employee chairpersons;
7. Promote and publicize the Campaign; and
8. Review pamphlets, donor cards, and other promotional materials for the Campaign.

V. Selection of Eligible Organizations by Steering Committee.

A. Organizations interested in participating in the Campaign shall submit an application in accordance with the procedures set forth by the Steering Committee.

B. The Steering Committee, in accordance with its procedures, shall review each application and determine whether an organization should be approved for participation in the Campaign. The Steering Committee is expressly authorized to adopt and utilize an abbreviated application form and process for any organization that has participated in the Campaign for the prior three (3) consecutive years, provided that a duly authorized representative of the organization certifies that such organization continues to meet all of the criteria for participation listed in Section II above.

C. In the event the Steering Committee determines to reject an organization for participation in the Campaign, the Steering Committee shall send the subject organization a certified letter, return-receipt requested, advising the organization that the Steering Committee has rejected its application, and stating the reason(s) for that rejection. The decision of the Steering Committee with respect to approval of eligible foundations, umbrella organizations, and individual organizations shall be final.

VI. Administration of State Employees' Charitable Campaign.

A. The Campaign shall be administered by one of the organizations that has previously been approved for participation in the Campaign.

B. The Steering Committee shall issue to all organizations previously accepted for participation in the Campaign an invitation to submit a bid as administrator of the Campaign.

C. The bid specifications shall describe the services to be provided, including, but not limited to the:

1. Organization and administration of any informational presentation to employees;
2. Assistance to any department or division which wishes to have a rally or other event by providing professional or training assistance and promotional materials;
3. Manufacture and distribution of informational pamphlets, posters, donor cards or other promotional materials;
4. Collection of donations and donor cards and tabulation of fund designation information;
5. Proper distribution of donations to approved organizations, both with respect to funds collected at the time of the Campaign and to those which will be forwarded to the administrator from the Department of Finance representing payroll deductions authorized during the Campaign by employees;
6. Completion of an audit of the Campaign; and
7. Provision of a written report to the Committee detailing the distribution of funds to participating agencies at each time of distribution.

D. Bid proposals shall include a statement from the organization which substantiates a claim that the organization:

1. Demonstrates the administrative and financial capability to manage and operate an extensive fundraising campaign among State employees in an efficient manner; and
2. Ensures public accountability by certifying that it: annually submits to a financial audit by a certified public accountant; makes its audited financial statement, or a summary thereof, available to the public upon request; will provide evidence that it engages in sound management practices that indicate that contributions donated by the public have been utilized with the utmost integrity.

E. Bid proposals shall further include a percentage figure representing that portion of each donated dollar the organization would charge if chosen to serve as the administrator of the Campaign.

F. The Steering Committee shall choose as the administrator of the program that organization which submits a responsible bid with the lowest percentage figure as outlined above, unless the Steering Committee determines

that the State's interest is best served by selecting other than the lowest responsible bidder, in which case the Steering Committee shall state, in writing, its reasons for such determination. The Steering Committee may choose to reject all bids and rebid the matter.

G. The organization, which is chosen to administer the program, shall not assign, subcontract, or otherwise transfer its duties and responsibilities to manage and administer the Campaign unless expressly permitted to do so in writing by the Steering Committee.

VII. State Employees' Charitable Campaign Fund Drive Programs.

A. All facets of the Campaign shall have safeguards to ensure fair and equitable treatment and representation of the approved organizations.

B. If practical, all pamphlets, donor cards, and other promotional materials representing the Campaign shall be formatted in such a way as to provide equal representation of each of the approved organizations.

VIII. Distribution of Contributions.

Contributions shall be distributed to organizations as designated by contributors. Undesignated funds shall be distributed to each approved organization in an amount proportionate to the percentage of the total designated funds contributed to that approved organization. Likewise, shrinkage due to unfulfilled pledges shall be absorbed by each approved organization in an amount proportionate to that percentage for the total designated funds, which were contributed to that approved organization.

IX. Executive Order Number Fifty-Five, issued by former Governor Thomas R. Carper on November 4, 1998, is rescinded.

Approved this 13th day of September, 2001.

