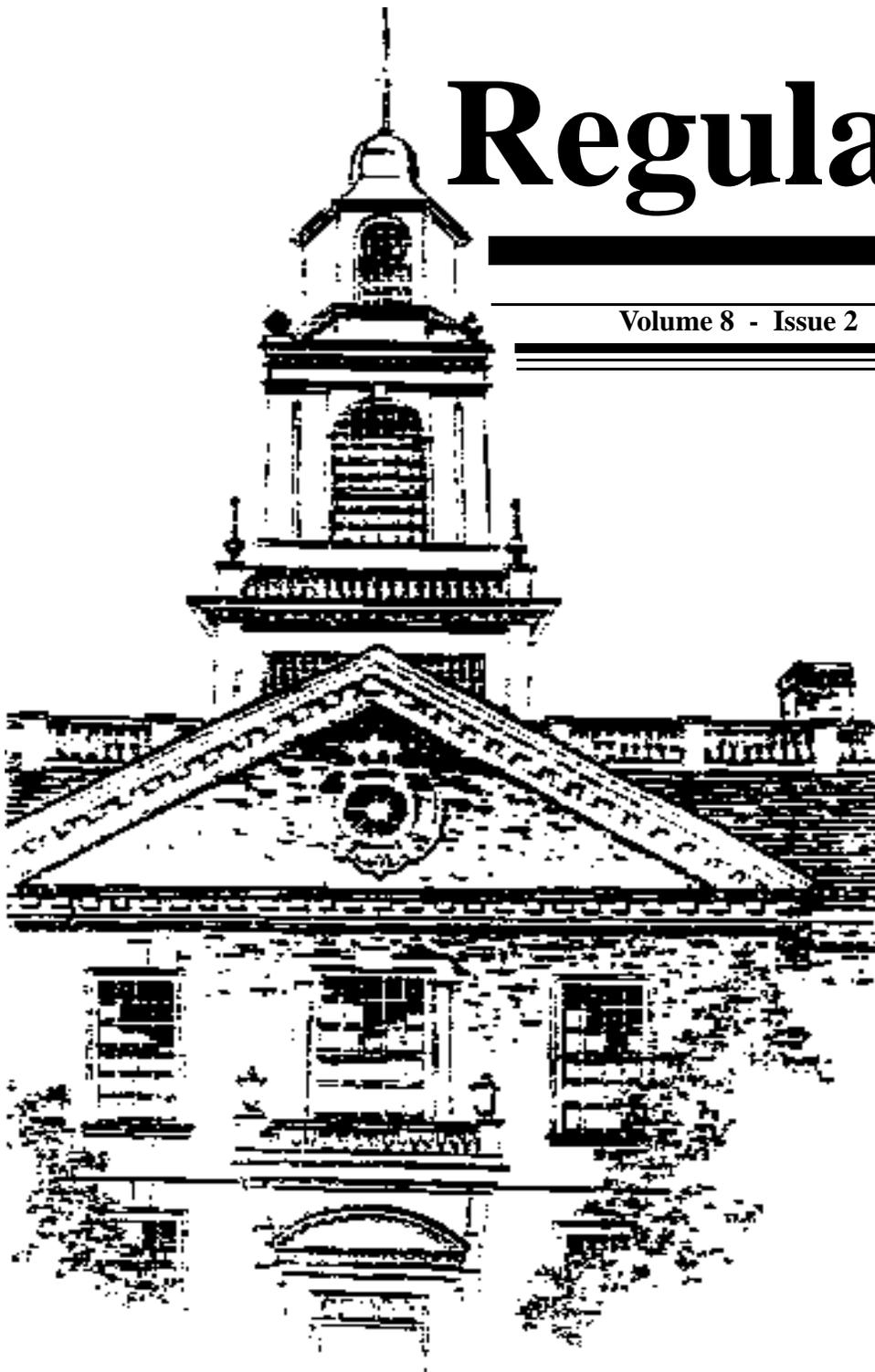


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# Delaware Register of Regulations



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Issue Date: August 1, 2004

Volume 8 - Issue 2

Pages 211 - 364

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Proposed

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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 July 15, 2004.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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### CITATION TO THE DELAWARE REGISTER

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

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

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

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### SUBSCRIPTION INFORMATION

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

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other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
SEPTEMBER 1	AUGUST 16	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 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 CLINICAL SOCIAL WORK  
EXAMINERS**

24 **DE Admin. Code** 3900

Statutory Authority: 24 Delaware Code,  
Section 3906(1) (24 **Del.C.** §3906(1))

**PUBLIC NOTICE**

The Delaware Board of Clinical Social Work Examiners is proposing to revise its rules and regulations pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** §3906(1). The Board is proposing changes to the following Regulations:

- Regulations 7.1 through 7.4 regarding the Definition and Scope of Continuing Education,
- Continuing Education Hourly Requirements and Continuing Education Reporting and Documentation.

A public hearing will be held on the proposed Rules and Regulations on Monday, September 20, 2004 at 9:00 a.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited.

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 Karin Stone at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Persons may view the proposed changes to the Regulations between the hours of 8:15 a.m. to 4:15 p.m., Monday through Friday, at the Board's office at the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. There will be a reasonable fee charged for copies of the proposed changes.

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

*Amend Sections 7.1, 7.2, 7.3 and 7.4 as follows:*

**7.0 Continuing Education**

7.1 Required Continuing Education Hours:

7.1.1 Hours Required. All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, ~~1999~~ 2005 and thereafter, documentation, as required by Rule ~~5.4~~ 7.4 of all continuing education hours must be submitted to the Board for approval by October 31 of each biennial license period.

7.1.2 Proration. At the time of the initial license renewal, some individuals will have been licensed for less than two (2) years. Therefore, for these individuals only, the continuing education hours will be prorated as follows:

License Granted During First Credit Hours  
Year Of Licensing Period Required

January 1 - June 30 35 hours

July 1 - December 31 25 hours

License Granted During Second Credit Hours  
Year Of Licensing Period Required

January 1 - June 30 15 hours

July 1 - December 31 5 hours

7.1.3 **Hardship.** A candidate for license renewal may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" 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 period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. 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.

**See 2 DE Reg 775 (11/1/98)**

**7.2 Definition and Scope of Continuing Education:**

7.2.1 Continuing Education is defined to mean ~~approved~~ acceptable courses offered by colleges and universities, televised and ~~extension~~ internet courses, independent study courses which have a final exam or paper, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including self-directed activities ~~ies~~ and ~~preparation of a first-time clinical course~~ as described herein. The following types of courses are NOT acceptable for credit: business, computer, financial, administrative or practice development courses or portions of courses.

~~7.2.1.1 Approved Courses shall be those courses which: increase the clinical social worker (CSW)'s knowledge about, skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.~~

~~7.2.1.2 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.~~

7.2.1.1 The Board will accept for continuing education credit all courses designated for clinical social workers which are offered by the Association of Social Work Boards (ASWB), the National Association of Social Work (NASW) and the American Psychological Association

(APA) approved providers. Other courses will be evaluated for acceptability at the time they are submitted for license renewal. The Board will no longer "pre-approve" continuing education courses.

7.2.1.2 Acceptable Courses, other than those approved pursuant to Rule 5.2.1.1, shall be courses which: increase the licensed clinical social worker's knowledge about skill in diagnosing and assessing, skill in treating, and/or skill in preventing mental and emotional disorders, developmental disabilities and substance abuse; AND are instructed or presented by persons who have received specialized graduate-level training in the subject, or who have no less than two (2) years of practical application or research experience pertaining to the subject.

7.2.1.2.1 Mental and Emotional Disorders, Developmental Disabilities and Substance Abuse are those disorders enumerated and described in the most current Diagnostic and Statistical Manual including, but not limited to, the V Codes and the Criteria Sets and Axes provided for further study.

~~7.2.2~~ ~~7.2.4~~ 7.2.4 The Board may, upon request, review and approve credit for self-directed activities, to a maximum of ~~15~~ 10 hours per 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 (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.

~~7.2.2.1~~ ~~7.2.4.3~~ 7.2.4.3 Self-Directed Activity shall include teaching, research, preparation and/or presentation of professional papers and articles, and other activities specifically approved by the Board, which may include one or more of the following. The Board shall require documentation of each activity as noted below:

7.2.2.1.1 Publication of a professional clinical social work-related book, or initial preparation/presentation of a clinical social work-related college or university course (maximum of 10 hours);

7.2.2.1.1.1 Required documentation shall be proof of publication, or syllabus of course and verification that the course was presented.

7.2.2.1.2 Publication of a professional clinical social work-related article or chapter of a book (maximum of 5 hours);

7.2.2.1.2.1 Required documentation shall be reprint of publication(s).

7.2.2.1.3 Initial preparation/presentation of a professional clinical social work-related continuing education course/program (maximum of 2 hours,

in addition to number of hours actually attended at the course/program) (Will only be accepted one time for any specific program);

7.2.2.1.3.1 Required documentation shall be outline, syllabus agenda and objectives for course and verification that the course was presented.

7.2.2.1.4 One year of Field instruction of graduate students in a Council on Social Work Education-accredited school program, in a clinical setting (maximum of 2 hours);

7.2.2.1.4.1 Required documentation shall be a letter of verification from school of social work.

7.2.2.1.5 Participation in formal clinical staffings at federal, state or local social service agencies, public school systems or licensed health facilities and licensed hospitals (maximum of 5 hours);

7.2.2.1.5.1 Required documentation shall be a signed statement from the agency, school system, facility or hospital, from a supervisor other than the licensee, including date and length of staffing.

~~7.2.2~~ 7.2.3 Any program submitted for continuing education hours must have been attended during the biennial licensing period for which it is submitted. Excess credits may not be carried over to the next licensing period.

~~7.2.3~~ 7.2.4 An "hour" for purposes of continuing education credit shall mean ~~60~~ 50 (fifty) minutes of instruction or participation in an appropriate course or program. Meals and breaks shall be excluded from credit.

~~7.2.5~~ The Board may award a maximum of 5 continuing education hours for the first-time preparation and presentation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

**7.3 Continuing Education Content Hourly Requirements:**

During each biennial licensing period, licensees shall complete a minimum of ~~thirty (30)~~ forty-five (45) hours of continuing education. ~~in Category I courses. The remaining fifteen (15) continuing education hours may be taken in Category II courses.~~ At least three (3) of the ~~30~~ Category I 45 hours shall consist of courses acceptable to the Board in the area of ethics for mental health professionals.

~~Category I: Courses which have as their primary focus and content the assessment, diagnosis, and biopsychosocial (biological, psychological and social) treatment of mental and emotional disorders, developmental disabilities, and/or substance abuse; courses which have as their primary focus and content the ethical practice of social work.~~

~~Category II: Courses in any of the following areas which are related to and increase the CSW's knowledge of mental and emotional disorders, developmental disabilities, and/or substance abuse~~

~~research methods and findings;  
psychology and sociology;  
human growth and development;  
child and family constructs;  
physical illness and health;  
social action;  
advocacy;  
human creativity;  
spirituality~~

~~HIV~~

**7.4 Continuing Education Reporting and Documentation**

**7.4.1 Continuing Education Reporting Periods.**

Licenses are valid for 2 year periods, renewing on January 31 of odd numbered years (e.g. January 31, 2004~~5~~, 2003~~7~~). Continuing education (CE) reporting periods run from ~~October 31~~ November 1 to October 31 of the preceding two even-numbered years. ~~(e.g. credits for the January 2001 license renewal may be obtained between October 31, 1998 and October 31, 2000). The Board will allow credits obtained between October 31 and January 31 to apply to either (but not both) of the biennial licensing periods, at the licensee's discretion.~~ Beginning with the January 2003~~5~~ license renewal, all required continuing education ~~shall should~~ be completed within the previous two year ~~October~~ November to October period (e.g. between ~~October 31~~ November 1, 2000~~2~~ and October 31, 2002~~4~~ for January 2003~~5~~ renewal). The Board shall continue to have the discretion, however, to grant extensions of time in which to complete continuing education in cases of hardship, pursuant to 24 Del.C. §3912 and Rule 7.1.3.

7.4.2 In order to assure receipt of continuing education credits, a licensee must complete and submit the appropriate continuing education form provided by the Division of Professional Regulation no later than October 31<sup>st</sup> preceding the start of the next biennial licensing period.

7.4.3 In addition to the form, each licensee must submit the following documentation as to each course attended: a certificate of attendance or completion signed by the presenter and attesting to the number of hours the licensee attended and documentation identifying the date and location of the course. ~~the total number of CE hours attended and the agenda, outline or brochure describing the course. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation, such as copies of program materials, to verify CE compliance. Statutory Authority: 24 Del.C. §§3906(7), 3912.~~

7.4.4 Prior to the end of each renewal period, the Board shall conduct a random audit of licensees to verify compliance with continuing education for that renewal period. Upon request from the Board, an audited licensee will be required to submit, in addition to the documents

noted above, copies of agenda, outline and brochure, for each course submitted for credit. Originals or photocopies will be accepted and retained by the Board. The Board reserves its right to request additional documentation to verify CE compliance.

7.4.5 In addition to licensees selected for random audit, the Board also may request additional supporting documentation from any licensee whose renewal materials, as required by Rules 7.4.2 and 7.4.3, raise questions as to the completion or acceptable content of the course(s).

See 2 DE Reg 1680 (6/1/00)

See 4 DE Reg 1815 (5/1/01)

See 7 DE Reg 1667 (6/1/04)

**\* Please Note: As the rest of the sections were not amended they are not being published. A complete set of the rules and regulations for the Board of Clinical Social Work Examiners is available at:**

<http://www.state.de.us/research/profreg/Frame.htm>

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## **DEPARTMENT OF EDUCATION**

**14 DE Admin. Code 260**

Statutory Authority: 14 Delaware Code,  
Section 220 (14 Del.C. §220)

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

### **260 General Appeal Procedure for the Child and Adult Care Food Program of the United States Department of Agriculture CACFP/USDA**

#### **A. Type of Regulatory Action Required**

Amendment to Existing Regulation

#### **B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education intends to amend 14 DE Admin Code 260 General Appeal Procedure for the Child and Adult Care Food Program of the United States Department of Agriculture CACEP/USDA. The amendments are necessary in order to bring the state's regulations in line with the requirements of the federal statute.

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

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses appeal procedures for the Child and Adult Care Food Program not student achievement.

2. Will the regulation help ensure that all students receive an equitable education? The amended regulation addresses appeal procedures for the Child and Adult Care Food Program not equitable education issues.

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses appeal procedures for the Child and Adult Care Food Program not health and safety issues.

4. Will the regulation help to ensure that all students' legal rights are respected? The amended regulation addresses appeal procedures for the Child and Adult Care Food Program which does help to protect the rights of the individuals enrolled in the programs.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal statute requires the Department of Education to maintain regulations for this appeal procedure.

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

~~**260 General Appeal Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA**~~

~~**10 When a participating institution or agency seeks to appeal actions taken by the Delaware Department of**~~

Education pursuant to findings based on monitoring or administrative reviews the following shall apply:

1.1 The institution or agency shall be advised in writing of the grounds on which the Delaware Department of Education has based its action. The notice of action, which shall be sent by certified mail, return receipt requested shall also include a statement indicating that the institution has the right to appeal the action.

1.2 To initiate an appeal procedure, a written request for review shall be filed by the appellant not later than 15 calendar days from the date the appellant received the notice of action, and the Delaware Department of Education shall acknowledge the receipt of the request for appeal within 10 calendar days. Then, the following procedures shall pertain:

1.2.1 Within five (5) days of receipt of an appeal for review, the Delaware Secretary of Education, or his/her designee, shall appoint a review official who shall be selected from the approved list of hearing officers. The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section.

1.2.2 The appellant may refute the charges contained in the notice of action in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice of action. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant institution's representative to appear at a scheduled hearing shall constitute the appellant institution's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the Delaware Department of Education shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official.

1.2.2.1 If the appellant does not specifically request a hearing in the letter of request for review, and the review official determines that a review of documentation is sufficient for resolution, the appellant and the Delaware Department of Education shall be advised of the official's determination.

1.2.2.2 If the appellant has requested a hearing, the appellant and the Delaware Department of Education shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time and place of the hearing.

1.2.3 Any information on which the Delaware Department of Education's action was based shall be

available to the appellant for inspection from the date of receipt of the request for review.

1.2.4 The review official shall make a determination based on information provided by the Delaware Department of Education and the appellant, and on Program regulations.

1.2.5 Within 60 calendar days of the Delaware Department of Education's receipt of the request for review, the review official shall inform the State agency and the appellant of the determination of the review.

1.2.6 The Delaware Department of Education's action shall remain in effect during the appeal process. However, participating institutions and facilities may continue to operate under the Program during an appeal of termination, unless the action is based on imminent dangers to the health or welfare of participants.

1.2.7 The determination by the Delaware Department of Education's review official is the final administrative determination to be afforded to the appellant.

1.2.8 Appeals shall not be allowed on decisions made by the Food and Consumer Services, U.S. Department of Agriculture, on requests for exceptions to the claims submission deadlines stated in 7CFR Sec. 226.10(e) or requests for upward adjustments to claims.

1.2.9 In cases where an appeal results in the dismissal of a claim against an institution, which was asserted by the Delaware Department of Education, based upon Federal audit findings of the Food and Consumer Services, U.S. Department of Agriculture, may assert a claim against the Delaware Department of Education in accordance with the procedures outlined in 7CFR Sec. 226.14(e).

Authority: 7 CFR Sec. 226.6 State Agency Administrative Responsibilities, (k) Institution appeal procedures.

**5 DE Reg. 461 (8/1/01)**

## 260 General Administrative Review Procedures for the Child and Adult Care Food Programs of the United States Department of Agriculture CACFP/USDA

1.0 Institutions participating in the Delaware CACFP may request an Administrative Review of the following actions:

1.1 Denial of a new or renewing institution's application for participation;

1.2 Denial of an application submitted by a sponsoring organization on behalf of a facility;

1.3 Proposed termination of an institution's agreement;

1.4 Proposed disqualification of a responsible principal or responsible individual;

1.5 Suspension of an institution's participation;

1.6 Denial of an institution's application for start-up or expansion payments;

1.7 Denial of all or a part of an institution's claim for

reimbursement except for a denial based on a late submission under 7 CFR § 226.10(e);

1.8 Demand for the remittance of an overpayment; and

1.9 Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

2.0 Notwithstanding the provisions of Section 1.0 above, institutions participating in the Delaware CACFP may not request an Administrative Review of the following actions:

2.1 A determination that an institution is seriously deficient;

2.2 Disqualification of an institution or a responsible principal or responsible individual, and the subsequent placement on the State agency list and the National disqualified list; or

2.3 Termination of a participating institution's agreement, including termination of a participating institution's agreement based on the disqualification of the institution by any publically funded program.

3.0 Except where the abbreviated administrative review procedures apply as set forth below, administrative reviews will be conducted as follows:

3.1 The Department of Education ("Department") must give notice of the action being taken or proposed, the basis for the action, and the procedures under which the institution and the responsible principals or responsible individuals may request an administrative review of the action. Notice shall be given to the institution's executive director and chairman of the board of directors, and the responsible principals and responsible individuals by U. S. Mail postage prepaid. As used herein, "Petitioner" means a participating institution or agency, or its responsible principals or responsible individuals, as appropriate under the circumstances.

3.2 A request for administrative review must be submitted to the Department in writing not later than 15 days after the date the notice of action is received.

3.3 The petitioner may retain legal counsel or may be represented by another person if permitted by law.

3.4 Any information on which the Department's action was based will be available to the petitioner for inspection from the date of receipt by the Department of the request for an administrative review.

3.5 The petitioner may refute the findings contained in the notice of action in person or by submitting written documentation to the Department's review official. In order to be considered, written documentation must be submitted to and received by the review official not later than 30 days after the petitioner received the notice of action.

3.6 A hearing must be held by the administrative review official in addition to, or in lieu of, a review of written information only if the petitioner requests a hearing in the written request for an administrative review. If the petitioner fails to appear at a scheduled hearing, the

petitioner waives the right to a personal appearance before the administrative review official, unless the administrative review official agrees to reschedule the hearing. A representative of the Department may, but is not required, to attend the hearing to respond to the petitioner's testimony and to answer questions posed by the administrative review official. If a hearing is requested, the petitioner and the Department must be provided with at least 10 days notice of the time and place of the hearing.

3.7 The administrative review official shall be independent and impartial. The administrative review official may be an employee of the Department, but must not have been involved in the action that is the subject of the administrative review, or have a direct personal or financial interest in the outcome of the administrative review. The petitioner may contact the administrative review official directly, but all such contacts must include the participation of a representative of the Department if the Department chooses to participate.

3.8 The administrative review official shall make a determination based solely on the information provided by the Department, the petitioner, and based upon federal and Delaware laws, regulations, policies and procedures governing the CACFP/USDA.

3.9 The decision of the administrative review official shall be issued to the Department and petitioner within 60 days of the Department's receipt of the written request for an administrative review. If the last day on which the decision is to be issued shall fall on a Saturday, Sunday, legal state holiday, or day when the Department is closed due to adverse weather conditions, the decision shall be issued on the next regular work day of the Department. The failure to issue a timely decision shall not, solely in itself, constitute grounds for reversing the Department's action. The decision of the administrative review official is the final administrative determination to be afforded to the petitioner.

3.10 The Department shall maintain a searchable record of all administrative reviews and the dispositions of the same.

3.11 The Department shall conduct the administrative review of the proposed disqualification of the responsible principals and responsible individuals as part of the administrative review of the application denial, proposed termination and/or proposed disqualification of the institution with which the responsible principals or responsible individuals are associated. However, at the discretion of the administrative review official, separate administrative reviews may be held if the institution does not request an administrative review or if either the institution or the responsible principal or responsible individual demonstrates that their interests conflict.

4.0 Notwithstanding any of the foregoing to the contrary, administrative review will be limited to a review of written

submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

4.1 The information submitted on the application was false; or

4.2 The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is

4.2.1 On the National Disqualified List; or

4.2.2 Ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

4.2.3 Has been convicted for any activity that indicates a lack of business integrity.

5.0 The Department's administrative responsibilities to a participating institution shall remain in effect during the administrative review as follows:

5.1 Overpayment demand. During the period of the administrative review, the Department is prohibited from taking action to collect or offset the overpayment. However, the Department must assess interest beginning with the initial demand for remittance of the overpayment and continuing through the period of administrative review unless the administrative review official overturns the Department's action.

5.2 Program payments. The availability of Program payments during an administrative review of the denial of a new institution's application, denial of a renewing institution's application, proposed termination of a participating institution's agreement, and suspension of an institution shall be treated in accordance with the provisions of 7 CFR § 226.6 (c)(1)(iii)(D), (c)(2)(iii)(D), (c)(3)(iii)(D), (c)(5)(i)(D), and (c)(5)(ii)(E), respectively.

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

### 852 Child Nutrition

#### A. Type of Regulatory Action Required

Amendment to Existing Regulation

#### B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks the consent of the State Board of Education to amend 14 DE Admin. Code 852 in order to add the appropriate references to the federal legislation concerning nutrition standards and to correct the grammar.

#### C. Impact Criteria

1. Will the regulation help improve student achievement as measured against state achievement standards? The regulation and the amendments address child nutrition which has an impact on student achievement.

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

3. Will the regulation help to ensure that all students' health and safety are adequately protected? The amended regulation contributes to student health.

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

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

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

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

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

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

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

### 852 Child Nutrition

1.0 Each school district shall have a Child Nutrition Policy which at a minimum shall provide that:

1.1 Meals served to children ~~will be~~ are nutritious and well balanced as defined by USDA 7CFR Part 210.10

Nutrition Standards for Lunches and Menu Planning Methods and USDA 7CFR Part 220.8 Nutrition Standards for Breakfast and Menu Planning Alternatives.

1.2 The foods sold in addition to meals ~~be~~ are selected to promote healthful eating habits and exclude those foods of minimal nutritional value as defined by the Food and Nutrition Service, USDA 7 CFR Part 210, Appendix B.

1.3 Purchasing practices ensure the use of quality products.

1.4 Students have adequate time to eat breakfast and lunch.

1.5 Nutrition education ~~be an integral~~ is part of the curriculum from preschool to twelfth grade.

1.6 Food service personnel use training and resource materials developed by the Department of Education and the United States Department of Agriculture to motivate children in selecting healthy diets.

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

**925 Children with Disabilities**

**A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 925 Children with Disabilities in order to change the eligibility criteria for Autism in 4.3, for Developmental Delay in 4.4, for Mental Disability in 4.9, for Orthopedic Impairment in 4.10 and for other Health Impairment in 4.11 and to replace 21.2 Reserved with 21.2 the Statewide Monitoring Review Board (SMRB) for Children with Autism.

**C. Impact Criteria**

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to improved student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to ensuring that all children receive an equitable education.

3. Will the amended regulation help to ensure that all

students' health and safety are adequately protected? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to ensuring that all students' health and safety are adequately protected.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses changes in criteria for five categories of children with disabilities and describes the Statewide Monitoring Review Board (SMRB) for Children with Autism all of which may contribute to ensuring that all students' legal rights are protected.

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

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

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

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The federal law requires the state to make regulations concerning students with disabilities.

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

**925 Children with Disabilities**

**4.0 Eligibility for Services**

4.1 Age of Eligibility: Programs shall be provided for children with disabilities in age ranges as set out in

accordance with 14 **Del.C.** Ch.7 and 14 **Del.C.** Ch.31 and other age ranges as provided for by State and/or federal legislation.

4.1.1 The age of eligibility for special education and related services for children identified as having a hearing impairment, visual impairment, deaf-blindness, or autism, shall be from birth through 20 years, inclusive.

4.1.2 The age of eligibility for children identified as having preschool speech delay shall be from the third birthday up to, but not including, the fifth birthday.

4.1.3 The age of eligibility for children identified as having speech and/or language impairment shall be from the fifth birthday through twenty years, inclusive; provided, however, that children attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as preschool speech delayed upon reaching their third birthday.

4.1.4 The age of eligibility for children identified as having a developmental delay shall be from the third birthday up to, but not including, the fourth birthday.

4.1.5 The age of eligibility for children identified as having a physical impairment, trainable mental disability, traumatic brain injury, or severe mental disability shall be from the third birthday through 20 years inclusive; provided, however, that students in these categories attaining the minimum age by August 31 of the school year shall also be eligible.

4.1.6 The age of eligibility for children identified as having emotional disturbance, educable mental disability, or learning disability shall be from the fourth birthday through 20 years inclusive; provided, however, that children in these categories attaining the minimum age by August 31 of the school year shall also be eligible. These children receive a free appropriate public education as developmentally delayed upon reaching their third birthday.

4.1.7 Children in special education who attain age 21 after August 31 may continue their placement until the end of the school year including appropriate summer services through August 31.

#### 4.2 Definitions and General Eligibility/Exit Criteria

4.2.1 Eligibility Criteria - General: A child shall be considered eligible to receive special education and related services, and to be counted in the appropriate section of the unit funding system noted in 14 **Del.C.** §1703, when such eligibility and the nature of the disabling condition are determined by an IEP team. Eligibility and the nature of the condition shall be based upon consideration of the results of individual child evaluation data obtained from reports and observations and the definitions and criteria delineated in these regulations. Eligibility for classification under any one or more categories shall include documentation of the educational impact of the disability. Documentation of eligibility shall include an evaluation report from a qualified

evaluation specialist. Eligibility for classification under any one or more categories shall include, but shall not be limited to, an evaluation report from the evaluation specialist designated under the eligibility criteria for each disability.

4.2.2 Exit Criteria - General: A child ceases to be eligible for special education and related services when the IEP team determines that special education is no longer needed for the child to benefit from his or her educational program or the child graduates with a high school diploma. In making the determination, the team shall consider:

4.2.2.1 Eligibility criteria;

4.2.2.2 Data-based and/or documented measures of educational progress; and

4.2.2.3 Other relevant information

~~4.3 Eligibility Criteria for Autism: An IEP team shall review evidence for the following behavioral manifestations:~~

~~4.3.1 The presence of an impairment of verbal and nonverbal communication skills including the absence of speech or the presence of unusual speech features, and a combination of the following:~~

~~4.3.1.1 Impairment in reciprocal social orientation/interaction;~~

~~4.3.1.2 Extreme resistance to change and/or control;~~

~~4.3.1.3 Preoccupation with objects and/or inappropriate use of objects; and/or~~

~~4.3.1.4 Unusual motor patterns, including, but not limited to, self-stimulation and self-injurious behavior.~~

~~4.3.2 Identification of autism shall be documented through an evaluation by either a licensed psychologist, a certified school psychologist, a qualified physician, or a qualified psychiatrist. Determination of the condition of autism and eligibility for special education shall be made by an IEP team.~~

~~4.3.3 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.~~

~~4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child, who exhibits a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.~~

~~4.4.1 In order for an IEP team to determine eligibility for special education services, under the Developmental Delay category, the following is required:~~

~~4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross and/or fine), social/emotional functioning or adaptive~~

behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on the multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report.

4.4.2 Age of Eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the fourth birth date.

4.3. Eligibility Criteria for Autism: The educational classification of autism encompasses the clinical condition of Autistic Disorder, as well as other typically less severe Pervasive Developmental Disorders, (i.e., Asperger Syndrome and Pervasive Developmental Disorder – Not Otherwise Specified). These conditions share important features, and together, comprise the Autistic Spectrum Disorders (ASDs). Students with educational classifications of autism may have ASD of differing severity as a function of the number and pattern of features defined in the eligibility criteria listed below.

4.3.1 In order for the IEP team to determine eligibility for special education services under the Autism category, the following is required:

4.3.1.1 All students with an educational classification of autism demonstrate a marked, qualitative impairment in reciprocal social interaction, as manifested by deficits in at least two of the following:

4.3.1.1.1 Use of multiple nonverbal behaviors to regulate social interactions;

4.3.1.1.2 Development of peer relationships;

4.3.1.1.3 Spontaneous seeking to share enjoyment, interests, or achievements with other people; or

4.3.1.1.4 Social or emotional reciprocity.

4.3.1.2 All students with an educational classification of autism also demonstrate at least one feature from either 4.3.1.2.1. or 4.3.1.2.2. below:

4.3.1.2.1 A qualitative impairment in communication, as manifested by:

4.3.1.2.1.1 A lack of, or delay in, spoken language and failure to compensate through gesture;

4.3.1.2.1.2 Relative failure to initiate or sustain a conversation with others;

4.3.1.2.1.3 Stereotyped, idiosyncratic, and/or repetitive speech; or

4.3.1.2.1.4 A lack of varied, spontaneous make-believe play or social imitative play.

4.3.1.2.2 Restricted, repetitive, and stereotyped patterns of behavior, as manifested by:

4.3.1.2.2.1 Encompassing

preoccupation or circumscribed and restricted patterns of interest;

4.3.1.2.2.2 Apparently compulsive adherence to specific, nonfunctional routines/rituals;

4.3.1.2.2.3 Stereotyped and repetitive motor mannerisms; or

4.3.1.2.2.4 Persistent preoccupation with parts/sensory qualities of objects.

4.3.1.3 All students with an educational classification of autism have impairments that:

4.3.1.3.1 Are inconsistent with the student's overall developmental/functional level; and

4.3.1.3.2 Result in an educationally significant impairment in important areas of functioning; and

4.3.1.3.3 Are a part of a clear pattern of behavior that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time; and

4.3.1.3.4 Are not primarily accounted for by an emotional disorder.

4.3.2 An educational classification of autism is established:

4.3.2.1 Using specialized, validated assessment tools that provide specific evidence of the features of ASD described above;

4.3.2.2 By individuals who have specific training in the assessment of students with ASD in general, and in the use of the assessment procedures referred to in 4.3.2.1.; and

4.3.2.3 Based upon an observation of the student in a natural education environment, an observation under more structured conditions, and information regarding the student's behavior at home.

4.3.3 Age of Eligibility: The age of eligibility for children with autism shall be from birth through age 20, inclusive.

4.4 Eligibility Criteria for Developmental Delay: A developmental delay is a term applied to a young child who exhibits a significant delay in one or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and/or fine motor) social/emotional functioning and adaptive behavior. A developmental delay shall not be primarily the result of a significant visual or hearing impairment.

4.4.1 In order for an IEP team to determine eligibility for special education services under the Developmental Delay category, the following is required:

4.4.1.1 Standardized test scores of 1.5 or more standard deviations below the mean in two or more of the following developmental domains: cognition, communication (expressive and/or receptive), physical (gross motor and/or fine motor) social/emotional functioning and adaptive behavior; or

4.4.1.2 Standardized test scores of 2.0 or more standard deviations below the mean in any one of the developmental domains listed above; or

4.4.1.3 Professional judgment of the IEP team that is based on multiple sources of information used in the assessment process and with justification documented in writing in the evaluation report of a significant difference between the child's chronological age and his/her current level of functioning. A significant difference is defined as a minimum of a 25% delay in comparison to same-aged peers.

4.4.2 Multiple sources/ methods of information shall be used in the determination of eligibility for service provision. An assessment shall include, but not be limited to, the following sources of information:

4.4.2.1 Developmental and medical history;

4.4.2.2 Interview with the child's parent or primary caregiver;

4.4.2.3 Behavioral observations;

4.4.2.4 Standardized norm-referenced instruments; and

4.4.2.5 Other assessments which could be used for intervention planning, such as dynamic or criterion-referenced assessments, behavior rating scales, or language samples.

4.4.3 The assessment of a child suspected of a developmental delay shall be culturally and linguistically sensitive.

4.4.4 Age of eligibility: The age of eligibility for classification under the developmental delay classification is from the third birth date until the ninth birth date.

Non-regulatory note: Under the Delaware Code, funding for the Developmental Delay category is only available through the Preschool Children with Disabilities block grant, except as authorized through the Special Education Funding Pilot.

4.5 Eligibility Criteria for Deaf Blind: An IEP team shall consider the following in making a determination that a child has a deaf-blind condition:

4.5.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss so severe that he or she cannot effectively process linguistic information through hearing, with or without the use of a hearing aid. Such documentation shall be based upon a formal observation or procedure; and a licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest lateral field of vision subtends less than 20 degrees; and

4.5.2 An IEP team shall consider the documentation of auditory and visual impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.5.3 Classification as a child who is deaf-blind shall be made by the IEP team after consideration of the above eligibility criteria.

4.5.4 Age of Eligibility: The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

4.6 Eligibility Criteria for Emotional Disturbance: The IEP team shall consider documentation of the manifestation of the clusters or patterns of behavior associated with emotional disturbance and documentation from multiple assessment procedures. Such procedures shall include, but not be limited to, an evaluation by either a licensed or certified school psychologist, or a licensed psychiatrist, classroom observations by teacher(s) and at least one other member of the IEP team, a review of records, standardized rating scales, and child interviews.

4.6.1 The documentation shall show that the identified behaviors have existed over a long period of time and to a marked degree, and:

4.6.2 Adversely affect educational performance. This means that the child's emotions and behaviors directly interfere with educational performance. It also means that such interference cannot primarily be explained by intellectual, sensory, cultural, or health factors, or by substance abuse; and

4.6.2.1 Are situationally inappropriate for the child's age. This refers to recurrent behaviors that clearly deviate from behaviors normally expected of other students of similar age under similar circumstances. That is, the student's characteristic behaviors are sufficiently distinct from those of his or her peer groups; or

4.6.2.2 Preclude personal adjustment or the establishment and maintenance of interpersonal relationships. This means that the child exhibits a general pervasive mood of unhappiness or depression and/or is unable to enter into age-appropriate relationships with peers, teachers and others; and

4.6.3 The age of eligibility for children identified under this definition shall be from the fourth birthday through 20 years, inclusive.

4.7 Eligibility Criteria for Hearing Impairment

4.7.1 A qualified physician or licensed audiologist shall document that a child has a hearing loss such that it makes difficult or impossible the processing of linguistic information through hearing, with or without amplification. Such documentation shall be based upon a formal observation or procedure; and

4.7.2 The IEP team shall consider the documentation of hearing impairment in addition to other information relevant to the child's condition in determining eligibility for special education under the above definition.

4.7.3 The age of eligibility of children identified under this definition shall be from birth through 20 years, inclusive.

4.8 Eligibility Criteria for Learning Disability: In order for an IEP team to determine eligibility for special education services under the learning disability category, the following is required:

4.8.1 Written document for the formative intervention process used with the student. (See section 2.3, "Referral to Instruction Support Team" above). The documentation shall include a clear statement of the student's presenting problem(s); summary of diagnostic data collected and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.8.2 A comprehensive psychological assessment to evaluate the student's reasoning and cognitive processes in order to rule out mental retardation and emotional disturbance, and

4.8.3 A severe discrepancy between achievement and intellectual ability in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematics calculation or mathematics reasoning, based on correlation tables approved by the Department of Education.

4.8.4 The age of eligibility for students identified under this definition shall be from the fourth birthday through 20 years inclusive.

4.9 ~~Mental Disability: The degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, +5 points; Severe Mental Disability (SMD) - I.Q. below 35.~~

4.9.1 ~~Eligibility Criteria for Mental Disability: The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior, as measured by a licensed or certified school psychologist, in determining that a child has a mental disability and the degree of mental disability.~~

4.9.2 ~~The age of eligibility for children identified under the TMD, and SMD definition shall be from the third birthday through 20 years, inclusive. Children identified under the EMD definition shall be from the fourth birthday through 20 years inclusive. These children may be served at age 3 as having a developmental delay.~~

4.10 ~~Eligibility Criteria for Physical Impairments: Eligibility criteria for physical impairments include examples of orthopedic disabilities, but are not limited to: traumatic brain injury, cerebral palsy, muscular dystrophy, spina bifida, juvenile rheumatoid arthritis, amputation, arthrogryposis, or contractures caused by fractures or burns. Examples of health impairments include, but are not limited to: cancer, burns, asthma, heart conditions, sickle cell anemia, hemophilia, epilepsy, HIV/AIDS or medical fragility.~~

4.10.1 ~~A qualified physician shall document that~~

~~a child has a physical impairment in order to be considered for special education and related services under the above definition.~~

4.10.2 ~~The IEP team shall consider the child's need for special education and related services if the physical impairment substantially limits one or more major activities of daily living and the student has:~~

4.10.2.1 ~~Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or~~

4.10.2.2 ~~Skeletal deformities or other abnormalities which affect ambulation, posture and/or body use necessary for performing school work; or~~

4.10.2.3 ~~Similar disabilities which result in reduced efficiency in school work because of temporary or chronic lack of strength, vitality, or alertness.~~

4.10.3 ~~Determination by the IEP team of eligibility for services shall be based upon data obtained from:~~

4.10.3.1 ~~Medical records documenting the physical impairment are required, and current medical prescriptions such as O.T./P.T., medication, catheterization, tube feeding shall be included if available;~~

4.10.3.2 ~~Results from specialist team screening using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary. The team shall include, but not necessarily be limited to, an educator and physical or occupational therapist; and~~

4.10.3.3 ~~Prior program or school records if available; and when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history, and/or psychological evaluation.~~

4.10.4 ~~Age of Eligibility: The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.~~

#### 4.9 Eligibility Criteria for Mental Disability

4.9.1 Eligibility Criteria for Mental Disability: In order for the IEP team to determine eligibility for special education services under the Mental Disability category, the following is required:

4.9.1.1 A level of intellectual functioning, as indicated below:

4.9.1.1.1 Educable Mental Disability: IQ 50-70 +/- 5 points;

4.9.1.1.2 Trainable Mental Disability: IQ 35-50 +/- 5 points;

4.9.1.1.3 Severe Mental Disability: IQ below 35; and

4.9.1.2 Significant limitations in two or more areas of adaptive behavior, including communication, self-care, home/school living, social/interpersonal, community

use, self-direction/coping, health and safety, functional academics, leisure/play, and work.

4.9.2 Assessment for both intellectual functioning and adaptive behavior shall be conducted by a licensed psychologist or certified school psychologist.

4.9.3 Age of Eligibility: The age of eligibility for children identified as Trainable Mental Disability and Severe Mental Disability shall be from the third birthday through 20 years, inclusive. Children identified as Educable Mental Disability shall be from the fourth birthday through 20 years, inclusive. These children may be served at age 3, as having a Developmental Delay.

4.10 Eligibility Criteria for Orthopedic Impairment: In order for an IEP team to determine eligibility for special education services under the orthopedic impairment category, the following is required:

4.10.1 A qualified physician shall document that a child has an orthopedic impairment in order to be considered for special education and related services.

4.10.2 The IEP team shall consider the child's need for special education and related services if the orthopedic impairment substantially limits one or more major activities of daily living and the child has:

4.10.2.1 Muscular or neuromuscular disability(ies) which significantly limit(s) the ability to communicate, move about, sit or manipulate the materials required for learning; or

4.10.2.2 Skeletal deformities or other abnormalities which affect ambulation, posture, and/or body use necessary for performing school work.

4.10.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.10.3.1 Medical records documenting the physical impairment (required) and current prescriptions (e.g., O.T., P.T., medications, etc., if available);

4.10.3.2 Results from physical and occupational therapist screening(s) using appropriate measures which identify educational and related service needs, as well as environmental adjustments necessary; and

4.10.3.3 Prior program or school records (if available), and, when determined necessary, a speech/language evaluation, adaptive behavior scale, vision or hearing screening, social history and/or psychological evaluation.

4.10.4 For purposes of initial eligibility or continued eligibility determination, at least one of the following, and as many as are appropriate for the child's needs; physical therapist, occupational therapist, or nurse, shall be members of the IEP team.

4.10.5 Age of Eligibility: The age of eligibility for children with orthopedic impairments shall be from the third birthday through 20 years, inclusive.

Non-regulatory Note: For purposes of funding, children

classified under the Orthopedic Impairment category will be counted as Physically Impaired in the Unit Count.

4.11 Eligibility Criteria for Other Health Impairment: In order for an IEP team to determine eligibility for special education services under the Other Health Impairment category, the following is required:

4.11.1 Documentation from a qualified physician that a child has a chronic or acute health problem.

4.11.2 For ADD/ADHD, the above requirement and a school team of qualified evaluators that determine the child exhibits:

4.11.2.1 Six (or more) of the following symptoms of inattention for at least six months, to a degree that is maladaptive and inconsistent with developmental level;

4.11.2.1.1 Often fails to give close attention to details or makes careless mistakes in schoolwork, work, or other activities;

4.11.2.1.2 Often has difficulty sustaining attention in tasks or play activities;

4.11.2.1.3 Often does not seem to listen when spoken to directly;

4.11.2.1.4 Often does not follow through on instructions and fails to finish schoolwork, chores, or duties in the work place (not due to oppositional behavior or failure to understand instructions);

4.11.2.1.5 Often has difficulty organizing tasks and activities;

4.11.2.1.6 Often avoids, dislikes, or is reluctant to engage in tasks that require sustained mental effort (such as school work or homework);

4.11.2.1.7 Often loses things necessary for tasks or activities (e.g., toys, school assignments, pencils, books, or tools);

4.11.2.1.8 Is often easily distracted by extraneous stimuli;

4.11.2.1.9 Is often forgetful in daily activities; Or

4.11.2.2 Six (or more) of the following symptoms of hyperactivity-impulsivity have persisted for at least six months to a degree that is maladaptive and inconsistent with developmental level:

4.11.2.2.1 Often fidgets with hands or feet and squirms in seat;

4.11.2.2.2 Often leaves seat in classroom or in other situations in which remaining seated is expected;

4.11.2.2.3 Often runs about or climbs excessively in situations in which it is inappropriate (in adolescents or adults, may be limited to subjective feelings of restlessness);

4.11.2.2.4 Often has difficulty laying or engaging in leisure activities quietly;

4.11.2.2.5 Is often "on the go" or often

acts as if “driven by a motor”;

4.11.2.2.6 Often talks excessively;

4.11.2.2.7 Often blurts out answers

before questions have been completed;

4.11.2.2.8 Often has difficulty waiting

turn;

4.11.2.2.9 Often interrupts or intrudes

into conversations or games; and

4.11.2.3 Some hyperactive-impulsive or inattentive symptoms that caused impairment were present before seven years of age;

4.11.2.4 A clear pattern that is consistently manifested across a variety of people, tasks and settings, and that persists across a significant period of time;

4.11.2.5 Clear evidence of clinically significant impairment in social, academic or occupational functioning; and

4.11.2.6 The symptoms do not occur exclusively during the course of a pervasive developmental disorder, schizophrenia, or other psychotic disorder, and are not better accounted for by another mental disorder (e.g. mood disorder, anxiety disorder, dissociative disorder, or personality disorder).

4.11.3 Determination by the IEP team of eligibility for services shall be based upon data obtained from:

4.11.3.1 Written documentation from the formative intervention process used with the student (see section 2.3, p.11 “Referral to Instructional Support Team” above). The documentation shall include a clear statement of the student’s presenting problem(s); summary of diagnostic data collected, and the sources of that data; and summary of interventions implemented to resolve the presenting problem(s) and the effects of the interventions; and

4.11.3.2 Medical records documenting the health impairment or, in the case of students with ADD/ADHD, medical records documenting that a child has such health impairment and determination by a school team of qualified evaluators, or, in the case of re-evaluation, the IEP team, including the school psychologist, that the child exhibits the criteria listed in number 4.11.2 above.

4.11.4 For purposes of initial eligibility or continued eligibility determination, the school psychologist and the school nurse shall be members of the IEP team.

4.11.5 Age of Eligibility: The age of eligibility for children with Other Health Impairments shall be from the third birthday through 20 years, inclusive.

Non-regulatory Note: For purposes of funding, children classified under the Other Health Impaired category will be counted as Physically Impaired in the Unit Count.

~~4.11.4.12 Eligibility Criteria for Speech and/or Language Impairment Eligibility Criteria:~~ In determining eligibility under the Speech and/or Language classification,

the IEP team shall consider the results of an evaluation conducted by a licensed Speech-Language Pathologist which identifies one or more of the following conditions: an articulation disorder, a language disorder, dysfluent speech; and/or a voice disorder.

~~4.11.4~~ 4.12.1 The age of eligibility for children identified under this definition shall be from the fifth birthday through 20 years, inclusive, except where speech and/or language therapy is provided as a related service. In the latter instance, the age of eligibility shall correspond with that of the identified primary disability condition.

~~4.12~~ 4.13 Eligibility Criteria for Traumatic Brain Injury: A qualified physician must document that a child has a traumatic brain injury in order to be considered for special education and related services under the above definition.

~~4.12.4~~ 4.13.1 The IEP team shall consider the child’s need for special education and related services if the traumatic brain injury substantially limits one or more major activities of daily living.

~~4.12.2~~ 4.13.2 The age of eligibility for children under this definition shall be from the third birthday through 20 years, inclusive.

~~4.13~~ 4.14 Eligibility Criteria for Visual Impairment Eligibility Criteria

~~4.13.4~~ 4.14.1 Legally Blind shall be defined as a visual acuity of 20/200 or less in the better eye with best correction, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees.

~~4.13.2~~ 4.14.2 Partially Sighted shall be defined as a visual acuity between 20/70 and 20/200 in the better eye after best correction, or a disease of the eye or visual system that seriously affects visual function directly, not perceptually. A visual impairment may be accompanied by one or more additional disabilities, but does not include visual-perceptual or visual-motor dysfunction resulting solely from a learning disability.

~~4.13.3~~ 4.14.3 A licensed ophthalmologist or optometrist shall document that a child has a best, corrected visual acuity of 20/200 or less in the better eye, or a peripheral field so contracted that the widest diameter of such field subtends less than 20 degrees, legally blind, or a visual acuity of 20/70 or less in the better eye after all correction, partially sighted.

~~4.13.4~~ 4.14.4 The IEP team shall consider the documentation of visual impairment in addition to other information relevant to the child’s condition in determining eligibility for special education under the above definition.

~~4.13.5~~ 4.14.5 The age of eligibility for children identified under this definition shall be from birth through 20 years, inclusive.

~~4.14~~ 4.15 Eligibility Criteria for Preschool Speech Delay (3 and 4 year olds only)

~~4.14.4~~ 4.15.1 A speech disability is defined as a communication disorder/delay involving articulation, voice

quality, and/or speech fluency to such a degree that it interferes with a child's overall communicative performance.

~~4.14.2~~ 4.15.2 In order to determine a significant delay or disorder in this area, the child shall receive a speech and language evaluation conducted by a licensed Speech and Language Pathologist.

~~4.14.2.1~~ 4.15.2.1 A speech and language evaluation shall include assessment of articulation, receptive language and expressive language as measured by a standardized/norm-based instrument. It is strongly recommended that the evaluation include clinical observations and/or an assessment of oral motor functioning, voice quality and speech fluency. Results of the evaluation may identify a significant delay or disorder in one or more of the following areas:

~~4.14.2.1.1~~ 4.15.2.1.1 Articulation errors of sounds that are considered to be developmentally appropriate for the child's age as measured by an articulation test,

~~4.14.2.1.2~~ 4.15.2.1.2 Conversational speech that is not developmentally appropriate for the child's age as measured by a speech and language pathologist,

~~4.14.2.1.3~~ 4.15.2.1.3 Oral motor involvement which may affect the development of normal articulation,

~~4.14.2.1.4~~ 4.15.2.1.4 Speech Fluency, or

~~4.14.2.1.5~~ 4.15.2.1.5 Voice Quality

~~4.14.3~~ 4.15.3 Results of the evaluation may indicate a significant delay in receptive and/or expressive language which warrants further evaluation. In this event, the child is to be referred for a multidisciplinary evaluation to determine if he/she meets the eligibility criteria for developmental delay.

~~4.14.4~~ 4.15.4 The age of eligibility for preschool children identified under this definition shall be from the third birth date until the fifth birth date.

**3 DE Reg. 1551 (5/1/00)**

**4 DE Reg. 470 (9/1/00)**

## 21.0 Special Programs for Children with Autism:

21.1 Definitions of terms applicable only to special programs for children with autism.

21.1.1 **"Behavior Management Procedure"** means any procedure used to modify the rate or form of a target behavior.

21.1.2 **"Behavior Management Target"** means any child's behavior that either causes or is likely to cause (a) injury to the child (e.g., self-abuse), (b) injury to another person (e.g., aggression), (c) damage to property, (d) a significant reduction in the child's actual or anticipated rate of learning (e.g., self-stimulation, non-compliance, etc.) or (e) a significant reduction in the societal acceptability of a child (e.g., public masturbation, public disrobing, etc.).

21.1.3 **"Emergency Intervention Procedure"**

means any procedure used to modify episodic dangerous behavior (e.g., self-injurious behaviors, physical aggression property destruction) identified in a behavioral intervention plan.

21.1.4 **"Ethical Use"** means the application of a procedure in a manner that is consistent with current community values and protects all of a child's rights.

21.1.5 **"Informed Consent"** means knowing and voluntary consent by the parent(s), based upon a thorough explanation by the program staff member supervising the individualized Behavior Management procedure, of the nature of the procedure, the possible alternative procedures, the expected behavior outcomes, the possible side effects (positive and negative), the risks and discomforts that may be involved, and the right to revoke the Procedure at any time.

21.1.6 **"Least Restrictive Procedure"** means that behavior management procedure which is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's educational needs.

21.1.7 **"School"** means any public school or program (special education or otherwise), which has enrolled a child classified with autism.

21.1.8 **"Accepted Clinical Practice"** means any behavior management procedure or treatment, the effectiveness of which has received clear empirical support as documented by publication in peer-reviewed journals or similar professional literature.

~~21.2~~ ~~Reserved.~~ The Statewide Monitoring Review Board (SMRB) shall be generally administered by the Director for State Services for Children with Autism and the Director of the Exceptional Children and Early Childhood Education Group, Department of Education.

21.2.1 The purpose of the SMRB is to define research-based best educational practices for students with autism served in approved programs in Delaware. This includes reviewing and making recommendations to the Secretary of Education regarding the special education and related services for children with autism in approved programs, including programs for students with autism whose placement in private facilities has been authorized by the Department of Education.

21.2.2 The SMRB shall consist of the following members:

21.2.2.1 Director for State Services for Children with Autism.

21.2.2.2 Director of the Exceptional Children and Early Childhood Education Group, or designee.

21.2.2.3 One administrator from each LEA/charter school with an approved program for students with autism, or their designee. The administrator or designee must have experience in, and responsibility for, the program

for students with autism.

21.2.2.4 One non-administrative experienced professional from each approved program for students with autism. These individuals are nominated by the administrator responsible for the approved program and are subject to the approval of the Director for State Services for Children with Autism.

21.2.2.5 Two non-voting public representatives nominated annually by the Statewide Parent Advisory Committee. These individuals must not have a child currently served in an approved program.

21.2.3 The SMRB shall operate under the following procedures:

21.2.3.1 The Director of State Services for Children with Autism shall serve as the Chairperson of the Board.

21.2.3.2 A majority of the voting members of the board shall constitute a quorum.

21.2.3.3 Decisions of the Board shall be determined by a majority vote of the quorum.

21.2.3.4 The chairperson shall set mutually agreeable times and places for meetings, which shall be scheduled at least five times per year, contingent upon agenda items.

21.2.3.5 The SMRB shall discharge its responsibilities in accordance with the IDEA and the Administrative Manual for Special Education Services (AMSES).

21.2.3.6 The SMRB shall function in an advisory capacity and the procedural safeguards guaranteed to students with autism, their parents (as defined under IDEA), and local school districts, charter schools, or agencies, shall not be diminished by the activities of the SMRB.

21.2.4 The SMRB has the following responsibilities:

21.2.4.1 To determine which educational methods and curricula are consistent with research-based best practices for students with autism. This includes reviewing and making recommendations regarding proposed new practices.

21.2.4.1.1 Requests for review of practices may be submitted to the SMRB by SMRB members, the Secretary of Education, the State Parent Advisory Committee, Superintendents of LEAs, or Chief Administrators of Charter Schools.

21.2.4.1.2 If the party making the request for review disagrees with the recommendation of the SMRB regarding best educational practices, they may request the Secretary of Education appoint an independent expert to review the practice.

21.2.4.2 To review, at least annually, educational programming and aggregated performance data for students with autism in approved programs in Delaware.

21.2.4.3 To make recommendations based on this review regarding appropriate strategies, supports, services, and professional development necessary to ensure the implementation of research-based best educational practices with respect to the evaluation and educational programming for students with autism.

21.2.4.4 To assist LEAs /charter schools with approved programs in developing and implementing plans to address the recommendations of the SMRB.

21.2.4.5 To submit an Annual Report by September 1 of each year to the Secretary, Department of Education and the President of the State Board of Education.

21.3 A Parent Advisory Committee (PAC) shall be established by each local education agency operating a center for the Delaware Autistic Program.

21.3.1 The function of the PAC shall be to advise the local education agency on matters pertaining to the local center.

21.3.2 Each PAC shall meet no less than four times each year and must be representative of the age groups of children with autism served by the local center.

21.3.3 When a local education agency operates a residential program, at least one member of the PAC shall be a parent of a child with autism served in the residential program associated with that center.

21.4 A Statewide Parent Advisory Committee (SPAC) shall be established whose membership shall consist of one representative elected annually from each local education agency PAC.

21.4.1 The SPAC shall meet no less than four times each year with the Director of DAP advising on matters pertaining to the program.

21.4.2 The establishment of bylaws for the SPAC shall be by vote of all of its eligible members.

21.4.3 A current statewide membership list shall be provided to all parents.

21.4.4 Reimbursement for travel expenses shall be available to members of the Statewide Parent Advisory Committee (SPAC).

21.5 A Peer Review Committee (PRC) shall be established by the Director of the Delaware Autism Program (DAP) and the Department of Education in consultation with the Statewide Monitoring Review Board (SMRB).

21.5.1 Purpose: The purpose of the PRC shall be to review, in light of accepted clinical practice, the professional and clinical issues involved in the use of behavior management procedures to ensure their appropriate use by the staff of a school district serving children with autism.

21.5.2 Composition: The PRC shall consist of three to five members who shall be competent, knowledgeable professionals with at least three years of post-doctoral experience in the theory and ethical application of behavior management procedures. Membership shall be

external to the Delaware Autism Program (DAP), the Department of Education, any Delaware school district, and any other State agency or department, excluding State institutions of higher education. Members shall not belong to any in-State committee, council, board or program that deals directly with children with autism.

21.5.3 Operation: The PRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.5.4 Peer Review Committee (PRC) Responsibilities

21.5.4.1 The PRC shall meet at least every three months to review those behavior management procedures requiring after-the-fact examination. (See Section 21.7.1)

21.5.4.1.1 A quorum shall consist of a majority of the Committee.

21.5.4.1.2 The PRC chairperson shall announce the dates of review at least one month prior to the review date.

21.5.4.2 The PRC shall meet at least six (6) times per year to review procedures requiring prior, case-by-case review that have been granted interim or on-going approval. The monthly review shall continue until said procedure has been discontinued or the PRC votes otherwise. This review may be held jointly with HRC.

21.5.4.3 The PRC chairperson shall invite staff members of DAP responsible for implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., a consultant to ensure expertise in a specific behavior management procedure under review) to participate as needed in a non-voting capacity.

21.5.4.4 The PRC shall provide technical assistance when requested by the Program Director to develop a behavior management procedure for children engaged in behaviors that pose a significant health risk to the child or others, a significant risk of damage to property, and/or a significant reduction of learning.

21.5.4.5 The PRC shall review and evaluate the training and supervision for the staff that will carry out all behavior management procedures requiring prior, individual review and may evaluate the training of staff carrying out procedures requiring after-the-fact review.

21.5.4.5.1 The PRC shall provide the Program Director with written comments and recommendations concerning the findings of this review.

21.5.4.6 The PRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Department of Education and the HRC chairperson.

21.5.4.6.1 These minutes shall be submitted within two weeks of each meeting.

21.5.4.6.2 An oral summary of the PRC

recommendations shall be made within twenty-four hours following the PRC meeting to the Director of DAP and the HRC chairperson.

21.6 A Human Rights Committee (HRC) shall be established by the Director of the DAP and the Department of Education in consultation with the Statewide Autistic Program Monitoring Review Board.

21.6.1 Purpose: The purpose of the HRC shall be to review the ethical and children rights issues involved in the use of behavior management procedures to ensure their humane and proper application.

21.6.2 Composition: The HRC shall consist of five to ten members representing various occupations, who are not employees or relatives of children enrolled in the DAP, who are not employees of the Department of Education, and who are not members of any in-State organization, agency, or program that deals directly with children with autism. No member of the HRC shall be a member of the PRC.

21.6.3 Operation: The HRC shall elect a chairperson and shall adopt a set of rules to guide its operation. A copy of these rules shall be provided to the Department of Education and the Director of the DAP.

21.6.4 Human Rights Committee Responsibilities

21.6.4.1 Whenever a school proposed to use a behavior management procedure requiring review prior to implementation, the HRC shall meet and review the proposed use of the behavior management procedure. This review shall occur within seven days after the PRC chairperson informs the HRC chairperson of PRC's recommendations.

21.6.4.1.1 A quorum shall consist of a majority of the Committee.

21.6.4.1.2 This review, however, may be held jointly with the PRC.

21.6.4.2 The HRC chairperson shall invite staff members who are responsible for the implementation of behavior management procedures, the Director of DAP, or any other individual (e.g., consultant, parent) to participate as needed in a non-voting capacity.

21.6.4.3 The HRC shall develop a written form to be used to ensure that informed parental consent is obtained before implementation of specified behavior management procedures.

21.6.4.4 The HRC shall keep written minutes of all its meetings and shall submit them to the Director of DAP, the Director, Exceptional Children Group, and the PRC chairperson.

21.6.4.4.1 These minutes shall be submitted within two weeks of each meeting.

21.6.4.4.2 An oral summary of the HRC recommendations shall be made within twenty-four hours following the HRC meeting to the Director of DAP and the PRC chairperson.

21.7 Joint responsibilities of the Peer Review and Human Rights Committees are as follows:

21.7.1 Issue a written statement indicating which behavior management procedure(s) shall be recommended for use:

21.7.1.1 Without further PRC/HRC review during the year approved;

21.7.1.2 Without a case-by-case PRC/HRC review but with after-the-fact review (timelines to be established by the PRC); or

21.7.1.3 Only with prior case-by-case PRC and HRC (before-the-fact) review;

21.7.2 Recommend written modifications, if necessary, of behavior management procedures along with accompanying rationale;

21.7.3 Review a school's proposed Emergency Intervention Procedures for children with autism and issue a written statement indicating which Emergency Intervention Procedures shall be recommended:

21.7.3.1 For use without after-the-fact reporting to the PRC/HRC; or

21.7.3.2 For use with after-the-fact reporting to the PRC/HRC;

21.7.4 Issue an advisory, not mandatory, statement presenting a recommended hierarchy of reviewed behavior management procedures according to the Least Restrictive Procedure principle.

21.7.4.1 Notice shall be given to parents of children with autism in the program of the availability upon request, and at no cost to parents, of copies of the reviewed behavior management procedures.

21.7.4.2 A copy shall also be forwarded to the Governor's Advisory Council for Exceptional Citizens.

21.7.5 The PRC chairperson, in cooperation with the HRC chairperson, shall announce the joint PRC/ HRC annual review at least one month prior to the review date.

21.7.5.1 At the discretion of either chairperson, Committees may meet jointly or separately to conduct before-the-fact and after-the-fact reviews.

21.7.6 Approve, before-the-fact, the housing of children under age twelve with a child over age sixteen in a community-based residential program for children with autism operated by a school district designated and approved by the Secretary of Education as the administering agency for the DAP.

21.7.7 Review, within 30 days of the granting of interim approval, any request by a school for the immediate implementation of a behavior management procedure requiring prior, case- by-case review.

21.7.7.1 Immediate implementation of a proposed procedure may occur after the Program Director has obtained unanimous interim approval from one PRC member and two HRC members.

21.7.7.2 Proposed prior review procedures not

requiring immediate implementation shall be submitted by a school directly to PRC and HRC chairperson to be reviewed within two weeks of submission of the proposal.

21.7.8 Have access to the educational records of any child with autism for purposes of 21.5.1 and 21.6.1 of this section.

21.7.8.1 A quorum of a joint meeting shall consist of a majority of combined membership.

21.7.9 Submit written Procedural Descriptions for Behavior Management and Emergency Interventions

21.7.9.1 Prior to utilizing a behavior management procedure or an emergency intervention procedure for a particular child with autism, a school shall submit written procedural descriptions for at least annual joint review by the PRC and HRC.

21.7.9.1.1 The annual date of review shall be announced by the HRC chairperson at least one month prior to the review date.

21.7.9.1.2 The school shall submit written procedural descriptions at least two weeks prior to the joint annual review date to the PRC and HRC chairpersons.

21.7.9.1.3 The written descriptions shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.1.4 PRC and HRC may request pertinent information needed for the completion of reviews.

21.7.9.2 After reviewing each behavior management and emergency procedure, the PRC and HRC shall indicate what kind of review each procedure requires (annual, after-the-fact, or prior case-by-case review). A school serving children with autism shall then submit proposals in accordance with PRC/HRC recommendations.

21.7.9.3 Behavior management and emergency intervention procedures that require annual review only may then be implemented by a school without further PRC/HRC review until the next annual joint review. A school shall require that the use of these procedures be indicated in a child's IEP.

21.7.9.4 Behavior management and emergency intervention procedures that require after-the-fact review only shall be used by a school without case-by-case review, but shall be reported after the fact to the PRC by dates specified by the Committee chairperson.

21.7.9.4.1 The school shall submit written records as set forth in PRC and HRC operating rules, or any other relevant information requested by either Committee, to the PRC chairperson at least one week prior to the review date.

21.7.9.5 Behavior management procedures that require prior case-by- case review shall be submitted to the PRC and HRC for joint review prior to implementation.

21.7.9.5.1 If the PRC and HRC decide not to review the case jointly, the PRC shall first review the

proposal.

21.7.9.5.2 The proposal shall contain information determined by PRC and HRC and set forth in their operating rules.

21.7.9.5.3 Recommendations and rationale for the decision shall be provided whenever the PRC fails to recommend use of a proposed procedure.

21.7.9.6 Following the PRC recommendation (or following joint PRC/HRC approval), written informed parental consent shall be obtained by the school.

21.7.9.6.1 If an interim consent is obtained by telephone, then two witnesses to the content of the conversation shall sign a form certifying that the parent(s) gave informed consent. The school must then obtain written verification of this consent from the parent(s).

21.7.9.6.2 Parents may withdraw consent at any time; if said withdrawal is done verbally in person or by telephone, the parent shall provide written verification of withdrawal within 10 days of the initial notice.

21.7.9.7 Whenever the PRC and HRC choose not to meet jointly, the information provided by a school shall be submitted to the HRC along with the PRC's recommendations.

21.7.9.7.1 Recommendations and rationale for the decision shall be provided whenever the HRC fails to recommend the use of a proposed procedure.

21.7.9.7.2 Whenever a proposal is recommended for implementation, an IEP objective shall be developed relating to the behavior management target and the proposed procedure.

21.7.9.8 Whenever the PRC or HRC fail to recommend or modify the proposed procedure, the parent(s) shall be notified by the school.

21.7.9.8.1 If the procedure is to be modified, informed written consent shall be obtained from the parents.

21.7.9.9 The school staff responsible for implementing the behavior management procedure shall provide written reports to the PRC and HRC, summarizing the records (which shall be kept on a daily basis) on the use and results obtained by implementing the procedure.

21.7.9.9.1 Records shall be kept in an objective, quantitative form, permitting easy evaluation of child data.

21.7.9.9.2 The PRC and HRC shall have unrestricted access to all data, records, and reports relating to the behavior management procedures used.

21.7.9.10 Any behavior management or emergency intervention procedure that is developed by a school after the joint annual review date for a particular school year shall be submitted to the PRC and HRC chairpersons for joint review prior to any implementation of the new procedure, unless interim approval has been

recommended as described in 21.7.7.

21.8 Private facilities serving autistic children shall have Peer Review and Human Rights Committee policies as follows:

21.8.1 Private facilities serving children with autism located in Delaware shall have Peer Review Committee and Human Rights Committee policies that comply with DELACARE standards (requirements for Residential Child Care Facilities, Department of Services for Children, Youth and their Families).

21.8.2 Private facilities serving Delaware children with autism located in other states shall comply with the Peer Review Committee and Human Rights Committee policies used by the state in which the facility is located.

21.8.2.1 Said policies shall be reviewed by Delaware's Department of Education to determine that they grant protection substantially equivalent to that provided by Delaware for children prior to any recommendation of approval for private placement by the State Board of Education.

21.8.3 Private facilities serving Delaware children with autism located in states which have no Peer Review Committee and Human Rights Committee policies shall have written Peer Review and Human Rights Committee policies that shall be reviewed by Delaware's Department of Education in consultation with Delaware's PRC, to determine that they grant protection substantially equivalent to that provided by Delaware for children, prior to any recommendation of approval for private placement by the Secretary of Education.

21.8.4 Private facilities serving Delaware children with autism located in states which require substituted judgment or other court order for the use of aversive or related restrictive procedures, and which have obtained such an order for each Delaware child, shall be deemed to have met the peer review and human rights requirements of this section.

21.9 Whenever psychotropic medication has been prescribed by a physician and appears to affect adversely the educational program of a child with autism, the administrator of the center shall contact the parent and request a medication review with the parent and physician.

21.10 Appropriate liaison with the Department of Health and Social Services and other agencies shall be established by the Director of DAP and the Department of Education.

### 3 DE Reg. 1709 (6/1/00)

**\* Please Note: As the rest of the sections were not amended they are not being published. The complete regulation can be found at: <http://www.state.de.us/research/AdminCode/title14>**

**Education Impact Analysis  
Pursuant to 14 Del.C. §122(d)****1105 School Transportation****A. Type of Regulatory Action Required**

Amendment to Existing Regulation

**B. Synopsis of Subject Matter of the Regulation**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code 1105** School Transportation in order to add a new section 22.0 that includes the responsibilities of non-public, non-profit schools for the administration of their transportation systems under the rules and regulations of the Department of Education. Section 13.2.1 is also amended in order to change the statement about when the bus contractors are paid from “at the end of the month” to “in the middle of the month” due to the fact that schools are starting earlier in the fall.

**C. Impact Criteria**

1. Will the regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses school transportation issues not student achievement issues.

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

3. Will the regulation help to ensure that all students’ health and safety are adequately protected? The amended regulation addresses school transportation issues which include numerous references to safety.

4. Will the regulation help to ensure that all students’ legal rights are respected? The amended regulation addresses school transportation issues and protection of students rights are included.

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

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

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

8. Will the regulation be consistent with and not an

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

9. Is there a less burdensome method for addressing the purpose of the regulation? The Delaware Code requires that the Department of Education make regulations concerning School transportation.

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

**1105 School Transportation****1.0 Responsibilities of Local Superintendents:**

Local District Superintendents or their designees shall assume the following responsibilities concerning the transportation of students:

1.1 Implement state school transportation regulations. Local school disciplinary policies shall include pupil behavior and discipline on the school bus.

1.2 Define and coordinate changes to school transportation operations impacting local district budget allocations with the Department of Education.

1.3 Provide resource material and encourage teachers to include instruction in passenger safety in the school curriculum.

1.4 Provide for close and continuous supervision of the unloading and loading zones on or near the school plant, and of the emergency drills.

1.5 Provide supervision for those students whose bus schedules require them to arrive at school before classes begin and remain after classes terminate.

1.6 Promote public understanding of, and support for the district’s school transportation program.

1.7 Assume prime responsibility for student conduct.

**2.0 Conditions for School Bus Contractors:**

School Bus Contractors shall agree to the following conditions in their contracts:

2.1 Follow all applicable federal, state, and local school bus regulations and policies.

2.2 Communicate effectively with the district transportation supervisor.

2.3 Dismiss a school bus driver when it can be shown that the driver is not satisfactorily performing driver tasks.

District transportation supervisors may restrict a driver from

operating in their school district.

2.4 Pay drivers and aides and provide substitute drivers and aides.

### 3.0 Responsibilities of School Bus Drivers:

Local school districts shall have a policy concerning the responsibilities of school bus drivers which, at a minimum, includes the following:

3.1 A statement that the school bus driver is in full charge of the bus and pupils, has the authority of a classroom teacher and is responsible for the health, safety, and welfare of each passenger.

3.2 Statements listing the following specific responsibilities of the bus driver:

3.2.1 Operate the school bus in a safe and efficient manner.

3.2.2 Conduct pre-trip and post-trip checks on the vehicle.

3.2.3 Establish and maintain rapport with passengers.

3.2.4 Maintain discipline among passengers.

3.2.5 Meet emergency situations effectively.

3.2.6 Communicate effectively with district and school staff.

3.2.7 Maintain effective contact with the public.

3.2.8 Complete reports as required by the state or school district.

3.2.9 Complete required training programs satisfactorily.

3.2.10 Refrain from using profane or indecent language or tobacco while on duty.

3.2.11 Dress appropriately.

3.2.12 Pickup and drop-off students at designated stops.

3.2.13 Submit to periodic random drug and alcohol testing and be subject to actions specified in the Delaware Code and in federal requirements.

3.2.14 Report suspected cases of child abuse to the school principal or designated official.

3.2.15 Notify the district transportation supervisor of any school bus accident.

3.3 A statement requiring a report of a physical examination on forms designated by the Department of Education.

### 4.0 Qualifications and Responsibilities of School Bus Aides

4.1 Qualifications for School Bus Aides include the following and shall apply to all new applicants and for any person whose employment as an aide has lapsed for a period of over one year.

4.1.1 Be at least 18 years of age.

4.1.2 Be fingerprinted to allow a criminal history check at both state and federal level and meet the same requirements (pre-licensing) specified for school bus

drivers in the Delaware Code.

4.1.3 File with the district transportation supervisor a notarized affidavit (the same as the school bus driver affidavit) attesting to acceptable criminal history pending an official state and federal criminal record report.

4.1.4 Submit to the federal drug and alcohol testing procedures established for school bus drivers.

4.2 Local school districts shall have a policy concerning school bus aides which, at a minimum, lists the following responsibilities:

4.2.1 Assist in loading and unloading of students, including lift operation.

4.2.2 Ensure that students and equipment are properly strapped in seats. Adjust, fasten, and release restraint devices for students and equipment, as required. Monitor overall safety of students and equipment.

4.2.3 Ensure that all students remain seated at all times.

4.2.4 Assist the driver during unusual traffic conditions; act as a lookout if necessary when bus must be backed.

4.2.5 Assist the driver in the enforcement of all state and school district bus safety regulations.

4.2.6 Perform record keeping tasks related to student attendance and bus assignment.

4.2.7 Monitor and report student misbehavior according to established procedure.

4.2.8 Assist the driver in keeping the interior of the bus clean.

4.2.9 Assist students with disabilities with personal needs associated with their disabilities.

4.2.10 Assist in bus evacuation drills.

4.2.11 Work cooperatively with all school personnel and parents.

4.2.12 Perform other duties as assigned by the district transportation supervisor or designee.

### 6 DE Reg. 643 (11/1/02)

### 5.0 Student Conduct on School Buses:

School Districts shall have a policy concerning the behavior of students on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension of bus riding privileges.

5.1 Obey the driver promptly, and be courteous to the driver and to fellow students. Students are to conduct themselves while on the bus in such a way that it will not distract the driver from the job of driving.

5.2 Be at their bus stop on time for pickup.

5.3 Wait for the bus on the sidewalk or shoulder, not the roadway.

5.4 Keep a safe distance from the bus while it is in motion.

5.5 Enter the bus without crowding or disturbing others and occupy their seats immediately.

5.6 Get on or off the bus only when it is stopped.

5.7 Remain seated and facing forward. No student shall occupy a position in the driver area in front of a stanchion, barrier, or white floor line that may distract the driver's attention or interfere with the driver's vision.

5.8 Stay out of the driver's seat. Also, unnecessary conversation with the driver is prohibited while the bus is in motion.

5.9 Follow highway safety practices in accordance with the Motor Vehicle Laws of the State of Delaware and walk on the side of the road facing traffic when going to or from the bus or bus stop along the highway. Before crossing the road to board the bus or after being discharged from the bus cross only upon an audible clearance signal from the driver.

5.10 Do not cross the road until it is clear of all traffic or that traffic has come to a complete stop and then walk in front of the bus far enough to be seen by the driver at all times.

5.11 Observe classroom conduct when on the bus.

5.12 Do not call out to passers-by or open the bus windows without permission from the driver, nor extend head or arms out of the windows.

5.13 Do not leave the bus without the driver's consent, except on arrival at their regular bus stop or at school.

5.14 Keep the bus clean, sanitary, and orderly and not damage or abuse the equipment.

5.15 Do not smoke, use profanity or eat or drink on the bus.

5.16 Do not throw articles of any kind in, out, or around the bus.

5.17 Other forms of misconduct that will not be tolerated are acts such as, but not limited to, indecent exposure, obscene gestures, spitting, and others that may be addressed in the school code of conduct.

### **6.0 Procedures for Operating Buses:**

Each school district shall adopt the following procedures for the operation of their school buses:

6.1 No person other than a pupil, teacher, school official, aide or substitute driver shall be permitted to ride on a school bus while transporting pupils. Exceptions may be made for parents involved in Department of Education educational programs that provide for transportation and others approved by the district transportation supervisor.

6.2 The driver shall maintain a schedule in the bus and shall at all times adhere to it. Drivers shall not be required to wait for pupils unless they can be seen making an effort to reach the bus stop.

6.3 The driver shall maintain discipline on the bus, and shall report cases of disobedience or misconduct to the proper school officials. No pupils may be discharged from the bus for disciplinary reasons except at the home or school. The principal or designated school official shall be notified

of such action immediately. Any change to the action taken by the driver or any further disciplinary action to be taken is the responsibility of the principal or designated school official.

6.4 Pupils shall have definite places to get on and leave the bus, and should not be allowed to leave the bus at any place other than the regular stop without written permission from their parents, and approval by the principal or designated school official, except in cases of emergency. Districts may adopt a more restrictive policy.

6.5 Buses shall be brought to a full stop before pupils are allowed to get on or off. Pupils are not permitted to ride outside or in any hazardous location in the bus including the area ahead of the stanchions, barriers, or white floor line designating the driver-area.

6.6 Buses shall not stop near the crest of hills, on curves, or on upgrades or downgrades of severe inclination. When stopped for the purpose of receiving or discharging pupils, the bus shall always be stopped on the right side of the road and as far off the paved or main traveled portion of the highway as the condition of the shoulder permits.

6.7 Pupils who must cross the road to board the bus or after leaving the bus shall cross at a distance in front of the bus and beyond the crossing control arms so as to be clearly seen by the driver and only upon an audible clearance by the driver. The driver shall attempt to signal pupils to cross by instructions through the external speaker of the public address system.

6.8 All loading and unloading of pupils shall be made from the service door. The rear exit door is not to be used except in cases of emergency or emergency drills. No object shall be placed in the bus that restricts the passage to the emergency door or other exits.

6.9 No one but the driver shall occupy the driver's seat. Pupils shall remain behind the white floor line.

6.10 Seats may be assigned to pupils by the driver, subject to the approval of a school official.

6.11 The doors of the bus shall be kept closed while the bus is in motion, and pupils shall not put their head or arms out of open windows.

6.12 When the bus is stopped on school grounds, students are aboard, and the motor is running, the transmission shall be in neutral (clutch disengaged) and the parking brake set. While on school grounds, drivers shall not leave their seat while the motor is running or leave the key in the ignition switch.

6.13 Fuel tanks shall not be filled while the engine is running or while pupils are in the bus.

6.14 Weapons of any kind are not permitted on a school bus.

6.15 Animals are not permitted on school buses; however, a service animal is permitted if a physician certifies that it is required.

6.16 A school bus shall not be used for hauling

anything that would make it objectionable for school use or unsafe for passengers.

6.17 Band instruments, shop projects and other school projects shall not be permitted on the bus if they interfere with the driver or other passengers. The aisle, exits, and driver's vision shall not be blocked.

6.18 Bus stops on roadways with three or more lanes (with oncoming traffic) must be made on the right side of the road. Students shall not be required to cross more than two lanes of traffic when entering or leaving the bus.

6.19 Headlights or daytime running lights shall be on at all times when the bus is in motion.

6.20 On the bus route every effort should be made to load children before turn-arounds are made and unload them after the turn-around is made.

6.21 Backing of school buses is prohibited, except in unusual circumstances:

6.21.1 A school bus shall not be driven backwards on school grounds unless an adult is posted to guard the rear of the bus.

6.21.2 When backing is unavoidable extreme caution must be exercised by the bus operator and an outside observer should be used if possible.

### 3 DE Reg. 942 (1/1/00)

## 7.0 Accident Reports

All drivers or contractors shall complete accident reports and submit them to the district person in charge of transportation in order to assure accurate information pertaining to school bus accidents.

7.1 The following information shall be included on all school bus accident reports and be maintained in the district transportation files:

7.1.1 A description, preferably using diagrams, of the damage to each vehicle in addition to estimates of damage costs.

7.1.2 A description of all personal injuries.

7.1.3 A list of passengers and witnesses.

7.1.4 Name, address and telephone number of the driver.

7.1.5 Follow-up information, such as the actual cost of repairs, should be added to the accident report wherever it is filed; i.e., in federal, state or local offices, so that the record of the accident is completed. Other pertinent information relating to the accident that should be added later, if the information is readily available, includes:

Disposition of any litigation.

Disposition of any summonses.

Net effects of all personal injuries sustained, including medical care given, physician's fees, hospital expenses, etc.

Amount of property damage other than to vehicles involved.

Any corrective actions taken against the

school bus driver, e.g., training, suspension, or dismissal.

A summation of the driver's total accident record so that each completed report form will contain a listing of the total number of accidents that the driver has had.

### 3 DE Reg. 942 (1/1/00)

## 8.0 Transportation Benefits:

Transportation benefits shall be provided for pupils in grades K-6 whose legal residences are one (1) mile or more from the public schools to which they would normally be assigned by the district administrations and for pupils in grades 7-12 whose legal residences are two (2) miles or more from the public schools to which they would normally be assigned by the district administrations.

8.1 For the purpose of these regulations, the "legal residence" of the pupil is deemed to be the legal residence of the parent(s), legal guardian(s), or ~~caregiver~~ Relative Caregiver as described in 14 Del.C. §202(e)(3). Daycare facilities may be designated as a pupil's residence for pickup and drop off.

8.2 To determine pupil eligibility for transportation benefits, measurement shall be by the most direct route provided by a public road or public walkway. The measurement shall be from the nearest point where a private road or walkway connects the legal residence of the pupil with the nearest public entrance of the school building to which the pupil is normally assigned by the school district administration.

8.3 All school bus routes shall be measured from the first pick-up point to the respective schools served in the approved sequence, and then by the most direct route back to the first pick-up point.

8.4 Additional bus routes required after the opening of school shall be approved by the Department of Education and supported by evidence of need to include: enrollment number changes, descriptions of existing routes in the area of proposed additional service, the run times, and actual loads. A description of the proposed route shall also accompany the request.

8.5 Transportation for eligible pupils may be provided from locations other than their legal residence provided that:

8.5.1 Such pickup and discharge points as approved by the district administration are in excess of the relevant one and two mile limits from the school to be attended, and such transportation to be provided will be to the public school to which the pupil is assigned by the district administration.

8.5.2 Such transportation to be provided be on the same bus and/or route to and from the school attended by the pupil (i.e. each student is entitled to one seat on one bus) except that permission may be granted on a year-by-year basis by the district administration for eligible pupils to ride other buses if seats are available and does not create

additional expense to the State.

8.5.3 The limitation pertaining to “same bus and route” indicated above is not applicable to pupils attending vocational-technical schools or kindergartens operating one-half day sessions.

8.6 A spur to a bus route (where a bus leaves a main route) shall not be scheduled unless the one-way distance is greater than ½ mile. Requests for exception due to a unique traffic hazard from a parent must be in writing, approved by the local school board, and submitted through the Chairman of the Unique Hazard Committee for review.

8.7 Students otherwise ineligible to ride a bus may ride if a physician certifies that a student is unable or should not walk from home to school and return.

### **9.0 Bus Capacities:**

9.1 Bus capacities for children in grades K-6 shall be established by the manufacturer on the basis of 13 inches per child, and for Grades 7-12 secondary pupils the capacity shall be established on the basis of 15 inches per child.

9.2 A mixture of the criteria will be used to plan loads when pupils come from both of the above groups.

9.3 Actual bus loads may not exceed this guidance. Standees shall not be permitted under normal circumstances; however, exceptions may be made in emergency situations on a temporary basis.

### **10.0 Loading and Unloading:**

Each school shall have a loading and unloading dock or area, rather than load or discharge passengers onto the street. On school grounds all other traffic is prohibited in the loading and unloading area during school bus loading/unloading operations.

### **11.0 Unique Hazards:**

Unique hazards are considered to be conditions or situations that expose the pedestrian to rare or uncommon traffic dangers. This definition is not intended to include hazards representative of situations which may exist throughout the State.

11.1 Procedures for handling Unique Hazards requests.

11.1.1 When the request for relief originates with parents of pupils affected or vested officials, such as State and local police representatives, Safety Council representatives, and legislators, it shall be presented in writing to the local school authorities.

11.1.1.1 The local school administration shall make every effort to resolve problems identified by the parents, vested officials, or by the local district staff.

11.1.1.2 If the problem cannot be resolved by the local school administration, the request shall be forwarded to the local board of education for appropriate action. If the local board of education has explored all of the

local alternatives to resolve the problem without success, a request by board action shall be made to the Chairman of the Unique Hazards Committee (Education Associate for School Transportation).

11.2 The request to the Unique Hazards Committee must include:

11.2.1 The original request from the parents, vested officials, or the district staff.

11.2.2 A statement of the specific hazard and area involved including maps showing the specific location, points of concern and schools attended.

11.2.3 Number and grades of children involved.

11.2.4 School schedule and the time children would normally be walking to and from school in the area of concern.

11.2.5 List any actions to resolve the problem taken by the local school administration.

11.2.6 List any actions to resolve the problem taken by the local board of education.

11.2.7 List any actions to resolve the problem taken by the town, the city or county.

11.3 The Unique Hazards Committee will process the request and report its findings and recommendations to the Department of Education for their consideration and action. A copy of the report will also be forwarded to the local board of education involved.

11.4 The Unique Hazards Committee consists of representatives from the Department of Transportation; the New Castle County Crossing Guard Division; Delaware Safety Council; Traffic Control Section, the Delaware State Police; and the Department of Education Education Associate for School Transportation (Chairman).

11.5 Unique Hazards Committee Recommendations Appeal Process

11.5.1 Appeals to the Unique Hazards Committee recommendations approved by the State Department of Education must be in writing and from the local board of education.

11.5.2 The local school board shall, before making an appeal, make every effort to resolve the problem. If, in the opinion of the local board of education, reconsideration is needed by the Unique Hazards Committee, the appeal, along with pertinent information, should be forwarded to the Chairman of the Unique Hazards Committee.

11.5.3 The Unique Hazards Committee will submit to the State Department of Education its recommendations regarding the appeal for reconsideration by the local board of education. A copy of the report will also be forwarded to the local board of education involved.

### **12.0 Contingency Plans:**

12.1 Each school district shall have contingency plans for inclement weather, accidents, bomb threats,

hostages, civil emergencies, natural disasters, and facility failures (environmental/water, etc.). These plans shall be developed in cooperation with all those whose services would be required in the event of various types of emergencies.

12.2 The school transportation supervisor, school administrators, teachers, drivers, maintenance and service personnel, students, and others shall be instructed in the procedure to be followed in the event of the contingencies provided for in the plans.

### **13.0 Reimbursements for School Bus Ownership and or Contracts:**

School buses may be either state owned/district operated or contracted.

13.1 Reimbursements for buses operated by the district shall be on the basis of the formula for district operated buses unless otherwise approved by the Department of Education.

13.1.1 Drivers employed by the district shall be paid on the regular payroll of the district. When drivers are employed in a dual capacity there shall be strict accounting for salary division.

13.2 Reimbursement for buses operated on contract shall be on the basis of the approved formula or of a bid if the amount should be less.

13.2.1 Contractors shall be paid regularly ~~at the end in the middle~~ of the month. The total contract shall be paid in ten (10) installments, with the first payment ~~at the end in the middle~~ of September.

13.3 Any transportation costs caused by grade reorganizations and/or pupil re- assignments during the school term after October 1, other than the occupancy of a new school building, shall be at the expense of the local school district unless approved by the Department of Education.

13.4 Bills unpaid from Transportation funding lines that have not been encumbered as of June 30, shall be the responsibility of the local school district.

13.5 Reimbursement to the local school district for contracts or for district- owned or leased buses shall be made on the basis of a Department of Education formula approved by the State Board of Education. This formula shall take into consideration school bus cost and depreciation, fixed charges, operations, maintenance, driver and aide wages. Reimbursement shall be made only for transportation of eligible pupils and exceptions approved by the Department of Education and the State Board of Education.

13.6 Contract allowances for buses when there are Emergency Days (forgiven by the Department of Education with the consent of the State Board of Education), Specially Declared Holidays or Strikes by Teachers.

13.6.1 School bus contractors and school districts shall be paid the normal rate of pay as provided for in their

contract, less the allowance for fuel, maintenance and administration. Driver (including layover allowance) and aide allowances shall be paid.

13.6.2 School bus contractors and school districts with buses assigned to midday kindergarten or vocational-technical trips shall be paid the normal rate of pay as provided for in their contract, less the allowance for fuel.

13.6.3 The additional mileage allowance for contractor and school district buses will not include fuel and maintenance allowances.

13.6.4 The Delmar School District shall be reimbursed on the basis of the additional days necessary to operate as a result of the agreement with the Wicomico County Board of Education for the Delmar, Maryland elementary schools.

### **7 DE Reg. 1546 (5/1/04)**

### **14.0 Transportation Formulas for Public School Districts Operating District, Lease, or Lease Purchase Buses**

Items which are not on this list must be approved by the State Department of Education. Any purchase, commitment, or obligation exceeding the transportation allocation to the district is the responsibility of the district.

14.1 The following items may be used for the purpose of providing pupil transportation in accordance with the regulations of the Department of Education.

14.1.1 Advertising including equipment, routes, supplies, and employees.

14.1.2 Communication systems including two-way radios, cellular phones, and AM-FM radio.

14.1.3 Fuel including gasoline, diesel, propane, kerosene, storage tanks, pumps, additives, and oil.

14.1.4 Leasing/rental including tools, equipment, storage facilities, buses, garage space, and office space.

14.1.5 Office supplies and materials including computer hardware, computer software, data processing, maps, postage, printing, subscription, and measuring devices.

14.1.6 Safety materials including audio-visual aids, restraining vests, belts, safety awards, pins, patches, certificates, wheelchair ramps, wheelchair retainers, printing, handout materials, pamphlets, training materials, subscriptions, and bus seats.

14.1.7 Salary/wages including attendants (aide) as approved by the Department of Education when required in a student's IEP, dispatchers, drivers, maintenance helpers, mechanics, mechanics helpers, office workers, secretarial, substitute drivers, supervisory (other than State supported supervisor or manager), and State provided employee benefits.

14.1.8 Shop facilities including heat, electric, water, sewer, security, fences, lights, locks, guards, bus storage, janitorial supplies, brushes, mops, buckets, soap,

tools, maintenance vehicles, grease, service vehicles, and work uniforms for maintenance staff.

14.1.9 Sidewalks including construction of sidewalks, footbridges, etc. that would be offset in reduced busing costs in 5 years or less, with prior approval of Supervisors of Transportation and School Plant Planning.

14.2 Special 01-60 state funds are provided to school districts for training supplies. This account may also be used for reimbursements for state provided equipment and services.

14.3 Examples of Programs Excluded from State Reimbursement:

14.3.1 Extracurricular Field trips

14.3.2 Transportation of pupils from one school to another for special programs (e.g., music festivals, Christmas programs, etc.)

14.3.3 Transportation of pupils to and from athletic contests, practices, tutoring, band events, etc.

14.3.4 Post-secondary classes

14.3.5 Federal programs

14.3.6 Alternative school transportation when not using a shuttle concept that is as efficient as a shuttle concept.

14.3.7 Choice school transportation outside of the school district or outside of the attendance area of school that the bus normally serves.

14.3.8 Charter school transportation outside of the school district.

#### **15.0 Transportation Allowances for Individuals:**

Requests for transportation allowances shall be made in writing to the Department of Education by districts with justification. This information is necessary in order for the Department to determine a pupil's eligibility. The responsibility for establishing a claim for transportation allowances rests upon the district and claimant.

15.1 All requests shall be signed by the parent or guardian and certified by the superintendent, principal or the principal teacher of the school to be attended. In case of a car pool, only the driver shall be paid.

15.2 Payments or reimbursements for transportation by private means shall be on the following basis:

15.2.1 When adequate public services is available, the public service rates shall be used.

15.2.2 When public service is not available and it is necessary to provide transportation by private conveyance, the allowance shall be calculated at the prevailing state rate per mile for the distance from the home to the school or school bus and return twice a day, or for the actual distance traveled.

15.2.3 Districts shall maintain a monthly record of mileage travelled on a form provided by the Department of Education.

15.2.4 Any exception or variation must be

approved by the Department of Education.

#### **16.0 Cost Records:**

Cost Records shall include the following costs directly attributable to the transportation of eligible students on district school buses:

16.1 Total expenditures by funding code.

16.2 Wages of the Drivers.

16.3 Bus maintenance costs (expenditure for all bus supplies, repairs and routine service).

16.4 Cost of accidents, including bus repairs.

16.5 Indirect costs (all those costs not included in above categories and all costs associated with those who supervise the school transportation operation).