Ruth Ann Minner, Governor

Attest:

Harriet Smith Windsor, Secretary of State

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF ACCOUNTANCY**

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

A public hearing on the proposed Rules and Regulations originally scheduled for August 22, 2001 has been rescheduled and will be held on Wednesday, November 14, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Dana Spruill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Dana Spruill at the above address by calling (302) 744-4505.

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

**DIVISION OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 2905(a)(1), the Delaware Real Estate Commission proposes to revise its Rules and Regulations. The proposed amendments revise several sections of the rules and regulations. Substantive changes are proposed to the rules and regulations regarding advertising and the maintenance of offices that reflect further revisions resulting from a public hearing regarding proposed revisions held on August 9, 2001 and originally published in the June 1, 2001 Register of Regulations. Other proposed revisions include deleting the class size limit in real estate courses, deleting Rule 4.1.3 relating to qualifications for licensure of non-residents, and increasing the period of required retention of documents demonstrating compliance

with the continuing education requirement for license renewal.

A public hearing will be held on the proposed Rules and Regulations on Thursday, November 8, 2001 at 9:00 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

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

**DIVISION OF PROFESSIONAL REGULATION
REAL ESTATE COMMISSION
Real Estate Commission Education Committee**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 2905(a)(1) and 2911(b), the Delaware Real Estate Commission proposes to revise its Guidelines for Fulfilling the Delaware Education Requirements. The proposed amendments insert a new guideline relating to student requests for approval of an educational activity.

A public hearing will be held on the proposed Education Guidelines on Thursday, November 8, 2001 at 9:30 a.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Commission will receive and consider input in writing from any person on the proposed Education Guidelines. Any written comments should be submitted to the Commission in care of Joan O'Neill at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Education Guidelines or to make comments at the public hearing should notify Joan O'Neill at the above address by calling (302) 744-4519.

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF VETERINARY MEDICINE

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3306 (a) (1), the Delaware State Board of Veterinary Medicine proposes to revise its rules and regulations. The proposed changes would be comprehensive revision of the current rules and regulations. The proposed revisions seek to redefine the role of support personnel, unprofessional conduct by a veterinarian, standards for veterinary premises and equipment, privileged communications between a veterinarian and a client, and requirements for continuing education. The proposed changes also affect other aspects of licensure including renewal and reinstatement of licenses. The proposed regulations serve to implement or clarify specific sections of 24 **Del.C.** Chapter 33.

A public hearing will be held on the proposed Rules and Regulations on Tuesday, November 13, 2001 at 6:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address or by calling (302) 744-4506.

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

DIVISION OF PROFESSIONAL REGULATION
BOARD OF MASSAGE & BODYWORK

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Sections 5306(1) and 5306(7), the Delaware Board of Massage and Bodywork proposes to revise its Rules and Regulations. The proposed revisions seek to clarify Rule 6.3.2, popularly known as "the 25% Rule." The proposed revisions will assist licensees in understanding that the application of this continuing education rule results in a limitation of the total number of continuing education hours that are permissible in specified areas and methods during a licensure period.

A public hearing will be held on the proposed Rules and Regulations on Thursday, November 1, 2001 at 1:30 p.m., in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing

from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Susan Miccio at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Susan Miccio at the above address by calling (302) 744-4506.

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

PUBLIC SERVICE COMMISSION
NOTICE OF PUBLIC COMMENT PERIOD AND PROPOSED AMENDMENT TO THE DELAWARE PUBLIC SERVICE COMMISSION'S MINIMUM STANDARDS GOVERNING SERVICE PROVIDED BY PUBLIC WATER COMPANIES

On August 21, 2001, the Delaware Public Service Commission ("the Commission") entered an Order proposing a revision to Standard 4.2.4 of the Commission's *Minimum Standards Governing Service Provided by Public Water Companies* ("Minimum Standards").

Currently, Standard 4.2.4 requires public water utilities to undertake periodic testing of their meters based on a schedule linked to the size of the meter. The proposed amendment will allow a public water utility the alternative to propose to the Commission a statistical sampling methodology for testing the accuracy of its meters. If such a plan is approved by the Commission, the public water utility could, thereafter, in lieu of testing all meters on a periodic basis, test a random sampling of particular groups of meters in order to ascertain the accuracy of its meters. The Commission has proposed allowing public water utilities this alternative in light of changes and improvements in the design and manufacturing of water meters.