#### **17.0 Bus Replacement Schedules**

The time begins for a new bus when it is placed in service. A bus shall have the required mileage prior to the start of the school year. Once a bus is placed in service for the school year, it will not be replaced unless it is unable to continue service due to mechanical failure.

17.1 The following age and mileage requirements apply:

17.1.1 12th year must be replaced ( it may then be used as a spare); or

17.1.2 150,000 miles no matter age of bus; or

17.1.3 7 years plus 100,000 miles; or

17.1.4 may be replaced after 10 years.

17.2 Contractors shall be reimbursed for their eligible school buses for the annual allowances permitted by the Formula. New (unused) buses placed in service in a year following their manufacture shall begin their 7 years of capital allowances with the rate specified for the year of manufacture and continue in year increments until completed.

17.3 School buses purchased with state-allocated transportation funds may be used by the school districts for purposes other than transportation of pupils to and from school. This type of use shall be at the district's expense and shall occur only during a time when the bus is not making its normal school run.

17.4 In accordance with the Attorney General's opinion of June 18, 1974, regarding the use of buses purchased from State-allocated transportation funds for purposes other than the regular transportation of pupils to and from school, the provisions of Title 14, Section 1056, School Property, Use, Control and Management, shall apply.

#### **18.0 School Bus Inspections:**

The Delaware Motor Vehicle Division has two periods of time when all school bus owners shall have their buses inspected each year, once during January or February and the second yearly inspection during June, July, or August.

**19.0 Transportation for Students with Disabilities:**

Transportation or a reimbursement for transportation expenses actually incurred shall be provided by the State for eligible persons with disabilities by the most economically feasible means compatible with the person's disability subject to the limitations in the following regulations:

19.1 When the legal residence of a person receiving tuition assistance for private placement is within sixty (60) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement for transportation on a daily basis at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a day, or for actual mileage traveled, whichever is less.)

19.2 When the legal residence of a person receiving tuition assistance for private placement is in excess of sixty (60) miles (one way) but less than one hundred (100) miles (one way) from the school or institution to be attended, the person shall be eligible for round trip transportation reimbursement at the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle, or for transportation at State expense which may be provided in lieu of the per mile reimbursement on a weekly basis and on such other occasions as may be required when the school is not in session due to scheduled vacations or holidays of the school or institution. (Round trip mileage is considered to be from the person's legal residence to the school or institution and return twice a week. The weekly basis is to be determined by the calendar of the school or institution to be attended.)

19.3 When the legal residence of a person receiving tuition assistance for private placement is in excess of one hundred (100) miles (one way) of the school or institution to be attended, the person shall be eligible for round trip reimbursement on the basis of one round trip per year from the person's legal residence to the school or institution and return, and at such other times when care and maintenance of the person is unavailable due to the closing of the residential facility provided in conjunction with the school or institution. (Round trip is considered to be from the person's legal residence to the school or institution to be attended and from the school or institution to the legal residence of the person on an annual basis or at such times as indicated above.)

19.4 Reimbursement shall be computed on the per mile rate allowed by the Internal Revenue Service for business use of a private vehicle from the legal residence to the point of embarkation and return to the legal residence and for the actual fares based on the most economical means of transportation from the point of embarkation to the school

or institution to be attended; the return trip shall be computed on the same basis.

19.5 Transportation at State expense may be provided from the legal residence to the point of embarkation in lieu of the per mile reimbursement when it is determined by the local district to be more economically feasible.

19.6 The local district of residence shall be responsible for payment of all such transportation reimbursement when it is determined by the local district to be more economically feasible.

19.7 All requests for payment shall be made by the parent or legal guardian or other person who has control of the child to the transportation supervisor responsible for transportation in the district of residence at a time determined by the district but prior to June 5 of any year.

19.8 When reimbursements are made they shall be based on required documentation to support such payment.

19.9 The legal residence for the purpose of these regulations is defined as the residence of the parent, legal guardian or other persons in the state having control of the child with disabilities and with whom the child actually resides.

19.10 School Transportation Aides: With the approval of the Department of Education, a state funded school bus aide may be provided on school buses serving special schools/ programs for children with disabilities.

**3 DE Reg. 1548 (5/1/00)****20.0 Transportation for Alternative Programs:**

Costs for transportation shall be paid by the state from funds appropriated for student transportation if transportation is provided by extending already existing routes. Shuttle services that extend existing routes will be allowed. Additional routes established to transport students to and from the Alternative Programs or other special transportation designs will not be paid by the state from the school transportation appropriation and shall be included in the Alternative Program budget and be paid from the state allocation for alternative programs and/or the districts 30% share. Planning committees for these programs shall include the transportation supervisors who will be providing services. In addition, those supervisors must coordinate planning with and submit their transportation plans to the Education Associate for School Transportation at the Department of Education.

**21.0 Drugs and Alcohol Testing****21.1 Content:**

21.1.1 Pursuant to 14 Del.C. §2910, this regulation shall apply to the contracting for a program of drug and alcohol testing services necessary to enable public school districts, charter schools, and any person or entity that

contracts with a school district or charter school to provide transportation for State public school students, to comply with such drug and alcohol testing requirements applicable to Delaware public school bus drivers as are now, or may hereafter be, imposed by federal law.

21.1.2 School bus aides shall be subject to the same federal and state drug and alcohol testing requirements as school bus drivers. They shall use non-DOT forms, and the employer shall follow the same procedures set forth herein.

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

“**Alcohol**” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

“**CDL**” means a commercial drivers license issued pursuant to 21 Del.C. Ch. 26.

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

“**DOT**” means the United States Department of Transportation.

“**Drug**” means the controlled substances for which tests are required under the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40, and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

“**Employer**” means school bus contractors or school districts and charter schools when they directly employ school bus drivers.

“**Negative Result**” means a verified negative drug test result or an alcohol test result lower than the Federal standard as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

“**Positive Result**” means a verified positive, adulterated, or substituted drug test result, an alcohol test result equal to or greater than the Federal standard or a refusal to take a drug or alcohol test as defined by the provisions of 49 U.S.C. ' 31306, 49 CFR Part 382 and 49 CFR Part 40.

### 21.3 Federal Regulations

Employers shall comply with the drug and alcohol testing regulations issued by the Secretary of Transportation of the United States pursuant to 49 U.S.C. ' 31306 and located at 49 CFR Part 382 and 49 CFR Part 40.

21.4 Drug and Alcohol testing program requirements:

21.4.1 The employer shall:

21.4.1.1 Be responsible for compliance with all federal and state regulations;

21.4.1.2 Maintain drug and alcohol testing records for their school bus drivers and aides.

21.4.1.2.1 Documentation of drug and alcohol testing results shall flow directly from the Consortium/Third Party Administrator Medical Review

Officer (C/ TPA/MRO), as defined by the provisions of 49 CFR Part 382 and 49 CFR Part 40, to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.4.1.2.2 Documentation of results shall be addressed to the individual, or employer, and the transportation supervisors for the school district, charter school or Department so as to ensure confidentiality.

21.4.2 The Department shall:

21.4.2.1 Bid the contract for the drug and alcohol testing program;

21.4.2.2 Monitor the drug and alcohol testing program;

21.4.3 Any school bus driver or aide who is not in compliance with federal and state drug and alcohol testing requirements shall not perform driver or aide duties until they have satisfied the federal and state requirements.

21.4.3.1 Any school bus driver or aide who has a positive drug or alcohol test result shall comply with DOT regulations regarding a Substance Abuse Professional (SAP) evaluation, treatment and return-to-duty testing before another pre-employment test is allowed.

21.4.3.2 An employer who hires a school bus driver or aide who has previously failed a drug or alcohol test shall ensure that all follow-up drug and/or alcohol testing recommended by the SAP evaluation is implemented.

### 21.5 Pre-employment Testing

21.5.1 School bus drivers with no CDL and aides with no prior experience must have a negative pre-employment drug test, and the employer must receive a negative result before the prospective employee can operate a school bus or serve as an aide.

21.5.2 Bus drivers with a CDL and school bus aides with past experience shall follow DOT rules and regulations to determine the necessity for pre-employment drug testing.

21.5.3 Employers shall provide Federal Drug Testing Custody and Control (CCF) forms to new school bus drivers and non-DOT forms to school bus aides who shall take the forms to the appropriate collection facility where the driver or aide shall be administered a drug test. Forms shall note the employer and school district or charter school.

21.5.4 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.5.5 Positive results shall be forwarded from the C/TPA/MRO to the employer. Copies of positive results shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.5.6 Employers shall notify prospective school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

## 21.6 Random Testing

21.6.1 Employers shall provide the C/TPA/MRO a quarterly list of eligible drivers and aides to be drug and alcohol tested no later than one week before the testing quarter. The list shall note the primary school district or charter school of the drivers and aides. Copies of the lists shall be provided to the school district or charter school transportation supervisors.

21.6.2 The C/TPA/MRO shall send the employer lists of drivers and aides to be tested by the end of the first week of the quarter.

21.6.3 Employers shall provide CCF and alcohol testing forms to the drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug test or a drug and alcohol test. Forms shall note the employer and the school district or charter school.

21.6.4 Employers shall complete the required random tests before the end of the calendar quarter.

21.6.5 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.6.6 Notification of positive results shall be forwarded from the C/ TPA/MRO to the employer. Copies of the positive results forms shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.6.7 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and Department.

## 21.7 Post-Accident and Reasonable Suspicion Testing

21.7.1 Employers shall provide CCF and alcohol testing forms to the school bus drivers and aides who shall take the forms and go immediately to the appropriate collection facility where the driver or aide shall be administered a drug and/or alcohol test. Forms shall note the employer and school district and charter school.

21.7.2 Negative results shall be forwarded from the C/TPA/MRO to the employer.

21.7.3 Notification of positive results shall be forwarded from the C/ TPA/MRO to the employer. Copies of the positive result form shall be sent to the transportation supervisor for the school district or charter school and the Department for accounting and audit purposes.

21.7.4 Employers shall notify school bus drivers and aides in writing of a positive result. Copies of this letter shall be sent to the transportation supervisor for the school district or charter school and the Department.

**3 DE Reg. 942 (1/1/00)**

**6 DE Reg. 643 (11/1/02)**

22.0 The nonpublic, nonprofit schools shall be responsible for the administration and supervision of the

family transportation allowance provided by the State Department of Education.

22.1 The nonprofit, nonpublic school shall act as the administrator and fiscal agent. If the nonpublic, nonprofit school chooses to use an agent to receive payment other than the nonpublic, nonprofit school, written authorization from the governing board of the nonpublic, nonprofit school, such as the board of trustees or the school board, specifying such agent shall be forwarded to the Education Associate for School Transportation in the Department of Education. The use of an agent to accept payment shall not relieve the nonpublic, nonprofit school from its responsibility to administer and supervise the transportation program, to maintain records, or to submit such reports as may be required.

22.2 Those nonpublic, nonprofit schools with families requesting transportation allowances shall have a Federal ID number. The nonpublic, nonprofit school shall submit the initial transportation form, provided by the Department of Education, no later than August 31<sup>st</sup> of each year.

22.3 Transportation allowances shall be made only for those eligible students (Delaware residents attending Delaware schools) who meet residence-to-school proximity guidance of one (1) mile or more for grades K-6 and two (2) miles or more for grades 7-12 and who make application to the nonpublic, nonprofit school for such transportation allowances. These applications for transportation allowances shall be signed by the parent, guardian, or Relative Caregiver and certified by a school administrator. The responsibility for establishing a claim for transportation allowances rests upon the claimant, and all records of this request shall be kept on file in the nonpublic, nonprofit school office. Such records shall be made available for audit by a representative of the Department of Education or the State Auditors.

22.4 The State shall provide the transportation funds to the nonpublic, nonprofit school or designated agent for eligible families. The family shall direct the nonpublic, nonprofit school or designated agent how the funds are to be dispersed. The nonpublic, nonprofit school shall ensure that its tuition, transportation fees, and other costs of attendance are independent of the allowances.

22.5 Payment shall be made only on the basis of one trip to and one trip from nonpublic, nonprofit school daily. Families who transport more than one child to the same school by private conveyance shall be reimbursed on the basis of the number of trips rather than on the number of children transported. No family shall qualify for more than one reimbursement for students it transports to a single school except for families with two or more children, one of whom is enrolled in a half day kindergarten program. In the event of car pools, each family is entitled to reimbursement.

but a family shall not receive more than the annual allowance.

22.6 The nonpublic, nonprofit school or designated agent shall submit the final transportation form provided by the Department of Education no later than October 3rd of each year. All information shall be based on September 30<sup>th</sup> enrollment and eligibility. After the submission of the final transportation form no further adjustments for eligibility shall be made for the remainder of the school year.

22.7 Upon receipt of the initial form required by the Department of Education the first payment shall be made at the end of September. Upon receipt of the final form the remaining payments will be made at the end of October, January, and April. The school shall return funds not distributed to parents, guardians or Relative Caregivers to the State of Delaware.

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**PROFESSIONAL STANDARDS BOARD****14 DE Admin. Code 323**

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

**Repeal Of Regulations****323 Certification Computer Science Teacher****A. Type Of Regulatory Action Requested**

Repeal

**B. Synopsis Of Subject Matter Of Regulation**

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the approval of the State Board of Education to repeal 14 DE Admin. Code §323 Certification Computer Science Teacher. It is necessary to repeal this regulation as it reflects skills which are no longer taught, making the position obsolete.

**~~323 Certification Computer Science Teacher~~  
~~Effective July 1, 1993~~**

~~1.0 The following shall be required for a Standard License for all teachers assigned to teach computer programming grades 9-12 or any aspect of computer science, and is valid in grades 7-8.~~

~~1.1 Bachelor's degree from an accredited college and,~~

~~1.2 Professional Education~~

~~1.2.1 Completion of an approved teacher education program in Computer Science or,~~

~~1.2.2 A current, valid Standard License in any area of secondary education or,~~

~~1.2.3 A minimum of 24 semester hours to include Human Development, Methods of Teaching Computer~~

~~Science, Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching at the secondary (9-12) level in an accredited secondary school and,~~

~~1.3 Specific Teaching Field~~

~~1.3.1 A major in Computer Information Science or,~~

~~1.3.2 A minimum of 12 semester hours of Computer Science course work to include a one-semester course in each of the following areas:~~

~~1.3.2.1 Data Structures and File Processing~~

~~1.3.2.2 Pascal Programming~~

~~1.3.2.3 Assembly Language~~

~~1.3.2.4 Operating Systems and,~~

~~1.3.2.5 A minimum of 6 semester hours of elective course work in Computer Science from courses designated with a Computer Science or Computer Information Science symbol.~~

~~2.0 The following shall be required for a Limited Standard License~~

~~2.1 This License may be issued for a 3-year period at the request of a Delaware public school district to a person who meets the requirements listed below, and who is employed as a teacher of Computer Science/Programming or related areas, to allow for the completion of the requirements stated in 1.0.~~

~~2.1.1 Requirements as stated in 1.1 and 1.2.2, and course work in 3 of the 4 required areas listed in 1.3.2 and,~~

~~2.1.2 Three years of successful classroom teaching experience at the secondary level in an accredited secondary school, while holding a Standard License in the content area taught.~~

~~3.0 Present Computer Teachers Protected~~

~~3.1 Those teachers authorized prior to the adoption of this License by the Delaware State Board of Education (4/89) to teach computer science or programming, and who have the recommendation of the district superintendent shall be authorized to continue in such a teaching assignment in the school district where the assignment was authorized. Authorization to teach in this circumstance does not constitute a License in the area of computer science, nor is such authorization transferable to any other school district. Courses taught for computer literacy or word processing skills do not require certification in computer science.~~

~~4.0 Licenses that may be issued for this position include Standard and Limited Standard.~~

## PROFESSIONAL STANDARDS BOARD

### Educational Impact Analysis Pursuant to 14 Del.C. §122(D)

#### 331 Certification Family And Consumer Sciences Teacher

#### A. Type Of Regulatory Action Requested

Amendment to Existing Regulation

#### B. Synopsis Of Subject Matter Of Regulation

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 331 Certification Family and Consumer Sciences Teacher. The regulation concerns the requirements for a standard certificate for educational personnel. It is necessary to amend this regulation due to changes in statute regarding licensure and certification of educators. The regulation will be renumbered 1566 to reflect its movement to the Professional Standards section of the Department regulations.

Changes in statute in 2000 and again in 2003 necessitated major changes in the licensure and certification system for educators. All educators must have an initial, continuing, or advanced license, as well as a standard certificate, which delineates the area in which an educator may practice. A standard certificate is issued to an educator who holds a license and who has acquired the prescribed knowledge, skill and/or education to practice in a particular area, to teach a particular subject or to instruct a particular category of students. Educators who have graduated from an educator preparation program offered by a Delaware higher education institution approved by the Department, who have achieved a passing score on a PRAXIS II examination, who have obtained National Board for Professional Teaching Standards certification, or who hold a current and valid certificate from another state in the area in which the standard certificate is sought are granted a standard certificate. It is necessary to amend existing requirements for standard certificates to reflect these changes and to provide an interim set of requirements for individuals who are in the process of acquiring the necessary content knowledge or pedagogy under the regulations that are currently in place.

#### C. Impact Criteria

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

particular category of students to help ensure that students are instructed by educators who are highly qualified.

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

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

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

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

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

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

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

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

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

**331-1566 Standard Certificate on Family and Consumer Sciences Teacher**

Effective July 1, 1993

(Formerly Home Economics)

1.0 The following shall be required for the Standard license in grades 9-12 and is valid in grades 5-8 in a middle level school

**1.1 License I – Comprehensive**

1.1.1 Bachelor's degree from an accredited college or university and;

**1.2 Professional Education**

1.2.1 Completion of an approved teacher education program in Family and Consumer Science/ Comprehensive or;

**1.3 Specific Teaching Field**

1.3.1 Completion of a major in Family and Consumer Science/Comprehensive or;

1.3.2 Completion of an approved teacher education program in Family and Consumer Science / Comprehensive or;

1.3.3 A minimum of 36 semester hours in Family and Consumer Science with at least one course in each of the following areas:

1.3.3.1 Housing/Home Furnishings/Home Equipment, Consumer/Family Economics, Home Management, Child Development, Family Life/Parenthood Education, Foods/Nutrition, Textiles/Clothing, and Computer Literacy.

**1.0 Content.**

1.1 This regulation shall apply to the requirements for a Standard Certificate, pursuant to 14 **Del.C.** §1220(a), for Family and Consumer Sciences Teacher.

**2.0 License II – Specialized Areas**

2.1 Bachelor's degree from an accredited college and;

**2.2 Professional Education**

2.2.1 Completion of an approved teacher education program in Family and Consumer Science or;

2.2.2 A minimum of 24 semester hours to include Human Development/Learning, Methods of Teaching Family and Consumer Science (including clinical experience), Identifying/Treating Exceptionalities, Effective Teaching Strategies, Multicultural Education, and student teaching evenly divided between the middle and high school levels and;

**2.3 Specific Teaching Field**

2.3.1 License II A: Child Care and Guidance, Management and Services

2.3.1.1 A minimum of 36 semester hours distributed as follows: 21 semester hours covering the following areas: Child Development, Care and Guidance; Child Care Management (Preschool Education); Family

Life/Parenthood Education, Computer Literacy, and 15 semester hours from the other areas of Family and Consumer Sciences listed in 1.3.3.

2.3.2 License II B: Food Production, Management, and Services

2.3.2.1 A minimum of 36 semester hours distributed as follows:

2.3.2.1.1 21 semester hours covering the following areas: Food Sciences, Human Nutrition, Food Service, Institutional Management, Computer Literacy and; Fifteen semester hours from the other areas of Family and Consumer Sciences listed in 1.3.3.

2.3.3 License II C: Clothing, Apparel, and Textiles Management, Production and Services

2.3.3.1 A minimum of 36 semester hours distributed as follows:-

2.3.3.1.1 21 semester hours covering the following areas:

2.3.3.1.1.1 Commercial Garment and Apparel, Fashion Design, Clothing Construction, Textiles and Clothing Retail, Textiles Testing, Custom Tailoring and Alteration, Fashion/Fabric Coordination, Computer Literacy, and

2.3.3.1.1.2 15 semester hours from the other areas of Family and Consumer Sciences in 1.3.3.

2.3.4 License II D: Institutional, Home Management, and Supporting Services

2.3.4.1 A minimum of 36 semester hours distributed as follows:

2.3.4.1.1 21 semester hours covering the following areas:

2.3.4.1.1.1 Companion to the Aged, Consumer Assisting, Custodial Services, Executive Housekeeping, Homemaker's Aide, Computer Literacy, and 15 semester hours from the other areas of Family and Consumer Sciences in 1.3.3.

**2.0 Definitions.**

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

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

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

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

3.0 Licenses that may be issued for this position include Standard and Limited Standard.

3.1 The limited Standard license may be issued upon

request of a Delaware public school district for a teacher employed in one of these positions who meets the standards set forth in 2.3 of regulation 301 General Regulations for Certification of Professional Public School Personnel.

**3.0** In accordance with 14 Del.C. §1220(a), the Department shall issue a Standard Certificate as a Family and Consumer Sciences Teacher to an applicant who holds a valid Delaware Initial, Continuing, or Advanced License; or Standard or Professional Status Certificate issued by the Department prior to August 31, 2003, and who meets the following requirements:

3.1 Graduating from an NCATE specialty organization recognized educator preparation program offered by a regionally accredited college or university, with a major in Family and Consumer Science; or

3.2 Graduating from a state approved educator preparation program offered by a regionally accredited college or university, with a major in Family and Consumer Science, where the state approval body employed the appropriate NCATE specialty organization standards; or

3.3 ~~1-2-2~~ A minimum of ~~24~~ 36 semester hours with at least one course in each of the following areas:

3.3.1 Human Development/~~Learning~~ ~~Adult~~ Development and Aging;

3.3.2 Methods of Teaching Family and Consumer Science (~~including clinical experience~~);

3.3.3 Identifying/Treating Exceptionalities;

3.3.4 Effective Teaching Strategies;

3.3.5 Multicultural Education; ~~student teaching~~ evenly divided between the middle and high school levels and;

3.3.6 Family Resource Management;

3.3.7 Child Development;

3.3.8 Adolescent Development;

3.3.9 Family Life/Human Sexuality;

3.3.10 Foods/Nutrition;

3.3.11 Textiles/Clothing; and

3.3.12 Curriculum and Evaluation for Family and Consumer Sciences.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code,  
Section 512 (31 Del.C. §512)

### PUBLIC NOTICE

#### Acquired Brain Injury Waiver Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Waiver Program (ABIWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware by August 31, 2004.

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

#### Summary Of Proposed Changes

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed set forth the rules and regulations governing the administration of the ABIWP, and describe the types of services available under the program. The regulations being proposed would also define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

The earliest effective date for the ABIMWP is October 10, 2004.

#### DSS PROPOSED REGULATION #04-18

#### 20700.5 Acquired Brain Injury Medicaid Waiver Program

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a home and community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The earliest effective date for the ABIMWP is October 10, 2004.

20700.5.1 Eligibility Criteria

To be eligible for the ABIMWP, an individual must:

1. be a Delaware resident  
2. be between 18 and 64 years of age (persons who enter the waiver before age 65 may remain in the waiver after age 65)

3. meet the financial and medical criteria for the DSS Long Term Care Medicaid Program and meet nursing facility admission criteria.

Medical eligibility is determined by the Pre-Admission Screening Unit of DSAAPD.

Financial eligibility is determined by DSS.

Program eligibility is determined by DSAAPD. An individual must meet all of the following criteria:

a have an injury to the brain which is not hereditary or congenital (Acquired Brain Injury)

b have a need of one waiver service, in addition to case management, on a monthly basis

c have a physical, cognitive and/or behavioral symptom of an acquired brain injury and currently reside in a nursing facility or is at risk for placement in a nursing facility

d have completed or would no longer benefit from intensive, inpatient, post-trauma or rehabilitation programs

e accept and maintain case management services

20700.5.2 Number of Recipients

There is a maximum number of recipients who may be served under the ABIMWP each fiscal year. The total unduplicated number of recipients served under the program cannot exceed the maximum number approved by the Centers for Medicare and Medicaid Services (CMS). DSAAPD will monitor the number of individuals receiving ABIMWP services so the maximum number will not be exceeded.

20700.5.3 Cost Effective Requirement

In order for an applicant to be eligible for the ABIMWP, the applicant's cost of care cannot exceed the cost of their care if the same applicant was institutionalized. An average monthly cost for institutionalized individuals is used to determine the amount that may be spent on

ABIMWP recipients. A DSAAPD worker determines cost effectiveness.

20700.5.4 Approval

Upon approval, DSS will send a notice of approval to the applicant or the applicant's representative and the ABIMWP provider. The notice to the provider will include the effective date of Medicaid coverage, the patient pay amount, and the Medicaid identification number.

20700.5.5 Post Eligibility Budgeting

See DSSM 20720 and 20995.1 for patient pay calculation.

For recipients residing in Assisted Living facilities, the personal needs allowance is equal to the current Adult Foster Care rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the assisted living provider.

For recipients residing in community-based settings, the personal needs allowance is equal to 250% of the Federal SSI Benefit Rate. Collection of the patient pay amount from the recipient or the recipient's representative is the responsibility of the provider who is providing the most costly service.

20700.5.6 Days Appropriate for Billing

The waiver provider may not bill for any day that the recipient is absent from the program or facility for the entire day. The waiver provider may bill for services for any day that the recipient is present in the facility or program for any part of the day.

If the recipient resides in an assisted living facility, the waiver provider may not bill Medicaid for room and board.

20700.5.7 Hospitalization or Illness

Waiver services will terminate upon hospitalization. There are no Medicaid bed hold days for hospitalization. DSS will redetermine eligibility for continued Medicaid coverage. Waiver services may restart after hospital discharge as determined by DSAAPD staff.

If the recipient is a resident of an assisted living facility, the waiver provider shall not provide services to a recipient that has been bedridden for seven (7) consecutive days unless a physician certifies that the individual's needs may be safely met by the service agreement. If a physician certification is not obtained, waiver services will terminate and DSS will redetermine eligibility for continued Medicaid coverage.

20700.5.8 ABIMWP Services

Acquired brain injury waiver services will include the following:

Case Management

Personal Care

Respite Care

Adult Day Expanded Services

Specialized Medical Equipment and

Supplies

Personal Emergency Response Systems

(PERS)

Assisted Living Program

Behavioral and/or Cognitive Services

## DEPARTMENT OF INSURANCE

Statutory Authority: 18 Delaware Code,  
Sections 311 and 2304  
(18 Del.C. §§311 and 2304))

### PUBLIC NOTICE

#### 301 Audited Financial Reports [Formerly Regulation 50]

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday September 1, 2004, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 301 relating to **AUDITED FINANCIAL REPORTS**.

The purpose for amending Regulation 301 is to reflect the changes to the NAIC model regulation, upon which Regulation 301 is based, that have been adopted by the NIAC in the ten years since the regulation was last amended.

The hearing will be conducted in accordance with 19 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Wednesday September 1, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

#### 1.0 Authority

1.1 This Regulation is promulgated and adopted pursuant to 18 Del.C. §§314, 322(a), 324 and 526, and 29 Del. C. §10117.

#### 2.0 Purpose and Scope

2.1 The purpose of this Regulation is to improve the Delaware Insurance Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and

the results of operations of insurers.

2.2 Every insurer (as defined in Section 3.0) shall be subject to this regulation. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificate holders of directly written policies nationwide at the end of such calendar year shall be exempt from this Regulation for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities except those insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so ~~accepted~~ exempt.

2.3 Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirements of audited financial reports ~~are exempt from filing in Delaware unless such filing is specifically requested by the Commissioner. Any foreign or alien insurer receiving a copy of any notification of adverse financial condition report must file such report with the Commissioner within the time specified in Section 10.0 that has been found by the Commissioner to be substantially similar to the requirements herein, are exempt from this regulation if:~~

2.3.1 A copy of the Audited Financial Report, Report on Significant Deficiencies in Internal Controls, and the Accountant's Letter of Qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in Sections 4, 11 and 12, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance).

2.3.2 A copy of any Notification of Adverse Financial Condition Report filed with the other state is filed with the commissioner within the time specified in Section 10.

2.4 This regulation shall not prohibit, preclude or in any way limit the Commissioner from ordering and/or conducting and/or performing examinations of insurers under the rules and regulations of the Delaware Insurance Department and the practices and procedures of the Delaware Insurance Department.

#### 3.0 Definitions

3.1 "**Audited financial report**" means and includes those items specified in Section 5.0 of this rule.

3.2 "**Accountant**" ~~and or~~ "Independent Certified Public Accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of CPAs and in all states in which he, she or they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

3.3 "**Indemnification**" means an agreement of indemnity or a release from liability where the intent or

effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

3.3 ~~4~~ **"Insurer"** means a licensed insurer as defined in Title 18 **Del. C.** Ch.5 or authorized insurer as defined in Title 18 **Del. C.**, Ch.19.

**4.0 Filing and Extensions for Filing of Annual Audited Financial Reports**

~~4.1~~ All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 with ninety (90) days advance notice to the insurer. ~~4.2~~ Extensions of the June 1 filing date may be granted by the Commissioner for thirty-day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten (10) days prior to the due date in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

**5.0 Contents of Annual Audited Financial Report**

5.1 The aAnnual aAudited fFinancial rReport shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department of Insurance of the state of domicile

5.2 The annual Audited Financial Report shall include the following:

- 5.2.1 Report of independent certified public accountant.
- 5.2.2 Balance sheet reporting admitted assets, liabilities, capital and surplus.
- 5.2.3 Statement of operations.
- 5.2.4 Statement of cash flows.
- 5.2.5 Statement of changes in capital and surplus.
- 5.2.6 Notes to financial statements. These notes shall be those required by the appropriate NAIC *Annual Statement Instructions* and ~~any other notes required by generally accepted accounting principles and shall also include: the NAIC Accounting Practices and Procedures Manual.~~ The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to 18 Del.

C. § 526 with a written description of the nature of these differences.

~~5.2.6.1 A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to 18 Del. C. §526 of the Delaware Insurance Statute with a written description of the nature of these differences.~~

~~5.2.6.2 A summary of ownership and relationships of the insurer and all affiliated companies.~~

5.2.7 The financial statements included in the aAudited fFinancial rReport shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the aAnnual sStatement of the insurer filed with the Commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

**6.0 Designation of Independent Certified Public Accountant**

6.1 Each insurer required by this regulation to file an annual audited financial report must within sixty (60) days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm (generally referred to in this rule as the "accountant") retained to conduct the annual audit set forth in this regulation. Insurers not retaining an independent certified public accountant on the effective date of this regulation shall register the name and address of their retained certified public accountant not less than six (6) months before the date when the first audited financial report is to be filed.

6.2 The insurer shall obtain a letter from the accountant, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the Insurance Code and the rRules and rRegulations of the Insurance Department of the state of domicile that relate to accounting and financial matters and affirming that accountant ~~he~~ will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that Department, specifying such exceptions as he or she may believe appropriate.

6.3 If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns the insurer shall within five (5) business days notify the Department of this event.

6.3.1 The insurer shall also furnish the Commissioner with a separate letter within ten (10) business days of the above notification stating whether in the twenty-four (24) months preceding such event there were any disagreements with the former accountant on any matter of

accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion.

6.3.2 The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

6.3.3 Disagreements contemplated by this section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

6.3.4 The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.

## 7.0 Qualifications of Independent Certified Public Accountant

7.1 The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant ~~that is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant.~~ if the person or firm:

7.1.1 Is not in good standing with the American Institute of CPAs and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

7.1.2 Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as *indemnification*) with respect to the audit of the insurer.

7.2 Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code.

7.3 A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under 18 Del. C. Ch. 59, the mediation or arbitration provisions shall operate at the option of the statutory successor.

7.4 The time during which an accountant may serve shall be subject to the following provisions:

7.4.1 No partner or other person responsible for rendering a report may act in that capacity for more than seven (7) consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two (2) years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

7.4.1.1 Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

7.4.1.2 Premium volume of the insurer; or

7.4.1.3 Number of jurisdictions in which the insurer transacts business.

~~7.3.4 The requirements of this paragraph shall become effective two (2) years after the enactment of this rule.~~

7.54 The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

7.54.1 Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

7.54.2 Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or

7.54.3 Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.

7.65 The Insurance Commissioner, as provided in the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, and 18 Del. C. Ch. 3, may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual ~~a~~Audited fFinancial ~~R~~report made pursuant to this regulation and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this regulation.

## 8.0 Consolidated or Combined Audits

8.1 An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one

hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

8.1.1 Amounts shown on the consolidated or combined ~~a~~Audited ~~f~~Financial ~~r~~Report shall be shown on the worksheet:-

8.1.2 Amounts for each insurer subject to this section shall be stated separately:-

8.1.3 Noninsurance operations may be shown on the worksheet on a combined or individual basis:-

8.1.4 Explanations of consolidating and eliminating entries shall be included:- and

8.1.5 A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the ~~a~~Annual ~~s~~Statements of the insurers.

## **9.0 Scope of Examination and Report of Independent Certified Public Accountant**

~~9.1~~ Financial statements furnished pursuant to Section 5.0 hereof shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the *Financial Condition Examiner's Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

## **10.0 Notification of Adverse Financial Condition**

10.1 The insurer required to furnish the annual Audited Financial Report shall require the independent certified public accountant to report, in writing, within five (5) business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirement of the Delaware Insurance Statute as of that date. ~~10.1.1~~ An insurer that ~~who~~ has received a report pursuant to this paragraph shall forward a copy of the report to the Commissioner within five (5) business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. ~~10.1.2~~ If the independent certified public accountant fails to receive such evidence within the required five (5) business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five (5) business days.

10.2 No independent public accountant shall be

liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with the section 10.1 above paragraph.

10.3 If the accountant, subsequent to the date of the Audited Financial Report filed pursuant to this regulation, becomes aware of facts which might have affected his or her report, the Department notes the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants.

## **11.0 Report on Significant Deficiencies in Internal Controls**

~~11.1~~ In addition to the annual audited financial statements, each insurer shall furnish the Commissioner with a written report prepared by the accountant describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit. SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants) requires an accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. ~~11.2~~ No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within sixty (60) days after the filing of the annual audited financial statements. ~~1.3~~ The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

## **12.0 Accountant's Letter of Qualifications**

12.1 The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

12.1.1 That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the Delaware Board of Public Accountancy, or similar code:-

12.1.2 The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this regulation shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

12.1.3 That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this regulation and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

12.1.4 That the accountant consents to the requirements of Section 13.0 of this regulation and that the accountant consents and agrees to make available for review by the Commissioner, or the Commissioner's his designee or his appointed agent, the workpapers, as defined in Section 13.0:-

12.1.5 A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants;- and

12.1.6 A representation that the accountant is in compliance with the requirements of Section 7.0 of this regulation:-

### 13.0 Definition, Availability and Maintenance of CPA Workpapers

13.1 Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's his examination of the financial statements of an insurer. ~~13.1.1~~ Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer and which support the accountant's his opinion thereof.

13.2 Every insurer required to file an Audited Financial Report pursuant to this regulation, shall require the accountant to make available for review by Department examiners, all workpapers prepared in the conduct of the accountant's his examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Insurance Department or at any other reasonable place designated by the Commissioner. ~~13.3~~ The insurer shall require that the accountant retain the audit workpapers and communications until the Insurance Department has filed a Report on Examination covering the period of the audit but no longer than seven (7) years from the date of the audit report.

13.4~~3~~ In the conduct of the aforementioned periodic review by the Department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the Department. Such reviews by the Department examiners shall be considered investigations and all working papers and communications obtained during the course of

such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.

### 14.0 Exemptions and Effective Dates

14.1 Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this regulation if the Commissioner finds, upon review of the application, that compliance with this regulation would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within ten (10) days from a denial of an insurer's written request for an exemption from this regulation, such insurer may request in writing a hearing on its application for an exemption. Such hearing shall be held in accordance with the Delaware Administrative Procedures Act, 29 Del.C. Ch. 101, and 18 Del.C. Ch. 3 Section 3.0.

14.2 Domestic insurers retaining a certified public accountant on the effective date of this regulation who qualify as independent shall comply with this regulation for the year ending December 31, 1994 and each year thereafter unless the Commissioner permits otherwise.

14.3 Domestic insurers not retaining a certified public accountant on the effective date of this regulation who qualify as independent may meet the following schedule for compliance unless the Commissioner permits otherwise.

14.3.1 As of December 31, 1994, file with the Commissioner:

14.3.1.1 Report of independent certified public accountant;

14.3.1.2 Audited balance sheet;

14.3.1.3 Notes to audited balance sheet.

14.3.2 For the year ending December 31, 1994 and each year thereafter, such insurers shall file with the Commissioner all reports required by this regulation.

~~14.4~~ ~~14.3.3~~ Foreign insurers shall comply with this regulation for the year ending December 31, 1994 and each year thereafter, unless the Commissioner permits otherwise.

### 15.0 Canadian and British Companies

15.1 In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant.

15.2 For such insurers, the letter required in Section 6.0 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to Section 4.0 and shall affirm that the opinion expressed is in conformity with such requirements.

**16.0 Severability Provision**

16.1 If any section or portion of a section of this regulation or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of such provision to other persons or circumstances shall not be affected thereby.

**17.0 Effective Date**

This regulation became effective July 29, 1987. the first amendment became effective on September 12, 1994. This second amendment shall become effective on October 12, 2004.

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 311 (18 Del.C. §311)

**PUBLIC NOTICE****1404 LONG-TERM CARE INSURANCE  
[Formerly Regulation 63]**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a public hearing will be held on Wednesday September 1, 2004, at 10:30 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 1404 (formerly Regulation 63) relating to LONG-TERM CARE INSURANCE.

The purpose for amending Regulation 1404 is to add sections to the regulation dealing with (1) required disclosures of rating practices to consumers, (2) initial filing requirements, (3) premium rate schedule increases and (4) make technical corrections to the existing regulation.

The hearing will be conducted in accordance with 19 Del.C. §311 and the Delaware Administrative Procedures Act, 29 Del.C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Wednesday September 1, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

**1404 LONG-TERM CARE INSURANCE****[Formerly Regulation 63]****1.0 Purpose**

The purpose of this regulation is to implement 18 Del.C. Ch. 71, to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

**2.0 Authority**

This regulation is issued pursuant to the authority vested in the Commissioner under 18 Del.C. §§ 3141 and 7105.

**3.0 Applicability and Scope**

Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies and certificates delivered or issued for delivery in this state on or after the effective date hereof, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

**4.0 Definitions**

For the purpose of this regulation, the terms "Department," "long-term care insurance," "Commissioner," "applicant," "policy" and "certificate" shall have the meanings set forth in 18 Del.C. §§ 102 and 7103.

**5.0 Policy Definitions**

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, or terms of like or similar meaning, unless the terms are defined in the policy and the definitions satisfy the following requirements:

5.1 "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

5.2 "Acute Condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain their health status.

5.3 "Adult day care" means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

5.4 "Chronically ill" means any individual who has been certified by a Licensed Health Care Practitioner as being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a

period of at least ninety (90) days; or who requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

5.5 **"Cognitive impairment"** means a deficiency in a person's short-term or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

5.6 **"Home health care services"** means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

5.7 **"Medicare"** means "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," or "Title I, Part I of Public Law 89-97, as enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

5.8 **"Mental or nervous disorder"** shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

5.9 **"Personal care"** means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring and toileting).

5.10 **"Preexisting Conditions"** shall be defined in accordance with 18 Del.C. § 7105 (C).

5.11 **"Qualified Long-Term Care Insurance Policy"** means a policy that provides coverage for qualified long-term care services that is intended to meet the requirements of §7702B(b) of the Internal Revenue Code of 1986, as amended.

5.12 **"Qualified Long-Term Care Services"** means necessary diagnostic, preventive therapeutic, curing, treating, mitigating and rehabilitative services and Maintenance or Personal Care Services which are required by a Chronically Ill Individual and are provided pursuant to a Plan of Care prescribed by a Licensed Health Care Practitioner.

5.13 **"Skilled nursing care"**, **"intermediate care"**, **"personal care"**, **"home care"**, and other services shall be defined in relation to the level of skill required, nature of the care and the setting in which care must be delivered.

5.14 All providers of services, including but not limited to "skilled nursing facility", "extended care facility", "intermediate care facility", "convalescent nursing home", "personal care facility", and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may

require that the provider be appropriately licensed or certified.

## 2 DE Reg. 2113 (5/1/99)

### 6.0 Policy Practices and Provisions

6.1 Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without providing further explanatory language in accordance with the disclosure requirements of section 7.0 of this regulation.

6.1.1 No such policy issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable." However, the Commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the Commissioner, to best protect the interests of the insureds, if the insurer demonstrates: That renewal will jeopardize the insurer's solvency.

6.1.2 The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, during which period the insurer has no unilateral right to make any change in any provision of the policy or rider, and cannot decline to renew and cannot revise rates except on a class basis in accordance with section 6.1.4 below. This cost disclosure must be approved by the Commissioner and included in any solicitation and also prominently displayed on the initial policy.

6.1.3 Every long-term care insurance policy or certificate issued or delivered in this State must be "guaranteed renewable" as defined in section 6.1.2 above, and contain a cost disclosure section as defined section 6.1.4 below.

#### 6.1.4 Cost Disclosure Information.

6.1.4.1 The following cost disclosure information shall appear in bold print on the cover page of every individual policy and Outline of Coverage issued or delivered in this state: "This policy provides only the following price protection, and no more. Your premiums may not increase by more than X% during any given calendar year and your benefits may not decrease. Any representations that these increases will not take place are unauthorized and shall not be relied upon."

6.1.4.2 The following cost disclosure information shall appear in bold print on the cover page of every certificate and Outline of Coverage issued or delivered in this state: "This policy provides only the following price protection, and no more. Your premiums are guaranteed to remain the same for the first three (3) years this policy is in force. Your premiums may not increase by more than X% during any three year rating period. Insurers will be allowed a carry forward of the initially disclosed maximum premium increase, but said carry forward is lost within twenty-four (24) months if not utilized." Any additional language that

appears under the cost disclosure section must be approved in advance by the Delaware Insurance Department. The purpose of this cost disclosure section is twofold: first, to make crystal clear to the purchaser what the maximum cost will be from year to year, and second, to prohibit the practice of low pricing during the early years of a policy followed by dramatic increases designed to produce a high ratio of cancellations when the group insured reaches that age at which its members are more likely to file claims. Therefore, this section does not permit annual increases to be accumulated and applied all at once. For example, if the price is \$100 in the initial year of the policy and 10% is the represented annual maximum increase, then during the second year of the policy, the maximum allowable price is \$110, the third year of the policy the maximum allowable price is not more than 110% of the price actually charges during year two of the policy. It is not permissible to charge \$121 during the third year of the policy unless \$110 had actually been charged during year two of the policy. In other words, any permitted annual price increase not implemented during a calendar year is thereafter waived and may not be considered in calculating future prices.

6.1.5 In addition to other requirements of this subsection, a qualified long-term care insurance contract shall be guaranteed renewable.

6.2 Limitations and Exclusions. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

6.2.1 Preexisting conditions;

6.2.2 Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;

6.2.3 Alcoholism and drug addiction;

6.2.4 Illness, treatment or medical condition arising out of:

6.2.4.1 War or act of war (whether declared or undeclared);

6.2.4.2 Participation in a felony, riot or insurrection;

6.2.4.3 Service in the armed forces or units auxiliary thereto;

6.2.4.4 Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

6.2.4.5 Aviation (this exclusion applies only to non-fare-paying passengers).

6.2.5 Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's

immediate family and services for which no charge is normally made in the absence of insurance.

6.2.6 No territorial limitations are permissible, except that nothing herein shall preclude limiting benefits for specific services to a specific dollar amount, or to that dollar amount which is reasonable and prevailing in a particular geographic area which is defined and clearly delineated in the original offering or solicitation and the initial policy or certificate, or to specific providers within a particular geographic area. Moreover, nothing herein shall prohibit the limitation of services to a particular geographic area when the insured elects to receive services within that specific geographical area. For purposes of this clause, the location of receipt of services must be within 50 miles of the domicile of the insured at the time of entry therein or that area, including the nearest three nursing homes, whichever distance is greater.

6.2.7 Expenses for services or items available or paid under another long-term care insurance or health insurance policy.

6.2.8 In the case of a qualified long-term care insurance contract expenses for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount.

6.2.9 This section 6.2 is not intended to prohibit exclusions and limitations by type of provider.

6.3 Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization which began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

6.4 Continuation or Conversion.

6.4.1 Group long-term care insurance issued in this state on or after the effective date of this section shall provide covered individuals with a basis for continuation or conversion of coverage.

6.4.2 For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits under the existing policy. The Commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences

between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

6.4.3 For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

6.4.4 For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made.

6.4.4.1 Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the Commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. When the policyholder or certificate holder is no longer in the geographical area of the provider system or available services, the insurer must calculate the financial worth of the group policy and make a cash contribution toward the purchase of any health insurance policy the policyholder may select.

6.4.5 Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer no later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

6.4.6 Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

6.4.7 Continuation of coverage or issuance of a

converted policy shall be mandatory, except where:

6.4.7.1 Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

6.4.7.2 The terminating coverage is replaced no later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

6.4.7.2.1 Providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

6.4.7.2.2 The premium for which is calculated in a manner consistent with the requirements of 6.4.6 of this section.

6.4.8 Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

6.4.9 The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

6.4.10 Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

6.4.11 For the purposes of this section: a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

#### 6.5 Discontinuance and Replacement.

If a group long-term care insurance policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and the premiums charged under the new group policy:

6.5.1 Shall not result in any exclusion for pre-

existing conditions that would have been covered under the group policy being replaced; and

6.5.2 Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

6.6 The premiums charged to an insured for long-term care insurance shall not increase due to either: (1) The increasing age of the insured at ages beyond sixty-five (65); or (2) The duration the insured has been covered under the policy.

#### 6.7 Electronic Enrollment for Group Policies

6.7.1 In the case of a group defined in 18 **Del.C.** § 7103(4)a. any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

6.7.1.1 The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

6.7.1.2 The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

6.7.1.3 The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information is maintained.

6.7.2 The insurer shall make available, upon request of the Commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

#### **2 DE Reg. 2113 (5/1/99)**

### **7.0 Required Disclosure Provisions**

7.1 Renewability. Individual long-term care insurance policies shall contain a renewability provision consistent herewith. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed, subject to section 6.1.1 hereof. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

7.2 Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by

the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

7.3 Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", "reasonable and prevailing", or words of similar import shall include a definition of such terms and an explanation of such terms in its outline of coverage.

7.4 Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."

7.5 Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, except in accordance with 18 **Del.C.** § 7105, shall set forth a description of such limitations or conditions, including any required number of days or confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions of Eligibility for Benefits."

#### 7.6 Disclosure of Tax Consequences.

7.6.1 With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents. This subsection shall not apply to qualified long-term care insurance contracts.

7.6.2 With regard to qualified long-term care insurance policies a disclosure statement shall appear in bold print on the face of the policy and outline of coverage indicating the policy is intended to be a qualified long-term care policy under Section 7702B(b) of the Internal Revenue Code of 1996.

7.7 Benefit Triggers. Activities of daily living and cognitive impairment shall be used to measure an insured's need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled "Eligibility for the Payment of Benefits." Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too shall be specified.

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## **8.0 Required Disclosure of Rating Practices to Consumers**

8.1 This subsection shall apply as follows:

8.1.1 Except as provided in section 8.1.2, this section applies to any long-term care policy or certificate issued in this state on or after March 1, 2005.

8.1.2 For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in 18 Del.C. § 7103(4), which policy was in force at the time this amended regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2006.

8.2 Other than policies for which no applicable premium rate or rate schedule increases can be made, insurers shall provide all of the information listed in this subsection to the applicant at the time of application or enrollment, unless the method of application does not allow for delivery at that time. In such a case, an insurer shall provide all of the information listed in this section to the applicant no later than at the time of delivery of the policy or certificate.

8.2.1 A statement that the policy may be subject to rate increases in the future;

8.2.2 An explanation of potential future premium rate revisions, and the policyholder's or certificateholder's option in the event of a premium rate revision;

8.2.3 The premium rate or rate schedules applicable to the applicant that will be in effect until a request is made for an increase;

8.2.4 A general explanation for applying premium rate or rate schedule adjustments that shall include:

8.2.4.1 A description of when premium rate or rate schedule adjustments will be effective (e.g., next anniversary date, next billing date, etc.); and

8.2.4.2 The right to a revised premium rate or rate schedule as provided in section 8.2.3 if the premium rate or rate schedule is changed;

8.2.5 Premium rate increase information

8.2.5.1 Information regarding each premium rate increase on this policy form or similar policy forms over the past ten (10) years for this state or any other state that, at a minimum, identifies:

8.2.5.1.1 The policy forms for which premium rates have been increased;

8.2.5.1.2 The calendar years when the form was available for purchase; and

8.2.5.1.3 The amount or percent of each increase. The percentage may be expressed as a percentage of the premium rate prior to the increase, and may also be expressed as minimum and maximum

percentages if the rate increase is variable by rating characteristics.

8.2.5.2 The insurer may, in a fair manner, provide additional explanatory information related to the rate increases.

8.2.5.3 An insurer shall have the right to exclude from the disclosure premium rate increases that only apply to blocks of business acquired from other nonaffiliated insurers or the long-term care policies acquired from other nonaffiliated insurers when those increases occurred prior to the acquisition.

8.2.5.4 If an acquiring insurer files for a rate increase on a long-term care policy form acquired from nonaffiliated insurers or a block of policy forms acquired from nonaffiliated insurers on or before the later of the effective date of this section or the end of a twenty-four-month period following the acquisition of the block or policies, the acquiring insurer may exclude that rate increase from the disclosure. However, the nonaffiliated selling company shall include the disclosure of that rate increase in accordance with section 8.2.5.1.

8.2.5.5 If the acquiring insurer in section 8.2.5.4 above files for a subsequent rate increase, even within the twenty-four-month period, on the same policy form acquired from nonaffiliated insurers or block of policy forms acquired from nonaffiliated insurers referenced in section 8.2.5.4, the acquiring insurer shall make all disclosures required by section 8.2.5, including disclosure of the earlier rate increase referenced in section 8.2.5.4.

8.3 An applicant shall sign an acknowledgement at the time of application, unless the method of application does not allow for signature at that time, that the insurer made the disclosure required under sections 8.2.1 and 8.2.5. If due to the method of application the applicant cannot sign an acknowledgement at the time of application, the applicant shall sign no later than at the time of delivery of the policy or certificate.

8.4 An insurer shall use the forms in Appendices B and F to comply with the requirements of sections 8.2 and 8.3 of section 8.

8.5 An insurer shall provide notice of an upcoming premium rate schedule increase to all policyholders or certificateholders, if applicable, at least forty-five (45) days prior to the implementation of the premium rate schedule increase by the insurer. The notice shall include the information required by section 8.2 when the rate increase is implemented

## **8.0 Unintentional Lapse**

8.1 Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

8.1.1 Notice before lapse or termination. No individual long-term care policy or certificate shall be issued

until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person's full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: "Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice."

89.1.1.1 The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

89.1.2 When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in section 89.1.1.1 need not be met until sixty (60) days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

89.1.3 Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to section 89.1.1.1, at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

89.2 Reinstatement. In addition to the requirement in section 89.1.1, a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within

five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.

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**10.0 Initial Filing Requirements**

10.1 This section applies to any long-term care policy issued in this state on or after March 1, 2005.

10.2 An insurer shall provide the information listed in this subsection to the commissioner 30 days prior to making a long-term care insurance form available for sale.

10.2.1 A copy of the disclosure documents required in Section 8; and

10.2.2 An actuarial certification consisting of at least the following:

10.2.2.1 A statement that the initial premium rate schedule is sufficient to cover anticipated costs under moderately adverse experience and that the premium rate schedule is reasonably expected to be sustainable over the life of the form with no future premium increases anticipated;

10.2.2.2 A statement that the policy design and coverage provided have been reviewed and taken into consideration;

10.2.2.3 A statement that the underwriting and claims adjudication processes have been reviewed and taken into consideration;

10.2.2.4 A complete description of the basis for contract reserves that are anticipated to be held under the form, to include:

10.2.2.4.1 Sufficient detail or sample calculations provided so as to have a complete depiction of the reserve amounts to be held;

10.2.2.4.2 A statement that the assumptions used for reserves contain reasonable margins for adverse experience;

10.2.2.4.3 A statement that the net valuation premium for renewal years does not increase (except for attained-age rating where permitted); and

10.2.2.4.4 A statement that the difference between the gross premium and the net valuation premium for renewal years is sufficient to cover expected renewal expenses; or if such a statement cannot be made, a complete description of the situations where this does not occur;

10.2.2.4.4.1 An aggregate distribution of anticipated issues may be used as long as the underlying gross premiums maintain a reasonably consistent relationship;

10.2.2.4.4.2 If the gross premiums for certain age groups appear to be inconsistent with this

requirement, the commissioner may request a demonstration under section 10.3 based on a standard age distribution; and

10.2.2.4.5 Premium schedules.

10.2.2.4.5.1 A statement that the premium rate schedule is not less than the premium rate schedule for existing similar policy forms also available from the insurer except for reasonable differences attributable to benefits; or

10.2.2.4.5.2 A comparison of the premium schedules for similar policy forms that are currently available from the insurer with an explanation of the differences.

10.3 Actuarial information.

10.3.1 The commissioner may request an actuarial demonstration that benefits are reasonable in relation to premiums. The actuarial demonstration shall include either premium and claim experience on similar policy forms, adjusted for any premium or benefit differences, relevant and credible data from other studies, or both.

10.3.2 In the event the commissioner asks for additional information under this provision, the period in section 10.2 does not include the period during which the insurer is preparing the requested information.

**911.0 Prohibition Against Post-Claims Underwriting**

911.1 All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

911.2 If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

911.2.1 If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

911.3 Except for policies or certificates which are guaranteed issue:

911.3.1 The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: Caution: If your answers on this application are incorrect or untrue [company] has the right to deny benefits or rescind your policy.

911.3.2 The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A

copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

911.3.3 Prior to issuance of a long-term care insurance policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one of the following:

911.3.3.1 A report of a physical examination,

911.3.3.2 An assessment of functional capacity,

911.3.3.3 An attending physician's statement, or

911.3.3.4 Copies of medical records.

911.4 A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

911.5 Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the Insurance Commissioner in the form prescribed by the National Association of Insurance Commissioners.

**1012.0 Minimum Standards for Home Health and Community Care Benefits in Long-Term Care Insurance Policies**

1012.1 A long-term care insurance policy or certificate shall not, if it provides benefits for home health or community care services, limit or exclude benefits;

1012.1.1 By requiring that the insured/claimant would need skilled care in a skilled nursing facility if home health care services were not provided.

1012.1.2 By requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home, community or institutional setting before home health care services are covered.

1012.1.3 By limiting eligible services to services provided by registered nurses or licensed practical nurses.

1012.1.4 By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification.

1012.1.5 By excluding coverage for personal care services provided by a home health aide;

1012.1.6 By requiring that the provision of

home health care services be at a level of certification or licensure greater than that required by the eligible service;

‡12.1.7 By requiring that the insured/claimant have an acute condition before home health care services are covered.

‡12.1.8 By limiting benefits to services provided by Medicare-certified agencies or providers;

‡12.1.9 By excluding coverage for adult day care services.

‡12.2 A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's coverage available for nursing home benefits under the policy or certificate. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

‡12.3 Home health care coverage may be applied to non-home health care benefits provided in the policy or certificate when determining the maximum coverage under the terms of the policy or certificate.

### **‡13.0 Requirement to Offer Inflation Protection**

‡13.1 No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

‡13.1.1 Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent (5%); However, if the insured individual shall reject the inflation protection offer as provided for in this section, the insurer may offer other or alternate forms of inflation protection;

‡13.1.2 Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extended until the year in which the offer is made; or

‡13.1.3 Covers a specific percentage of actual or reasonable charges and does not include a maximum specified indemnity amount of limit.

‡13.2 Where the policy is issued to a group, the required offer in section ‡13.1 above shall be made to the

group policyholder; except, if the policy is issued to a group defined in 18 Del.C. § 7103(4), other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

‡13.3 The offer in section ‡13.1 above shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

‡13.4 Insurers shall include the following information in or with the outline of coverage:

‡13.4.1 A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period.

‡13.4.2 Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

‡13.5 Inflation protection benefit increases under a policy which contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

‡13.6 An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

### **‡13.7**

‡13.7.1 Inflation protection as provided in section ‡13.1.1 of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

‡13.7.2 The rejection shall be considered part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans \_\_\_\_\_ and I reject inflation protection.

### **‡14.0 Requirements for Replacement**

‡14.1 Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group defined in 18 Del.C. § 7103(4), the

following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement.

~~14.1.1~~ 14.1.1 Do you have another long-term care insurance policy or certificate in force (including health care services contract, health maintenance organization contract)?

~~14.1.2~~ 14.1.2 Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

~~14.1.2.1~~ 14.1.2.1 If so, with which company?

~~14.1.2.2~~ 14.1.2.2 If that policy lapsed, when did it lapse?

~~14.1.3~~ 14.1.3 Are you covered by Medicaid?

~~14.1.4~~ 14.1.4 Do you intend to replace any of your medical or health insurance with this policy {certificate}?

~~14.2~~ 14.2 Agents shall list any other health insurance policies they have sold to the applicant.

~~14.2.1~~ 14.2.1 List policies sold which are still in force.

~~14.2.2~~ 14.2.2 List policies sold in the last five (5) years which are no longer in force.

~~14.3~~ 14.3 Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING  
REPLACEMENT OF INDIVIDUAL  
ACCIDENT AND SICKNESS OR LONG-TERM CARE  
INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care insurance is a wise decision.

STATEMENT TO APPLICANT BY AGENT  
[BROKER OR OTHER REPRESENTATIVE]:

(Use additional sheets, as necessary).

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny and future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Agent's Signature)

The above "Notice to the Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

~~14.4~~ 14.4 Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING  
REPLACEMENT OF INDIVIDUAL  
ACCIDENT AND SICKNESS OR LONG-TERM CARE

INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within (30) thirty days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company Name)

14.5 Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the name of the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five (5) working days from the date the application is received by the insurer or the date the

policy is issued, whichever is sooner.

14.6 Life Insurance policies that accelerate benefits for long-term care shall comply with this section if the policy being replaced is a long-term care insurance policy. If the policy being replaced is a life insurance policy, the insurer shall comply with the replacement requirements of Regulation 1204. If a life insurance policy that accelerates benefits for long-term care is replaced by another such policy, the replacing insurer shall comply with both the long-term care and the life insurance replacement requirements.

1315.0 Reporting Requirements

1315.1 Every insurer shall maintain records for each Delaware-licensed agent of that agent's amount of replacement sales as a percentage of the agent's total annual sales and the amount of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

1315.2 Each insurer shall report annually by June 30 the ten percent (10%) of its Delaware-licensed agents with the greatest percentages of lapses and replacements as measured by section 1315.1 above.

1315.3 Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

1315.4 Every entity providing long-term care insurance in this state shall file annually as an attachment to its annual statement an exhibit that discloses the total number of long-term care insurance policies, by form number, in force in this state and the total number of policies, by form number, that have lapsed over the previous five years. Companies must provide in-force policy and lapsed policy information in the following manner:

POLICY FORM # \_\_\_\_\_

SOLD	LAPSED	LAPSED	LAPSED	LAPSED	LAPSED	TOTAL
1985	1985	1986	1987	1988	1989	
100	6	21	11	32	14	84
1986	1986	1987	1988	1989		
100	6	11	21	32		70
1987		1987	1988	1989		
100		6	21	28		50
1988			1988	1989		
100			6	14		20
1989				1989		
100				6		6

1315.5 Every insurer shall report, annually by June 30

the number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding calendar year.

~~15.6~~ For purposes of this section, "policy" shall mean only long-term care insurance and "report" shall mean on a statewide basis.

## **146.0 Licensing**

~~146.1~~ No agent is authorized to market, sell, solicit or otherwise contact any person for the purpose of marketing long-term care insurance unless the agent has demonstrated his or her knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses.

~~146.2~~ Agents shall comply with the licensing provisions contained in 18 Del.C. Ch. 17 and Delaware Insurance Department Regulation 504, as the same may be amended or supplemented, §§ 1716(a)(4) and 1725(a) relating to lines of authority and examinations, respectively.

**2 DE Reg. 2113 (5/1/99)**

## **1517.0 Discretionary Powers of Commissioner**

The Commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

~~1517.1~~ The modification or suspension would be in the best interest of the insureds; and

~~1517.2~~ The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

~~1517.3~~

~~1517.3.1~~ The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

~~1517.3.2~~ The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonable related to the special needs or nature of such a community; or

~~1517.3.3~~ The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

## **1618.0 Reserve Standards**

~~1618.1~~ When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with 18 Del.C. § 1113. Claim reserves must also be established in the case when such policy or rider is in claim status. Reserves for policies and riders subject to this

subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

- ~~1618.1.1~~ Definition of insured events;
- ~~1618.1.2~~ Covered long-term care facilities;
- ~~1618.1.3~~ Existence of home convalescence coverage;
- ~~1618.1.4~~ Definition of facilities;
- ~~1618.1.5~~ Existence or absence of barriers to eligibility;
- ~~1618.1.6~~ Premium waiver provision;
- ~~1618.1.7~~ Renewability;
- ~~1618.1.8~~ Ability to raise premiums;
- ~~1618.1.9~~ Marketing method;
- ~~1618.1.10~~ Underwriting procedures;
- ~~1618.1.11~~ Claims adjustment procedures;
- ~~1618.1.12~~ Waiting period;
- ~~1618.1.13~~ Maximum benefit;
- ~~1618.1.14~~ Availability of eligible facilities;
- ~~1618.1.15~~ Margins in claim costs;
- ~~1618.1.16~~ Optional nature of benefit;
- ~~1618.1.17~~ Delay in eligibility for benefit;
- ~~1618.1.18~~ Inflation protection provisions; and
- ~~1618.1.19~~ Guaranteed insurability options.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

~~1618.2~~ When long-term care benefits are provided other than as in section ~~1618.1~~ above, reserves shall be determined in accordance with 18 Del.C. § 1108.

## **1719.0 Loss Ratio**

~~1719.1~~ This section shall apply to all long-term care insurance policies or certificates except those covered under Sections 10 and 20.

~~1719.2~~ Benefits under long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent (60%) for individual policies and at least sixty-five percent (65%) for group policies, calculated in a manner which

provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

1719.2.1 Statistical credibility of incurred claims experience and earned premiums;

1719.2.2 The period for which rates are computed to provide coverage;

1719.2.3 Experienced and projected trends;

1719.2.4 Concentration of experience within early policy duration;

1719.2.5 Expected claim fluctuation;

1719.2.6 Experience refunds, adjustments or dividends;

1719.2.7 Renewability features;

1719.2.8 All appropriate expense factors;

1719.2.9 Interest;

1719.2.10 Experimental nature of the coverage;

1719.2.11 Policy reserves;

1719.2.12 Mix of business by risk classification;

and

1719.2.13 Product features such as long elimination periods, high deductibles and high maximum limits.

1719.3 Section 19.2 shall not apply to life insurance policies that accelerate benefits for long-term care. A life insurance policy that funds long-term care benefits entirely by accelerating the death benefit is considered to provide reasonable benefits in relation to premiums paid, if the policy complies with all of the following provisions:

1719.3.1 The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

1719.3.2 The portion of the policy that provides life insurance benefits meets the nonforfeiture requirements of 18 **Del. C.** § 2929;

1719.3.3 The policy meets the disclosure requirements of 18 **Del. C.** § 7105;

1719.3.4 Any policy illustration that meets the applicable requirements of the Delaware Insurance Department Regulation 1210; and

1719.3.5 An actuarial memorandum is filed with the insurance department that includes:

1719.3.5.1 A description of the basis on which the long-term care rates were determined;

1719.3.5.2 A description of the basis for the reserves;

1719.3.5.3 A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

1719.3.5.4 A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per

unit of benefits, if any;

1719.3.5.5 A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

1719.3.5.6 The estimated average annual premium per policy and the average issue age;

1719.3.5.7 A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

1719.3.5.8 A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying life insurance policy, both for active lives and those in long-term care claim status.

~~17.1~~ Benefits under individual long-term care insurance policies and group policies with fewer than 250 insureds shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. Long-term care benefits provided through the acceleration of the death benefit under a life insurance policy or annuity, where the charge or the premium for the acceleration benefit is identifiable and where the payment of such long-term care benefits cannot result in the decrease of the total amount of benefits payable under the policy (i.e., long-term care benefits plus balance payable upon death), shall be exempt from this section. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

~~17.1.1~~ Statistical credibility of incurred claims experience and earned premiums;

~~17.1.2~~ The period for which rates are computed to provide coverage;

~~17.1.3~~ Experienced and projected trends;

~~17.1.4~~ Concentration of experience within early policy duration;

~~17.1.5~~ Expected claim fluctuation;

~~17.1.6~~ Experience refunds, adjustments or dividends;

~~17.1.7~~ Renewability features;

~~17.1.8~~ All appropriate expense factors;

~~17.1.9~~ Interest;

~~17.1.10~~ Experimental nature of this coverage;

~~17.1.11~~ Policy reserves;

~~17.1.12~~ Mix of business by risk classification; and

~~17.1.13~~ Product features such as long elimination periods, high deductibles and high maximum limits.

~~17.2~~ Every entity providing long-term care

insurance in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

For purposes of this section, policy forms shall be deemed to comply the loss ratio standards if:

17.2.1f or the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and

17.2.2 the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section. An expected third year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

## **20.0 Premium Rate Schedule Increases**

20.1 This section shall apply as follows:

20.1.1 Except as provided in section 20.1.2, this section applies to any long-term care policy or certificate issued in this state on or after September 1, 2005.

20.1.2 For certificates issued on or after the effective date of this amended regulation under a group long-term care insurance policy as defined in Section 18 **Del. C. § 7103(4)**, which policy was in force at the time this amended regulation became effective, the provisions of this section shall apply on the policy anniversary following January 1, 2006.

20.2 An insurer shall provide notice of a pending premium rate schedule increase, including an exceptional increase, to the commissioner at least 30 days prior to the notice to the policyholders and shall include:

20.2.1 Information required by section 8;

20.2.2 Certification by a qualified actuary that:

20.2.2.1 If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated;

20.2.2.2 The premium rate filing is in compliance with the provisions of this section;

20.2.3 An actuarial memorandum justifying the rate schedule change request that includes:

20.2.3.1 Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase; and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing

other forms currently available for sale;

20.2.3.1.1 Annual values for the five (5) years preceding and the three (3) years following the valuation date shall be provided separately;

20.2.3.1.2 The projections shall include the development of the lifetime loss ratio, unless the rate increase is an exceptional increase;

20.2.3.1.3 The projections shall demonstrate compliance with section 20.3; and

20.2.3.1.4 For exceptional increases,

20.2.3.1.4.1 The projected experience should be limited to the increases in claims expenses attributable to the approved reasons for the exceptional increase; and

20.2.3.1.4.2 In the event the commissioner determines as provided in section 4.1.4 that offsets may exist, the insurer shall use appropriate net projected experience;

20.2.3.2 Disclosure of how reserves have been incorporated in this rate increase whenever the rate increase will trigger contingent benefit upon lapse;

20.2.3.3 Disclosure of the analysis performed to determine why a rate adjustment is necessary, which pricing assumptions were not realized and why, and what other actions taken by the company have been relied on by the actuary;

20.2.3.4 A statement that policy design, underwriting and claims adjudication practices have been taken into consideration; and

20.2.3.5 In the event that it is necessary to maintain consistent premium rates for new certificates and certificates receiving a rate increase, the insurer will need to file composite rates reflecting projections of new certificates;

20.2.4 A statement that renewal premium rate schedules are not greater than new business premium rate schedules except for differences attributable to benefits, unless sufficient justification is provided to the commissioner; and

20.2.5 Sufficient information for review of the premium rate schedule increase by the commissioner.

20.3 All premium rate schedule increases shall be determined in accordance with the following requirements:

20.3.1 Exceptional increases shall provide that seventy percent (70%) of the present value of projected additional premiums from the exceptional increase will be returned to policyholders in benefits;

20.3.2 Premium rate schedule increases shall be calculated such that the sum of the accumulated value of incurred claims, without the inclusion of active life reserves, and the present value of future projected incurred claims, without the inclusion of active life reserves, will not be less than the sum of the following:

20.3.2.1 The accumulated value of the initial

earned premium times fifty-eight percent (58%);

20.3.2.2 Eighty-five percent (85%) of the accumulated value of prior premium rate schedule increases on an earned basis;

20.3.2.3 The present value of future projected initial earned premiums times fifty-eight percent (58%); and

20.3.2.4 Eighty-five percent (85%) of the present value of future projected premiums not in section 20.3.2.3 on an earned basis;

20.3.3 In the event that a policy form has both exceptional and other increases, the values in section 20.3.2.2 and 20.3.2.4 will also include seventy percent (70%) for exceptional rate increase amounts; and

20.3.4 All present and accumulated values used to determine rate increases shall use the maximum valuation interest rate for contract reserves as specified by applicable Delaware law or regulation. The actuary shall disclose as part of the actuarial memorandum the use of any appropriate averages.

20.4 For each rate increase that is implemented, the insurer shall file for review by the commissioner updated projections, as defined in section 20.2.3.1, annually for the next three (3) years and include a comparison of actual results to projected values. The commissioner may extend the period to greater than three (3) years if actual results are not consistent with projected values from prior projections. For group insurance policies that meet the conditions in section 20.11, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

20.5 If any premium rate in the revised premium rate schedule is greater than 200 percent of the comparable rate in the initial premium schedule, lifetime projections, as defined in section 20.2.3.1, shall be filed for review [approval] by the commissioner every five (5) years following the end of the required period in section 20.4. For group insurance policies that meet the conditions in section 20.11, the projections required by this subsection shall be provided to the policyholder in lieu of filing with the commissioner.

20.6 Actual v. projected experience.

20.6.1 If the commissioner has determined that the actual experience following a rate increase does not adequately match the projected experience and that the current projections under moderately adverse conditions demonstrate that incurred claims will not exceed proportions of premiums specified in section 20.3, the commissioner may require the insurer to implement any of the following:

20.6.1.1 Premium rate schedule adjustments;  
or  
20.6.1.2 Other measures to reduce the difference between the projected and actual experience.

20.6.2 In determining whether the actual experience adequately matches the projected experience, consideration should be given to section 20.2.3.5, if

applicable.

20.7 If the majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse, the insurer shall file:

20.7.1 A plan, subject to commissioner approval, for improved administration or claims processing designed to eliminate the potential for further deterioration of the policy form requiring further premium rate schedule increases, or both, or to demonstrate that appropriate administration and claims processing have been implemented or are in effect; otherwise the commissioner may impose the condition in section 20.8; and

20.7.2 The original anticipated lifetime loss ratio, and the premium rate schedule increase that would have been calculated according to section 20.3 had the greater of the original anticipated lifetime loss ratio or fifty-eight percent (58%) been used in the calculations described in section 20.3.2.1 and 20.3.2.3.

20.8 Lapse rate review.

20.8.1 For a rate increase filing that meets the following criteria, the commissioner shall review, for all policies included in the filing, the projected lapse rates and past lapse rates during the twelve (12) months following each increase to determine if significant adverse lapsation has occurred or is anticipated:

20.8.1.1 The rate increase is not the first rate increase requested for the specific policy form or forms;

20.8.1.2 The rate increase is not an exceptional increase; and

20.8.1.3 The majority of the policies or certificates to which the increase is applicable are eligible for the contingent benefit upon lapse

20.8.2 In the event significant adverse lapsation has occurred, is anticipated in the filing or is evidenced in the actual results as presented in the updated projections provided by the insurer following the requested rate increase, the commissioner may determine that a rate spiral exists. Following the determination that a rate spiral exists, the commissioner may require the insurer to offer, without underwriting, to all in force insureds subject to the rate increase the option to replace existing coverage with one or more reasonably comparable products being offered by the insurer or its affiliates.

20.8.2.1 The offer shall:

20.8.2.1.1 Be subject to the approval of the commissioner;

20.8.2.1.2 Be based on actuarially sound principles, but not be based on attained age; and

20.8.2.1.3 Provide that maximum benefits under any new policy accepted by an insured shall be reduced by comparable benefits already paid under the existing policy.

20.8.2.2 The insurer shall maintain the experience of all the replacement insureds separate from the

experience of insureds originally issued the policy forms. In the event of a request for a rate increase on the policy form, the rate increase shall be limited to the lesser of:

20.8.2.2.1 The maximum rate increase determined based on the combined experience; and

20.8.2.2.2 The maximum rate increase determined based only on the experience of the insureds originally issued the form plus ten percent (10%).

20.9 If the commissioner determines that the insurer has exhibited a persistent practice of filing inadequate initial premium rates for long-term care insurance, the commissioner may, in addition to the provisions of section 20.8 of this section, prohibit the insurer from either of the following:

20.9.1 Filing and marketing comparable coverage for a period of up to five (5) years; or

20.9.2 Offering all other similar coverages and limiting marketing of new applications to the products subject to recent premium rate schedule increases.

20.10 Sections 20.1 through 20.9 shall not apply to policies for which the long-term care benefits provided by the policy are incidental, as defined in section 4.2, if the policy complies with all of the following provisions:

20.10.1 The interest credited internally to determine cash value accumulations, including long-term care, if any, are guaranteed not to be less than the minimum guaranteed interest rate for cash value accumulations without long-term care set forth in the policy;

20.10.2 The portion of the policy that provides insurance benefits other than long-term care coverage meets the nonforfeiture requirements as set forth by law or regulation including but not limited to the following:

20.10.2.1 18 Del.C. §2929; and

20.10.2.2 Delaware Insurance Department Regulation 1201;

20.10.3 The policy meets the disclosure requirements of 18 Del.C. §§ 7105 and 7106;

20.10.4 The portion of the policy that provides insurance benefits other than long-term care coverage meets the requirements as set forth by law or regulation including but not limited to the following:

20.10.4.1 Policy illustrations as required by Delaware Insurance Department Regulation 1210; and

20.10.4.2 Disclosure requirements in Delaware Insurance Department Regulation 1201.

20.10.5 An actuarial memorandum is filed with the insurance department that includes:

20.10.5.1 A description of the basis on which the long-term care rates were determined;

20.10.5.2 A description of the basis for the reserves;

20.10.5.3 A summary of the type of policy, benefits, renewability, general marketing method, and limits on ages of issuance;

20.10.5.4 A description and a table of each actuarial assumption used. For expenses, an insurer must include percent of premium dollars per policy and dollars per unit of benefits, if any;

20.10.5.5 A description and a table of the anticipated policy reserves and additional reserves to be held in each future year for active lives;

20.10.5.6 The estimated average annual premium per policy and the average issue age;

20.10.5.7 A statement as to whether underwriting is performed at the time of application. The statement shall indicate whether underwriting is used and, if used, the statement shall include a description of the type or types of underwriting used, such as medical underwriting or functional assessment underwriting. Concerning a group policy, the statement shall indicate whether the enrollee or any dependent will be underwritten and when underwriting occurs; and

20.10.5.8 A description of the effect of the long-term care policy provision on the required premiums, nonforfeiture values and reserves on the underlying insurance policy, both for active lives and those in long-term care claim status.

20.11 Sections 20.6 and 20.8 shall not apply to group insurance policies as defined in 18 Del.C. § 7103(4) where:

20.11.1 The policies insure 250 or more persons and the policyholder has 5,000 or more eligible employees of a single employer; or

20.11.2 The policyholder, and not the certificateholders, pays a material portion of the premium, which shall not be less than twenty percent (20%) of the total premium for the group in the calendar year prior to the year a rate increase is filed.

#### **1821.0 Filing Requirement**

Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to 18 Del.C. §7104 it shall file with the Commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

#### **1922.0 Standard Format Outline of Coverage**

This section of the regulation implements, interprets and makes specific, the provisions of 18 Del.C. Section 7105, in prescribing a standard format and the content of an outline of coverage.

1922.1 The outline of coverage shall be a free-standing document, using no smaller than ten point type.

1922.2 The outline of coverage shall contain no material of an advertising nature.

1922.3 Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by

other means which provide prominence equivalent to such capitalization or underscoring.

4922.4 Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

4922.5 Format for outline of coverage:

[COMPANY NAME]  
[ADDRESS - CITY & STATE]  
[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE  
OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate  
Number]

[Except for policies or certificates which are guaranteed issue, the following cautionary statement, or language substantially similar, must appear as follows in the ~~on~~ the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when your applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).

2. Purpose Of Outline Of Coverage. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. FEDERAL TAX CONSEQUENCES.

This [POLICY] [CERTIFICATE] is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

OR

Federal Tax Implications of this [POLICY] [CERTIFICATE]. This [POLICY] [CERTIFICATE] is not intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal

Revenue Code of 1986 as amended. Benefits received under the [POLICY] [CERTIFICATE] may be taxable as income.

4. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) [For long-term care health insurance policies or certificates describe one of the following permissible policy renewability provisions:

(1) Policies and certificates that are guaranteed renewable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS GUARANTEED RENEWABLE. This means you have the right, subject to the terms of your policy, [certificate] to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own, except that, in the future, IT MAY INCREASE THE PREMIUM YOU PAY.

(2) [Policies and certificates that are noncancellable shall contain the following statement:] RENEWABILITY: THIS POLICY [CERTIFICATE] IS NONCANCELLABLE. This means that you have the right, subject to the terms of your policy, to continue this policy as long as you pay your premiums on time. [Company Name] cannot change any of the terms of your policy on its own and cannot change the premium you currently pay. However, if your policy contains an inflation protection feature where you choose to increase your benefits, [Company Name] may increase your premium at that time for those additional benefits.

(b) [For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy:]

(c) [Describe waiver of premium provisions or state that there are not such provisions.]

5. TERMS UNDER WHICH THE COMPANY MAY CHANGE PREMIUMS.

[In bold type larger than the maximum type required to be used for the other provisions of the outline of coverage, state whether or not the company has a right to change the premium, and if a right exists, describe clearly and concisely each circumstance under which the premium may change.]

6. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) [Provide a brief description of the right to return--"free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

7. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the

insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

8. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home. This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

9. BENEFITS PROVIDED BY THIS POLICY.

(a) [Covered services, related deductibles, waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

(d) Eligibility for Payment of Benefits

[Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.] [Any additional benefit triggers must also be explained. If these triggers differ for different benefits, explanation of the triggers should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified.]

10. LIMITATIONS AND EXCLUSIONS.

[Describe:

(a) Preexisting conditions;

(b) Non-eligible facilities and provider;

(c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);

(d) Exclusions and exceptions;

(e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in Number 6 above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

11. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services

will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

(a) That the benefit level will not increase over time;

(b) Any automatic benefit adjustment provisions;

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;

(d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

12. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS. [State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

13. PREMIUM.

(a) State the total annual premium for the policy;

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]

14. ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used;

(b) Describe other important features.]

15. CONTACT THE STATE SENIOR HEALTH INSURANCE ASSISTANCE PROGRAM IF YOU HAVE GENERAL QUESTIONS REGARDING LONG-TERM CARE INSURANCE. CONTACT THE INSURANCE COMPANY IF YOU HAVE SPECIFIC QUESTIONS REGARDING YOUR LONG-TERM CARE INSURANCE POLICY OR CERTIFICATE.

~~19.5.3 TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.~~

~~19.5.3.1[Provide a brief description of the right to return—"free look" provision of the policy.]~~

~~19.5.3.2[Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]~~

~~19.5.4 THIS IS NOT MEDICARE~~

~~SUPPLEMENT COVERAGE.~~ If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide provided by the insurance company.

~~19.5.4.1[For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.~~

~~19.5.4.2[For direct response] [insert company name] is not representing Medicare, the federal government or any state government.~~

~~19.5.5 LONG TERM CARE COVERAGE.~~ Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

~~19.5.6 BENEFITS PROVIDED BY THIS POLICY.~~

~~19.5.6.1[Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]~~

~~19.5.6.2[Institutional benefits, by skill level.]~~

~~19.5.6.3[Non-institutional benefits, by skill level.]~~

[Any benefit triggers must be explained in this section. If these triggers differ for different benefits, explanation of the screen trigger should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or triggers must be explained.]

~~19.5.6.4~~Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.

~~19.5.7LIMITATIONS AND EXCLUSIONS.~~

~~19.5.7.1Describe:~~

~~19.5.7.1.1Preexisting conditions;~~

~~19.5.7.1.2Non-eligible facilities/provider;~~

~~19.5.7.1.3Non-eligible levels of care (e.g., unlicensed providers, care of treatment provided by a family member, etc.);~~

~~19.5.7.1.4Exclusions/exceptions;~~

~~19.5.7.1.5Limitations.~~

This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner

operate to qualify payment of the benefits described in section 19.5.6 above.

~~THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG TERM CARE NEEDS.~~

~~19.5.8RELATIONSHIP OF COST OF CARE AND BENEFITS.~~ Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. As applicable, indicate the following:

~~19.5.8.1That the benefit level will not increase over time;~~

~~19.5.8.2Any automatic benefit adjustment provisions;~~

~~19.5.8.3Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not only by a specified amount or percentage;~~

~~19.5.8.4If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;~~

~~19.5.8.5And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.~~

~~19.5.9TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.~~

~~19.5.9.1Describe the policy renewability provisions;~~

~~19.5.9.2For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;~~

~~19.5.9.3Describe waiver of premium provisions or state that there are not such provisions;~~

~~19.5.9.4State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.~~

~~19.5.10ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.~~

State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.

~~19.5.11PREMIUM.~~

~~19.5.11.1State the total annual premium for the policy;~~

~~19.5.11.2If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium that corresponds to each benefit option.~~

~~19.5.12~~ **ADDITIONAL FEATURES:**

~~19.5.12.1~~ Indicate if medical underwriting is used;

~~19.5.12.2~~ Describe other important features.

~~{COMPANY NAME}~~

~~{ADDRESS - CITY & STATE}~~

~~{TELEPHONE NUMBER}~~

**2 DE Reg. 2113 (5/1/99)**

**203.0 Filing Requirements for Advertising**

~~203.1~~ Prior to use, every insurer, health care service plan or other entity providing long-term care insurance in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State whether through written, radio or television medium to the Insurance Commissioner of the State Delaware for review and approval by the Commissioner.

**~~24.0~~ Standards for Marketing**

~~24.1~~ Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

~~24.1.1~~ Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

~~24.1.2~~ Establish marketing procedures to assure excessive insurance is not sold or issued.

~~24.1.3~~ Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following: "Notice to Buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."

~~24.1.4~~ Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.

~~24.1.5~~ Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this section ~~24.0~~.

~~24.1.6~~ If the state of Delaware is the state in which the policy or certificate is delivered or issued for delivery, the insurer shall, at solicitation, provide written notice to the prospective policyholder or certificate holder that the *Elderinfo* Program, a senior counseling program approved by the Commissioner, is available and the name, address and telephone number of the *Elderinfo* Program.

~~24.2~~ In addition to the practices prohibited in **18 Del.C. Ch. 23, Unfair Trade Practices**, the following acts and practices are prohibited:

~~24.2.1~~ Twisting. Knowingly making any

misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

~~24.2.2~~ High Pressure Tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

~~24.2.3~~ Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

**2 DE Reg. 2113 (5/1/99)**

**~~225.0~~ Suitability**

~~225.1~~ This section shall not apply to life insurance policies that accelerate benefits for long-term care.

~~225.2~~ Every insurer, health care service plan or other entity marketing long-term care insurance ("insurer") shall:

~~225.2.1~~ Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

~~225.2.2~~ Train its agents in the use of its suitability standards; and

~~225.2.3~~ Maintain a copy of its suitability standards and make them available for inspection upon request by the Commissioner.

~~225.3~~ Procedures required.

~~225.3.1~~ To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

~~225.3.1.1~~ The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

~~225.3.1.2~~ The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

~~225.3.1.3~~ The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

~~225.3.2~~ The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in section ~~225.3.1~~ above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall

contain, at a minimum, the information in the format contained in Appendix B, in not less than twelve (12) point type. The insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the Commissioner.

2225.3.3 A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

2225.3.4 The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

2225.4 The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

2225.5 Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

2225.6 At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C, in not less than twelve (12) point type.

2225.7 If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

2225.8 The insurer shall report annually to the Commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

**2 DE Reg. 2113 (5/1/99)**

### **2326.0 Standards for Benefit Triggers**

2326.1 A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of

the activities of daily living or the presence of cognitive impairment.

### **2326.2 Activities of Daily Living**

2326.2.1 Activities of daily living shall include at least the following as defined in section 5.0 and in the policy:

- 2326.2.1.1 Bathing;
- 2326.2.1.2 Continence;
- 2326.2.1.3 Dressing;
- 2326.2.1.4 Eating;
- 2326.2.1.5 Toileting; and
- 2326.2.1.6 Transferring;

2326.2.2 Insurers may use activities of daily living to trigger covered benefits in addition to those contained in section 2326.2.1 as long as they are defined in the policy.

2326.3 An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in sections 2326.1 and 2326.2.

2326.4 For purposes of this section the determination of a deficiency shall not be more restrictive than:

2326.4.1 Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or

2326.4.2 If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

2326.5 Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

2326.6 Long term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

2326.7 The requirements set forth in this section shall be effective (12 months after adoption of this provision) and shall apply as follows:

2326.7.1 Except as provided in section 2326.7.2, the provisions of this section apply to a long-term care policy issued in this state on or after the effective date of the amended regulation.

2326.7.2 For certificates issued on or after the effective date of this section, under a group long-term care insurance policy as defined in 18 Del.C. § 7103(4)a, the provisions of this section shall not apply.

**2 DE Reg. 2113 (5/1/99)**

### **247.0 Prohibition Against Pre-Existing Conditions and Probationary Periods in Replacement Policies or Certificates**

247.1 If a long-term care insurance policy or

certificate replaces another long-term care insurance policy or certificate, the replacing insurer shall waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care insurance policy or certificate to the extent that similar exclusions have been satisfied under the original policy.

### **258.0 Requirement to Deliver Shopper's Guide**

**258.1** A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or one developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

**258.1.1** In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

**258.1.2** In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

**258.2** Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under 18 Del.C. § 7105 (j).

### **2629.0 Requirement to Offer Nonforfeiture Benefit**

**2629.1** No policy or certificate may be delivered or issued for delivery in this state unless the insurer also offers to the policyholder or certificateholder the option to purchase a policy that provides for nonforfeiture benefits to the defaulting or lapsing policyholder or certificateholder.

This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

**2629.1.1** For purpose of this section, attained age rating is defined as a schedule of premiums starting from the issue date which increases with increasing age at least one percent per year to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).

**2629.1.2** For purposes of this section, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefit shall be determined as specified in section **2629.1.3**.

**2629.1.3** The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home

benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of section **2629.2**.

~~26.1.4 No Policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:~~

#### 2629.1.4 Effective Dates

29.1.4.1 The nonforfeiture benefit shall begin not later than the end of the third year following the policy or certificate issue date. The contingent benefit upon lapse shall be effective during the first three (3) years.

29.1.4.2 Section 29.1.4.1 notwithstanding, ~~No~~ policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

2629.1.4.2.1 The end of the tenth year following the policy or certificate issue date; or

2629.1.4.2.2 The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

2629.1.5 Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

**2629.2** All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

**2629.3** There shall be no difference in the minimum nonforfeiture benefit as required under this section for group and individual policies.

**2629.4** The requirements set forth in this section shall become effective on May 1, 1997, except for certificates issued on or after the effective date of this section under a group long-term care insurance policy as defined in 18 Del.C. § 7103, which policy was in force at the time this amended regulation became effective.

**2629.5** Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of section ~~4618.0~~ treating the policy as a whole.

#### 2629.6 Rejection of nonforfeiture benefit.

2629.6.1 A nonforfeiture benefit as provided in sections **2629.1.2** and **2629.1.3** shall be included in a long-term care insurance policy or certificate unless an insurer obtains a rejection of a nonforfeiture benefit signed by the policyholder or certificateholder as required in this section.

2629.6.2 The rejection shall be considered part of the application and shall state: I have reviewed the outline

of coverage and the nonforfeiture benefit as described therein. Specifically, I have reviewed Plan \_\_\_\_\_ and I reject the nonforfeiture benefit.

**2629.7** Nonforfeiture benefits for qualified long-term care policies shall meet the following requirements:

**2629.7.1** The nonforfeiture provision shall be appropriately captioned:

**2629.7.2** The nonforfeiture provision shall provide a benefit available in the event of a default in the payment of any premiums and shall state that the amount of the benefit may be adjusted subsequent to being initially granted only as necessary to reflect changes in claims, persistency and interest as reflected in changes in rates for premium paying contracts approved by the Commissioner Secretary of the Treasury for the same contract form; and

**2629.7.3** The nonforfeiture provision shall provide at least one of the following:

- 2629.7.3.1** Reduced paid-up insurance;
- 2629.7.3.2** Extended term insurance;
- 2629.7.3.3** Shortened benefit insurance; or
- 2629.7.3.4** Other similar offerings approved

by the Commissioner.

**2629.8** If the required offer of a nonforfeiture benefit is rejected, the insurer shall provide the contingent benefit upon lapse described below. In the event that a group policyholder elects to make the nonforfeiture benefit an option to the certificateholder, a certificate shall provide either the nonforfeiture benefit or the contingent benefit upon lapse.

**2629.8.1** The contingent benefit on lapse shall be triggered every time an insurer increases the premium rates to a level which results in a cumulative increase of the annual premium set forth below based on the insured's issue age, and the policy or certificate lapses within 120 days of the due date of the premium so increased. Unless otherwise required, policyholders shall be notified at least thirty (30) days prior to the due date of the premium reflecting the rate increase.

Triggers for a Substantial Premium Increase  
Percent Increase Over

Issue Age	Initial Premium
29 and under	200%
30-34	190%
35-39	170%
40-44	150%
45-49	130%
50-54	110%
55-59	90%
60	70%
61	66%
62	62%
63	58%
64	54%

65	50%
66	48%
67	46%
68	44%
69	42%
70	40%
71	38%
72	36%
73	34%
74	32%
75	30%
76	28%
77	26%
78	24%
79	22%
80	20%
81	19%
82	18%
83	17%
84	16%
85	15%
86	14%
87	13%
88	12%
89	11%
90 and over	10%

**2629.8.2** On or before the effective date of a substantial premium increase as defined in section **2629.8.1** above, the insurer shall:

**2629.8.2.1** Offer to reduce policy benefits provided by the current coverage without the requirement of additional underwriting so that required premium payments are not increased;

**2629.8.2.2** Offer to convert the coverage to a paid-up status with a shortened benefit period in accordance with the terms of section **2629.5**. This option may be elected at any time during the 120-day period referenced in section **2629.8.1**; and

**2629.8.2.3** Notify the policyholder or certificateholder that a default or lapse at any time during the 120-day period referenced in section **2629.8.1** shall be deemed to be the election of the offer to convert in section **2629.8.2.2** above.

**2629.8.2.4** The contingent benefit upon lapse shall begin not later than the end of the third year following the policy or certificate issue date.

**2730.0 Permitted Compensation Arrangements**

**2730.1** An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate which shall not exceed thirty-five percent (35%) of the total premium paid for that policy year.