The full text of the proposed amendment to Standard 4.2.4 has been filed with the Delaware Registrar of Regulations for publication in the Register of Regulations. The full text of the proposed amendment is also available at the Commission's website located at www.state.de.us/delpsc.

The Commission has authority to promulgate the regulations pursuant to 26 **Del.C.** §211 and 29 **Del.C.** §10111 *et seq.*

The Commission hereby solicits written comments, suggestions, compilations of data, briefs, or other written materials concerning the proposed amendment to Standard 4.2.4. Twelve (12) copies of such materials shall be filed with the Commission at its office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. **All such materials shall be filed with the**

Commission on or before October 31, 2001. Persons who wish to participate in the proceedings, but who do not wish to file written materials, are asked to send a letter informing the Commission of their intention to participate. Such letter must be received on or before October 31, 2001.

In addition, the Commission will conduct a public hearing on the proposed amendment to Standard 4.2.4 on Wednesday, November 7, 2001, at the Commission's Dover office at the address set forth above. Such hearing shall begin at 10:00 AM. At such hearing, persons may present comments, evidence, and other materials concerning the proposed amendment.

ONLY PERSONS WHO SUBMIT COMMENTS, PARTICIPATE IN THE HEARING, OR FILE A NOTICE OF INTENT TO PARTICIPATE WILL RECEIVE NOTICE OF FURTHER PROCEEDINGS IN THIS MATTER.

The proposed and existing Standard and the materials submitted in connection therewith are available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The proposed amendment is also available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephone (including text telephone and TRS), or otherwise. The Commission's toll-free telephone number in Delaware is (800) 282-8574. The Commission may also be contacted at (302) 739-4333 (including text telephone). Inquiries can also be sent by Internet e-mail to connie.mcdowell@state.de.us.

PUBLIC SERVICE COMMISSION
NOTICE OF PUBLIC HEARING

On July 24, 2001, the Delaware Public Service Commission ("the Commission") entered an Order proposing certain revisions to the Commission's *Rules for the Provision of Telecommunications Services*. The proposed amendments to the *Rules* are intended: 1) to address concerns raised by Staff which impact the certification of competitive local exchange carriers and intrastate carriers, including application and bonding requirements; 2) to reflect other changes that have occurred in federal and state telecommunications laws which impact the existing *Rules*; 3) to ensure that carriers comply with federal and state law; and 4) to conform, where practicable, the requirements of the *Rules* with other regulatory provisions.

The Commission has authority to promulgate the

regulations pursuant to 26 Del. C. § 209(a) and 29 Del. C. § 10111 et seq.

By notice published in the Register of Regulations and The News Journal on August 1, 2001, and in the Delaware State News on August 2, 2001, the Commission solicited written comments concerning the proposed regulations as well as requests to participate in the proceeding. Such comments or requests to participate were due on August 31, 2001. In addition to Commission Staff, two companies and two associations are participating in the case. The Hearing Examiner assigned to the case has established a procedural schedule that includes rebuttal comments, which are due on October 5, 2001, and a public hearing, which will be conducted at 1:00 p.m. on **Tuesday, November 6, 2001**, at the Commission's office located at 861 Silver Lake Boulevard, Cannon Building, Suite 100, Dover, Delaware 19904. At the hearing, the public will be permitted to comment on the proposed amendments to the regulations.

The proposed amendments and the current regulations were published in the Register of Regulations, at 5 **DE Reg.** 435 - 445 (8/1/01). The proposed regulations and the materials submitted in connection therewith are available for public inspection and copying at the Commission's Dover office during normal business hours. The fee for copying is \$0.25 per page. The regulations are also available for review on the Commission's website: www.state.de.us/delpsc.