2730.2 No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than twenty-five percent (25%) of the total premium paid for that policy year for the sale of a replacement long-term care insurance policy or certificate.

2730.3 For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration or any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

**2831.0 Penalties**

28-1 In addition to any other penalties provided by the laws of this state, any insurer and any agent found to violate any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

**2932.0 Separability**

29-1 If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

**303.0 Effective Date**

303.1 This regulation became effective July 30, 1990, except Section 13 became effective July 1, 1993. Amendment #1 adopted nonforfeiture benefits (Section 2326) on December 23, 1996, to become effective on May 1, 1997. Amendment #2 became effective on March 22, 1999 to become effective 120 days thereafter. Amendment #3 adding sections 8.0, 10.0 and 20.0 shall become effective on January 1, 2005~~Subsequent amended provisions of this Regulation shall become effective 120 days from the Commissioner's order amending this regulation.~~

**See 2 DE Reg. 2113 (5/1/99)**

APPENDIX A

RESCISSION REPORTING FORM FOR  
**LONG-TERM CARE POLICIES  
FOR THE STATE OF DELAWARE  
FOR THE REPORTING YEAR 19[ ]**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Due: March 1 annually

Instructions:

**The purpose of this form is to report all rescissions of long-term care insurance policies or certificates. Those rescissions voluntarily effectuated by an insured are not required to be included in this report. Please furnish one form per rescission.**

Policy Form #	Policy and Certificate #	Name of Insured	Date of Policy Issuance	Date/s Claim/s Submitted	Date of Rescission
---------------	--------------------------	-----------------	-------------------------	--------------------------	--------------------

Detailed reason for rescission: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (please type)

\_\_\_\_\_  
Date

**Appendix B  
Long Term Care Insurance  
Personal Worksheet**

People buy long-term care insurance for a variety of reasons. Some don't want to use their own assets to pay for long-term care. Some buy insurance to make sure they can choose the type of care they get. Others don't want their family to have to pay for care or don't want to go on Medicaid. But long term care insurance may be expensive, and may not be right for everyone.

By state law, the insurance company must fill out part of the information on this worksheet and ask you to fill out the rest to help you and the company decide if you should buy this policy.

**Premium Information**

Policy Form Numbers \_\_\_\_\_

The premium for the coverage you are considering will be [\$\_\_\_\_\_ per month, or \$\_\_\_\_\_ per year,] [a one-time single premium of \$\_\_\_\_\_.]

Type of Policy (non cancellable/guaranteed renewable): \_\_\_\_\_

**The Company's Right to Increase Premiums:**

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums on this policy in the future, provided it raises rates for all policies in the same class in this state.] [Insurers shall use appropriate bracketed statement. Rate guarantees shall not be shown on this form.]

Rate Increase History

The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The company has never raised its rates for any long-term care policy it has sold in this state or any other state.] [The company has not raised its rates for this policy form or similar policy forms in this state or any other state in the last 10 years.] [The company has raised its premium rates on this policy form or similar policy forms in the last 10 years. Following is a summary of the rate increases.]

Questions Related to Your Income

How will you pay each year's premium? [ ] From my Income [ ] From my Savings/Investments [ ] My Family will Pay [ ] Have you considered whether you could afford to keep this policy if the premiums went up, for example, by 20%? What is your annual income? (check one) [ ] Under \$10,000 [ ] \$10-20,000 [ ] \$20-30,000 [ ] \$30-50,000 [ ] Over \$50,000 How do you expect your income to change over the next 10 years? (check one) [ ] No change [ ] Increase [ ] Decrease If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

Will you buy inflation protection?(check one) [ ] Yes [ ] No If not, have you considered how you will pay for the difference between future costs and your daily benefit amount? [ ] From my Income [ ] From my Savings/Investments [ ] My Family will Pay

How are you planning to pay for your care during the elimination period? (check one) [ ] From my Income [ ] From my Savings/Investments [ ] My Family will Pay

Question Related to Your Savings and Investments

Not counting your home, about how much are all of your assets (savings and investments) worth? (check one) [ ] Under \$20,000 [ ] \$20,000-\$30,000 [ ] \$30,000-\$50,000 [ ] Over \$50,000 How do you expect your assets to change over the next ten years? (check one)

[ ] Stay about the same [ ] Increase [ ] Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care. Disclosure Statement

Table with 2 columns: [ ] The information provided above accurately describes my financial situation. [ ] I choose not to complete this information.

Signed: (Applicant) (Date) [ ] I explained to the applicant the importance of completing this information. Signed: (Agent)(Date) Agent's Printed Name: [Note: In order for us to process your application, please return this signed statement to [name of company], along with your application.]

[My agent has advised me that this policy does not appear to be suitable for me. However, I still want the company to consider my application.

Signed: [ ] (Applicant) (Date) Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or agent sale.

The company may contact you to verify your answers.

Drafting Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

Appendix C

Things You Should Know Before You Buy Long-Term Care Insurance

Long-Term Care Insurance 2A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.

2[You should not buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting Note: For single premium policies, delete this bullet; for noncancellable policies, delete the second

sentence only.

<sup>2</sup>The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.

Medicare <sup>2</sup>Medicare does not pay for most long-term care.

Medicaid <sup>2</sup>Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.

<sup>2</sup>Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.

<sup>2</sup>When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house and furniture, a living allowance, and some of your joint assets.

<sup>2</sup>Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.

Shopper's Guide <sup>2</sup>Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.

Counseling <sup>2</sup>Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Drafting Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

Drafting Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

No. I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE DATE

Please return to [issuer] at [address] by [date].

## Appendix D

### Long-Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
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 1 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 September 13, 2004 beginning at 6:00 p.m., in Down's Lecture Hall, Delaware Technical & Community College, Terry Campus, 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 1 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 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 Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**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. After years of working under the Regulations which were first implemented in the 1960's, numerous deficiencies were found to be present within the same. Given this, the Department concluded that significant revisions to its regulations governing the site evaluation, siting density, design, installation and operation of on-site wastewater treatment and disposal systems were required.

In considering these findings, the Department determined that the adoption of effective on-site wastewater treatment and disposal regulations was the proper course of action. Through a process that included considerable staff research, public meetings and presentations, public workshops, a public hearing and a hearing officer's report along with four draft versions of this Regulation 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 this Regulation, 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 system design criteria were established to enable proper waste treatment and disposal to occur in locations where conventional systems would be inappropriate. With the advent of mortgage companies requiring wastewater system inspection prior to loan approval, the Department took a proactive approach to create a new licensee category (Class H System Inspector) and standardized format to perform the inspection so all inspections will be evaluated under the set of criterion. 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, inspection 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), 6026(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 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 used to replace the filter aggregate and distribution pipe in an absorption facility.

2.01020 Alteration: Any physical change in the design capacity 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.

2.01040 Alternative Treatment 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 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 to Use Existing System Permit: A written document issued by the Department which states that an on-site wastewater treatment and disposal system appears adequate to serve the purpose for which a particular application is made.

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 which carries wastewater from a building to the 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.

2.01100 Commercial Facility: Any structure or building, or any portion thereof, other than a residential dwelling.

2.01110 Community System: An on-site wastewater treatment and disposal system which will serve more than three (3) lots or parcels or more than three (3) condominium units or more than 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 applicant, is accompanied by all required exhibits, detailed plans and specifications, and required fee.

2.01123 Confined Aquifer: An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself and

containing ground water. An aquifer containing ground water which is 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, alteration, repair or replacement of an on-site wastewater treatment and disposal system.

2.01132 Construction Report: A report prepared by the contractor and submitted to the Department within 10 calendar days after the absorption facility has been completely installed.

2.01136 Conventional On-Site Wastewater Treatment and Disposal Systems: Gravity, low pressure pipe, pressurized, sand-lined and elevated sand mound.

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, manufactured home community, or multi-unit housing project.

2.01170 Director: The Director of the Division of Water Resources for the State of Delaware or his/her authorized representative.

2.01180 Disposal Area: The entire area used for the absorption facility.

2.01190 Distribution Box: A box for distributing wastewater equally to separate distribution laterals of the absorption facility.

2.01200 Distribution System: Piping or other devices used in the distribution of wastewater within the absorption facility. (Also referred to as distribution laterals)

2.01220 Dosing: The pumped or regulated flow of wastewater to the absorption facility.

2.01230 Dosing Chamber: A receptacle for retaining wastewater until pumped or regulated to the absorption facility.

2.01235 Down Gradient: An area that has a lower potentiometric surface (hydraulic head) than a comparative reference point.

2.01240 Dwelling: Any structure or building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including but not limited to, houses, houseboats, boathouses, mobile homes, manufactured homes, travel trailers, hotels, motels, apartments, and condominiums.

2.01245 Easement: An interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

2.01247 Effluent Filter: A device placed in the outlet compartment of a septic tank which conforms to ANSI/NSF Standard 46 for the purpose of removing particulate matter before the effluent enters the absorption facility.

2.01250 Effluent Line: The pipe beginning at the treatment unit or septic tank and terminating at the 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 broken system component where immediate action is necessary to 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 Wastewater Treatment and Disposal System: Any installed on-site 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 satisfactorily with system design provided for in Department 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  $\frac{3}{4}$ " to  $2\frac{1}{2}$ " in any dimension and clean and free of 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: The state or any county, municipality, or any part 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 that has not come into contact with toilet waste. Greywater includes wastewater from bathtubs, showers, bathroom wash basins, clothes washing machines, laundry tubs and other wastewater 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 that is accessible for periodic removal.

2.01360 Groundwater: Any water naturally found under the surface of the earth.

2.01370 Holding Tank: A watertight receptacle used to store wastewater prior to being removed by a licensed waste hauler.

2.01375 Hydraulic Conductivity: A specific mathematical coefficient (quantitative) that relates the rate of water movement to the hydraulic gradient. A term of Darcy's law  $Q = KA_i$  where K represents hydraulic conductivity and is the current standard for measuring a soils ability to transmit water.

2.01380 Impervious Strata and Formation: An underground or surface layer of soil or rock which will not allow water to pass through it at a rate permissible for subsurface disposal and having a percolation rate slower than one hundred 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 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) 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) Geologic stratum or soil zone in which the permeability of the stratum or zone effectively limits the movement of water

2.01430 Lot: A portion of a subdivision or parcel of land.

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 adequately renovating or hydraulically eliminating the wastewater it is receiving as evidenced by, but not limited to, the following conditions:

(a) Failure of a system to accept wastewater discharge or the backup of wastewater into the structure served by the system.

(b) Direct discharge of wastewater to the surface of the ground, surface water, or groundwater without adequate renovation.

2.01450 Manifold: A pipe with numerous branches to convey 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 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 that is saturated with water less than 30 days (cumulative) per year in normal years and contains less than 20 percent (by weight) organic carbon; or is saturated for greater than 30 days or more cumulative in normal years, and has an organic carbon content (by weight) of less than 18 percent if the mineral fraction contains 60 percent or more clay; or less than 12 percent if the mineral fraction contains no clay.

2.01475 Monitor Well: A well installed for the sole purpose of the determination of subsurface conditions and collecting groundwater samples.

2.01480 Mottling: Soil irregularly marked with spots of different colors that vary in number and size which may indicate poor aeration, lack of drainage and the upper extent of the seasonal high water table.

2.01495 Observation well: A well used for the sole purpose of determining groundwater levels.

2.01500 On-Site Wastewater Treatment and Disposal System: Conventional or alternative, wastewater treatment and disposal systems installed or proposed to be installed on land of the owner or on other land to which the owner 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 licenses.

2.01510 Owner: The person who has a vested legal or equitable title to real or personal property, including an on-site wastewater treatment and disposal system.

2.01530 Percolation rate: The rate of water movement through a soil. Percolation rate is usually measured and assigned on the basis of elapsed time per unit volumetric water level drop. The most commonly used unit for expressing percolation rate is minutes per inch (mpi).

2.01540 Permeability: The property of a soil horizon that enables the soil to transmit gases, liquid, or other substances.

2.01550 Permit: The written document approved by the Department which authorizes the installation of a system or any part thereof, which may also require operation and maintenance of the system.

2.01560 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 the elevation of the water table or potentiometric surface.

2.01570 Platy Structure: Soil aggregates that are developed predominantly along the horizontal axes, laminated and flaky.

2.01580 ~~75~~ Pollution or Water Pollution: Any alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.

2.01581 Potentiometric Surface: A surface that represents the level to which water will rise in tightly cased wells.

2.01582 Pressure Dosed Capping Fill: A pressurized on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed between 12 and 23 inches into the natural soil below a soil cap of a specified

depth and texture.

2.01587 Pressure Dosed Full Depth: A pressurized on-site wastewater treatment and disposal system which maintains a 36 inch separation distance above the limiting zone where the trench or bed is installed 24 inches into the natural soil.

2.01590 Pressurized Distribution: A network of piping with orifices designed to evenly distribute wastewater under pressure through the entire absorption facility.

2.01595 Primary Treatment: A wastewater treatment process that takes place in a tank and allows those substances in wastewater that readily settle or float to be separated from the water being treated.

2.01600 Professional Engineer: A person registered by the Delaware Association of Professional Engineers to practice professional engineering in the State of Delaware.

2.01610 Professional Geologist: A person registered by the Delaware State Board of Registration of Geologists to practice professional geology in the State of Delaware.

2.01620 Project Site: The total area within the property lines of an individual lot or within the division lines of a parcel or subdivision.

2.01630 Public Health Hazard: A condition whereby there are sufficient types and amounts of biological, chemical or physical, including radiological, agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogens, viruses, bacteria, parasites, toxic chemicals, and radioactive isotopes.

2.01635 Redoximorphic Features: Characteristic soil patterns formed by the reduction, translocation and oxidation of iron and manganese oxides. The occurrence of these features may be indicative of poor drainage, or lack of aeration associated with the upper most extent of the seasonal high water table.

2.01640 Repair: Any modification to an existing on-site wastewater treatment and disposal system necessary to fix a problem or malfunction.

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.

2.01680 Sand Lined System: A type of seepage trench or seepage bed soil absorption facility constructed in the sandy fill material below the natural soil surface and may require pressurization. The fill material is used to replace a natural impermeable or slowly 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).

2.01700 Scarifying: Scraping or loosening the bottom and sidewall soil surfaces in the preparation of percolation test holes, seepage trenches, beds, or similar excavations.

2.01710 Scum: A mass of sewage solids floating at the surface of 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) is seasonally or permanently saturated.

2.01725 Secondary Treatment: A combination of unit processes that will consistently remove 85% or more of the organic and suspended material in domestic wastewater and produce an effluent of sufficient quality to satisfy the following requirements; monthly average effluent BOD<sub>5</sub> and TSS concentrations of 30 mg/L; daily maximum effluent BOD<sub>5</sub> and TSS concentrations of 45 mg/L.

2.01730 Secretary: Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee.

2.01750 Seepage Bed: An absorption 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~~ A covered pit with a porous lining into which wastewater is discharged and allowed to seep or leach into the surrounding soil and is preceded by a septic tank, where a cesspool is not.

2.01760 Seepage Trench: A soil absorption 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 wastewater from a structure or part thereof and is designed and constructed so as to permit settling of solids from the liquid, digestion of the organic matter by detention, and discharge of the liquid portion into an absorption facility.

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 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.

2.01860 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: A vertical cross-section of a soil that shows the various soil horizons. Soil drainage or moisture status are soil characteristics that can be inferred from the soil profile.

2.01880 Soil Structure: The combination or arrangement of primary soil particles into secondary compound particles or clusters, the principle forms of which are: platy (laminated); prismatic (prisms with rounded tops); blocky (angular or subangular); granular and columnar.

2.01890 Soil Texture: The grain sizes that comprise a soil consisting of three textural classes; sand, silt and clay. Field methods for judging the texture of a soil consist of forming a cast of soil, both dry and moist, in the hand and pressing a ball of moist soil between thumb and finger.

(a) The major textural classifications are observed and can be determined in the field as follows:

(1) Sand: Individual grains can be seen and felt readily. Squeezed in the hand when dry, this soil will fall apart when the pressure is released. Squeezed when moist, it will form a cast that will hold its shape when the pressure is released, but will crumble when touched.

(2) Sandy Loam: Consists largely of sand, but has enough silt and clay present to give it a small amount of stability. Individual sand grains can be readily seen and felt. Squeezed in the hand when dry, this soil will readily fall apart when the pressure is released. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(3) Loam: Consists of an even mixture of sand and of silt and a small amount of clay. It is easily crumbled when dry and has a slightly gritty yet fairly smooth feel. It is slightly plastic. Squeezed when moist, it forms a cast that will not only hold its shape when the pressure is released, but will withstand careful handling without breaking. The stability of the moist cast differentiates this soil from sand.

(4) Silt Loam: Consists of a moderate amount of fine grades of sand, a small amount of clay, and a large quantity of silt particles. Lumps in a dry, undisturbed state appear quite cloddy, but they can be pulverized readily; the soil then feels soft and floury. When wet, silt loam runs together in puddles. Either dry or moist, casts can be handled freely without breaking. When a ball of moist soil is pressed between thumb and finger, it will not press out into a

smooth, unbroken ribbon, but will have a ribbon appearance.

(5) Clay Loam: Consists of an even mixture of sand, silt, and clay, which breaks into clods or lumps when dry. When a ball of moist soil is pressed between the thumb and finger, it will form a thin ribbon that will readily break, barely sustaining its own weight. The moist soil is plastic and will form a cast that will withstand considerable handling.

(6) Silty Clay Loam: Consists of a moderate amount of clay, a large amount of silt, and a small amount of sand. It breaks into moderately hard clods or lumps when dry. When moist, a thin ribbon or one-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.

(9) Silt: Consists largely of silt with very small amounts of clay. The soil feels very silky or floury. When pressed between thumb and finger, it will readily pulverize without forming a ribbon.

(10) Loamy Sand: Is predominately composed of sand, but has enough clay so that it can be formed into a weakly developed ball with careful handling.

(11) Sandy Clay Loam: The predominant particle size found within this soil textural class is sand, although it contains relatively high levels of clay with lesser amounts of silt. When moist, it will form a thin ribbon that does not readily break.

(12) Sandy Clay: Consists of relatively even amounts of sand and clay with very small amounts of silt. When moist, a thin ribbon can readily be formed between thumb and finger without considerable deformation or movement.

(b) These and other soil textural characteristics are defined as shown in the United States Department of Agricultural Textural Classification Chart which is hereby adopted as part of these Regulations (see Exhibit B). This textural classification chart is based on the Standard Pipette Analysis as defined in the United States Department of Agriculture, Soil Conservation Service Soil Survey Investigations Report No. 1.

(c) Throughout these Regulations where soil textural classes and other terminology describing soils are utilized, definition and interpretation shall be in accordance

with the latest edition of Soil Survey Manual (Handbook 18), Field Book for Describing and Sampling Soils, and Field Indicators of Hydric Soils in the Mid-Atlantic States as published by either the U.S. Department of Agriculture or the U.S. Environmental Protection Agency.

2.01910 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.

2.01930 Subdivision: Any tract or parcel of land which has been divided into two or more lots for which development is intended.

2.01940 System: Refers to an on-site 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 examine a soil profile in order to assess soil permeability and depth to a seasonal high water table using soil texture, structure, and redoximorphic features as a basis for assessing site suitability.

2.01960 Topography: 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.

2.01975 Upgradient: An area that has a higher potentiometric surface (hydraulic head) than a comparative reference point.

2.01980 Wastewater: 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 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 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: 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 in conformance with all applicable Regulations; and

(b) Connecting all plumbing fixtures on that property, from which wastewater is or may be discharged, to a central wastewater system or on-site 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

3.02000 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, manufactured home or other structure capable of discharging wastewater on-site unless such person has a valid license and 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 program establishes standards no less stringent than the standards established in 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 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 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 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 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.

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. The licensing program shall provide the issuance of licenses as follows;

(a) Class A - Percolation Tester: The Class A 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 conventional on-site wastewater treatment and disposal systems which utilize gravity distribution systems for seepage beds and seepage trenches and lift pump stations as provided for in these Regulations.

(c) Class C - Designer: The Class C license authorizes the design of conventional and alternative on-site wastewater treatment and disposal systems and all pressure distribution systems.

(d) Class D - Site Evaluator: The Class D license authorizes the performance of site soil evaluations, percolation and/or permeability tests or hydraulic conductivity 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 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 and data collection to make determinations regarding the present operational condition of on-site wastewater treatment and disposal systems.

4.02000 It shall be necessary to have the Class A, Class B, Class C, Class D, Class E, Class F, Class GB, ~~and~~ Class GC and Class H licenses in order to engage in the specified

activities under Section 4.01000 of these Regulations except the Class H license will become effective June 1, 2005.

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, E, F, ~~and/or~~ GB and/or 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.

4.03050 In the event an applicant fails to receive a passing grade on the examination, he/she shall be so notified by the Board within 30 days. The applicant may re-apply for a subsequent examination only after completion of a training course approved by the On-Site System Advisory Board (OSSAB). The examination may be taken no more than twice in a twelve (12) month time period.

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 verify the individual's knowledge and competency in the field of on-site 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 verify the individual's knowledge and competency in the field of site evaluations for on-site 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 qualifications statement, on appropriate Department forms, which verify the individual's knowledge and competency of the application and requirements of these Regulations; and

(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 for general liability and \$100,000 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) Furnishes certification of training completed under the National Association of Waste Transporters (NAWT) certification, Pennsylvania Septage Management Association (PSMA) certification, Delaware Technical & Community College certification program or as approved by

the Board.

4.06250 Responsibilities of Licensees

4.06260 Any Class D licensed site evaluator 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, ~~and 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 the work carried out by their employees; and

(d) Submit to the Department within ten (10) days of completion of a system, a Construction Report on forms provided by the Department, signed by the licensed contractor; and

(e) Notify the Department 24 hours prior to construction start up to receive an authorization number, except newly licensed contractors must notify the Department 48 hours prior to initial six (6) construction start ups 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) ~~Remove all wastewater from the appropriate tanks in accordance with the guidelines as set forth by the Department; and~~

(h) ~~May repair, add or replace septic tank and/or holding tank risers, and baffles, lids, distribution box lids and effluent filters on or within septic tanks~~

4.06430 All Class H System Inspectors shall perform:

(a) All inspections of on-site wastewater treatment and disposal systems shall be submitted to the Department on forms approved by the Department (See Exhibit A for the inspection form example and guidelines). 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)~~ eight (8) 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 evaluator, ~~and~~ one (1) member who is a Class E contractor, one (1) member who is a Class F Liquid Waste Hauler and one (1) member who is a Class H System Inspector. 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, ~~and~~ 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 site evaluators 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 Class A, B, C, D, E, F, GB, ~~or~~ 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 or;

(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 twenty (20) days of notification, the person shall notify the Secretary, in writing, if an appeal pursuant to 7 Del.C., Chapter 60, Section 6008 is to be requested. If no 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 December 31<sup>st</sup> of each year. A license may be renewed yearly without examination for an ensuing year provided the licensee makes application for renewal by November 30<sup>th</sup> 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 treatment and disposal system. Any person applying for a permit to install a new or replacement on-site wastewater treatment and disposal system shall first obtain a site evaluation report prepared by a Class D site evaluator. The Department shall conduct site evaluations only for Home Rehabilitation Loan Programs (HRLP), block grant households, State Revolving Fund (SRF) sites and other qualifying income programs with similar criteria.

5.01020 Site evaluations performed for the purpose of siting large/community systems refer to the necessary criteria in Section 5.12000.

5.01025 Each report shall be completed in full and be accompanied, at a minimum, by approval page(s) (excluding sites not suitable for conventional on-site wastewater treatment and disposal systems (OWTDS)), report page(s), site drawing, soil profile notes, zoning verification form and the appropriate fee. The site evaluation report shall contain specific site conditions or limitations including, but not limited to, isolation and separation distances, slopes, existing wells, cuts and fills, and unstable landforms.

5.01028 The Class D site evaluator shall specify on the approval page the type of on-site wastewater treatment and disposal system that may be constructed in the acceptable on-site disposal area as indicated on the site drawing. Any other on-site wastewater treatment and disposal options available in the evaluated area shall be specified by the Class D site evaluator. The evaluator 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 drawing drawn to scale showing the information referenced in Section 5.01080. All site

~~drawings~~ drawings 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 shall be noted on the site drawing when no land survey boundary stakes or markers are readily identifiable in the field, or if the site drawing is not based on a survey conducted by a licensed land surveyor. However, if the site drawing is based on a survey conducted by a licensed land surveyor, the property corner stakes or markers will suffice for identification of the parcel. Site drawing(s) shall be based on an even number scale, not to exceed 1 inch equals 100 feet. Any site drawing exceeding the dimensions of 8.5 inches X 11 inches must be submitted in duplicate.

5.01035 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 site evaluator. The following procedure shall be used in all cases when on-site or adjacent well(s) cannot be located. For instances where the on-site or adjacent well(s) are below ground and the homeowner or adjacent property owner states that the well is located in a certain area, this information shall suffice for verification of well location. Any well(s) that can not be verified must be researched through the Water Supply Section of the Department. The search attempts to locate any well(s) that are near the affected parcel. If, after this search is completed, the well location(s) cannot be identified the Class D site evaluator can state "records were researched under this property owner's name and no information was found". The Department then sends a letter to the adjacent well owners notifying them of the need to locate their well(s) due to the future installation of an on-site wastewater treatment and disposal system. If no response is rendered within fifteen (15) days of receipt then the new system is to be designed to maximize the isolation distance from the property line.

5.01040 A site evaluation prescription shall follow an approach that includes consideration of topography, available area, slope gradient and uniformity, soil profile (thickness and depth of each horizon, color, percolation, absorption rate, redoximorphic features, texture (see Exhibit B), and zones of saturation), drinking water supplies, bodies of water, and shellfish growing areas. All suitable soils within the evaluated area shall be delineated regardless of isolation distances, encumbrances and easement requirements as well as any of the above conditions which may exist.

5.01045 All soil borings, holes and/or pits shall be flagged, identified and adequately shown on the site drawing.

5.01060 In describing the soils and soil profile, the site evaluator 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 drawing and observations of the following site characteristics, if present:

- (a) Parcel size, location map of project site, configuration and approximate dimensions
- (b) Slope - percent and direction
- (c) Surface streams, springs or other bodies of water and their definition (i.e. shellfish, intermittent, ephemeral, etc.)
- (d) Existing wells within 150 feet of approved soils area
- (e) Escarpments
- (f) Cuts and fills
- (g) Unstable landforms
- (h) 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). The geographic coordinates of each representative soil boring, a minimum of two (2), must be determined by a global positioning system. The coordinates should be reported in the following format – Latitude DD.ddddd & Longitude DD.ddddd – (5 decimal places are required for accuracy).
- (i) Zones of saturation (as indicated by redoximorphic features)
- (j) Approved soils area(s)
- (k) Encumbrances
- (l) Central wastewater or water systems availability
- (m) Any other applicable information such as hydric soils (if any recorded state or federal wetlands) or refer to Statewide Wetland Mapping Project (SWMP)
- (n) Any overhead utilities
- (o) Existing dwellings

5.01100 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 these 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 Environmental Scientist with a soil science background. If the report is in non-compliance, the Class D site evaluator shall be notified. The Class D 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 site evaluator. 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) working days of receipt. (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 approved, the report shall be 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 should be reported to the Department prior to conducting the site evaluation.

5.01125 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.

5.01140 The approved site evaluation report shall indicate the type of the initial and type of replacement system for which the site is approved.

5.01170 Technical regulation changes shall not invalidate an approved site evaluation but may require the use of a different type of system.

5.01172 The approved site evaluation shall be valid for five (5) years from the date of the Department's approval or the adoption of this Regulation revision unless a subdivision base plan restricting well and on-site wastewater treatment and disposal system locations has been approved by the Department and recorded in the local Recorder of Deeds Office. After the five (5) year period, a site evaluation as outlined in Section 5.01080, shall be submitted to the Department for approval. This site evaluation will be reviewed as outlined in Sections 5.01100 and 5.01105.

5.01176 Supplemental soil information submitted after the original site evaluation has been approved shall include a revised approval page, report page, soil profile notes, and revised site drawing locating supplemental borings/test pits. In all cases, the new report shall be approved provided all criteria for approval are met. 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 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 drawing.

5.01180 The Department shall issue a notice of its intention to deny a site evaluation when appropriate. Alternative technologies for on-site wastewater treatment and disposal systems, if appropriate, may be included in the letter. The applicant still maintains his/her right to appeal the decision of the Secretary, within twenty (20) days of receipt, in accordance with 7 Del.C., Chapter 60, Section 6008.

5.01190 A property owner or agent has the option to use observation wells and/or piezometers to demonstrate that redoximorphic features are not an indication of zones of saturation. The following procedures for the use of observation wells/piezometers to determine the depth and

duration of zones of saturation shall be implemented.

#### 5.01200 Observation Wells/Piezometers

5.01210 Determining the zones of saturation using observation wells and/or piezometers follow these procedures:

(a) The property owner or authorized agent shall notify the Department, in writing, of the intent to use observation wells and/or piezometers to determine the zones of saturation.

(b) At least three (3) observation wells and/or piezometers shall be installed and monitored at a site. If, in the judgment of the Department, more than three (3) are needed, the property owner or agent shall be notified in writing within ten (10) days of receipt of the letter of intent.

(c) The design illustrated in Exhibit Y shall be used when constructing observation wells and/or piezometers. At least two (2) wells/piezometers shall extend to a depth of six (6) feet, at a minimum, below ground surface. However, with layered mottled soil over permeable unmottled soil, at least one (1) well/piezometer shall terminate within the mottled layer. Site conditions may, in some cases, require monitoring at greater depths. It shall be the responsibility of the Class D site evaluator to determine the depth of the observation wells and/or piezometers for each site and, if in doubt, they shall request the guidance of the Department.

(d) All observation wells are required to be permitted in accordance with the current *Regulations Governing the Construction and Use of Wells*.

(e) Observation wells and/or piezometers shall be installed by or under the direct on-site supervision of a well driller licensed by the State of Delaware in accordance with the current *Regulations Governing the Construction and Use of Wells*.

(f) Monitoring of water levels shall be done by an individual who is licensed by the 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 December 1<sup>st</sup> through May 15<sup>th</sup> 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 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 monitoring period is defined as a period that has plus or minus one standard deviation of the long term mean annual precipitation. (Long term refers to 30 or more years). Also, the mean monthly precipitation during a normal period must be plus or minus one standard

deviation of the long term monthly precipitation for 8 of the 12 months. For the most part, normal years can be calculated from the mean annual precipitation.

(i) The Department shall field check the monitoring periodically during the time of expected saturated soil conditions at their discretion.

(ii) The 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/piezometers. If the water level in the fresh boring, after twenty four (24) hours, presents a discrepancy with the water level observed in the well/piezometer, then at the discretion of the Department, the data may be declared invalid. If the data is declared invalid, then the Department will notify the owner in writing of the invalid data within ten (10) days of determination.

5.01220 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. An approved site evaluation report shall be issued indicating the appropriate system type(s).

5.01230 Observation wells and/or piezometers are required to be abandoned in accordance with the current *Regulations Governing the Construction and Use of Wells*.

#### 5.01300 Site Interpretation Advisory Council

5.01310 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 and Class D site evaluators regarding questions of interpretation of soil and site information for the purpose of siting on-site wastewater treatment and disposal systems.

5.01320 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 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 wastewater treatment and disposal systems.

(c) The recognition and documentation of site limitations for the placement of on-site wastewater treatment and disposal systems (i.e. existing wells and on-site wastewater treatment and disposal systems) in accordance with standard practice in Delaware.

5.01330 The Site Interpretation Advisory Council shall be appointed by the Secretary and consist of the following members:

(a) Four (4) non-governmental Class D 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, NRCS, USDA.

(d) A Manager of the 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.

5.01340 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.

5.01350 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.

5.01360 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.

5.01370 Any decision rendered by the Council shall be considered by the Secretary and may be 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.

5.01380 The Council shall designate one of its members representing the private sector to serve as chairperson for a period of one year. The chairperson, or his/her designee, serving as the principal contact person between the Council and a Manager of the Ground Water Discharges Section (GWDS), shall perform the following duties:

(a) Call and preside at all Council meetings. (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 GWDS Manager calling a Council meeting when appropriate. (This function may also be performed by the 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 GWDS Manager for signature and returned for mailing within three (3) working days.)

5.01390 The following services shall be furnished by the DNREC to facilitate the operation of this Council:

(a) A Manager of the 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 GWDS Manager within ten (10) working days.

(c) A GWDS Manager, at the request of the Council chairperson, 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.

5.01400 The Council shall restrict reviews to those submittals directly affected by the expertise of the NRCS 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 Class D site evaluator.

5.01410 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.

5.02015 Permit applications must be designed in accordance with the prescribed system type and design considerations as specified on an approved site evaluation or Soils Investigative Report for that parcel.

5.02020 Applications for permits shall be made by the owner of the property or the owner's legally authorized agent on forms approved by the Department.

5.02030 An application is complete only when the form is completed in full, signed by the owner or the owner's legally authorized agent, accompanied by all required exhibits (provided an approved site evaluation report is on file) and fee. Also, a form from the appropriate governmental unit having jurisdiction and a statement from the local governmental unit approving the activity by zoning. Incomplete applications will not be processed and may be returned.

5.02050 The Department shall deny the permit if:

(a) The application contains false information;

(b) The proposed system would not comply with these Regulations;

(c) The proposed system, if constructed, would violate a Department moratorium;

(d) A central wastewater system which can serve the proposed 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 wastewater flow of not more than five hundred (500) gallons within two hundred (200) feet;

(b) For a proposed subdivision or group of two (2) to five (5) single family dwellings, or equivalent projected daily 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.

5.02075 When a central wastewater system is deemed both physically and legally available, as outlined in Sections 5.02060 and 5.02070, the connection must occur within a timeframe as set forth by the wastewater system owner. The existing on-site wastewater treatment and disposal system must be abandoned in accordance with Section 5.06000.

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. The Department shall either issue or return 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 two (2) years from the date of issuance. If the system has been started the Department may issue a limited time period extension. A one year extension 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, a Class E system contractor must submit a certification document, if necessary, prepared by a Class D site evaluator on a form provided by the Department which states whether the area is suitable for installation or not. If not suitable, 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 make a decision on the application which it determines will best implement the purposes of 7 **Del.C.**, Chapter 60 and these Regulations. 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 appeals process in accordance with 7 Del. C., Chapter 60, Section 6008.

#### 5.04000 Inspections

##### 5.04001 Construction 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 Class E contractor shall notify the Department. The 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 an ~~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 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 ten (10) calendar 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.

5.04033 Inspections performed by Class C designers shall conform to guidelines established by the Department.

5.04037 In situations where the Class C designer is not comfortable approving a system, he/she is to contact the Department immediately.

##### 5.04040 Existing System Inspections

5.04045 An existing system inspector shall be either:

(a) An employee of the Ground Water Discharges Section; or

(b) A Class H system inspector; or

(c) Any person officially authorized by the Department to perform inspections of on-site wastewater treatment and disposal systems.

#### 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, the conditions of the permit, and a construction report is submitted to the Department.

5.05030 A system shall be backfilled (covered) when:

(a) The 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

5.05040 Corrections necessary to meet requirements for satisfactory completion shall be made within seven (7) calendar days after written notification by the Department, unless otherwise required.

5.05060 A Certificate of Satisfactory Completion shall be valid for a period of two (2) years from the date of issuance. After the two (2) year period, the Regulations for Authorization to Use an Existing System Permit or Alteration Permit apply.

5.05070 Denial of a Certificate of Satisfactory Completion may be appealed in accordance with 7 Del.C., Chapter 60, Section 6008.

5.05080 If the system has been placed into operation without the required Certificate of Satisfactory Completion, a Notice of Non-Compliance shall be issued to the owner and must be corrected within ten (10) calendar days or system must be abandoned in accordance with Section

5.06020.

5.06000 Abandonment of Systems

5.06005 General Requirements

(a) All systems shall be abandoned by a Class E contractor or other governmental appointee.

(b) Within ten (10) calendar days of abandonment, the Class E contractor 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 contractor.

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; 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

5.06020 Procedures for Abandonment:

(a) The septic tank, cesspool or other treatment unit shall be pumped by a Class F liquid waste hauler to remove all of the contents;

(b) The septic tank, cesspool or other treatment unit shall be removed or filled with 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 Permit shall be made on forms provided by the Department and shall be accepted only when the forms are complete.

5.07020 No person shall place into service, change the use of or increase the projected daily wastewater flow above design standards into an existing system without first obtaining an Authorization to Use an Existing System Permit or Alteration, Repair or Replacement Permit as appropriate.

5.07030 An Authorization to Use an Existing System Permit is not required:

(a) Where there is a replacement of a manufactured home with similar units in manufactured home communities with on-site wastewater treatment and disposal systems when an annual inspection has taken place by the Department or an authorized designee certifying that the existing system(s) is/are not malfunctioning.

(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 wastewater flow does not exceed the design flow.

5.07040 For changes in the use of an existing system where no increase in wastewater flow above design standards is projected, or where the design flow is not exceeded an Authorization to Use an Existing System Permit shall be issued if:

(a) The existing system is not malfunctioning; and

(b) All isolation distances from the existing system can be maintained; and

(c) 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 to Use an Existing System Permit shall be withheld until such time as alterations and/or repairs to the system are made.

5.07060 For changes in the use of a system where projected daily wastewater flows would be increased above design criteria an Alteration, Repair or Replacement permit must be obtained.

5.07070 The Department may allow a manufactured home to use an existing system serving another dwelling, in order to provide temporary housing for a family member suffering hardship, by issuing an Authorization 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

(c) The application is for a manufactured home; and

(d) Evidence is provided that a hardship manufactured home placement is allowed on the subject property by the governmental agency that regulates zoning, land use planning, and/or building; and

(e) A full system replacement area is available according to an approved site evaluation

5.07080 An Authorization 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 Department shall impose conditions in the Authorization to Use an Existing System Permit that are necessary to ensure protection of public health. If the system fails and additional replacement area is no longer available,

the manufactured home 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 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
- (b) An approved site evaluation report has been obtained; and
- (c) The proposed installation will be in 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.

#### 5.09000 Repair and Replacement of Existing Systems

5.09010 Steps to repair a malfunctioning system shall be initiated immediately and continued until system repair is completed. 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 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 system components, as specifically defined in these Regulations (see Section 2.01260), may be made without first obtaining a permit provided 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 that cannot be repaired shall be abandoned in accordance with these Regulations.

#### 5.10000 Alternative Wastewater Treatment and Disposal Systems

5.10010 Alternative technology on-site wastewater treatment and disposal systems may be appropriate for areas 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 wastewater treatment and disposal systems, which may benefit the people 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 designer to incorporate into a design.

5.10020 No person shall construct an alternative on-site wastewater treatment and disposal system without obtaining a permit from the Department.

5.10030 Applications for alternative systems shall be made to the Department. The application shall be complete, signed by the owner and accompanied by the required fee. The application shall include detailed system design specifications, 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 Alternative System Permits where:

- (a) Soils, climate, ground water, or topographical conditions are indicating the seasonal high water table or a limiting condition is encountered deeper than ten (10) inches below the soil surface or observation well data determines the seasonal high water table is deeper than ten (10) inches; and
- (b) A specific acceptable backup alternative is available in the event of system failure; and
- (c) 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
- (e) The system will be used on a continuous basis during the life of the project

5.10050 The 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) Require system construction and use within two (2) years of permit issuance

5.10060 Inspection of all installed systems shall be performed by a Class C designer and the Department. Upon completion of each phase requiring inspection by the permit, the 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 will be monitored by the Department and/or the Department's designee in accordance with a schedule contained in the permit.

5.10110 Should any additional guidelines be developed by the Department, the permittee would be responsible for meeting these guidelines.

#### 5.11000 Community Systems

5.11010 Without first applying for and obtaining a construction 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 when any of the following conditions exist:

(a) ~~Lot size is less than two (2) acres and more than 55% of the subdivision or planned unit development contains soil interpretative units identified as being suitable for on-site wastewater treatment and disposal systems that require pressurization~~ Proposed number of dwelling units is two hundred (200); or

(b) Where overall density of the subdivision or planned unit development is more than one dwelling unit per ½ acre.

5.11020 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 Binding Agreement between the applicant for the construction permit, the "permittee", and an operator or owner/operator. The Binding Agreement must:

(a) Identify an Operator or Operator and Owner (Operator) that will assume the operation, management, maintenance and repairs of the community on-site wastewater and disposal system, "the wastewater system", upon satisfactory completion of the construction, by providing:

(1) Full name and business address of the Operator;

(2) A description of the Operator's experience, training and education in the wastewater treatment and disposal industry, together with any supporting data regarding the Operator's qualifications in the industry;

(3) Proof of the Operator's financial solvency by providing a business financial statement (including balance sheet) that is not more than six (6) months old, and a statement of financial encumbrances;

(4) A list of licensed wastewater treatment facility operators employed by the Operator

(b) Identify the terms and conditions under which the Operator shall assume operational responsibility or ownership of the wastewater system.

(c) Provide a detailed description of the wastewater system.

(d) Disclose any existing encumbrances, liens or other indebtedness to the title of the wastewater system.

(e) Provide 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 owner/operator or an established Homeowners Association upon satisfactory completion of construction of the wastewater system.

(4) The owner of the wastewater system shall notify the Department, in writing, of intent to access funds from the escrow account. The escrow funds may not be used without prior approval of the Department. When escrow funds are used for the repair and/or replacement of mechanical equipment, the owner must submit a plan for the reestablishment of the escrow fund balance through the use of user fees or other sources.

(5) The escrow account established for a community or a development can only be used for the community or development for which it was established. Accounts for non-contiguous communities or developments may not be co-mingled.

(6) If the community wastewater system for which the escrow account was established is abandoned, and the community development connects to a regional or municipal wastewater treatment facility, the escrow account may be reduced to cover 25% of the replacement cost of all

mechanical equipment associated with the transmission and conveyance sewer lines. If the transmission and conveyance sewer lines are all gravity lines, with no lift stations, pumps, or other mechanical equipment, the escrow account may be terminated and the funds returned to the wastewater system owner.

(f) Be approved by the Department and fully executed before a construction permit is issued by the Department.

(g) The Department shall have the right to inspect and review the financial records of the owner of the wastewater system, to include the operating budget, escrow account, and financial statements.

5.11021 ~~An application for a permit to construct a community system~~ Prior to initiation of construction of any part or component of the community system the permittee shall provide the Department with an executed 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 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.

(b) A performance bond is not required for any local, municipal, county, state, federal government agency, non-profit association representing property owners, political subdivision, or utility that is regulated by the Public Service Commission.

(c) Liability under the performance bond shall run to the State for a continuous period. The Department shall release the bond only after the wastewater system has been constructed in accordance with approved plans and has been turned over to an established homeowners association, their designee, or exempted trustee identified in Section 5.11021(b) above, provided the requirements of Section 5.11021(g) are met.

(d) The performance bond shall be executed by the permittee through a corporate surety licensed to do business in the State of Delaware. In lieu of a performance bond, the permittee may elect to provide an original irrevocable letter of credit equal to the required sum of the performance bond.

(e) The obligation of the permittee under the performance bond shall become due and payable for the purposes of properly fulfilling the requirements of the permit when the Department has:

(1) Notified the permittee that the conditions of the permit have not been fulfilled and specified the specific deficiencies in the fulfillment of the permit

conditions;

(2) Given the permittee a reasonable opportunity to correct the deficiencies and to fulfill all the conditions of the permit; and

(3) Determined that, at the end of a reasonable length of time, some or all of the deficiencies specified under Section 5.11021(e)(1) above remain uncorrected.

(f) The Department has the authority to designate a new Operator in the event that the provisions of Section 5.11021(e) have been implemented. Upon formal transfer of ownership of a community wastewater system to an entity identified in 5.11021(b), the performance bond requirement shall cease, provided the Department has determined that the wastewater system has been constructed in accordance with approved plans and is operating properly.

(g) Once the Department has verified that the wastewater system has been constructed in accordance with approved plans, the owner may apply for a permit to operate the system.

5.11022 The permit application shall also include the following documents for legal review by the Department;

(a) A Purchase and Sale Agreement -- which specifies that the purchaser or a dwelling unit has an encumbrance on the title for wastewater treatment and disposal system operation fees, easements, and other assessments related to the community system.

(b) An Acknowledgment of Buyer -- which is appended to the Purchase and Sale Agreement and signed by the buyer after being furnished copies of appropriate agreements, covenants, restrictions, Articles of Incorporation and Bylaws of the Owners' 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 homeowners' 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, Restrictions and Easements (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 (see 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 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

5.12005 Unless otherwise authorized by the Department, all soils and siting criteria for large systems shall comply with the following requirements:

(a) A Soil Investigative Report (SIR) shall be filed with the Department's Large Systems Branch setting forth the proposed manner of compliance with these Regulations. The SIR shall contain the following:

1. Site plan drawn to scale not to exceed one (1) inch equals two hundred (200) feet

2. A topographic map with two (2) foot contour intervals unless the Department approves the use of an alternate scale

3. Location of all wells, watercourses, roads and on-site wastewater treatment and disposal systems within one hundred fifty (150) feet of the perimeter of the proposed disposal area

4. The proposed disposal area shall be mapped on a grid pattern of not more than seventy five (75) feet between observations using a combination of auger borings and test pits

5. A description of the hydrologic properties of the water table/surficial aquifer, including estimates of horizontal and vertical hydraulic conductivity, ground water flow direction, and water table elevations or depth to water table measurements. This information can be obtained from readily available published data.

6. A representative number of hydraulic conductivity tests (minimum single-ring) shall be conducted within the proposed disposal area (PDA), based upon soil variability. These tests must be performed within the most restrictive horizon per mapping unit within the PDA.