Any individual with disabilities who wishes to participate in these proceedings should contact the Commission to discuss any auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, by writing, telephonically, by use of the Telecommunications Relay Service, or otherwise. The Commission's toll-free telephone number is (800) 282-8574. Persons with questions concerning this application may contact the Commission's secretary, Karen J. Nickerson, by either Text Telephone ("TT") or by regular telephone at (302) 739-4333 or by Internet e-mail at karen.nickerson@state.de.us.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, October 18, 2001 at 9:00 a.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF FINANCE
DIVISION OF REVENUE
DELAWARE STATE LOTTERY OFFICE

The Delaware Lottery Office proposes to amend Video Lottery Regulations 5.2.1(2), 7.2, 7.3, and 14.7. The Lottery proposes to amend the Regulations as follows:

5.2.1 All contracts with technology providers who are video lottery machine manufacturers shall include without limitations, provisions to the following effect:

...

(2)The technology provider shall submit video lottery machine illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source code and object code and any other information requested by the Director for purposes of analyzing and testing the video lottery machines. A maximum of ~~twenty-five (\$25)~~ one-hundred (\$100) shall be permitted for wagering on a single play of any video game.

7.2 Video games shall be based on bills, coins, tokens, or credits, worth between \$.05 and ~~\$25.00~~ \$100.00 each, in conformity with approved business plans as amended.

7.3 The Director, in his or her discretion, may authorize extended play features from time to time to which the maximum wager limit of ~~\$25.00~~ \$100.00 shall not apply

14.7 The Lottery shall communicate the results of the determination of suitability in writing, to the license applicant or licensee within thirty (30) days of receipt of the criminal history information, unless extenuating circumstances require a longer period. If a determination is made to deny a person licensure, the person shall have an opportunity to appeal for reconsideration as set out below:

(1)Appeal shall be initiated by a person notified that he/she is being denied a license pursuant to 29 Del. C. §4807A and Video Lottery Regulation 13.3 by submitting a request for a hearing to the Director within ten (10) working days of the receipt of the written notice.

(2)The appeal shall be reviewed by the Lottery Director and the person shall be given the right to be heard by the Director or the Director's designee within thirty (30) working days of the receipt of the letter of appeal, unless extenuating circumstances require a longer period. Any hearing will be

pursuant to the procedures in the Video Lottery Regulations 13.5-13.11, whichever is applicable.

(3)A written decision shall be rendered by the Director or the Director's designee within thirty (30) working days of the hearing unless extenuating circumstances require a longer period. All decisions made by the Lottery under this appeal procedure are final.

(4)A person determined to be unsuitable for licensure pursuant to these Regulations shall be prohibited from reapplying for licensure for a period of twelve (12) months.

The Lottery proposes these Regulation amendments pursuant to 29 **Del.C.** §4805(a). The Lottery will accept written comments from October 1, 2001 through October 31, 2001. The Lottery will hold a public hearing on the proposed amendments on October 22, 2001 at 10:00 a.m. at the Lottery Office, Second Floor Conference Room, 1575 McKee Road, Suite 102, Dover, DE 19904-1903. Written comments should be submitted to the Lottery at the above address and noted to the attention of Lottery Director Wayne Lemons.

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

PUBLIC NOTICE

Delaware Health and Social Services (DHSS), in compliance with Senate Bill 20 passed in the 140th General Assembly, has prepared revised draft regulations governing training and qualifications for nursing assistants and certified nursing assistants as required in Title 16 **Del. C.**, Chapter 30A.

These regulations address certified nursing assistant training, the composition of the certified nursing assistant training course and curriculum, the mandatory orientation period and senior certified nursing assistant certification.

INVITATION FOR PUBLIC COMMENT

Public hearings will be held as follows:

Tuesday, November 6, 2001, 10:00 AM
Department of Natural Resources &
Environmental Control Auditorium
89 Kings Highway
Dover
Thursday, November 8, 2001, 9:00 AM

Room 301, Main Building
Herman Holloway Campus
1901 N. DuPont Highway
New Castle

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

Written comments are also invited on these proposed revised regulations and should be sent to the following address:

Elise MacEwan
Division of Long Term Care Residents Protection
3 Mill Road
Wilmington, DE 19806

The last time to submit written comments will be at the public hearing November 8, 2001.

The Regulations currently in place are being replaced in their entirety by the new ones being submitted for publication on October 1, 2001.

locations:

Office of Narcotics & Dangerous Drugs
Jesse Cooper Building
Federal & Water Streets
P.O. Box 637
Dover, DE 19903
(302) 739-4798

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by October 30, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by November 1, 2001, to:

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

DIVISION OF PUBLIC HEALTH
Health Systems Protection Section

Notice of proposed amendments to the Uniform Controlled Substance Act

Under the authority set forth in 16 **Del.C.**, Section 4711 (1), the Secretary of the Department of Health and Social Services proposes amendments to 16 **Del.C.** §4716(g) and §4718(l). The amendments to these two Statutes will reschedule the drug Dronabinol in the Delaware Controlled Substances Act following the rescheduling of Dronabinol within the federal schedules of controlled substances by the Attorney General of the United States pursuant to 21 USC §811.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of the controlled substance rescheduling of Dronabinol from schedule II to schedule III. This amendment mimics the federal rescheduling of this drug. The amendment will remove Dronabinol from 16 **Del.C.** 4716(g) and place Dronabinol in 16 **Del.C.** 4718 (l)

The public hearing will be held on Wednesday, October 31, 2001, at 1:00 PM, in the 3rd floor conference room (Rm 309), Jesse Cooper Building, Federal and Water Streets, Dover, Delaware. Information concerning the proposed rescheduling of Dronabinol is available at the following

DIVISION OF PUBLIC HEALTH
Health Systems Protection Section

The proposed amendment to the Uniform Controlled Substance Regulation #4 is to be adopted in accordance with Title 16, Delaware Code, Section 4731.

The amendment to Regulation #4, paragraph (h) as attached will provide greater quantities of controlled substances to be dispensed while still protecting the public's safety and welfare. This amendment would provide for at least a 31-day supply and a mechanism for the pharmacist to validate an outdated and otherwise voided schedule II or III controlled substance prescription via practitioner authorization.

NOTICE OF PUBLIC HEARING

The Health Systems Protection Section, Division of Public Health, Department of Health & Social Services, will hold a public hearing to discuss the proposed adoption of the regulatory amendment to Regulation 4, paragraph (h) of the Uniform Controlled Substance Regulations. This amendment will provide greater quantities of controlled substances to be dispensed while still protecting the public's safety and welfare. This amendment would provide for at least a 31-day supply and a mechanism for the pharmacist to validate an outdated and otherwise voided schedule II or III controlled substance prescription via practitioner authorization.

The public hearing will be held on Wednesday, October 31, 2001, at 10:00 AM, in the 3rd floor conference room

(Rm 309), Jesse Cooper Building, Federal and Water Streets, Dover, Delaware. Information concerning the proposed regulatory amendment is available at the following locations:

Office of Narcotics & Dangerous Drugs
Jesse Cooper Building
Federal & Water Streets
P.O. Box 637
Dover, DE 19903
(302) 739-4798

Anyone wishing to present his or her oral comments at this public hearing should contact Dave Walton at (302) 739-4700 by October 30, 2001. Anyone wishing to submit written comments as a supplement to, or in lieu of, oral testimony should submit such comments by November 1, 2001, to:

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

DIVISION OF SOCIAL SERVICES

CHILD CARE FEE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services is proposing to implement a policy change to the Division of Social Services Manual, Section 11004.7, clarifying when the child care fee will be waived.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed revised regulation must submit same to Mary Ann Daniels, Policy and Program Implementation Unit, Division of Social Services, P.O. Box 906, New Castle, Delaware by October 31, 2001.

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 DIVISION OF AIR & WASTE MANAGEMENT Air Quality Management Section



REGISTER NOTICE

TITLE OF THE PROPOSAL:

State Implementation Plan Development: A new regulation #43 that will incorporate by reference the "Not to Exceed" California rules covering new heavy duty diesel engines registered for model years 2005 and 2006

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The proposed regulation requires manufacturers to perform supplemental test procedures, in addition to the existing Federal Test Procedure (FTP). The regulation will cover a gap in the legal requirements on manufacturers for these two model years that will ensure diesel powered heavy duty vehicles will continue to reduce NOx (nitrogen oxides) emissions in the years between those covered by a court consent decree and the adopted federal standards which begin in model year 2007.