7. Determination of an appropriate design percolation rate based upon hydraulic conductivity tests, soil characteristics (textures, structure, etc.) and number of mapping units within the PDA (Certain site specific conditions may not warrant the testing, contact the Department to discuss)

8. Depth of the limiting zone and the results of the site and soil analysis provided on the appropriate forms (ie. Approval page)

9. Number of proposed lots, dwellings or expected gal/day flow and loading rate

10. The preliminary plan shall include a general site location map to identify the area

11. The location of any jurisdictional wetlands (State and/or Federal), if delineated

12. Identification of any limitation that could affect system performance and design consideration

13. The Department shall approve the SIR after any and all concerns have been addressed

(b) The applicant shall provide a Preliminary Groundwater 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.

(c) Performance of wet season testing (December – May) to more accurately quantify the fluctuations of the water table may be required on a case by case basis as warranted by site conditions. (This is recommended during the planning stages of the project.) If rainfall is not normal (see definition in Section 5.01210 (g)) a second season of monitoring may be required. If timing does not allow for the testing prior to submittal, contact the Department.

(d) Ground-water mounding analysis may be required for proposed large on-site wastewater treatment and disposal system sites where a potential for significant water-table mounding is probable due to (1) low aquifer transmissivity (low hydraulic conductivity), (2) shallow depth to seasonal high water table, or (3) high wastewater loading rate. Slug test(s) may be necessary to obtain horizontal hydraulic conductivity values for the aquifer. A report documenting the ground-water model utilized to perform the analysis must be provided along with all aquifer parameters and design criteria needed to run the model. Only Certified Professional Geologists registered in the State of Delaware are qualified to perform the ground water mounding analysis.

5.12010 Prior to permit application submission, the SIR and PGIA must both be approved and a meeting with the Class D site evaluator, Class C designer, DNREC personnel and any other interested parties be held to discuss the project.

5.12015 Unless otherwise authorized by the Department, all treatment and design considerations for large systems shall comply with the following requirements:

(a) Prior to finalizing 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.

(a) Permit applications must be designed in accordance with the prescribed system type and design considerations as specified in the SIR and PGIA for that parcel.

(b) All soils investigation reports permit application(s) for a large system (>2,500 GPD) and permit application(s) shall be submitted to the Large Wastewater Systems Branch for review and approval.

(c) The proposed disposal area shall be mapped on a seventy five (75) foot grid, at a minimum, using a combination of auger borings and test pits.

(d) A soils investigation report shall also contain a description of the hydrologic properties of the water table/surficial aquifer, including estimates of horizontal and vertical hydraulic conductivity, ground water flow direction, and water table elevations or depth to water table measurements. This information can be obtained from readily available published data.

~~(e) A representative number of permeability tests shall be conducted within the proposed disposal area based upon soil variability.~~

~~(f) Proposed disposal areas wooded at the time of investigation shall be inspected by the Class D site evaluator after tree clearing and prior to disposal system installation. Written documentation of the conditions observed shall be submitted to the Department.~~

~~(g c) Large system absorption facilities shall be designed with pressure distribution.~~

~~(h d) The disposal system shall be divided into relatively equal areas. For effluent distribution each area is comprised 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 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 e) The replacement (repair) disposal area shall be divided into relatively equal units and sufficient replacement area must exist. Upgrading the initial system(s) will not suffice as replacement area.~~

~~(j f) Effluent distribution shall alternate between the disposal area units. The absorption facilities shall be at least 10 feet apart.~~

~~(k g) Each system shall have at least two (2) pumps or siphons.~~

~~(l h) Large systems treating domestic wastes which utilize conventional septic tank treatment shall be required to install an effluent filter following the primary treatment.~~

~~(m i) 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 j) Expected flows >20,000 GPD shall incorporate secondary wastewater treatment as approved by the Department.~~

~~(o k) The Department may require additional information beyond the scope presented here on a case by case basis.~~

~~(p) The applicant shall provide a Preliminary Groundwater 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 l) Any on-site wastewater treatment and disposal system receiving over two thousand five hundred (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.~~

~~(m) Prior to installing the wastewater treatment and~~

disposal system, a meeting with the Class D site evaluator, Class C designer, Class E System Contractor, DNREC personnel and any other interested parties shall be held to discuss the project.

5.12020 Unless waived by the Department, groundwater monitoring is required at all sites utilizing large on-site wastewater treatment and disposal systems. Such monitoring shall continue as long as required by the Department. Upon completion of the PGIA review, the Department may require the submittal of a monitoring plan. If monitoring is required, a minimum of three (3) monitor wells, one up gradient and two down gradient from the proposed disposal areas must be installed and surveyed.

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 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 designer.

5.13030 Permits may be issued, by the Department, for the permanent use of holding tanks when all of the following conditions are met:

(a) The site is improved with a dwelling 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) 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) 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; and

(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 to 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.

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).

5.13070 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 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 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 annual inspection fee

5.13080 Each holding tank shall:

(a) In no case shall the tank have a capacity less than seven days average flow from the wastewater generating facility or 1,000 gallons, whichever is larger. When holding tanks are designed to serve the needs of a community system, the size shall be in conformance with standard engineering practice as determined by the Department and in accordance with an acceptable monitoring and pumping schedule.

(b) Comply with standards for septic tanks as prescribed in these Regulations (see Section 6.0700).

(c) Be located and designed to facilitate removal of contents by pumping.

(d) Be equipped with both an audible and visual alarm installed on an AC circuit and placed in a location, acceptable to the Department, to indicate when the contents of the tank are at seventy-five (75) percent of capacity.

(e) Have no 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 eighteen (18) inch diameter or square access opening. The access opening shall be extended to a minimum of six (6) inches above grade level.

(i) All tanks constructed on-site (i.e. cast-in-place, concrete block, etc.) shall be tested to assure watertight conditions. Alarms shall be tested for proper operation.

5.13090 Each holding tank installed under these Regulations shall be inspected annually. A fee shall be charged for each annual inspection 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 As soon as the Department determines that construction of on-site 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 which shall insure that twenty (20) days notice is given.

5.14030 The order shall contain a specific description of the moratorium area and shall be limited to the area immediately threatened with ground water or surface water contamination if construction in that area continues.

5.14040 In issuing an order under this Section the Department shall consider the factors contained in 7 Del.C., Chapter 60, Section 6001.

5.14050 The moratorium shall be limited to a period of five (5) years after which re-establishment of the moratorium may be considered.

## **SECTION 6.00000 -- DESIGN AND CONSTRUCTION**

### **6.01000 General Requirements**

6.01010 Location: All disposal systems shall be located according to the minimum horizontal isolation distances specified in these Regulations (see Exhibit T). All isolation distances for capped systems and elevated sand mounds shall be measured from the edge of the aggregate or aggregate-free chamber.

6.01015 All pressurized systems must be constructed in such a manner that the operating pressure can be checked at the end of the distal lateral (permanent tee, etc).

6.01018 All pressurized systems must utilize timers or other electrical on/off delay devices to insure dosing frequencies.

### **6.01020 Disposal System Sizing**

6.01021 All disposal systems shall be sized based on the estimated wastewater flow and the results of percolation tests or the assigned percolation rate. Percolation rates shall be based on USDA soil textures and assigned by the Class D site evaluator. The table of percolation rates used by the Department (see 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 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 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:

$$A = 1.2 Q$$

Where:

A = the minimum disposal area required in square feet

Q = design flow rate in gallons per day

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.

6.01032 Special care should be taken when clearing vegetation from an approved disposal area as disturbance of the soil surface may render the site unsuitable.

6.01033 All unsuitable excavation materials shall be discarded and the excavation shall be kept dry and de-watered from surface drainage until backfilling is completed.

6.01034 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 aggregate may only be used when a minimum of three (3) feet of undisturbed soil can be maintained between the bottom of the aggregate and the limiting zone. In no case shall more than one (1) foot of additional 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 (2) inches per one hundred (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 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%

6.01042 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 (2) inches per one hundred (100) feet for gravity distribution lines.

6.01044 Filter fabric shall be placed over the gravel with a two (2) inch overlap turned up on each side of the trench or bed.

6.01045 Aggregate-free chambers or any other similar devices may be used in the design, installation, and operation

of on-site wastewater treatment and disposal systems in Delaware, but are subject to approval of the Department. The minimum disposal area required when using aggregate-free chambers shall be calculated by utilizing the most recent guidelines and Sections 6.01022 and 6.01023.

#### 6.01050 Distribution Networks

6.01051 All systems requiring a total of more than 2,500 square feet of disposal area shall have a pressurized distribution system pursuant to these Regulations.

6.01052 All systems requiring more than 2,500 square feet of disposal area, with the exception of low pressure pipe systems, shall be divided into a minimum of two separate alternating systems of equal size with pressurized distribution provided alternatively to each system. The minimum separation between absorption facilities shall be ten (10) feet, which, with the exception of subsurface irrigation systems, will be determined on a case by case basis.

6.01054 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.

6.01056 Gravity system distribution laterals may be connected in closed loop systems.

6.01057 The maximum allowable lateral length is one hundred (100) feet for gravity distribution systems and pressure distribution systems.

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, unless otherwise approved by the Department.

6.01059 All distribution systems shall ensure equal distribution when designed on slopes.

#### 6.01060 Conventional Treatment and Disposal Systems

6.01061 Gravity Trenches and Beds (see Exhibits K, L, M and N)

(a) A minimum of twelve (12) inches of filter aggregate shall be placed in the bed or trench. A minimum of six (6) inches of aggregate shall be placed under the distribution laterals. The remaining filter aggregate shall be placed so that a minimum depth of no less than two (2) inches exists above the crown of the distribution pipe.

(b) For trenches or beds with a minimum sidewall depth of twenty-four (24) inches, backfill shall be placed in

accordance with permit requirements. Unless otherwise required by the Department, the construction sequence shall be as follows:

(1) The backfill material shall be at least twelve (12) inches in depth above the filter fabric and returned to the original grade.

(2) Backfill material shall be carefully deposited 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 Exhibits M and N). Unless otherwise required by the Department, the construction sequence shall be as follows:

(1) 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 : 1 with 5 : 1 recommended by the Department.~~

(2) Construction of capping fills shall not occur when the natural soil has a moisture content which causes loss of soil structure and porosity when worked.

(3) The disposal area 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 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.

6.01062 Sand Mounds (see Exhibit P)

(a) Sand mound absorption areas shall be plowed six (6) to eight (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. Moldboard 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 depth as specified in the permit. Only lightweight equipment such as small track type tractors shall be allowed.

(c) A twelve (12) inch bed of filter aggregate shall be placed over the sand fill. Six (6) inches of aggregate shall be placed under the distribution lateral. The remaining filter aggregate shall be placed to an additional six (6) inches in depth with at least two (2) inches over the crown of the distribution pipe.

(d) A minimum allowable distance of four (4) feet and a maximum distance of six (6) feet shall separate adjacent laterals in a elevated sand mound bed.

(e) The slope of the sand fill not directly beneath the filter aggregate shall be 3 : 1, with 5 : 1 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 twelve (12) inches above the twelve (12) inch filter aggregate layer plus at least six (6) inches of topsoil cover.

(h) The outside slopes of the mound cover or berm shall be approximately 3 : 1 with 5 : 1 recommended by the Department.

(i) 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 Exhibits O & X)

(a) A trench width of twelve (12) inches shall be used.

(b) Trenches shall be no 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 seepage bed, trench and sand-lined absorption facilities shall be sloped to provide positive drainage.

6.01072 The land adjacent to all absorption facilities shall be graded to prevent both the accumulation of surface water on the absorption facility and the flow of surface water across the absorption facility. The finished absorption facility and fill extensions shall be seeded and mulched to prevent erosion.

6.01073 Trees shall not be planted within ten (10) feet of the perimeter of absorption facility. All trees and shrubs shall be located to prevent root intrusion into the absorption facility and other components of the system. Shallow rooted shrubs are permitted (ie, rhododendrons, azaleas, etc.).

6.01074 All areas of disturbance due to the installation of the absorption facility shall be either sodded or seeded and mulched to establish a permanent grass cover.

#### 6.01090 Spare Area

6.01091 Each site utilizing an on-site 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 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.-

#### 6.02000 Artificially Drained Systems

6.02001 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.

#### 6.03000 Soil Percolation Rate Determination

6.03003 Percolation rates are assigned by State environmental scientists and Class D site evaluators based upon observed soil structure and textures during the site evaluation. The Department has established percolation rates based upon USDA soil textures (see Exhibit W).

##### 6.03005 Soil Percolation Test

6.03010 The soil percolation test shall provide a measure of the rate at which water moves from an uncased bore hole into the surrounding soil under nearly constant head in both vertical and horizontal directions.

6.03015 One soil percolation test shall consist of three (3) test holes.

6.03020 The percolation test shall be performed only after a site evaluation has indicated that the soil may be suitable for an on-site wastewater treatment and disposal system. The percolation test shall be used to determine 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 for proper treatment and disposal.

6.03030 The depth of the percolation test holes shall not be determined until a 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 occurs at least twenty (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 sixty (60) inches.

(b) If the limiting zone occurs at less than twenty (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 twenty (20) inch limiting condition. In situations where sand-lining through an impermeable or less permeable horizon within the top forty eight (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 sixty (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 absorption facility. Additional tests may be required in areas with varying soil 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 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 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 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 aggregate and the hole allowed to sit undisturbed for another thirty (30) minutes.

(f) Where the drop in the water level is two (2) inches or more in thirty (30) minutes, the interval for readings during the percolation test shall be ten (10) minutes. Where the drop in the water level is less than two (2) inches in thirty (30) minutes, the interval for readings during the percolation test shall be thirty (30) minutes. The drop in water level shall be recorded after each reading and the water level shall be adjusted to six (6) inches above the gravel. Readings shall continue for a minimum of four (4) hours where the interval between readings is thirty (30) minutes. Where the interval is ten (10) minutes due to fast percolation, the readings may be discontinued after one (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 ( $\frac{1}{16}$ ) of an inch. If any of the holes has a rate that is significantly different from the other holes, it shall be examined to see if this hole is in a soil that is different from the soil described in the site evaluation. If the hole is determined, by the licensed percolation tester, to be uncharacteristic of the site it shall be excluded from analysis but listed on the application.

(g) The percolation rate for the site shall be determined by taking the arithmetic average of all percolation tests conducted. Percolation rates slower than one hundred 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 that have percolation rates slower than one hundred twenty (120) mpi.

#### 6.03045 Additional Methodologies

6.03050 At the discretion of the Department or Class D site evaluator, additional methodologies may be preferred as a substitute for the soil percolation test. Approved test methods are given in the current edition of Methods of Soil Analysis, ASA and the ASTM Standards.

#### 6.04000 Wastewater Design Flow Rates

6.04010 The projected peak daily wastewater flow shall be used to determine the appropriate size and design of both, 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 (3) year period are available for a similar facility, such peak flow data may be substituted for the 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 within the upper ten (10) percent of the daily readings.

6.04030 The design wastewater flow from residential dwellings, including single family, multiple family, manufactured homes, and apartments served by individual on-site or community wastewater treatment and disposal systems shall be 120 gallons per day per bedroom. The minimum design flow for any commercial property shall be 120 gallons per day and 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 design wastewater flow from other residential, commercial and/or 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 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 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 absorption facility under these Regulations.

6.04080 Industrial wastewater shall not be discharged into a septic tank 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, locating, 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 Conventional On-Site Wastewater Treatment and Disposal Systems Criteria

6.06010 All Full Depth Gravity and Capping Fill Gravity Trench and Bed Treatment and Disposal Systems shall be designed in accordance with the following criteria (see Exhibits K, L, M or N).

6.06011 Landscape Position: Areas with good surface drainage which allow surface water to run off easily without ponding and which are not prone to flooding.

6.06012 Slope: 0 - 15%. Bed systems can not be sited on slopes > 2%, unless otherwise approved by the Department. All systems must be constructed with level bottoms and shall incorporate construction procedures prohibiting equipment from entering the excavation. Trench systems on slopes in excess of 15% shall be permitted only if the design is prepared by a licensed Class C designer. Any such design shall incorporate construction procedures.

6.06017 Depth to Limiting Zone: The limiting zone shall be a minimum of three (3) feet below the bottom of the trench  $\geq$  48 inches beneath the soil surface.

#### 6.06018 Percolation Rates:

(a) 6 - 120 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 120 mpi shall not be permitted.

(b) Faster than 6 mpi: A pressurized distribution system is required for seepage trenches or beds. The trench or bed may be placed between twelve (12) and twenty four (24) inches in order to maintain thirty six (36) inch separation distance between rapidly permeable material and the limiting zone.

6.06030 All Low Pressure Pipe Treatment and Disposal Systems shall be designed in accordance with the following criteria (see Exhibits 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, unless otherwise approved by

the Department.

6.06035 Depth to limiting zone: The limiting zone shall be a minimum of eighteen (18) inches below the bottom of the trench (i.e. a minimum of twenty seven (27) inches below existing grade for a nine (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 eighteen (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 site evaluator.

(b) There shall be no soil disturbance to the proposed disposal area except the minimum required for installation. The soils may be rendered unsuitable should unnecessary soil disturbance occur. Particular care should be taken when clearing wooded lots so as not to remove the surface soil material.

(c) LPP disposal systems shall be installed only with equipment approved by DNREC.

(d) LPP disposal systems shall not be allowed where sand lining is required or where soils have been filled or disturbed.

6.06040 All Elevated Sand Mound Treatment and Disposal Systems shall be designed in accordance with the following criteria (see Exhibit P).

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 mpi.

(b) 0 – 12% for soils with percolation rates faster than 60 mpi.

6.06044 Depth to Limiting Zone: > 20 inches to evidence of a limiting zone.

6.06045 Percolation Rate: 0 - 120 mpi: Construction on soils with slower percolation rates is not permitted. A pressurized distribution system is required in all cases.

6.06050 All Pressure-Dosed Full Depth and Capping Fill Treatment and Disposal Systems shall be designed in accordance with the following criteria (see Exhibits Q & R).

6.06051 Landscape Position: Areas with good surface drainage which allows surface water to run off easily without ponding and are not prone to flooding.

6.06052 Slope: 0 – 15%. Bed systems can not be sited on slopes > 2%, unless otherwise approved by the

Department. All designs must be constructed with level bottoms and shall incorporate construction procedures prohibiting equipment from entering the excavation. Slopes in excess of 15% shall be permitted only if the design is prepared by a licensed Class C designer. Any such design shall incorporate construction procedures.

6.06054 Depth to Limiting Zone: > Forty eight (48) inches to evidence of a limiting zone.

6.06055 Depth to Limiting Zone: Forty eight (48) inches or greater from original grade and three (3) feet below bottom of filter aggregate. (ie. 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 designer. Any such design shall incorporate construction procedures.

6.06065 Depth to Limiting Zone: Forty eight (48) inches or greater from original grade and three (3) feet below bottom of filter aggregate. 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.

6.06066 Percolation Rate: 0 - 120 mpi. A pressurized distribution system may be required. The percolation test shall be taken in the permeable soil below the impermeable or less permeable soil zone. The bottom of the percolation test hole shall extend a minimum of six (6) inches below the slowly permeable soil zone but in no case shall it be less than six (6) inches above the underlying limiting zone. If the percolation tests are to be conducted at a depth too deep to obtain accurate percolation rates, a percolation rate based on USDA soil textures shall be assigned (see Exhibit W). Otherwise, hydraulic conductivity tests may be substituted.

6.06067 Additional Criteria:

(a) Sand lined systems may be used where the site evaluation has shown that there is an impermeable or slowly permeable soil zone located over an acceptable soil. Use of 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 may require a

Class D site evaluator on site to monitor depth of sand lining.

6.07000 Septic Tanks:

6.07100 The standard wastewater treatment system used for on-site 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 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 one thousand (1,000) gallons.~~

6.07203 The minimum liquid working capacity of septic tanks shall be:

(a) For flows  $\leq$  500 GPD the minimum liquid working capacity shall be one thousand (1,000) gallons

(b) For flows  $>$  500 GPD but  $\leq$  15,000 GPD shall have a working capacity of 1.5 times the expected flow rate with a minimum liquid working capacity of one thousand five hundred (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

6.07206 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.

6.07208 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) 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 ( $\frac{2}{3}$ ) the liquid capacity of the total volume of the tank. Tanks shall be of rectangular design.

6.07210 Pre-cast reinforced concrete tanks shall have a minimum wall thickness of two and one-half ( $2\frac{1}{2}$ ) inches.

6.07211 Cast-in-place reinforced concrete tanks shall have a minimum wall thickness of four (4) inches.

6.07212 All inlet and outlet connections shall be sanitary tees or baffles constructed of cast-in-place concrete 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 if it is to be used as a pumping chamber.

6.07213 All pipe cutouts for inlet and outlet connections shall be sealed with a watertight concrete (95%) & bentonite (5%) grout mix or standard rubber gaskets.

6.07214 Connections between multi-compartment tanks shall consist of either a four (4) inch diameter sanitary tee or two (2) or more openings equally spaced across the width of the tank. Such openings shall be six (6) inches wide. All compartment connections shall extend to a level no deeper than 40% of the liquid depth as measured from the liquid level.

6.07215 All inlet, outlet and inter-compartment connections shall be located to provide a minimum air space of one (1) inch between the top of the connection and the underside of the tank cover.

6.07216 Each tank compartment shall be equipped with an access opening and cover. The opening shall be located to provide access to each tank compartment as well as providing access to the inlet and outlet connections for routine inspections. Access openings shall be at least eighteen (18) inches square or in diameter.

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 approved by the Department. If multiple concrete risers are needed then water tight gaskets or hydraulic cement must be placed between each riser.

6.07219 All above grade access covers shall be water tight and secure from vandalism.

6.07225 All septic tanks shall be equipped with any outlet effluent filter approved by the Department. 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  $\frac{3}{4}$ " 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. 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 wastewater treatment and disposal systems. Grease interceptors shall not be approved for new construction designs as replacement for the grease trap. Grease interceptors may be allowed for replacement systems when there are site limitations and low flow applications.

6.08020 All grease traps shall be designed in accordance with the following requirements. The minimum size grease trap shall be 1,000 gallons (see Exhibits E & F).

6.08021 The location of grease traps shall be in accordance with the minimum isolation distances set forth in these Regulations as prescribed in Exhibit C.

6.08022 The sizing of grease traps shall be based on wastewater flow data and grease retention capacity. The grease retention capacity in pounds shall be equal to at least twice the peak flow capacity in gallons per minute. The flow capacity can be determined from the individual flows from fixtures discharging into the grease trap. Exhibit E contains the minimum flow rate fixture capacities which shall be used for grease trap designs when actual calibrated metered flow

data indicating peak daily flows over a three (3) year period are not available.

6.08023 All grease traps shall have multi-compartments.

6.08024 All inlet and outlet connections shall be sanitary tees or baffles constructed of cast-in-place concrete or PVC. Inlet and outlet openings shall be a minimum of four (4) inches in diameter. The outlet invert shall be two (2) inches below the inlet invert. The inlet baffle or sanitary tee shall extend at least twenty four (24) inches below the liquid level. The bottom of the outlet baffle or sanitary tee shall be eight (8) inches above the tank bottom.

6.08025 Connections between multi-compartment tanks shall consist of a four (4) inch diameter sanitary tee. The bottom of the sanitary tee shall be twelve (12) inches above the tank bottom.

6.08026 The requirements of Section 6.07208, 6.07210, 6.07211, 6.07213, 6.07215, 6.07216, 6.07217 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 wastewater treatment and disposal systems shall be transmitted to the 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 wastewater flow requires less than 2,500 ft<sup>2</sup> of disposal area for seepage trenches or seepage beds and the percolation rate is equal to or slower than six (6) minutes per inch.

6.09030 Gravity distribution systems shall conform to the following requirements:

6.09031 All unperforated gravity transmission pipe up to the distribution box shall be Sch. 40 PVC or ANSI Class 22 thickness cast iron and shall be at least four (4) inches or greater in diameter unless lifted by a lift station to a surge tank or the distribution box in which case 1 ½ inch or 2 inch Sch. 40 PVC pipe would be permissible with a minimum of twenty (20) feet of four (4) inch diameter Sch. 40 PVC pipe prior to entering the distribution box.

6.09032 All gravity transmission pipes shall be placed on a firm undisturbed or well compacted soil. All joints shall be watertight. A minimum grade of  $\frac{1}{4}$  1/8 inch per foot shall be provided for gravity transmission piping. Clean backfill shall be placed around and over the pipe and hand tamped to

provide compaction.

6.09033 All gravity distribution laterals shall be thin walled or Sch. 40 PVC and shall be ~~at least~~ four (4) inches ~~or greater~~ in diameter. Perforated PVC pipe shall have  $\frac{3}{8}$  to  $\frac{3}{4}$  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 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 systems. They shall be located in accordance with the minimum horizontal isolation distances set forth in Exhibit C. A minimum distance of three (3) feet shall separate the inlet face of the distribution box from the septic tank outlet.

6.09042 Capacity: Distribution boxes shall be sized to accommodate the number of distribution laterals required for the distribution system.

6.09043 An inlet baffle shall be installed in all distribution boxes. The baffle shall be perpendicular to the inlet pipe and situated six (6) inches from the end of the inlet. The baffle shall be constructed of the same material as the distribution box and shall be a twelve (12) inch square rising from the box floor, centered with the inlet connection, and permanently affixed. PVC tees 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 (5) 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 or access manhole which shall be located twelve (12) inches below grade unless another distance is approved by the Department.

6.09048 All installations of distribution boxes shall be in accordance with the requirements of Section 6.07300.

6.09049 All installed distribution boxes shall be tested to insure watertight conditions and leveled to insure an even

distribution of flow to each lateral under operating conditions.

6.09050 Pressure distribution systems shall be utilized with:

- (a) Trench or bed systems receiving flows requiring more than 2,500 ft<sup>2</sup> of disposal area
- (b) All sand mounds
- (c) Certain sand-lined systems
- (d) All absorption facilities located on soils where percolation rates are faster than six (6) minutes per inch
- (e) All low pressure pipe systems

6.09060 Pressure distribution systems shall conform to 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 sized to provide a minimum flow rate of two (2) feet per second in the pipe.

6.09062 All pressure transmission pipes shall be placed below the frost line. 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** – 24 inches **Kent** – 24 inches **New Castle** – 30 inches.

6.09063 All pressure distribution laterals shall be Sch. 40 and SDR 26 PVC pipe with diameters as determined by a Class C designer. Minimum hole diameters for perforated pressure distribution laterals shall be  $\frac{5}{32}$  to  $\frac{1}{2}$  inch maximum and spacing intervals as determined by a Class C designer and be placed on center along the length of the pipe. Maximum hole spacing shall be determined by percolation rates as follows:

Percolation Rate	Maximum Hole Spacing
20 - 25 MPI	Sixty (60) inches
30 - 60 MPI	Seventy two (72) inches
65 - 120 MPI	Ninety six (96) inches

**NOTE:** Balanced trench loading rates (gpd/ft<sup>2</sup>) must be considered where slopes are encountered. This can be accomplished by varying the number of lateral perforations (and spacing) and perforation diameter.

6.09064 All laterals shall be connected to manifolds with tees or sanitary tees constructed of PVC corresponding to the size of the connecting laterals.

6.09065 Distribution of effluent from the pressure transmission pipe to the distribution laterals shall be by a central PVC manifold.

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 three (3) 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 that 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: 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.

6.09103 The requirements of Sections 6.07208, 6.07210, 6.07211, 6.07215, 6.07216 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 with a watertight concrete (95%) & bentonite (5%) grout mix or standard rubber gaskets.

6.09106 Dosing chambers shall be constructed with a ventilation port and a watertight access manhole. The ventilation port shall be extended at least six (6) inches above grade while the access manhole shall be extended to the finished grade, at a minimum, the Department recommends six (6) inches above grade. The vent shall be three (3) inches in diameter and the access manhole shall be sized for easy removal of pumps or siphons. In no case shall the manhole be less than twenty (20) inches square or in diameter. The vent shall be turned down and shall be fitted with 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 and shall be installed in accordance with the manufacturer's recommendations.

6.09108 Dosing chambers using pumps shall have an installed pump for which a replacement is readily available in the event of failure.

6.09109 Pumps and siphons shall be sized to discharge a flow rate equal to the combined flows from all discharge holes in the laterals when operating at designed level or head.

6.09110 Pumps and valves shall be equipped with suitable connections so that they may be removed for inspection or repair without entering the dosing chamber. A slide rail system or disconnect coupling accessible from outside the dosing chamber shall be utilized to allow

removal and access to the pump and pump check valve for repairs and maintenance. A corrosion-proof lifting device shall be attached to the pumps and tied off at the access manhole.

6.09111 Check valves shall be 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.

6.09113 All pump electrical connections and alarm controls shall be corrosion resistant and waterproof.

6.09114 Elevations for pump controls and high water level sensor elevations shall be provided in the design.

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 that include operation and maintenance procedures and pump characteristics.

#### 6.09200 Diversion Boxes and Diversion Valves.

6.09210 Location: Diversion boxes or diversion valves for 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 dual 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. Diversion valve systems shall be commercially available and diversion or gate valves shall be constructed of durable cast iron or plastic.

#### 6.09260 Diversion Box and Diversion Valve Specifications (see Exhibit 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 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) 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 plumbing shall be at least as large as the internal building 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 (2) 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  $\frac{3}{4}$ " to  $1\frac{1}{2}$ " 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 or PVC pipe encased in six (6) inches of concrete shall be used for building sewers located < 3 feet below driveways, parking area, or other areas subject to vehicular traffic or similar loading. 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  $\frac{1}{8}$  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 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 (25) percent reductions in design flow are allowed for water conservation. The absorption 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 absorption facility. However, only permanent water saving plumbing devices such as low flush toilets shall be considered in reducing the size of the absorption facility. Devices such as inserts in showers are considered temporary.

### 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 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 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 septic tank for treatment prior to discharge to the absorption facility, 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 absorption facility. The degree of nitrogen removal required will 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 manufactured home communities, which are evaluated as single family residential facilities.

7.02030 In establishing maximum siting densities the Department may consider impervious areas where it can be demonstrated that through the establishment of an acceptable stormwater management plan, all runoff will be recharged to the groundwater of the State within the boundaries of the project site. Stormwater management plans shall be based upon a ten (10) year - one (1) hour storm event as a minimum and provide recharge of the runoff within seventy two (72) hours of the storm event.

7.03000 If the deed or instrument, under which an owner acquired title to a lot or parcel, was of record prior to April 8, 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 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 and/or issue a construction permit for a new on-site wastewater treatment and 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 Groundwater Impact Assessment (GIA) provided that in the sole discretion of the Department such modification will allow for the protection of environmental resources and public health, safety and welfare. A site specific 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 The Department may require an applicant, owner or operator to perform a site specific Groundwater Impact Assessment (GIA) when a proposed or existing large system will likely or is likely causing unacceptable environmental impacts and/or risk to public health. The GIA should be performed by a Delaware Registered Professional Geologist and shall be based upon site specific investigations and testing. If information required in the GIA was previously submitted in a PGIA for the site, the required information need not be resubmitted. The applicant may reference the PGIA and state that the information was submitted in the report. The Department will provide general and site specific guidelines for preparing the GIA.

7.07000 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 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.

#### **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 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 ( $\frac{1}{3}$ ) full of sludge. The schedule shall be prescribed in accordance with current Department guidelines based on the size of the treatment unit and anticipated number of residents. The owner of the on-site wastewater treatment and disposal system shall maintain a record indicating the system has been pumped and provide such documentation to the Department upon request.

8.03000 Organic chemical septic tank cleaning agents shall not be used in individual or community on-site wastewater treatment and disposal systems.

8.04000 Grease traps shall be cleaned when seventy five (75) percent of the grease retention capacity has been reached.

8.05000 The sites of the initial and replacement absorption facilities shall not be covered by asphalt or concrete or subject to vehicular traffic or other activity which would adversely affect the soils. These sites shall be maintained so that they are free from encroachments by accessory buildings and additions to the main building.

8.06000 The Department may impose specific operation and maintenance requirements for on-site wastewater treatment and disposal systems to assure continuity of performance.

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 conventional on-site wastewater treatment and disposal system.

8.08000 The Department shall impose, in any permit for large or community systems, standards for evaluating treatment system performance and compliance with these Regulations. The standards may be in the form of limitations on flow and pollutant concentrations and/or mass loadings. The standards shall reflect the utilization of best management and operational practices.

8.09000 Unless otherwise required by a permit, all community and large systems shall be inspected annually by the Department or its designee.

8.09500 Alternative systems shall be inspected by the Department or its designee once every three years and a fee may be required.

8.09600 The Department recommends alternative systems be inspected annually, at a minimum.

## SECTION 9.00000 -- PRELIMINARY WASTEWATER TREATMENT & DISPOSAL REVIEW

9.01000 It is the policy of the Department to facilitate compliance with these Regulations through review of proposed development projects as early as possible in the development process to avoid unnecessary conflicts and expense. Any development project, which may or may not constitute a major subdivision, can submit a feasibility study to satisfy other local government approval processes. Any project that proposes to use individual on-site and/or community/large wastewater treatment and disposal systems must submit a letter of intent prior to initiating any preliminary soil 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 tax parcel number(s)~~
- (~~e~~) ~~Indication of type of system(s) — individual versus large/community~~
- (~~d~~ ~~c~~) Projected start date of site/soil investigative work

9.01015 If the proposed number of dwelling units is two hundred (200) or a large on-site wastewater treatment and disposal system(s) (LOWTDS) is proposed, proceed to the requirements of Section 5.12000, if not, proceed to Section 9.01020 . If a preliminary review is desired prior to the submission of a SIR, the site evaluator may submit a feasibility study in accordance with Section 9.01017.

9.01017 A feasibility study for a LOWTDS shall

contain the following information:

(a) Site plan drawn to scale not to exceed one (1) inch equals two hundred (200) feet

(b) Illustrate topography on two (2) foot contour intervals unless the Department approves the use of an alternate scale due to extreme variations in the elevation on the site

(c) Conduct a soil suitability evaluation of the project site following the procedures prescribed in section 5.01000. The area of investigation should be concentrated within the proposed LOWTDS. The Site Evaluator must demonstrate the area proposed for the LOWTDS represents the best soils on the project site. The extent and nature of the soil evaluation shall be determined by the Class D site evaluator.

(d) Based on preliminary design criteria established by the Class D site evaluator, as a result of the soils evaluation, a preliminary engineering study prepared by a Class C engineer must be included which demonstrates the suitability of the evaluated area for the proposed number of lots. The engineering study must include, at a minimum, the proposed method of disposal, proposed treatment levels, and proposed design flow rates, along with preliminary calculations/layout to demonstrate there is sufficient area for both the initial and replacement system.

(e) The Department may ask for any additional information deemed necessary on a case-by-case basis to make a statement of feasibility.

9.01020 A feasibility study shall be filed with the Department setting forth the proposed manner of compliance with these Regulations. The feasibility study shall contain the following information:

(a) Site plan must be drawn to scale not to exceed one (1) inch equals two hundred (200) feet

(b) Illustrate topography by two (2) foot contour intervals unless the Department approves the use of an alternate scale due to extreme variations in elevation on the site

(c) Illustrate the approximate location of all wells, watercourses, roads and on-site wastewater treatment and disposal systems within one hundred fifty (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 site evaluator. The site evaluator 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

(f) Each soil interpretative unit identified for potential on-site wastewater treatment and disposal shall have at least one (1) percolation test conducted within it to

establish representative percolation rates for each interpretative 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) Proposed stormwater management areas

(j) Location of any jurisdictional wetlands, if delineated

(k) Any other information required by the Department on a case by case basis.

9.02000 The Department shall conduct a general review of the preliminary plan and give the owner/developer a ~~soil investigation report~~ statement of preliminary subdivision feasibility 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 permits from the Department for each lot prior to commencement of construction of any on-site wastewater treatment and disposal system.

9.03000 If, in the estimation of the Department, more than fifty five (55) percent of the proposed absorption facilities for the subdivision will require pressurized systems, due to limiting conditions, a community wastewater treatment and disposal system shall be utilized unless average lot density is greater than two (2) acres.

#### **SECTION 10.00000 -- 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 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 parcel size is not less than ten (10) acres; and

(c) The permit is for an on-site wastewater treatment and disposal system designed to serve a single family dwelling; and

(d) The on-site wastewater treatment and disposal system will function in a satisfactory manner so as not to create a public health hazard; and

(e) Applications must be completed per Section 10.02030 to obtain final approval for the Rural Area Variance.

##### 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 include:

(a) A site evaluation report conducted by a Class D site evaluator, unless waived by the Department, to include the requirements of Section 10.01000; and

(b) Proof the parcel is a minimum of ten (10) acres (survey or statement from zoning office); and

(c) ~~Wetland delineation and~~ Location of any jurisdictional wetlands, determination if delineated; and

(d) A proposed disposal location which is a minimum of one hundred (100) feet from all property boundaries (when soil conditions allow); and

(e) The location of all wells within one thousand (1,000) feet of the proposed absorption facility; and

(f) The property owner(s) shall provide a list of all property owners names and addresses within one thousand (1,000) feet of parcels property lines; and

(g) A percolation test conducted by a Class A percolation tester or an assigned percolation rate by the Class D site evaluator based upon USDA soil textures (see Exhibit W); and

(h) Submit soils report with appropriate site evaluation fee, if fee not paid already. Upon reviewing the soils report, the Department will determine the system type, design specifications and return this information to the owner, or designated agent.

10.02035 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 conventional on-site wastewater treatment and disposal systems for specified periods of time;
- (d) Any other conditions which the Secretary finds in his/her sole discretion to be appropriate.

10.03040 At the time of the application, the applicant must designate on the application that it is 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 is located.

#### 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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- Y. Observation Well Construction Diagram
- Z. System Abandonment Report

Percolation Class	Percolation Rate (mpi)
Very Slow	>120
Slow	50 – 120
Moderate	25 – 49
Moderately Rapid	10 – 25
Rapid	6 – 10
Very Rapid	< 6

**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.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
BOARD OF EXAMINERS OF PRIVATE  
INVESTIGATORS AND PRIVATE SECURITY  
AGENCIES**

**24 DE Admin. Code 1300**

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

**ORDER**

Pursuant to the Guidelines in 29 **Del.C.** §10118(a)(1)-(7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing held on July 15, 2004 on the proposed amendment of promulgated rules and regulations **5.0 Uniforms, Patches, Badges, Seals, Vehicular Markings** and **6.0 – Qualified Manager/License Holder**, the Board makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposed amendment.
2. The Board expressed its desire to amend Rule 5.0 to eliminate the use of unmarked vehicles and give specific

direction for marked vehicles and to amend Rule 6.0 to require the license holder be an owner/partner/corporate officer.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the amendment of the rule. The written comments and oral testimony received are described in paragraph 1.

4. The Board finds that the amendment of these rules will eliminate the use of unmarked vehicles and give specific direction for marked vehicles and require the license holder be an owner/partner/corporate officer.

5. The Board finds that the amendment will have no adverse impact on the public.

6. The Board finds that the amendments are well written and describe their intent to amend the rules eliminate the use of unmarked vehicles and give specific direction for marked vehicles and to require the license holder be an owner/partner/corporate officer.

**Conclusion**

7. The proposed rule amendment was promulgated by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** §1304 et seq. and, in particular, 24 **Del.C.** §1304(b)(3).

8. The Board deems this amendment necessary and

expedient to the full and official performance of its duties under 24 **Del.C.** §1304 et. seq.

9. The Board concludes that the amendment of this rule will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the amendment of this rule pursuant to 24 **Del.C.** §1304(b)(3) and guidelines of 29 **Del.C.** §10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This amended rule replaces 6.0(6.2), in its entirety, any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be August 9, 2004.

13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 15<sup>th</sup> day of July, 2004.

Colonel L. Aaron Chaffinch, Chairman

APPROVED AS TO FORM:  
Ralph K. Durstein, III, Esquire  
Deputy Attorney General

### 1.0 Firearm's Policy

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

#### 1.2 Firearms - approved type of weapons

- 1.2.1 9mm
- 1.2.2 .357
- 1.2.3 .38
- 1.2.4 .40

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

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

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

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

1.7 The minimum passing score is 75%.

1.8 All licenses are valid for a period of five (5) years, subject to proof of compliance of Rule 1.0 by submission of

shoot sheets by January 31st of each year for the previous calendar year.

**Adopted 11/04/1994**

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

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

### 2.0 Nightstick, Pr24, Mace, Peppergas and Handcuffs

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

**Adopted 11/04/1994**

### 3.0 Personnel Rosters and Job Assignments

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

Mark A. Smith	01/25/60W	M	01/25/99	SG
Helen E. White	03/17/71B	F	03/17/00	FA
John F. Henry	05/23/43B	M	05/23/00	PI
James D. Williams	12/03/40W	M	06/30/99	MG
Frank G. Montgomery	07/24/55BM		06/30/99	LH
Anne L. Murray	10/20/40W	F	06/30/99	CO
SG	Security Guard			
FA	Firearm's			
PI	Private Investigator			
MG	Delaware Manager			
LH	License Holder			
CO	Corporate Officer			

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

The DuPont Industry  
Barley Mill Road

2200 - 0600 Hours, Monday, Wednesday, and

Friday

**Adopted 11/04/1994**

**3 DE Reg 960 (1/1/00)**

### 4.0 Record Book; Right of Inspection

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

to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

**Adopted 11/04/1994**

**3 DE Reg 960 (1/1/00)**

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

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

5.2 Advertisement and other forms of publications:

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

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

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

#### 5.3. Vehicle Identification

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

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

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

5.3.4 In the event that a vehicle is not approved

by the Board of Examiners pursuant to this Rule, the Board may indicate what changes to the vehicle appearance would be sufficient to satisfy the standard and criteria set forth above.

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

**Adopted 11/04/1994**

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

### **6.0 Qualified Manager**

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

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

**Adopted 11/04/1994**

### **7.0 Employment Notification**

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

7.2 Employers Responsibility

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

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

7.2.2.1 The name of any employee arrested;

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

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

**Adopted 11/04/1994**

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

**8.0 Criminal Offenses**

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

**Adopted 11/04/1994**

**9.0 Private Investigators**

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

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

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

**Adopted 11/04/1994**

**10.0 Licensing Fees**

10.1 Class A License - Private Investigative Agency

10.1.1 In-State License Holder

10.1.1.1 Individual - No Employees - Not Corporation

10.1.1.1.1	\$230	
10.1.1.1.2	\$5,000 Bond	
10.1.1.1.3	\$1,000,000	Liability

Insurance per occurrence

10.1.1.2 Corporation - Has Employees

10.1.1.2.1	\$345	
10.1.1.2.2	\$10,000 Bond	
10.1.1.2.3	\$1,000,000	Liability

Insurance per occurrence

10.1.2 Out-of-State

10.1.2.1 License Holder - Individual and Corporation

10.1.2.1.1	\$345	
10.1.2.1.2	\$10,000 Bond	
10.1.2.1.3	\$1,000,000	Liability

Insurance per occurrence

10.1.2.2 Delaware Manager

10.1.2.2.1	\$230	
10.1.2.2.2	\$5,000 Bond	

10.2 Class B License - Private Security Agency

10.2.1 In-State License Holder

10.2.1.1 Individual - No Employees - Not

Corporation

10.2.1.1.1	\$230	
10.2.1.1.2	\$5,000 Bond	
10.2.1.1.3	\$1,000,000	Liability

Insurance per occurrence

10.2.1.2 Corporation - Has Employees

10.2.1.2.1	\$345	
10.2.1.2.2	\$10,000 Bond	
10.2.1.2.3	\$1,000,000	Liability

Insurance per occurrence

10.2.2 Out-of-State

10.2.2.1 License Holder - Individual and Corporation

10.2.2.1.1	\$345	
10.2.2.1.2	\$10,000 Bond	
10.2.2.1.3	\$1,000,000	Liability

Insurance per occurrence

10.2.2.2 Delaware Manager

10.2.2.2.1	\$230	
10.2.2.2.2	\$5000 Bond	

10.3 Class C License - Private Investigative & Private Security Agency

10.3.1 In-State License Holder

10.3.1.1 Individual - No Employees - Not Corporation

10.3.1.1.1	\$345	
10.3.1.1.2	\$10,000 Bond	
10.3.1.1.3	\$1,000,000	Liability

Insurance per occurrence

10.3.1.2 Corporation - Has Employees

10.3.1.2.1	\$520	
10.3.1.2.2	\$15,000 Bond	
10.3.1.2.3	\$1,000,000	Liability

Insurance per occurrence

10.3.2 Out-of-State

10.3.2.1 Individual and Corporation

10.3.2.1.1 License Holder		
10.3.2.1.1.1	\$520	
10.3.2.1.1.2	\$15,000 Bond	
10.3.2.1.1.3	\$1,000,000	Liability

Insurance per occurrence

10.3.2.1.2 Delaware Manager

10.3.2.1.2.1	\$345	
10.3.2.1.2.2	\$10,000 Bond	

10.4 Class D License - Armored Car Agency License

10.4.1 License Holder

10.4.1.1 \$345  
10.4.1.2 Banking Commissioner License as required by 5 Del.C. §3203

10.4.1.3	\$10,000 Bond	
10.4.1.4	\$1,000,000	Liability Insurance

per occurrence.

10.4.2 Delaware Manager

10.4.2.1 \$230  
10.4.2.2 \$5000 Bond

10.5

**6 DE Reg. 637 (11/01/02)**

**7 DE Reg. (03/01/04)**

### **11.0 Use Of Animals**

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

**Adopted 04/23/1998**

**3 DE Reg 960 (1/1/00)**

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## **DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION**

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

### **ORDER**

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting new rule 8.3.3.5 to be included in the Commission's Rules. Following notice and a public hearing on June 1, 2004, the Commission makes the following findings and conclusions:

#### **Summary Of Evidence**

1. The Commission posted public notice of a proposed new rule in the May 1, 2004 Register of Regulations and for two consecutive weeks in the Delaware Business Review and Delaware State News.