Under this regulation, manufacturers and dealers must provide documentation to purchasers of the applicable heavy duty diesel vehicles they sell in the State that verifies the vehicles are equipped with engines that comply with the "Not to Exceed" California rules. Anyone registering these vehicles must submit a copy of this documentation to the Division of Motor Vehicles.

NOTICE OF PUBLIC COMMENT:

Public Hearing is on October 31, 2001, 6 P.M. 156 South State Street, Second Floor, Dover

DIVISION OF WATER RESOURCES

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

REGISTER NOTICE**Brief Synopsis of the Subject, Substance and Issues:**

The State of Delaware revised on-site wastewater treatment and disposal system criteria and standards to keep pace with the industry and maintain its prominence as a nationally recognized leader in this field. To ensure the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems** are current with industry standards, engineering practices, soil science principles and compliance issues, the State of Delaware, in accordance with 7 Del.C. §6010, will amend Sections 2 through 10 and the Exhibits.

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control, Division of Water Resources, will conduct a public hearing on October 23, 2001, beginning at 6:00 p.m., in the auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to hear testimony and receive comments on the proposed amendments to the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems**.

The State of Delaware revised on-site wastewater treatment and disposal system criteria and standards to keep pace with the industry and maintain its prominence as a nationally recognized leader in this field. To ensure the **Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems** are current with industry standards, engineering practices, soil science principles and compliance issues, the State of Delaware, in accordance with 7 Del. C. §6010, will amend Sections 2 through 10 and the Exhibits.

For additional information or to request a copy of the proposed revisions to the regulations please contact the Ground Water Discharges Section at (302) 739-4761.

The procedures for public hearings are established in 7 Del.C. § 6006 and 29 Del.C. §10117. Inquiries regarding the public hearing should be directed to Lisa A. Vest at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. The deadline for inclusion of written comments in the hearing record will be announced at the time of the hearing. Written statements may be presented prior to the hearing and should be addressed to: Lisa A. Vest, Paralegal, DNREC, 89 Kings Highway, Dover, DE 19901.

EXECUTIVE DEPARTMENT

**DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE**

Direct Grants Program**NOTICE OF PUBLIC HEARING**

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the direct grants program set forth in 73 Delaware Laws Ch. 74, Section 67 (the "Direct Grants Program") and for the application and award procedure of the Direct Grants Program. The regulation originally proposed in 5 DE Reg. 512-13 (September 1, 2001) is hereby withdrawn and is re-proposed in the form set forth below. The regulation describes the Direct Grants Program, the eligibility criteria and application procedure for awards under the Direct Grants Program, the procedure for making of awards and the uses to which Direct Grants Program awards may not be put.

The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on November 9, 2001 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:00 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 9, 2001 at 9:00 a.m. Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271.

**DELAWARE ECONOMIC DEVELOPMENT OFFICE
DELAWARE TOURISM OFFICE****Matching Funds Program
NOTICE OF PUBLIC HEARING**

In accordance with the procedures set forth in 29 Del. C. Ch. 11, Subch. III, 29 Del. C. Ch 101 and 73 Delaware Laws Ch. 74, Section 67 (June 28, 2001), the Director of the Delaware Economic Development Office ("DEDO") (of which the Delaware Tourism Office ("DTO") is a subdivision), in cooperation with the Tourism Advisory Board (the "Board"), is proposing to adopt a regulation for the administration of the matching grants program set forth in 73 Delaware Laws Ch. 74, Section 67 (the "Matching Grants Program") and for the application and award procedure of the Matching Grants Program. The regulation describes the Matching Grants Program, the matching funds requirement of the Matching Grants Program, the eligibility criteria and application procedure for awards under the Matching Grants Program, the procedure for making of awards and the uses to which Matching Grants Program awards may not be put.