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

8.3.3.5 A finding by the official chemist that the antibody of Erythropietin (EPO) was present in a post-race test specimen of a horse shall be promptly reported in writing to the judges. The judges shall notify the owner and trainer of the positive test result for EPO antibodies. The judges shall notify the Commission Veterinarian of the name of the horse for placement on the Veterinarian's List, pursuant to Rule 8.6.1.1, if the positive test result indicates that the horse is unfit to race. Any horse placed on the Veterinarian's List pursuant to this Rule shall not be permitted to enter a race until the owner or trainer, at their own expense,

provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission, provided said test sample is obtained under collection procedures acceptable to the Commission or its designee under these Rules.

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

3. The Commission held a public hearing on June 1, 2004. At the public hearing, the Commission received public comment from Frank Szczuka, Joe Strug, Official Chemist for Dalare Laboratories, and Salvatore DiMario, Executive Director of DSOA.

4. Frank Szczuka questioned how the proposed rule would serve to prohibit the use of EPO unless the terminology was modified to increase the penalty and proposed, as an example, a thirty (30) day suspension. Mr. Szczuka commented that EPO creates a higher antibody during the period it is in the horse's system and then the horse crashes. He stated that it would be possible for someone who claims a horse with EPO to end up with a horse that crashes. Mr. Szczuka commented that the rule should include a way to penalize the trainer until the horse tests negative for the antibodies. In his opinion, the rule only places the horse under scrutiny and not the trainer and only penalizes the horse and the owner.

5. Joe Strug, Official Chemist for Dalare Laboratories, stated that the test developed to test for the antibodies is currently the only way to monitor for EPO. EPO only stays in the system for a short period and it is not effective to test for EPO itself. The scientific community felt that the testing as proposed in the rule is the most effective way to monitor for use and misuse. There is currently no test for time and administration to enable determination of when the EPO was administered.

6. Salvatore DiMario, Executive Director of DSOA, commented that the proposed rule prohibits the horse from racing until that horse tests negative and commended the Commission for trying to do something to address the EPO problem. He stated that House Bill 282 is now valid law, is much more complete, and mirrors the rule. Mr. DiMario stated that the Commission's rule needed to be expanded to address the possibilities that there will likely be a time and administration test and EPO test in the near future. He proposed that the rule should be amended to encompass any up to date testing and any positive test for EPO.

### Findings Of Fact And Conclusions

7. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed new rule. The Commission received no written comments on the proposed new rule 8.3.3.5.

8. The Commission finds that the comments received at the public hearing support adoption of the proposed rule. Although one commenter would like to see increased penalties for trainers, the Commission finds that there currently is no time and administration test to support the requested sanction against the trainer. Further any increase in the penalties beyond placing the horse on the Veterinarian's List and not permitting the horse to enter a race until the owner or trainer, at their own expense, provides proof of a negative test result for EPO antibodies from a laboratory approved by the Commission would be a substantive change that would require further hearing. While the Commission does not rule out future changes with regard to penalties as additional testing becomes available, the Commission finds that the request to increase the penalty provided in the rule in the context of this proceeding is not warranted and should not delay the adoption of the rule.

9. The Commission finds that the proposed rule mirrors the rule adopted in New York rule and, moreover, is consistent with the provisions of House Bill 282.

10. The Commission finds that proposed Rule 8.3.3.5 is necessary for the agency to achieve its statutory duty to effectively regulate harness racing in the public interest under 3 Del.C. §10005.

11. Based on the public comment received, the Commission does conclude that minor technical and non-substantive revisions to Rule 8.3.3.5 as proposed are necessary to encompass testing for darbopietin and the antibodies of Erythropietin and darbopietin. As a result, the final rule as adopted shall provide:

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

under collection procedures acceptable to the Commission or its designee under these Rules.

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

The Commission finds the above amendments are non-substantive under 29 Del.C. §10113(b)(4).

13. The effective date of this Order will be ten (10) days from the publication of this Order in the Register of Regulations on August 1, 2004. A copy of the enacted Rule is attached as Exhibit #1 to this Order.

**IT IS SO ORDERED** this 24<sup>th</sup> day of June, 2004.

Beth Steele, Chair  
Robert Everett, Commissioner  
Mary Ann Lambertson, Commissioner  
George Staats, Commissioner  
Kenneth Williamson, Commissioner

### 8.3 Medications and Foreign Substances

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

recommendations contained in subsection 8.3.2 of this section.

### 8.3.1 Uniform Classification Guidelines

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

#### 8.3.1.1 Class 1

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

#### 8.3.1.2 Class 2

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

8.3.1.2.1 Opiate partial agonist, or agonist-antagonists;

8.3.1.2.2 Non-opiate psychotropic drugs, which may have stimulant, depressant, analgesic or neuroleptic effects;

8.3.1.2.3 Miscellaneous drugs which might have a stimulant effect on the central nervous system (CNS);

8.3.1.2.4 Drugs with prominent CNS depressant action;

8.3.1.2.5 Antidepressant and antipsychotic drugs, with or without prominent CNS stimulatory or depressant effects;

8.3.1.2.6 Muscle blocking drugs which have a direct neuromuscular blocking action;

8.3.1.2.7 Local anesthetics which have a reasonable potential for use as nerve blocking agents (except procaine); and

8.3.1.2.8 Snake venoms and other biologic substances which may be used as nerve blocking agents.

#### 8.3.1.3 Class 3

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

8.3.1.3.1 Drugs affecting the autonomic nervous system which do not have prominent CNS effects, but which do have prominent cardiovascular or respiratory system effects (bronchodilators are included in this class);

8.3.1.3.2 A local anesthetic which has nerve blocking potential but also has a high potential for producing urine residue levels from a method of use not related to the anesthetic effect of the drug (procaine);

8.3.1.3.3 Miscellaneous drugs with mild sedative action, such as the sleep inducing antihistamines;

8.3.1.3.4 Primary vasodilating/hypotensive agents; and

8.3.1.3.5 Potent diuretics affecting renal function and body fluid composition.

#### 8.3.1.4 Class 4

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

8.3.1.4.1 Non-opiate drugs which have a mild central analgesic effect;

8.3.1.4.2 Drugs affecting the autonomic nervous system which do not have prominent CNS, cardiovascular or respiratory effects

8.3.1.4.2.1 Drugs used solely as topical vasoconstrictors or decongestants

8.3.1.4.2.2 Drugs used as gastrointestinal antispasmodics

8.3.1.4.2.3 Drugs used to void the urinary bladder

8.3.1.4.2.4 Drugs with a major effect on CNS vasculature or smooth muscle of visceral organs.

8.3.1.4.3 Antihistamines which do not have a significant CNS depressant effect (This does not include H1 blocking agents, which are listed in Class 5);

8.3.1.4.4 Mineralocorticoid drugs;

8.3.1.4.5 Skeletal muscle relaxants;

8.3.1.4.6 Anti-inflammatory drugs--those that may reduce pain as a consequence of their anti-inflammatory actions, which include:

8.3.1.4.6.1 Non-Steroidal Anti-Inflammatory Drugs (NSAIDs)--aspirin-like drugs;

8.3.1.4.6.2 Corticosteroids (glucocorticoids); and

8.3.1.4.6.3 Miscellaneous anti-inflammatory agents.

8.3.1.4.7 Anabolic and/or androgenic steroids and other drugs;

8.3.1.4.8 Less potent diuretics;

8.3.1.4.9 Cardiac glycosides and

antiarrhythmics including:

- 8.3.1.4.9.1 Cardiac glycosides;
- 8.3.1.4.9.2 Antiarrhythmic agents (exclusive of lidocaine, bretylium and propranolol); and
- 8.3.1.4.9.3 Miscellaneous

cardiotonic drugs.

- 8.3.1.4.10 Topical Anesthetics--agents

not available in injectable formulations;

- 8.3.1.4.11 Antidiarrheal agents; and
- 8.3.1.4.12 Miscellaneous drugs

including:

- 8.3.1.4.12.1 Expectorants with little or no other pharmacologic action;
- 8.3.1.4.12.2 Stomachics; and
- 8.3.1.4.12.3 Mucolytic agents.

#### 8.3.1.5 Class 5

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

#### 8.3.2 Penalty Recommendations

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

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

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

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

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

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

8.3.2.6 In determining the appropriate penalty

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

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

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

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

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

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

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

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

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

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

8.3.3 Medication Restrictions

8.3.3.1 Drugs or medications in horses are permissible, provided:

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

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

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

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

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

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

8.3.3.3.3 Substances present in the horse in excess of levels at which such substances could occur naturally and such prohibited substances shall include a total carbon dioxide level of 37 mmol/L or serum in a

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

8.3.3.3.4 substances foreign to a horse at levels that cause interference with testing procedures. The detection of any such substance is a violation, regardless of the classification or definition of the substance or its properties under the Uniform Classification Guidelines for Foreign Substances.

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

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

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

8.3.4 Medical Labeling

8.3.4.1 No person on association grounds where horses are lodged or kept, excluding licensed veterinarians, shall have in or upon association grounds

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

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

8.3.4.2.1 the name of the product;

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

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

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

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

### 8.3.5 Furosemide (Lasix)

#### 8.3.5.1 General

Furosemide (Lasix) may be administered intravenously to a horse on the grounds of the association at which it is entered to compete in a race. Except under the instructions of the Commission Veterinarian for the purpose of removing a horse from the Steward's List or to facilitate the collection of a post-race urine sample, furosemide (Lasix) shall be permitted only after the Commission Veterinarian has placed the horse on the Bleeder List.

#### 8.3.5.2 Method of Administration

Lasix shall be administered intravenously by a licensed practicing veterinarian, unless the Commission Veterinarian determines that a horse cannot receive an intravenous administration of Lasix and gives permission for an intramuscular administration; provided, however, that once Lasix is administered intramuscularly, the horse shall remain in a detention area under the supervision of a Commission representative until it races.

#### 8.3.5.3 Dosage

Lasix shall be administered to horses on the Bleeder List only by a licensed practicing veterinarian, who will administer not more than 500 milligrams nor less than 100 milligrams, subject to the following conditions:

8.3.5.3.1 If less than 500 milligrams is administered, and subsequent laboratory findings are inconsistent with such dosage or with the time of administration, then the trainer shall be subject to a fine or

other disciplinary action;

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

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

#### 8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined.

#### 8.3.5.5 Veterinary Charges

It is the responsibility of the owner or trainer, prior to the administration of the medication, to pay the licensed practicing veterinarian at the rate approved by the Commission. No credit shall be given.

#### 8.3.5.6 Restrictions

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

#### 8.3.5.7 Post-Race Quantification

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

8.3.5.7.1.1 Was administered intramuscularly as provided in 8.3.5.2; or

8.3.5.7.1.2 Exceeded 500 milligrams as provided in 8.3.5.3.2.

8.3.5.7.2 If post-race quantification indicates that a horse carried in its body at the time of the running of the race more than 100 nanograms of furosemide per milliliter of plasma in conjunction with a urine that has a specific gravity of 1.010 or lower, and provided that the dosage of furosemide was not administered intramuscularly as provided in 8.3.5.3.2 or exceeded 500 milligrams as provided in 8.3.5.3.2, then a penalty shall be imposed as follows:

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

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

8.3.5.7.2.3 If such overage is the third violation of this rule within a 12-month period: Up to a

\$1,000 fine and up to a 15-day suspension and loss of purse.

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

#### 8.3.5.8 Reports

8.3.5.8.1 The licensed practicing veterinarian who administers Lasix to a horse scheduled to race shall prepare a written certification indicating the time, dosage and method of administration.

8.3.5.8.2 The written certification shall be delivered to a Commission representative designated by the State Steward at least one (1) hour before the horse is scheduled to race.

8.3.5.8.3 The State Steward or judges shall order a horse scratched if the written certification is not received in a timely manner.

#### 8.3.5.9 Bleeder List

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

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

8.3.5.9.1.1.1 during a race;

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

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

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

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

8.3.5.9.2 The confirmation of a bleeder horse must be certified in writing by the Commission Veterinarian or the Lasix veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the

owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

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

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

8.3.5.9.4.1 1st time - 10 days;

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

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

8.3.5.9.4.4 4th time - barred for life.

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

8.3.5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

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

8.3.5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the

provisions of 8.3.6.4 above.

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

#### 8.3.5.10 Medication Program Entries

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

### 8.3.6 Phenylbutazone (Bute)

#### 8.3.6.1 General

8.3.6.1.1 Phenylbutazone or oxyphenbutazone may be administered to horses three years of age and older in such dosage amount that the official test sample shall contain not more than 2.0 micrograms per milliliter of blood plasma. Phenylbutazone or oxyphenbutazone is not permissible at any level in horses two years of age and if phenylbutazone or oxyphenbutazone is present in any post-race sample from a two year old horse, said horse shall be disqualified, shall forfeit any purse money, and the trainer shall be subject to penalties including up to a \$1,000 fine and up to a fifty day suspension.

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

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

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

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

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

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

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

8.3.6.1.4 If post-race quantification indicates that a horse carried in its body at the time of the running of the race any quantity of phenylbutazone or oxyphenbutazone, and also carried in its body at the time of

the running of the race any quantity of any other non-steroidal anti-inflammatory drug, including but not limited to naproxen, flunixin and 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.

## DELAWARE STANDARDBRED BREEDERS' FUND PROGRAM

**Statutory Authority: 29 Delaware Code, Sections 4815(b)(3)b.2.D. 29 & 8103 (8) (29 Del.C. §§ 4815(b)(3)b.2.D.29, 8103 (8))**

### ORDER

#### I. Nature Of Proceedings

Pursuant to its authority under 29 Del.C. §§4815(b)(3)b.2.D and 10115 the State of Delaware, Department of Agriculture, Standardbred Breeder's Fund (the "Fund") proposed to amend its regulations concerning the Fund's enforcement powers and also to substantially revise its regulations by specifically setting forth the powers and duties of the Fund's Administrator, eliminating the Delaware Harness Racing Commission from the hearing process for resolving disputes between horse owners, horse lessees, their agents and the Fund's Administrator substituting in its stead a public hearing before the Fund, and providing for appeals from the Fund's decisions to the Superior Court of the State of Delaware.

The Fund solicited written comments by the public in the Delaware *Register of Regulations* for June 1, 2004 as well as in two Delaware newspapers in general circulation in accordance with 29 Del.C. §10115. This is the Fund's Decision and Order adopting the proposed amended regulations.

#### II. Public Comments

The Fund received no written comments within the 30-day public comment period in response to its notice of intention to adopt the proposed amended regulations.

#### III. Findings And Conclusions

The public was given the required notice of the Fund's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Fund with written comments opposing the Fund's plan. Thus, the Fund concludes that its consideration of the proposed amended

regulations was entirely within its prerogatives and statutory authority and, having received no comments opposed to adoption, is now free to adopt them.

**IV. ORDER**

**AND NOW**, this 2<sup>nd</sup> day of July, 2004 it is hereby ordered that:

1. The proposed amendments to the Fund's regulations are adopted;
2. The text of the regulations shall be in the form attached hereto as Exhibit A;
3. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations* in accordance with 29 Del.C. §10118(e); and
4. The Fund reserves to itself the authority to issue such other and further orders concerning its practices and procedures as may be just and proper.

IT IS SO ORDERED.

David Singleton	Michael Scuse
James Vaughn	William Oberle (by
William Chasanov, Esquire	Tom Cook)
Gloria Myers	Charles Lockhart
Garret O'Marrow	Pete Geldof
Robert Kinsey	Andy Markano

**1.0 Introduction**

1.1 These regulations are authorized pursuant to §4815(b)(3)b.2.D. of Title 29 of the Delaware Code, which established in the State of Delaware a Delaware Standardbred Breeder's Program (herein "the Program") for:

- 1.1.1 Standardbred horses;
- 1.1.2 that are bred in a manner prescribed in Section 2.0 ~~herein~~;
- 1.1.3 that are the product of a registered Delaware stallion;
- 1.1.4 ~~who that~~ are registered, and whose sire is registered, with the Administrator of the Program ~~as such~~; and,
- 1.1.5 listed in their registry books.

1.2 Those horses eligible to race under said Delaware Standardbred Breeder's Program shall be any foal of any registered Delaware stallion standing at a Delaware breeding farm and either owned by a resident of the State of Delaware or owned by a non-resident who holds a lease for a period of the breeding season and will stand the stallion for that full season on a Delaware breeding farm. A copy of any such lease shall be filed with the United States Trotting Association, the Administrator of the Breeder's Program, and the Delaware Harness Racing Commission.

1.3 The Board of the Delaware Standardbred Breeder's Program (herein "the Board") is authorized to do all that is

reasonable and necessary for the proper administration of the Program and shall prepare, issue and promulgate rules and regulations providing for:

- 1.3.1 Classes and divisions of races, eligibility of horses and owners therefor and purses and bonuses to be awarded;
- 1.3.2 Nominating, sustaining and entry fees on horses and races;
- 1.3.3 Such temporary programs including eligibility of horses, breeding, and other matters as may be necessary to make the Program operable as soon as possible;
- 1.3.4 Registration and certification of Delaware stallions, mares bred to such stallions and foals produced thereby; and,
- 1.3.5 Such other matters as the board determines to be necessary and appropriate for the proper administration and implementation of the Program.

1.4 The funds for the Program ~~pursuant to §4815(b)(3) of Title 29 of the Delaware Code~~ and any nominating, sustaining, and declaration fees provided for herein shall be administered by the Delaware Department of Agriculture by deposit in a trust account entitled Delaware Standardbred Breeders' Fund. The Board shall approve an annual budget including the payment of purses and awards, cost of administration, reimbursement of expenses of members of the Board, promotional expenses, and any other appropriate expenses. The budget shall be administered by the Secretary of Agriculture or his designee in consultation with the Board in a manner consistent with ~~the~~ state laws and procedures. A report shall be prepared and filed annually by the Secretary of Agriculture with the Delaware Harness Racing Commission and the Board setting forth an itemization of all deposits to and expenditures from said fund.

1.5 Races ~~for in~~ the Program shall be contested at each licensed harness track in the State of Delaware. ~~Said races and Purses and awards awarded, therefore, for program races,~~ shall be pursuant to in compliance with the rules and regulations of the Board ~~hereunder~~, and the Delaware Harness Racing Commission.

1.6 The Board can propose to amend these regulations ~~through a~~ by the affirmative vote of ~~2/3 majority of the entire board~~ eight of its eleven members. Changes to the rules of eligibility for the Program will be effective at the beginning of the next breeding season and the corresponding racing season.

**2.0 Definitions.**

The following words and terms, when used in this part for ~~the~~ purposes of the Delaware Standardbred Breeder's Fund Program, have the following meanings, unless the context clearly indicates otherwise. Such definitions shall not affect the use of that term by the Delaware Harness Racing Commission for purposes other than for the Breeder's Fund Program.

"Bred" means any form of insemination inside the State of Delaware by a Delaware sire, including insemination using semen transported within the State of Delaware, provided that such semen is not frozen or desiccated in any way or at any time. Bred shall also refer to foals of mares bred outside the State of Delaware by a Delaware sire through interstate semen transportation when such semen is not frozen or desiccated in any way or at any time, provided that owners of mares that produce foals from Delaware sires eligible for this program that are bred through interstate semen transportation shall not be eligible for bonuses paid to owners of mares under the Delaware Standardbred Breeder's Program set forth in Section 4.0 herein. A foal conceived through embryo transplantation is not eligible for nomination to the Delaware Standardbred Breeder's Program under any circumstances.

"Breeder" means the owner of the dam at the time of breeding through foaling.

"Breeding Season" is the season during which reproduction occurs and which runs from February 1<sup>st</sup> to August 1<sup>st</sup> of the calendar year.

"Delaware-bred horse" is a Standardbred by a Delaware sire and registered with the ~~Harness Racing Commission and Administrator~~ of the Program provided that for the purposes of determining eligibility for race years 2002 and 2003 Delaware-bred horses shall also include any foal of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident registered with the ~~Harness and Administrator of the Program~~ by August by May 15<sup>th</sup> of the yearling year.

"Delaware resident" is as defined in §10032 of Title 3 of the Delaware Code.

"Delaware sire" is a Standardbred stallion that regularly stands for a breeding season in Delaware, does not compete for purses during that period, and is registered with the ~~Harness Racing Commission and Administrator~~ of the Program. A Delaware sire may be: a) owned by a resident of the state of Delaware and standing the entire breeding season in the state of Delaware; or b) owned by a resident of a state other than Delaware, but standing the entire breeding season in Delaware, verified by a copy of a lease filed with the Administrator of the Program ~~and the Harness Racing Commission~~ at the time of registration for the Program as provided in section 1.1 above; or c) owned jointly by a resident (or residents) and non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above.

"Private Treaty" No stallion participating in the Program may be offered for service under private treaty. Each stallion registered in the Program must make public the maximum possible breeding fee.

Such definitions shall not affect the use of that term by the ~~Delaware Harness Racing Commission~~ for purposes

other than for the Program.

"Registrant" is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

6 DE Reg. 1497 (5/1/03)

### 3.0 Eligibility for Delaware-bred races.

3.1 ~~To be eligible for races under the Program for race years 2002 and 2003, a horse, which shall be registered with the Administrator and Commission by August 15<sup>th</sup> of its yearling year, shall be: 1) the product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000 and by August 15<sup>th</sup> 2001 for the breeding season of 2001; and/or, 2) the product of a Delaware sire, which sire shall be registered with the Administrator and Commission by March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001.~~

3.2~~1~~ To be eligible for races under the Program for race year 2004, the horse shall be a Delaware sired 2-year old registered with the Administrator ~~and Commission~~ by ~~August~~ May 15<sup>th</sup> of its yearling year or a 3-year old product of a 100% wholly owned mare at the time of breeding through foaling by a Delaware resident, which mare shall have been registered with the ~~Administrator and Commission~~ Department of Agriculture by ~~August 15, 2000 for the breeding season of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001~~ or a 3-year old product of a Delaware sire, which sire shall have been registered with the ~~Administrator and Commission~~ by ~~March 1, 2000 for the breeding seasons of 1999 and 2000 and by August 15, 2001 for the breeding season of 2001~~. by March 1, 2000 and said 3-year old registered with the Administrator by May 15<sup>th</sup> of its yearling year.

3.3~~2~~ To be eligible for races under the Program for race year 2005 and thereafter, the horse shall be a Delaware sired 2 or 3- year old registered with the Administrator ~~and Commission~~ by ~~August~~ May 15<sup>th</sup> of its yearling year.

### 4.0 Eligibility of breeders for bonus payments.

Bonus payments of eight percent (8%) of money earned in the Program by ~~the~~ a foals shall be paid to the owner of the mare at the time of breeding that is bred to Delaware sires to produce that foal. Bonus payments of two percent (2%) of money earned in the Program by the foals shall be paid to owners of stallions standing in Delaware. In order for a Delaware-bred horse to be eligible to earn an award for its breeder, in a race conducted by a licensed harness race track in Delaware, the foals, mares, and stallions shall be registered in accordance with these regulations with the ~~Harness Racing Commission and Administrator~~ of the Breeder's Program prior to entry for the race. In race year

2002, bonus payments shall be restricted to 2 year olds. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

### **5.0 Eligibility of owners of Delaware sires for awards.**

In order for a Delaware sire to be eligible to earn an award for its owner, the sire shall have been registered as a sire of Delaware with the ~~Harness Racing Commission and~~ Administrator of the Breeder's Program during each breeding season when the sire inseminated the dams that, as a result of that insemination, produced Delaware-breds. To be eligible for a sire award, it is necessary that the foal entitling the sire owner to the award be itself registered in accordance with these regulations.

### **6.0 Records of registration.**

Foals and sires eligible for registration shall be registered on official registration forms approved by the ~~Harness Racing Commission~~ and maintained by the Administrator of the Program. The ~~registrar~~ Administrator shall certify thereon the name and address of the Owner, breeder, farm where mare was inseminated, farm on which this horse was foaled, owner of stallion at time the mare was inseminated, owner of the mare at the time of breeding, notice of semen transfer, stallion by which the mare was inseminated following the birth of the Standardbred to be registered, breeder social security or tax identification number, United State Trotting Association registration number, name of foal, color and sex of foal, date of foaling, sire, dam, sire of the dam, signature of the owner, or breeder or authorized representative and the date of application. The registration record shall be maintained at the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture. or agent, social security number and or tax id number. If registration is made by an agent, the name and address of the owner and social security number and or tax id number shall also be provided. Breeding information must include name, color, sex, gait, sire, and dam. For sires, the address and contact information for the breeding farm where the stallion will be collected, and current phone number, address and contact information for where the stallion actually resides, if different from where semen collection occurs. The registration records shall be maintained by the Administrator of the Program and be open to public inspection during normal business days and hours at the State Department of Agriculture. Immediately upon completion and filing of the form, the Administrator of the

Program shall cause a correct copy of it to be filed with the offices of the State Department of Agriculture.

### **7.0 Appeals Duties and Powers of the Fund Administrator; Public Hearings; Appeals.**

~~A person having an interest in a matter concerning the registration of a horse in the Breeder's Program shall have the right to file objections or exceptions to a registration and to the facts set forth therein within 30 days of the filing of the copy of the registration with the Administrator and the Delaware Harness Racing Commission. The objections or exceptions shall be filed in writing with the Administrator of the Breeder's Program and a duplicate delivered to the Harness Racing Commission within the 30 day time period. An interested party aggrieved of an action taken by the Administrator may appeal to the Commission in the manner prescribed for appeals. The Commission shall hear and determine an appeal de novo. In the absence of objections or exceptions timely made, a registration shall be deemed final and binding and an official record of the Commission at the expiration of the 30th day of the delivery to the Commission. The Commission shall thereafter have the right on its own motion to correct an error or inaccuracy that it may find within the records.~~

7.1 In addition to the duties of the Fund's Administrator that are set forth elsewhere in these regulations, the Administrator is charged with receiving and reviewing for compliance with all rules and regulations of the Fund, information submitted by registrants who are seeking to register or renew the registration of horses for participation in the Program.

7.2 If, after performing the review set forth in the immediately preceding section, the Administrator determines, in his or her sole discretion, that the information supplied by a registrant is incomplete or false, the Administrator has the power to: deny any application for registration; deny an application to renew an existing registration; and to suspend or revoke an existing registration.

7.3 The Administrator must provide the registrant with a written decision explaining the reason(s) why the registration, or application for renewal of registration, has been denied, suspended or revoked. Such written decision shall inform the registrant of the right to file a request for an administrative hearing before the Fund. Such a request for a hearing shall be considered timely filed with the Fund if it is received by the Fund within ten (10) days of the date the Administrator mails his or her written decision to the registrant. Such a request for a hearing challenging the Administrator's written decision must state with specificity the ground(s) upon which the Administrator's written decision is being contested.

7.4 No more than thirty (30) days after receiving a registrant's request a public hearing before the Fund will be

scheduled and at which the registrant will be permitted to subpoena, call and cross-examine witnesses, and to introduce documentary evidence challenging the Administrator's decision. The formal rules of evidence will not apply to such proceeding. The proceeding will be conducted in such a way as to allow for the creation of a verbatim transcript of the proceeding should either party wish to obtain one, the cost of such a transcript to be born by the requestor.

7.5 The Fund will, after considering all the evidence, and within thirty (30) days from the close of the public hearing, mail a written decision to the Administrator of the Fund and to the registrant stating its Findings of Fact and Conclusions of Law. An appeal from the decision by the Fund will be to the Superior Court of the State of Delaware on the record made before the Fund.

### **8.0 Records of expenses.**

The Administrator of the Breeder's Program shall maintain a complete record of reasonable and necessary expenses and will submit quarterly estimates to the Board and the Secretary of Agriculture, on the basis of which the Secretary may disburse advances. The quarterly estimated statements of expenses and advances shall be reconciled annually with a certified statement of expenses to be prepared by an auditor approved in advance by the Board. The Board may thereafter review them and after approval of allowable items shall then reimburse the Administrator of the Program for the expenses the Board finds reasonable and appropriate to this program. If advances on account of expenses exceed actual expenses as approved at the end of a given year, the excess shall be deemed disbursed on account of the ensuing year's expenses. bills to the Department of Agriculture following the normal procedures of the State of Delaware as set forth by the Finance Department within the Department of Agriculture. The Secretary of Agriculture has the responsibility to authorize all travel and major purchases.

### **9.0 Purses and Bonus Awards**

9.1 A purse or bonus awarded under this section shall be in accordance with the standards for purses at each racing meet as approved by order of the Commission. The racing association shall maintain a separate ledger of such purses and bonuses and shall transmit a certified copy of allowances, bonus payments, and purses made no later than the 10<sup>th</sup> day of each month of the meet to the Commission. After the Commission has reviewed and approved them, it shall reimburse the racing association for the advances made which the Commission finds proper. The Administrator shall send a confirmation to the Department of Agriculture on a race week basis which will state the amount owed for purses of the Program.

9.2 Administrator of the Program shall compile awards

bonus payments earned by breeders and owners of Delaware Sires and Dams and maintain a separate ledger of them. A certified report of awards earned shall be forwarded to the Commission on a monthly basis during the racing season. The list of awards will be forwarded to Administrator of the Program who shall ensure payment to the awardees subject to approval by the Commission. Bonus payments will be paid out at the end of the racing year. For race years 2003 and thereafter, bonus payments shall not exceed \$70,000 per crop of foals. In the event such payments would exceed these limits, owners eligible for bonus payments shall receive a prorated share of those monies allocated toward the payment of bonus payments.

9.3 A person interested in the awards, allowances, prizes and purses bonus payments and objecting to the calculations or determinations thereof as shown on the records of the Administrator of the Program and the Harness Racing Commission shall be responsible for taking written appeals to the Commission Board in the manner provided for appeals from the decisions of the Administrator pertaining to registrations.

9.4 The Board will have the right to review and approve fees and charges imposed by the Administrator of the Program. The charge or fee may not be imposed without prior approval by the Board.

9.54 Records, funds and accounts of funds, and prizes, purses, allowances and awards under this program shall be maintained separate from other records, funds, and accounts and may not become co-mingled with other matters. The records, funds, and accounts shall be kept continuously open for inspection by the Administrator of the Program.

### **10.0 Responsibilities-Owners or lessees of standardbred stallions and mares**

10.1 An owner or lessee of a standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Program, shall register the stallion by December 1<sup>st</sup> of the approaching breeding season with the Delaware Harness Racing Commission and Administrator of the Program or by January 1<sup>st</sup> of the approaching breeding season with an additional supplemental fee equal to the standard registration fee. For breeding season 1999 and 2000, an owner or lessee of a Standardbred stallion who desires to use him for breeding purposes and to have him qualify for the Program, shall register the stallion by March 1, 2000. Unless the stallion is contracted to stand at stud in the southern hemisphere, the stallion shall stand in the State of Delaware for the remainder of the breeding season. If a stallion is contracted to stand at stud in the southern hemisphere, a copy of said contract must be provided to the Administrator of the Program and the Harness Racing Commission at the time of application for eligibility

registration in the Program, in the event the contract is entered into at a subsequent date, within ten (10) days of entering into the contract. A virgin Standardbred stallion entering stud service for the first time shall be registered prior to his first breeding and shall stand in the State of Delaware the remainder of the breeding season, unless he is contracted to stand at stud in the southern hemisphere. A stallion shall be registered on an application for ~~Standardbred stallion certificate for eligibility~~ established by the Administrator of the Program. ~~in consultation with the Harness Racing Commission.~~

10.2 An owner or lessee of a standardbred stallion eligible for the Program shall designate a resident of Delaware as the authorized agent who shall be responsible for the registrations and records ~~of the farm; of the stallion and the records of the breeding farm;~~ and complying with the requirements of the Program. The "Authorized Agent" ~~form shall be filed with~~ information shall be incorporated into the Stallion registration form and filed as such.

10.3 ~~In order for foals of 100% wholly owned mares at the time of breeding through foaling by a Delaware resident to be eligible for races under the Program for race years 2002 and 2003, said mares shall be registered with the Administrator and Commission by August 15, 2000 for the breeding seasons of 1999 and 2000. No fee shall be charged for registering said mare.~~

10.3 No stallion participating in the Delaware Standardbred Breeder's Program may be offered under private treaty. Each stallion registered in the Delaware Standardbred Breeder's Program must make public the maximum possible breeding fee.

### 11.0 Sire Registration Fees

11.1 Sires shall initially register for the Program no later than December 1<sup>st</sup> of the approaching breeding season, or no later than January 1<sup>st</sup> with an additional supplemental registration fee equal to the regular stallion registration fee. ~~For sires registering in breeding season 2000, sires shall initially register for the Program no later than March 1, 2000.~~

11.2 All fees must accompany the registration and must be submitted by registered or certified mail.

11.3 Registration fees for the Program are non-refundable.

11.4 Sire registration fee for a Standardbred stallion shall be \$500.00. ~~Sire registration for those sires standing in the State of Delaware and registering for breeding seasons prior to 2001 in accordance with these regulations shall be charged a single fee of \$250. The supplemental registration fee shall be \$1,000.00.~~

11.5 The annual stallion registration fees may be used to offset reasonable expenses related to administering and promoting the Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the

Program.

~~11.6 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Program. An owner of a Standardbred stallion registered with the Administrator and Commission shall submit by December 1<sup>st</sup> of each year the stallion registration fee, or January 1<sup>st</sup> with the supplemental fee provided in section 10 above and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months. For breeding seasons prior to breeding season 2001, an owner of a Standardbred stallion registered with the Administrator and Commission shall submit by March 1, 2000 the stallion registration fee of \$250 and any other documentation required by the Administrator and Commission to verify where the stallion stood during the period for which the stallion or its progeny seek to register. An owner of a Standardbred stallion registered with the Administrator shall submit by September 1<sup>st</sup> after the breeding season which the stallion serviced mares a copy of the USTA "Mares Bred Report."~~

### 12.0 Sire Renewal Fees

12.1 The registration of a stallion that remains in the state for more than one (1) breeding season shall be renewed annually.

12.2 The annual renewal fee for registration of stallions to the Delaware Standardbred Breeders' Fund Program shall be \$500.

~~12.3 The annual stallion registration fee may be used to offset reasonable expenses related to administering and promoting the Delaware Standardbred Breeder's Program. Any fees beyond reasonable expenses shall be invested in the endowment account of the Delaware Standardbred Breeder's Program. An owner of a standardbred stallion registered with the Administrator and Commission shall submit by December 1st of each year the stallion registration fee and a report for each stallion that states each mare bred by said stallion during the preceding twelve (12) months.~~

### 13.0 Penalties and Suspension from the Program

13.1 ~~If an owner or a lessee of a registered stallion fails to furnish information the Administrator of the Breeder's Program has requested relating to the registration or renewal of registration of a horse, the Administrator of the Breeder's Program shall:~~

~~13.1.1 Suspend or deny the registration of the stallion; and~~

~~13.1.2 Schedule a hearing within thirty days of the denial or suspension.~~

~~13.1.2.1 After the hearing, the Administrator~~

of the Breeder's Program shall determine within ten working days whether the failure to furnish information was willful; and:

13.1.2.1.1 Suspend the registration; or  
 13.1.2.1.2 Rescind its suspension of the registration; or  
 13.1.2.1.3 Deny or revoke the registration; or  
 13.1.2.1.4 Deny or revoke the registration; and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.1.2.2 If the Administrator of the Breeder's Program determines that a registration is incorrect, or an application for registration, renewal of registration, or transfer of a registered stallion contains false or misleading information, the Administrator shall:

13.1.2.2.1 Suspend or deny the registration of the stallion; and

13.1.2.2.2 Summon the person who executed the application, and any person who has knowledge relating to the application, to appear before the Administrator at a hearing;

13.1.2.3 After the hearing, the Administrator of the Breeder's Program shall determine within ten working days whether the person knew or had reason to know that the information was false or misleading, and:

13.1.2.3.1 Rescind its suspension or denial of the registration; or

13.1.2.3.2 Suspend, deny, or revoke the registration; or

13.1.2.3.3 Deny or revoke the registration; and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

13.1.2.4 If a person summoned by the Administrator of the Breeder's Program fails to respond to the summons within ten working days, the Administrator of the Breeder's Program:

13.1.2.4.1 Shall suspend or deny the registration of the stallion;

13.1.2.4.2 Notify the person in writing of the action taken by the Commission; and

13.1.2.4.3 may deny or revoke the registration; and bar from further registration, horses owned by the person who executed the application containing false or misleading information.

### 13.2 Appeals

Appeals of decisions to deny or suspend registrations by the Administrator of the Breeder's Program may be appealed to the Delaware Harness Racing Commission within thirty days of the action by the Administrator of the Breeder's Program, subject to the same rules and procedures for handling appeals established for the

Delaware Harness Racing Commission.

### ~~14.0~~ 13.0 Races

~~14.1~~ 13.1 The purses for all races, including walkovers, under this Breeder's Program shall be distributed on the following percentage basis: 50-25-12-8-5. Walkovers receive 50 % of the purse. Points to qualify for the finals shall be distributed on the same percentage basis. In fields with more than five horses, places six through ~~nine~~ eight shall receive 4-3-2-1 points, respectively.

~~14.2~~ 13.2 In the case of dead heats, points for the two positions shall be divided equally among those horses finishing in a dead heat. For example, if two horses finish in a dead heat for second, those horses would divide 25 plus 12 points to receive 18.5 percent of the purse or 18.5 qualifying points each. In the case of a tie in points, the fastest time in either elimination shall determine the horse eligible to enter the final. In the case of horses tied in points that have recorded identical times, the amount of the horses' lifetime earnings will decide the horse eligible to enter the final. In the case where points, times, and lifetime earnings are equal, the eligible horse shall be drawn by lot. All horses must start in one elimination in order to start in the final. All horses shall be on the gate in eliminations and the final.

~~14.3~~ 13.3 The percentage basis established by subsection (1) of this section shall apply at each of the associations licensed by the Delaware Harness Racing Commission.

~~14.4~~ 13.4 If circumstances prevent the racing of an event, and the race is not drawn, all stake payments shall be refunded to the purse account of the Program.

~~14.5~~ 13.5 The monies provided for purses and bonus payments shall be distributed evenly between the races of each:

~~14.5.1~~ 13.5.1 Age:

~~14.5.2~~ 13.5.2 Sex: and

~~14.5.3~~ 13.5.3 Gait.

~~14.6~~ 13.6 The minimum purses for elimination races for both pacers and trotters shall be \$5,000. The minimum purses for finals shall be \$30,000. Beginning in 2004, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$15,000.00 and the finals shall be \$100,000.00. The Board of the Program, pursuant to a recommendation from the Administrator of the Program may agree to increase purses should funds and other conditions permit, or decrease purses in the event of insufficient funds.

~~14.7~~ 13.7 No horse is eligible to declare unless it has at least one charted satisfactory performance line within 30 days of declaration and must meet the following qualifying standards:

2 Year-Olds	3 Year-Olds
Pacers Trotters	Pacers Trotters
2:10 2:14	2:06 2:12

~~14.8~~ 13.8 Horses that meet the qualifying standards

for a preliminary leg at each racetrack are qualified for subsequent legs and the final at that racetrack.

~~14.9~~ 13.9 The Administrator of the Program shall be responsible for races conducted under the Program and shall ensure that:

~~14.9.1~~ 13.9.1 each track declares the time specified for races under this program by proper notice and racing dates are issued for sires stakes after the track's race dates are set.

~~14.9.2~~ 13.9.2 entry for races run under the Program is required to be received by the Racing Office ~~by noon three days in advance of the scheduled race date in a box designated for this purpose. at the date and time published on the track's condition sheet.~~

~~14.9.3~~ 13.9.3 The eligibility and class of all horses ~~running participating~~ in races is carefully screened.

~~14.9.4~~ 13.9.4 The Administrator, or his/her designee, is present for the ~~Judge's race draw by the Judges~~ for all races conducted under the Program.

**6 DE Reg. 1497 (5/1/03)**

~~14.10~~ Beginning in 2004, the minimum purse for elimination races for 2-year old trotters and pacers shall be \$7,500.00 and minimum purse for finals shall be \$75,000.

~~14.11~~ Beginning in 2005, the minimum purse for elimination races for 2 and 3-year old trotters and pacers shall be \$7,500.00 and minimum purse for finals shall be \$75,000.00.

**7 DE Reg. 497 (10/01/03)**

**~~15.0~~ 14.0 Nomination and Sustaining Payments**

~~15.1~~ 14.1 Nomination and sustaining payments shall be made to the Program in U.S. Funds.

~~15.2~~ 14.2 A fee payment required by this section shall be postmarked no later than the date due that is specified for the fee by this section. If the date due is on a Sunday and/or a legal federal holiday which falls on a Saturday, payment is due by the following Monday. If the date due falls on a Monday that is a legal holiday, such payment is due on Tuesday. Payments made by commercial delivery services shall be treated the same as those made by letters bearing a postmark.

~~15.3~~ 14.3 Beginning with the yearlings of 2001, the yearling nomination fee shall be:

~~15.3.1~~ 14.3.1 Forty (40) dollars each; and

~~15.3.2~~ 14.3.2 Due by May 15<sup>th</sup> of the yearling year.

~~15.4~~ 14.4 A nomination shall be accompanied by a photocopy of the USTA registration certificate. Supplemental fees of \$25 shall be assessed if the USTA registration certificate does not accompany the nomination. No nomination shall be accepted where a USTA registration certificate is not obtained and submitted within 60 days of nomination to the Program.

~~15.5~~ 14.5 If the May 15<sup>th</sup> deadline to nominate a yearling is missed, a late supplemental payment of \$350 shall be required. The late supplemental payment shall be accepted if ~~(a) it is received by April 1~~ March 15<sup>th</sup> of the two (2) year old year; ~~and (b) the two (2) year old Marefn 15<sup>th</sup> payment has been made.~~ This payment is in addition to the regular sustaining payment due on March 15<sup>th</sup>.

~~15.6~~ 14.6 Sustaining payments shall be as follows:

~~15.6.1~~ 14.6.1 Two(2) Year Old payments

March 15<sup>th</sup>-\$100.00(must be made to ensure eligibility as a three (3) year old;

May 15<sup>th</sup>-\$200.00;

Declaration Fee (for each track) \$500.00

~~15.6.2~~ 14.6.2 Three (3) Year Old payments.

March 15<sup>th</sup>-\$300.00

Declaration Fee (for each track) \$500.00

**6 DE Reg. 1497 (5/1/03)**

**5 DE Reg. 1274 (12/1/01)**

**~~16.0~~ 15.0 Investment Plan and Use of Fees**

~~16.1~~ 15.1 All proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, a Delaware Standardbred Breeders' Program and any interest earned on these monies shall be invested in an endowment account until race year 2002.

~~16.2~~ 15.2 For race year 2002, five hundred thousand dollars (\$500,000) of the proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year. For race year 2002, one million five hundred thousand dollars (\$1,500,000) of the proceeds pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program shall be deposited in the endowment account.

~~16.3~~ 15.3 For race year 2003, two million dollars (\$2,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program and any interest earned on the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for that race year.

~~16.5~~ 15.4 For race year 2004 and each race year thereafter, ~~two~~ three million dollars (\$3,000,000) of the proceeds received pursuant to §4815(b)(3)b.2.D of Title 29 of the Delaware Code, which established in the State of Delaware, the Program and any interest earned on ~~that money~~ the endowment fund in the preceding (12) twelve months shall be deposited in a separate purse account for purses and bonuses for ~~race year 2004 and for each year~~

thereafter that race year.

~~16.4~~ 15.5 Any monies from the purse account for the Program at the end of the race year shall revert to the endowment account of the Program.

## DEPARTMENT OF EDUCATION

### 14 DE Admin. Code 618

Statutory Authority: 14 Delaware Code,  
Section 220 (14 Del.C. §220)

### REGULATORY IMPLEMENTING ORDER

#### 618 School Safety Audit

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 879 School Safety Audit by requiring that a corrective plan of action be developed within sixty (60) days of conducting the School Safety Audit and that the plan be made available to the Department's Quality Review Team at the time of their visit. The reference to Alternative Schools has been changed, more appropriately, to Alternative Program sites and the number assigned to the regulation has been changed to 618 in order to place it in the School Climate and Discipline section of the regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24, 2004 in the form hereto attached as *Exhibit "A"*. No comments were received.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 DE Admin. Code 879 in order to require that a corrective plan of action be developed within sixty (60) days of conducting the School Safety Audit to be made available to the Department's Quality Review Team at the time of their visit and that references to Alternative Schools be changed to Alternative Program sites.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 DE Admin. Code 879. Therefore, pursuant to 14 Del.C. §122, 14 DE Admin. Code 879 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 Del.C. §122(e), 14 DE Admin. Code 879 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. Text and Citation

The text of 14 DE Admin. Code 879 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 DE Admin. Code 618 in the *Administrative Code of Regulations* for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on July 2, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 2nd day of July 2004.

DEPARTMENT OF EDUCATION

Valerie A. Woodruff, Secretary of Education

#### ~~879~~ 618 School Safety Audit

1.0 Each school year every Delaware public school including Charter Schools and Alternative Schools Program sites shall conduct a School Safety Audit. Such audit shall be conducted using guidelines provided by the Department of Education. Districts and heads of charter schools shall ensure that a corrective plan of action to address identified needs is developed within sixty (60) days of the School Safety Audit. The corrective plan of action shall be made available to the Department of Education's Quality Review Team at the time of their visit.

### REGULATORY IMPLEMENTING ORDER

#### 620 School Crisis Response Plans

### 14 DE Admin. Code 620

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 DE Admin. Code 880 School Crisis Response Plans. The amendment requires a meeting following practice drills to assess the readiness and effectiveness of the plan. The plan must also be made available to the Department's Quality Review Team when they visit the school. The reference to Alternative Schools has been changed more appropriately to Alternative Program sites and the number assigned to the regulation has been changed to 620 in order to place it in the School Climate and Discipline section of the regulations.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24,

2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 880 in order to require a meeting following practice drills to assess the readiness and effectiveness of the plan. The plan must also be made available to the Department's Quality Review Team when they visit the school and the reference to Alternative Schools has been changed to Alternative Program sites

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 880. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 880 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 880 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 880 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 620 in the *Administrative Code of Regulations* for the Department of Education.