The Director of the Delaware Economic Development Office, or an employee of the Delaware Economic Development Office designated by the Director, and the Board will hold a public hearing at which members of the public may present comments on the proposed regulation on November 9, 2001 in the conference room of the offices of the Delaware Economic Development Office at 99 Kings Highway, Dover, DE, 19901 at 9:00 a.m. Additionally, members of the public may present written comments on the proposed regulation by submitting such written comments to Ms. Julie Miro Wenger at the address of the Delaware Economic Development Office set forth above. Written comments must be received on or before November 9, 2001 at 9:00 a.m. Members of the public may receive a copy of the proposed amendments to the regulation at no charge by United States Mail by writing or calling Ms. Julie Miro Wenger, Delaware Tourism Office of the Delaware Economic Development Office, 99 Kings Highway, Dover, DE, 19901-7305, phone (302) 739-4271.

**DELAWARE RIVER BASIN
COMMISSION****P.O. Box 7360
25 STATE POLICE DRIVE
WEST TRENTON, NEW JERSEY 08628-0360**

The **Delaware River Basin Commission** will meet on Wednesday, October 31, 2001 in West Trenton, New Jersey. For more information contact Pamela M. Bush, Commission Secretary, at (609) 883-9500 ext. 203.

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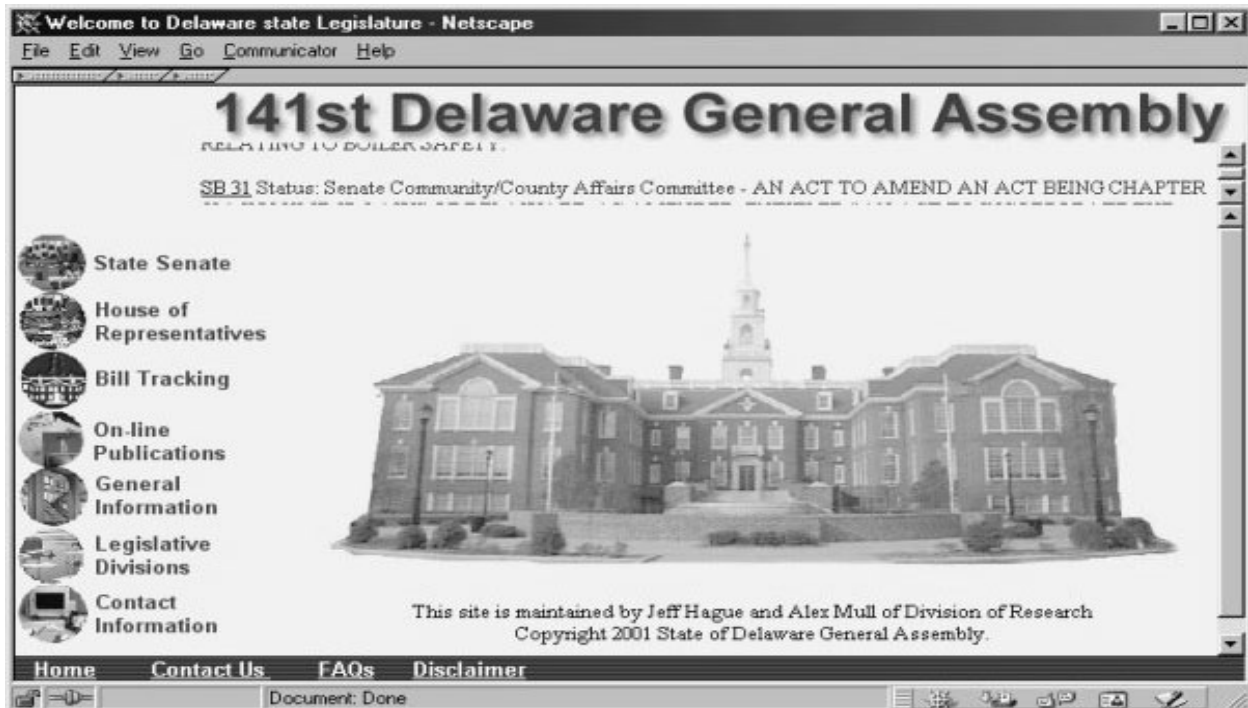
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