## V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on July 2, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 2nd day of July 2004.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff, Secretary of Education

### ~~880~~ 620 **School Crisis Response Plans**

1.0 Every Delaware public school including Charter Schools and Alternative ~~Schools~~ Program sites shall develop a School Crisis Response Plan and shall conduct at least one practice drill annually. Following practice drills, the districts and heads of charter schools shall ensure that the school safety teams conduct meetings to assess readiness and determine the effectiveness of the existing plans. Such plan

School Crisis Response Plans shall be developed using guidelines provided by the Department of Education and shall be made available to the Department of Education's Quality Review Team at the time of their visit.

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## REGULATORY IMPLEMENTING ORDER

### **885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System** **14 DE Admin. Code 885**

## I. Summary of the Evidence and Information Submitted

The Secretary of Education intends to amend 14 **DE Admin. Code** 885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System. The amendments include a statement in 1.0 that no mercury or mercury compounds may be used in Delaware public schools, an explanation of the use of the word "surplus" in the regulation in 4.0 and the inclusion of charter schools in the regulation. In addition, the word "surplus" has been removed from the title.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 24 , 2004, in the form hereto attached as *Exhibit "A"*. No comments were received.

## II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 885 in order to add a statement that no mercury or mercury compounds may be used in Delaware public schools, to add an explanation of the use of the word "surplus" in the regulation and to add charter schools to the regulation.

## III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 885. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 885 attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 885 hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

## IV. Text and Citation

The text of 14 **DE Admin. Code** 885 amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 885 in the

*Administrative Code of Regulations* for the Department of Education.

### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del.C. §122 on May 24, 2004. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 2nd day of July 2004.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff, Secretary of Education

### 885 Safe Management and Disposal of Surplus Chemicals in the Delaware Public School System

This policy was developed with the assistance of the Department of Natural Resources and Environmental Control, the Delaware Solid Waste Authority, the Bureau of Environmental Health, Delaware Department of Transportation, and the Advisory Committee on Science/Environmental Education.

1.0 The storage of all chemicals shall conform to the specifications stated in *Safety First: Guidelines for Safety in the Science or Science Related Classrooms*.

2.0 All laboratories and science storage in the Delaware public schools shall be inventoried each year during the month of March. The inventory of chemicals both hazardous and non-hazardous should contain the following information:

- 2.1 Who may handle the chemical and/or use it;
- 2.2 The name of the chemical;
- 2.3 The amount on hand;
- 2.4 The location where the chemical is stored;
- 2.5 The date purchased; and
- 2.6 The date discarded.

3.0 A list of the chemicals shall be kept by the school principal.

4.0 Each district shall prepare a list of surplus chemicals and send a copy to the Education Associate, Science/Environmental Education by April 15 of each year. These lists will be duplicated and disseminated to school districts so that they may negotiate, trade or exchange their surplus chemicals.

5.0 Disposal of surplus non-hazardous chemicals shall be carried out within the school district in accordance with

procedures outlined in the *Flinn Chemical Catalog/Reference Manual*, using trained staff. Direct any questions regarding these procedures to the Education Associate for Science/Environmental Education.

6.0 Each district shall prepare a list of Transportable Surplus Hazardous chemicals and submit it to the Education Associate for Science/Environmental Education by May 15 of each year. These Transportable Surplus Hazardous chemicals, from all districts, will be brought to a central facility by district personnel. The location of this facility and date of aggregation will be announced annually by the Education Associate for Science/Environmental Education. Arrangements will be made for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. Cost of disposal will be prorated among the districts and will be based upon the weight of the hazardous materials.

7.0 Non-transportable hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials listed in *Safety First: Guidelines for Safety in the Science or Science Related Classrooms*, must be disposed of in a prompt manner through the use of a licensed waste hauler. It is the school district's responsibility to contact a licensed waste hauler and to pay the cost for removal and disposal.

**See 4 DE Reg. 1255 (2/1/01)**

### 1.0 Mercury and Mercury Compounds

1.1 Mercury and mercury compounds, both organic and inorganic shall not be used in the science classrooms in the public schools in Delaware no later than January 1, 2005. Instruments which contain mercury such as thermometers, hydrometers, barometers, etc. shall be replaced at all grade levels in order to guard against spillage.

### 2.0 Storage of Chemicals

2.1 The storage of all chemicals shall conform to the specifications stated in *Safety First: Guidelines for Safety in the Science or Science Related Classrooms*.

### 3.0 Inventory of Chemicals, Hazardous and Nonhazardous

3.1 All laboratories and science storage in the Delaware public schools shall be inventoried each year during the month of March. The list of the chemicals shall be kept by the school principal. The inventory of chemicals both hazardous and non-hazardous shall contain the following information:

- 3.2 Who may handle the chemical and/or use it;
- 3.3 The name of the chemical;
- 3.4 The amount on hand;
- 3.5 The location where the chemical is stored;
- 3.6 The date purchased; and
- 3.7 The date discarded.

**4.0 For purposes of this regulation, surplus shall refer to chemicals which are no longer usable or needed**

**5.0 Inventory of Surplus Chemicals**

5.1 Each district and charter school shall prepare a list of surplus chemicals and send a copy to the Education Associate, Science/ Environmental Education by April 15 of each year. The Department shall duplicate and disseminate these lists to school districts and charter schools so that they may negotiate, trade or exchange their surplus chemicals.

**6.0 Disposal of Surplus Nonhazardous Chemicals**

6.1 Disposal of surplus non-hazardous chemicals shall be carried out by the school district and charter school in accordance with procedures outlined in the Flinn Chemical Catalog/ Reference Manual, using trained staff.

**7.0 Disposal of Surplus Transportable Hazardous Chemicals**

7.1 Each district and charter school shall prepare a list of surplus transportable hazardous chemicals and submit it to the Education Associate for Science/Environmental Education by May 15 of each year. These surplus transportable hazardous chemicals, from all districts and charter schools shall be brought to a central facility by district and charter school personnel. The location of this facility and date of aggregation shall be announced annually by the Education Associate for Science/Environmental Education. The Department shall arrange for a licensed waste hauler to take the chemicals to a proper waste facility for disposal. The cost of disposal shall be prorated among the districts and charter schools based upon the weight of the hazardous materials.

**8.0 Disposal of Surplus Non-transportable Hazardous Chemicals**

8.1 Surplus non-transportable hazardous chemicals such as diethyl ether, picric acid, benzoyl peroxide and other materials that are listed in Safety First: Guidelines for Safety in the Science or Science Related Classrooms, must be disposed of in a prompt manner through the use of a licensed waste hauler. It is the responsibility of the school districts and charter schools to contact a licensed waste hauler and to pay the cost for removal and disposal.

**PROFESSIONAL STANDARDS BOARD**

**14 DE Admin. Code 1502**

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

**REGULATORY IMPLEMENTING ORDER  
REGULATION 1502 EDUCATOR MENTORING**

**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 14 **DE Admin. Code** 1502 Educator Mentoring. It is necessary to adopt this regulation in order to fully implement educator mentoring, pursuant to 14 **Del.C.** §1210(c) and 14 **Del.C.** §1305(o). This regulation concerns the duties and responsibilities of educator lead mentors, mentors, and new educators. All educators serving on an Initial License must successfully participate in new educator mentoring in order to be eligible for a Continuing License. In addition, educators new to Delaware or new to roles or districts within the state must participate in mentoring activities.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on May 26, 2004, in the form hereto attached as Exhibit "A". The notice invited written comments. Comments supportive of the regulation were received from the Governor's Advisory Council for Exceptional Children.

**II. Findings Of Facts**

The Professional Standards Board and the State Board of Education find that it is appropriate to amend this regulation to comply with changes in statute regarding the licensure and certification of educators.

**III. Decision To Adopt The Regulation**

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to amend the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "B" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

**IV. Text And Citation**

The text of the regulation amended shall be in the form attached hereto as Exhibit "B", and said regulation shall be

cited as 14 **DE Admin. Code** 1502 from the *Administrative Code of 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 1st DAY OF JULY, 2004

Harold Roberts, Chair	Bruce Harter
Sharon Brittingham	Valerie Hoffman
Norman Brown	Leslie Holden
Heath Chasanov	Carla Lawson
Edward Czerwinski	Mary Mirabeau
Angela Dunmore	Gretchen Pikus
Karen Gordon	Karen Schilling Ross
Barbara Grogg	Carol Vukelich

FOR IMPLEMENTATION BY THE DEPARTMENT OF EDUCATION:

Valerie A. Woodruff, Secretary of Education

**IT IS SO ORDERED** This 15th Day Of July, 2004

### STATE BOARD OF EDUCATION

Dr. Joseph A. Pika, President  
 Jean W. Allen, Vice President  
 Richard M. Farmer, Jr.  
 Mary B. Graham, Esquire  
 Valarie Pepper  
 Dennis J. Savage  
 Dr. Claibourne D. Smith

### 1502 Educator Mentoring

#### **1.0 Content.**

1.1 This regulation shall apply to mentoring activities required of (1) all educators who hold an Initial License and (2) all educators who hold a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing, or Advanced License[;] who are new to the State of Delaware, new to an employing authority, or who move from one category of position to another (i.e., teacher to administrator), pursuant to 14 **Del.C.** §1210(c).

#### **2.0 Definitions.**

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

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

**“Educator”** means a public school employee who holds

a license issued under the provisions of 14 **Del.C.** Ch. 12, and includes teachers, specialists, and administrators, and as otherwise defined by the Standards Board and the State Board pursuant to 14 **Del.C.** §1203, but does not include substitute teachers. For the purposes of this regulation, licensed and certified charter school teachers, and teachers or specialists who are employed on temporary contracts of 91 days or longer duration shall be included under the term “educator”.

**“Employing Authority”** means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, or management companies.

**“Experienced Educator”** is an educator who holds a Continuing or Advanced License, or an educator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, and a Standard Certificate in the area assigned[~~;~~ and who has satisfactory DPAS evaluations].

**“Lead Mentor”** means a teacher, specialist, or administrator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing or Advanced License, who has participated in the training specified for lead mentors and who is employed by an employing authority as a lead mentor and performs the duties and responsibilities assigned that position. Educators serving as lead mentors must have satisfactory DPAS evaluations, and may not be on a DPAS improvement plan.

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

**“Mentor”** means a teacher, specialist, or administrator who holds a Standard or Professional Status Certificate issued prior to August 1, 2003, or a Continuing or Advanced License, who has participated in the training for mentors specified by the Department and the employing authority. Educators serving as mentors must have satisfactory DPAS evaluations, and may not be on a DPAS Improvement Plan.

**“Mentoring”** means activities prescribed by the Department or other employing authority in which a holder of an Initial License must engage during the three-year term of the Initial License. Mentoring also means activities prescribed by the Department or other employing authority for educators who are new to Delaware or who move [to another employing authority ~~from one category of position to another, such as from teacher to specialist or from teacher or specialist to administrator, regardless of the level of the license held~~].

**“NASSP”** means the National Association of Secondary School Principals.

**“New Educator”** means an educator who holds an Initial License.

**“Site Coordinator”** means an individual appointed by an employing authority to oversee an educator mentoring program.]

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

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

### **3.0 New Educator Mentoring.**

3.1 In accordance with 14 **Del.C.** §1210(c), educators who are new to the profession and who hold an Initial License shall participate in mentoring activities prescribed by the Department. Each new educator will be assigned a mentor for his or her first year in the profession, with continuing support in years two and three, who will assist the new educator in becoming acclimated to the role, the school or other setting, and Delaware content standards and Delaware Professional Teaching Standards, applicable national specialist standards, or Delaware Administrator Standards. The new educator will meet with his or her mentor at least 30 documented hours, which may include a combination of in-school and after-school time, during the first year of employment. The assignment of a mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the educator’s performance.

3.2 The new educator shall, during the three-year term of the Initial License, attend such activities as are planned by the Department as part of the New Educator Mentoring Program and offered in individual employing authorities.

3.3 The new educator shall participate in workshops and other activities offered for new educators as part of the New Educator Mentoring Program by the employing authority.

3.4 The new educator shall complete the requirements of the New Educator Mentoring Program, which shall consist of no more than 60 hours [in the first year], inclusive of meetings between the mentor and the new educator.

3.4.1 The New Educator Mentoring Program shall be aligned with Danielson’s (1996) “A Framework for Teaching” and shall include training and support in the components of the Delaware Performance Appraisal System, including descriptive, non-evaluative feedback. [In the first year, 18 hours of training shall be based on the Pathwise Induction Program.]

3.5 Failure by a new educator to complete the requirements of the New Educator Mentoring Program shall result in the denial of a Continuing License.

### **4.0 Experienced Educators New to the State of Delaware.**

4.1 Experienced teachers and specialists new to the State of Delaware who hold an Initial License shall participate in mentoring activities prescribed by the Department. Each teacher or specialist shall be assigned a mentor for the first year of employment in the State. The

mentor will assist the new teacher or specialist in becoming acclimated to the role, the school or other setting, and Delaware content and teacher or specialist standards. The teacher or specialist will meet with his or her mentor at least 30 documented hours, which may include a combination of in-school and after-school time, during the first year of employment. The assignment of a mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the teacher’s or specialist’s performance.

4.1.1 The teacher or specialist shall, during the three-year term of the Initial License, attend such activities as are planned by the Department and offered by individual employing authorities.

4.1.2 The teacher or specialist shall also participate in workshops and other activities concerning employing authority specific practices offered for new teachers and specialists by the employing authority.

4.2 Experienced teachers and specialists new to the State of Delaware who hold a Continuing or Advanced License shall, within the first year of employment, participate in, and successfully complete, a Department-sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

4.3 Experienced educators new to the State who are employed as school administrators shall participate in mentoring activities specified by the Department, as well as in mentoring activities required by the employing authority.

4.4 Experienced teachers and specialists new to the State of Delaware who hold Initial Licenses shall complete the requirements of the New Educator Mentoring Program, which shall consist of no more than 60 hours, inclusive of meetings between the mentor and the experienced teachers and specialists.

4.4.1 The [New] Educator Mentoring Program shall be aligned with Danielson’s (1996) “A Framework for Teaching” and shall include training and support in the components of the Delaware Performance Appraisal System, including descriptive, non-evaluative feedback. [In the first year, 18 hours of training shall be based on the Pathwise Induction Program.]

4.5 Failure by an experienced teacher or specialist new to the State of Delaware to complete the requirements of the [New] Educator Mentoring Program shall result in the denial of a Continuing License.

### **5.0 Experienced Delaware Educators New to an Employing Authority.**

5.1 Experienced Delaware educators who hold a Continuing or Advanced License, or a Standard or Professional Status Certificate issued prior to August 1, 2003, who move to a different employing authority shall, within the first year of employment, participate in, and

complete, an employing authority sponsored mentoring program which focuses on current best practices in curriculum, instruction and assessment aligned to state standards.

5.2 Experienced Delaware administrators moving to a new employing authority shall participate in that employing authority's designated mentoring program during the first year of employment.

#### **6.0 Experienced Delaware Educators New to a Category of Employment. [Reserved]**

~~[6.1 Experienced Delaware educators who move from a teacher, specialist, or administrative category to any other category, whether within the same or a different employing authority, shall participate in mentoring activities specified by the Department, as well as in mentoring activities required by the employing authority.]~~

#### **7.0 Duties and Responsibilities of Mentors.**

##### **7.1 Lead Mentors.**

##### **7.1.1 Teacher lead mentors must:**

7.1.1.1 Satisfactorily complete training in mentoring and coaching development provided by the Department for lead mentors[. **A minimum of one lead mentor per district shall be trained in the Pathwise Induction Program**]; and

7.1.1.2 Work a minimum of 45 documented hours per year in Lead Mentor Activities. Lead Mentor activities may include, but are not limited to, a combination of in-school and after-school time, per year in the program in a leadership position, planning mentor training, providing two-day mentor training to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the site coordinator.

##### **7.1.2 Administrative lead mentors must:**

7.1.2.1 Satisfactorily complete training in mentoring and coaching development provided by the NASSP Leadership Development and Assessment Program.

7.1.2.2 Satisfactorily complete training in the mentoring and coaching facilitator development provided by the NASSP Leadership Development and Assessment Program or Assessor Training for the Developmental Assessment Center provided by the NASSP Leadership Development and Assessment Program;

7.1.2.3 Work a minimum of 45 documented hours per year in Administrative Lead Mentor activities. Administrative Lead Mentor activities may include, but are not limited to, a combination of in-school and after-school time, in the program in a leadership position, planning mentor training, providing two-day mentor training as prescribed by NASSP to aspiring mentors, assisting mentors with specific issues, and other responsibilities as directed by the ~~[program site]~~ coordinator; and

7.1.2.4 Serve on the administrative mentoring program advisory committee.

##### **7.2 [Educator] Mentors.**

##### **7.2.1 Teacher [and Specialist] mentors must:**

7.2.1.1 Satisfactorily complete training in mentoring and coaching development provided by the Lead Mentors;

7.2.1.2 Attend structured meetings concerning the mentoring program as directed by the district;

7.2.1.3 Facilitate 30 documented contact hours, which may include a combination of in-school and after-school time, with their protégées annually which are designed to help the new teacher acquire additional skills and knowledge appropriate to their specific positions; and

7.2.1.4 Submit contact log documentation to site coordinator January 15 and May 15. This documentation must be forwarded to the Department by May 30.

##### **7.2.2 Administrative mentors must:**

7.2.2.1 Satisfactorily complete training in Mentoring and Coaching Development provided by the NASSP Leadership Development and Assessment Program;

7.2.2.2 Attend a minimum of three (3) structured meetings with protégées;

7.2.2.3 Facilitate 30 documented contact hours annually in Administrative mentoring activities. Administrative mentoring activities may include, but are not limited to, a combination of in-school and after-school activities which are designed to help the new administrator link school leadership theory and on the job practice;

7.2.2.4 Submit contact log documentation to ~~[program site]~~ coordinator January 15 and May 15. This documentation must be forwarded to the Department by May 30.

**8.0 Mentors and lead mentors who are paid in accordance with the provisions of 14 Del.C. §1305 shall be paid an extra responsibility salary supplement annually, upon documentation of satisfactory fulfillment of duties and responsibilities, in accordance with the schedule adopted annually by the Standards Board, with concurrence of the State Board.**

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Section  
107 (31 Del.C. §107)

**ORDER****NATURE OF THE PROCEEDINGS**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) as it relates to Fair Hearing Practice and Procedure. 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 June 2004 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by June 30, 2004 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

**SUMMARY OF PROPOSED CHANGE**

DSSM 5311, Notification of Time and Place of Hearing  
- The change adds language to clarify that the ten day advance notice period in this rule refers to the date the fair hearing scheduling letter is mailed and not to the date the letter is received by certified mail.

**SUMMARY OF COMMENTS RECEIVED WITH  
AGENCY RESPONSE**

The Delaware Developmental Disabilities Council (DDDC), the Governor's Advisory Council for Exceptional Citizens (GACEC), and the State Council for Persons with Disabilities (SCPD) provided the following summarized statement as a preamble to their observations, concerns and suggestions:

The regulation contemplates that the notice will be sent to the beneficiary by certified mail. This will often result in additional delay in receipt since the mail carrier will only leave a notice of the availability of the mail if the beneficiary is not at home. The beneficiary may need to alert witnesses of a hearing date with only a few days advance notice. This provides little advance notice to witnesses (who may be medical providers with "tight" calendars). Such "short" notices will predictably result in more requests for

continuances since attorney, beneficiary, and witness calendars will already be filled.

*Agency Response:* The proposal, which would amend the current regulation covering notification of a fair hearing, is to clarify that the 10-day advance notice provision only requires that the notice be mailed, not actually received, 10 calendar days prior to the hearing. Regulations already provide and the practice has been to use certified mail for mailing hearing notices.

The rule was proposed because of some recent confusion over its application. The Delaware rule is based primarily on the federal Food Stamp Program rule at 7 CFR 273.15(k)(3)(1). This rule says, in part, that "At least 10 days prior to the hearing, advance written notice shall be provided to all parties involved to permit adequate preparation of the case." The federal Medicaid Program rule at 42 CFR 431.240 does not include any time standard for mailing but says, in part, that "all hearings must be conducted...(2) only after adequate written notice of the hearing."

The Councils suggested that (1) a "mailing date" approach utilize a "10 business days" standard, (2) the regulation be amended so that the notice is sent by both certified mail and regular mail to facilitate prompt receipt and (3) "amend the regulation or adopt a business practice of contemporaneously mailing the notice to both the appellant and appellant's representative, if any."

DSS has carefully considered each of the suggestions.

DSS has not adopted the Councils' suggestions for the following reasons: commonly accepted rule of regulatory construction is that time periods of 7 days or less mean "working days" and rules that have time periods of more than 7 days mean calendar days; and, our experience over many years is that certified mail is typically delivered very promptly after it is posted. The obligation is to communicate with the client and, the majority of our scheduling notices are mailed 30 days in advance of the date of the hearing; adding mailings to our process is an additional expense as well as a manpower strain. However, the time period is changed to read "12 calendar days" to more clearly define the time period and to allow two (2) days for mailing.

**FINDINGS OF FACT**

The Department finds that the proposed changes as set forth in the June 2004 Register of Regulations should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual as it relates to the notification of time and place of fair hearing is adopted and shall be final effective August 10, 2004.

7.15.2004

Karryl McManus for Vincent P. Meconi  
Vincent P. Meconi, Secretary, DHSS

### 5311 Notification of Time and Place of Hearing

The time, date, and place of the hearing will be arranged so that the hearing is accessible to the appellant. At least ten (10) days before the hearing, advance written notice will be provided by mailing the notice to all parties involved to permit adequate preparation of the case. An appellant may request less notice in order to expedite the scheduling of the hearing. Notices to appellants are sent by certified mail. The notice will:

1) Advise the appellant or representative of the name, address, and phone number of the person to notify in the event it is not possible for the appellant to attend the scheduled hearing;

2) Stipulate that the hearing request will be dismissed if the appellant or his/her representative fails to appear for the hearing without good cause (i.e., death in family, personal illness, unexpected emergency);

3) Include the hearing procedures and any other information that would provide the appellant with an understanding of the proceedings that would contribute to the effective presentation of the household's case and will include fair hearing summary and documents filed for the hearing;

4) Explain that the appellant has the right to bring an attorney or other representative to his/her hearing;

5) Explain that the appellant may present any information that (s)he desires at the hearing;

6) Explain that the appellant or representative may examine the record prior to the hearing.

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT WASTE MANAGEMENT SECTION

Statutory Authority: 7 Delaware Code,  
Chapters 60 and 63 (7 Del.C. Ch. 60 and 63)

**Secretary's Order No.: 2004-A-0040**

**Date of Issuance: July 14, 2004**

**Effective Date of the Revisions: August 21, 2004**

#### I. Background

On June 23, 2004, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the

2004 proposed amendments to the State of Delaware's *Regulations Governing Hazardous Waste*. The proposed amendments incorporate certain RCRA amendments promulgated by U.S. EPA into Delaware's hazardous waste management program. Delaware is required to adopt these amendments in order to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program.

Additionally, Delaware is making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some of these amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

No one from the public attended this hearing. Proper notice of the hearing was provided as required by law. After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated July 13, 2004, and that memorandum is expressly incorporated herein by reference.

#### II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated July 13, 2004, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

#### III. Order

In view of the above, I hereby order that the proposed revisions to the 2004 *Delaware Regulations Governing Hazardous Waste* be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

#### IV. Reasons

Adopting these proposed revisions to the *Delaware Regulations Governing Hazardous Waste* will be beneficial to the State of Delaware. The Department's Division of Air & Waste Management has provided a sound basis for these revisions, and will permit Delaware to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program. In addition, the implementation of these regulatory revisions will add consistency and clarification to the existing regulations and will improve and/or enhance the performance of Delaware's hazardous waste management program, in furtherance of the policies and purposes of 7 Del.C., Chapter 63.

John A. Hughes, Secretary

**2004 AMENDMENTS TO  
DELAWARE REGULATIONS GOVERNING  
HAZARDOUS WASTE**

**SYNOPSIS**

This synopsis presents a brief description of the 2004 amendments to Delaware's *Regulations Governing Hazardous Waste* (DRGHW) and a list of those sections generally affected by the amendments. This synopsis is provided solely for the convenience of the reader.

These changes incorporate certain RCRA amendments promulgated by U. S. EPA into Delaware's hazardous waste management program. The State is required to adopt these amendments in order to maintain its hazardous waste program delegation and remain current with the Federal RCRA hazardous waste program.

The State is also making miscellaneous changes to the existing regulations for the purpose of correcting errors and to add consistency or clarification to the existing regulations. Some amendments are being made to the existing regulations in order to improve or enhance the performance of the hazardous waste management program.

A description of the regulatory amendments is shown below and organized by EPA's promulgating **Federal Register** notice. For additional information, please contact the Solid and Hazardous Waste Management Branch at (302) 739-3689.

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**1. Title: Treatment Variance for Radioactively Contaminated Batteries**

EPA Federal Register Reference: 67 FR 62618-62624  
(Checklist 201)

Federal Promulgation Date: October 7, 2002

**Summary:** The October 7, 2002 Federal Rule grants a national treatability variance from the Land Disposal Restrictions (LDR) treatment standards for radioactively contaminated cadmium-, mercury-, and silver-containing batteries by designating new treatment subcategories for these wastes. The current treatment standards of thermal recovery for cadmium batteries and of roasting and retorting for mercury batteries are technically inappropriate, because any recovered metals would likely contain residual radioactive contamination and not be usable. The current numerical treatment standard for silver batteries is also inappropriate because of the potential increase in radiation exposure to workers associated with manually segregating silver-containing batteries for the purpose of treatment. Macroencapsulation is designated as the required treatment prior to land disposal for the new waste subcategories.

**Sections of the DRGHW affected by this amendment:** Part 268, §268.40, the Table, "Treatment Standards for Hazardous Wastes."

**2. Title: National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks**

EPA Federal Register Reference: 69 FR 22602-22661  
(Checklist 201)

Federal Promulgation Date: April 26, 2004

This April 26, 2004 federal rule promulgates national emission standards for hazardous air pollutants (NESHAP) for automobile and light duty truck surface coating operations located at major sources of hazardous air pollutants. In doing so, the rule amends the Air Emission Standards for Equipment Leaks at DRGHW Parts 264 and 265 Subpart BB to reduce duplicative regulation of air emissions from the collection and transmission of purged paint and solvent in a purge capture system, and the storage of captured purge material where these emissions are subject to the final NESHAP rule. In addition to addressing collection and transmission, and storage of purged paint and

solvent, the NESHAP rule is more comprehensive as it is expanded to include regulation of emissions from purging of coating application systems.

**Sections of the DRGHW affected by this amendment:** Sections 264.1050(h) and 265.1050(g).

### 3. Title: Miscellaneous Changes

**Summary:** Proposed miscellaneous changes to DRGHW include non-substantive corrections for typographical or grammatical errors.

Proposed miscellaneous changes will also: Reinsert missing hazardous waste codes that were erroneously deleted from §261.32, and Part 262, Appendix VIII in a previous edition of the DRGHW; revise the timeframe in §263.103(d) for a transporter to submit an application to replace an expiring permit; add a sentence in §265.55 regarding annual training of a facility's emergency coordinator.

**Sections of the DRGHW affected by this amendment:** §261.32; Part 261, Appendix VIII; §263.103(d), and §265.55.

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## DIVISION OF AIR AND WASTE MANAGEMENT WASTE MANAGEMENT SECTION

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

**Secretary's Order No.: 2004-A-0039**

**Date of Issuance: July 14, 2004**

**Effective Date of the Revisions: August 21, 2004**

### I. Background

On June 8, 2004, a public hearing was held in the DNREC Auditorium in Dover to receive comment on the Department's proposed revisions to the *Delaware Regulations Governing Solid Waste*. A public workshop was held by the Department on November 12, 2003, to explain and discuss the proposed changes to these regulations. The aforementioned revisions involve numerous minor modifications to Delaware's Regulations Governing Solid Waste.

No one from the public attended the hearing. There were written comments were received prior to the hearing and incorporated into the record at the time of the hearing from the Department of Defense, however, these comments were outside of the scope of review with regard to this particular hearing, and did not concern the proposed changes

to these Regulations. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a memorandum to the Secretary dated July 13, 2004, and that memorandum is expressly incorporated herein by reference.

### II. Findings and Conclusions

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated July 13, 2004, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

### III. Order

In view of the above, I hereby order that the proposed revisions to the 2004 *Delaware Regulations Governing Solid Waste* be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed prior to the hearing and as recommended in the Hearing Officer's memorandum.

### IV. Reasons

Adopting these proposed revisions to the *Delaware Regulations Governing Solid Waste* will be beneficial to the State of Delaware. The Department's Division of Air & Waste Management has provided a sound basis for these revisions, including reasoned responses to the various comments. In addition, the implementation of these regulatory revisions will further the policy and purposes of 7 Del.C., Chapter 60.

John A. Hughes, Secretary

### SYNOPSIS OF AMENDMENTS TO THE DELAWARE REGULATIONS GOVERNING SOLID WASTE

#### General:

Reinsert previously deleted Table of Contents at the beginning of the regulations.

#### Section 3: Definitions

Add new definition for "Gross Vehicle Weight Rating."

#### Section 4: Permit Requirements and Administrative Procedures

Clarify language in section 4.A.2 stating that costs of publishing public notices for a permit application shall be borne by the applicant;

Revise timeframe in section 4.A.6 for renewing an

expiring permit;

Amend section 4.E.1 regarding requirements for submitting Transfer Station Applications;

Move section 4.E.3 regarding transfer station closure to Section 10.F;

Amend language in section 4.G for transporter permit application procedures.

#### **Section 5: Sanitary Landfills**

Amend section 5.I.2.c regarding daily cover at a sanitary landfill;

#### **Section 6: Industrial Landfills**

Add language in section 6.I.5 prohibiting acceptance of hazardous waste at an industrial landfill.

#### **Section 7: Transporters**

Add language in section 7.A prohibiting permitted transporters from using agents or subcontractors who do not hold permits for transporting solid waste.

Delete sections 7.B.8 and 7.C.7 regarding sub-leases and sub-contractors.

#### **Section 9: Resource Recovery Facilities**

Correct an internal reference in Section 9.E.2.b.

#### **Section 10: Transfer Stations**

Revise wording in section 10.A.2.b for material recovery facilities.

Amend section 10.A.2 by adding an exemption from transfer station permit requirements for temporary debris and collection sites established as a result of a natural or man-made disaster.

Insert and amend transfer station closure requirements moved from section 4 to section 10.F.2.

#### **Section 11: Special Wastes Management: Part 1 – Infectious Waste**

Amend language in section 11.A.1 to clarify who must obtain infectious waste Infectious Waste Identification Numbers.

In section 11.C revise certain infectious waste definitions, and add new definition for Large Quantity Generator of infectious waste.

**\* Please note that no changes were made to the regulation as originally proposed and published in the June 2004 issue of the Register at page 1432 (7 DE Reg. 1432). Therefore, the final regulation is not being republished. Please refer to the June 2004 issue of the Register or contact the Department of Natural Resources and Environmental Control.**

### **DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,  
Section 103(a)(1) and (b),  
( 7 Del.C. 103(a)(1) and (b))

**Secretary's Order No.: 2004-F-0038**

**Date of Issuance: July 14, 2004**

**Effective Date of the Amendment: August 11, 2004**

#### **I. Background**

On Wednesday, June 30, 2004 a public hearing was held in the DNREC Auditorium in Dover to receive comment on proposed amendments to the Delaware Wildlife and Non-Tidal Fishing Regulations – 4.0 Seasons (Formerly WR4) and 7.0 Deer (Formerly WR-7). Prior to the hearing, public workshops concerning these proposed changes were held by the Department on May 20<sup>th</sup>, May 27<sup>th</sup>, and again on June 2<sup>nd</sup>. Public comments were received on the Department's proposed changes during the pre-hearing, hearing and post-hearing phases of this rulemaking procedure, and this public input was incorporated into the formal record generated as a result of the same. No subsequent changes and/or additions were made to these proposed amendments as a result of the aforementioned public comments. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated July 12, 2004, and that memorandum is expressly incorporated herein by reference.

#### **II. Findings and Conclusions**

All of the findings and conclusions contained in the Hearing Officer's Memorandum dated July 12, 2004, are expressly incorporated herein and explicitly adopted as the findings and conclusions of the Secretary.

#### **III. Order**

In view of the above, I hereby order that the proposed amendments to the Delaware Wildlife and Non-Tidal Fishing Regulations, 4.0 Seasons (Formerly WR4) and 7.0 Deer (Formerly WR-7), be promulgated and implemented in the manner and form provided for by law pursuant to the changes proposed during this rulemaking process and as recommended in the Hearing Officer's Report.

#### IV. Reasons

Adopting the proposed amendments to the Delaware Wildlife and Non-Tidal Fishing Regulations, 4.0 Seasons (Formerly WR4) and 7.0 Deer (Formerly WR-7), will be beneficial to the State of Delaware, in that these amendments will add consistency and/or clarification to the existing regulations. Additionally, some of these amendments will enable the State of Delaware to improve and/or enhance the overall performance of Delaware's deer management program. Furthermore, the adoption of these amendments will permit the State of Delaware to further the purposes of Title 7, Delaware Code, Chapter 7.

John A. Hughes, Secretary

#### 4.0 Seasons (Formerly WR-4)

(Penalty Section 7 Del.C. 1304)

4.1 Season Dates. Hunting and trapping season dates will be published each year in an annual publication entitled "Delaware Hunting and Trapping Guide."

4.2 General. It shall be unlawful for any person to hunt those species of wildlife for which a season is designated at any time other than during that season.

##### 4.3 Protected Wildlife.

4.3.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt any species of protected wildlife.

4.3.2 It shall be unlawful for any person to sell, transport or possess any species of protected wildlife, except when:

4.3.2.1 Otherwise provided by law or regulation of the Department; or

4.3.2.2 The wildlife was lawfully taken outside of this State in accordance with the laws or regulations of the state or nation where the wildlife was taken.

##### 4.4 Beaver.

4.4.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to hunt or trap beaver during any period of the year, however, from December 1 through March 20, landowners (or their agents) may take up to eight beavers from their property without a permit, provided the beavers are causing crop or property damage.

4.4.2 Beaver hides and the meat of lawfully taken beaver harvested anywhere within or outside of Delaware may be sold.

##### 4.5 Bullfrogs.

4.5.1 Season. Bullfrogs may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bullfrogs: from May 1 through September 30.

4.5.2 Limit. It shall be unlawful for any person

to take more than twenty-four (24) bullfrogs in any one day.

4.5.3 License. A hunting or fishing license is required to take bullfrogs.

##### 4.6 Crows.

It shall be unlawful for any person to hunt common crows during any period of the year, except Thursdays, Fridays and Saturdays between and including the fourth Thursday of June and the last Saturday of March, unless said person holds a valid depredation permit. The hunting of common crows is restricted only by the provisions of federal regulations pertaining to the taking of common crows. Crows may be taken without a permit when committing damage or about to commit damage.

##### 4.7 Gray Squirrel.

4.7.1 Season. Gray squirrel may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of gray squirrel: from September 15 (September 14, if September 15 is a Sunday) through the first Saturday in November; and from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season. Squirrel hunting shall be unlawful during any period and in any area when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, when squirrel season overlaps with an October firearms deer season, squirrel may be hunted when hunter orange is displayed in accordance with §718 of Title 7.

4.7.2 Limit. It shall be unlawful for any person to take more than four gray squirrels in any one day.

##### 4.8 Opossum.

The opossum may only be hunted or trapped during the lawful season to hunt or trap raccoons.

##### 4.9 Pheasant.

4.9.1 Season. Male pheasant may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of pheasant: from the Monday that immediately precedes Thanksgiving through the day that precedes the January shotgun deer season, except that no pheasant hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, pheasant may be hunted during the December firearm deer season when hunter orange is displayed in accordance with § 718 of Title 7.

4.9.2 Female Pheasant. It shall be unlawful for any person to hunt or possess any female pheasant at any time, except as permitted on game preserves, by licensed game breeders or as otherwise permitted by law.

4.9.3 Male Pheasant Limit. It shall be unlawful for any person to hunt or possess more than two (2) male pheasants in any one day during the pheasant season, except as permitted by law.

4.9.4 Scientific or Propagating Purposes. It shall be unlawful for any person to possess pheasants for scientific and propagating purposes without a valid permit

from the Director.

4.9.5 Game Preserves. Nothing in this regulation shall be construed so as to limit the number or sex of pheasants that may be harvested by any one person on licensed game preserves.

4.10 Quail.

4.10.1 Season. Bobwhite quail may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of bobwhite quail: from the Monday that immediately precedes Thanksgiving through the first Saturday of February, except that no quail hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, quail may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

4.10.2 Limit. It shall be unlawful for any person to take more than six (6) quail in any one day.

4.11 Rabbit.

4.11.1 Season. Rabbits may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of rabbits: from the Monday that immediately precedes Thanksgiving through the first Saturday in February, except that no rabbit hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, rabbit may be hunted during the December or January firearm deer seasons when hunter orange is displayed in accordance with § 718 of Title 7.

4.11.2 Limit. It shall be unlawful for any person to take more than four (4) rabbits in any one day.

4.12 Raccoon.

4.12.1 Trapping Season. Raccoon may be trapped in accordance with the statutes and regulations of the State of Delaware governing the trapping of raccoon: from December 1 through March 10 (March 20 on embanked meadows) in New Castle County; and from December 15 through March 15 in Kent and Sussex counties. The season is open throughout the year on private land, except on Sundays, in eastern New Castle and Kent counties pursuant to § 786 of Title 7 and Section 4(b) of WR-2.

4.12.2 Hunting Season. Raccoon may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of raccoon: from September 1 (September 2, if September 1 is a Sunday) through October 31 for chase only whereby it shall be unlawful to kill raccoon and opossum; from November 1 through the last day of February; and from March 1 through March 31 for chase only whereby it shall be unlawful to kill raccoon and opossum. The season is open throughout the year on private land in eastern New Castle and Kent counties, except on Sundays, pursuant to § 786 of Title 7.

4.12.3 Notwithstanding subsection 4.3.2 of this section, it shall be unlawful for any person to hunt raccoon

or opossum during any period when it is lawful to hunt deer with a firearm, except that it shall be lawful to hunt raccoon from 7:00 p.m. until midnight during the December and January firearm deer seasons.

4.13 Red Fox.

Red fox may be hunted in accordance with the statutes and regulations of the State of Delaware governing the hunting of red fox: from October 1 through April 30 for chase only whereby it shall be unlawful to kill red fox, except no red fox hunting shall be lawful during any period when it is lawful to hunt deer with a firearm. Notwithstanding the foregoing, red foxes may be killed in accordance with Section 8 of WR-2 and § 788 of Title 7.

4.14 Ruffed Grouse.

It shall be unlawful for any person to hunt for ruffed grouse during any period of the year.

4.15 Snapping Turtles.

4.15.1 Season. It shall be unlawful for any person to hunt for snapping turtles during any period of the year, except between and including June 15 and May 15.

4.15.2 Size. It shall be unlawful for any person to sell, offer for sale or kill any snapping turtle with a carapace length of less than eight inches, measured on the curvature.

4.16 Terrapin.

4.16.1 Season. It shall be unlawful for any person to hunt for diamondback terrapin during any period of the year, except between and including September 1 and November 15.

4.16.2 Limit. It shall be unlawful for any person to take more than four (4) diamondback terrapin in any one day.

**3 DE Reg. 289 (8/1/99)**

**3 DE Reg. 1738 (6/1/00)**

**6 DE Reg. 536 (10/1/02)**

**7.0 Deer (Formerly WR-7)**

(Penalty Section 7 **Del.C.** 1304)

7.1 Limit.

7.1.1 Unless otherwise provided by law or regulation of the Department, it shall be unlawful for any person to:

7.1.1.1 Kill or take or attempt to kill or take more than ~~two~~ four antlerless deer in any license year;

7.1.1.2 Kill or take ~~two~~ four antlerless deer in any license year without at least ~~one~~ two of the ~~two~~ four deer being ~~an antlerless~~ female deer; or

7.1.1.3 Possess or transport any deer that was unlawfully killed.

7.1.1.4 Kill any antlered deer without first purchasing a Delaware Resident Hunter's Choice Deer Tag or a Delaware Non Resident Antlered Deer Tag, except that persons exempt from purchasing a hunting license shall be entitled to take one Hunter's Choice deer at no cost.

7.1.2 For the purposes of this section, a person "driving deer" and not in possession of any weapon or firearm shall not be treated as if they are hunting deer, provided they are assisting lawful hunters.

7.1.3 It shall be unlawful for any person to purchase, sell, expose for sale, transport or possess with the intent to sell, any deer or any part of such deer at any time, except that hides from deer lawfully killed and checked may be sold when tagged with a non-transferable tag issued by the Division. Said tag must remain attached to the hide until it leaves the State or is commercially processed into leather. This subsection shall not apply to venison approved for sale by the United States Department of Agriculture and imported into Delaware.

7.1.4 Notwithstanding subsection 7.1 of this section, a person may purchase ~~an~~ Antlerless Deer Tag Tags for \$10 each to kill or take ~~an~~ additional antlerless deer during the open season.  ~~, provided:~~

~~7.1.4.1 The tag is valid for the season in which it is used; and~~

~~7.1.4.2 The tag is valid in the deer management zone from which the deer is taken.~~ Hunters may take additional antlerless deer on Antlerless Deer Damage Tags at no cost.

7.1.5 Notwithstanding subsection 7.1.1 of this section, a person may use one Quality Buck tag to take an antlered deer with a minimum outside antler spread of fifteen inches, provided the tag is valid for the season in which it is used. Hunters exempt from the requirement to purchase a hunting license must purchase a Quality Buck tag in order to take a second antlered deer in any one license year.

## 7.2 Tagging and Designated Checking Stations.

7.2.1 Attaching Tags. – Each licensed person who hunts and kills a deer shall, immediately after the killing and before removing the deer from the location of the killing, attach an approved tag to the deer. An approved tag shall mean an Antlerless Deer Tag or Doe Tag received with the hunting license, a Delaware Resident Quality Buck Deer Tag, a Delaware Resident Hunter's Choice Deer Tag, a Delaware Non Resident Quality Buck Deer Tag, a Delaware Non Resident Antlered Deer Tag, an Antlerless Deer Damage Tag, a Sportsmen Against Hunger tag or an Antlerless Tag purchased in addition to the hunting license tags. ~~a tag detached from a Delaware hunting license.~~ Any unlicensed person not required to secure a license shall make and attach a tag to the deer that contains the person's name, address and reason for not having a valid Delaware hunting license.

7.2.2 this section shall remain attached to the deer until the deer is presented to an official checking station for examination and tagging, or registered by phone or over the internet, as prescribed by subsection 7.1.3 of this section.

7.2.3 Checking Stations. – Each person who

hunts and kills a deer shall, within 24 hours of killing said deer, present the deer to a checking station designated by the Division or to an authorized employee of the Division. ~~or register the deer by phone.~~ Hunters may also check deer by phone or over the internet through systems authorized by the Division.

7.2.4 Dressing. – It shall be unlawful for any person to remove from any deer any part thereof, except those internal organs known as the viscera, or cut the meat thereof into parts, until such deer has been examined by an authorized employee of the Division or a checking station, as prescribed by subsection (c) of this section or registered using the phone or internet system.

7.2.5 Receipt Tag. – The Division shall issue, at a checking station or otherwise, an official receipt tag proving the deer was examined by an authorized employee of the Division or a checking station, as prescribed by subsection (c) of this section. The receipt tag shall remain with the deer until such time as the deer is processed for consumption or prepared for mounting. Deer checked over the phone or internet will be given a registration number. These deer shall be tagged by the hunter, butcher or taxidermist with the registration number, hunter's first and last name, hunter's date of birth, and date of kill. This tag may be homemade or be one provided by the Division and must remain with the head and/or carcass until the mount is picked up from the taxidermist or the meat is processed and stored as food.

~~7.2.6 Hunting with Tags Detached from License. It shall be unlawful for any person to hunt deer with any license that has the applicable deer tag detached from the license, even though said tag may be in the possession of the hunter. Any person with a detached deer tag may, upon application to the Division, have a duplicate license issued in order to obtain a valid deer tag.~~

## 7.3 Method of Take.

7.3.1 Shotgun. It shall be unlawful for any person to hunt deer during the shotgun season using a shotgun of a caliber smaller than 20 gauge, or have in his or her possession any shell loaded with shot smaller than what is commonly known as "buckshot."

7.3.2 Bow and Arrow. It shall be unlawful for any person to hunt deer during the longbow season and have in his or her possession any weapon or firearm other than a knife, a bow and sharpened broadhead arrows having minimum arrowhead width of 7/8 of an inch.

7.3.3 Muzzle-loading Pistols. A single shot muzzle-loading pistol of .42 caliber or larger using a minimum powder charge of 40 grains may be used to provide the coupe-de-grace on deer during the primitive firearm season.

7.3.4 Refuge in Water. It shall be unlawful for any person to shoot, kill or wound or attempt to shoot, kill or wound any deer that is taking refuge in or swimming through

the waters of any stream, pond, lake or tidal waters.

7.3.5 Dogs. It shall be unlawful for any person to make use of a dog for hunting during the shotgun or muzzleloader seasons for deer (in each county), except as permitted in the hunting of migratory waterfowl from an established blind or for hunting dove, quail, raccoon or rabbit on properties closed to deer hunting with firearms during December and January.

7.4 Illegal Hunting Methods; Baiting.

It shall be unlawful for any person to set, lay or use any trap, snare, net, or pitfall or make use of any artificial light, or other contrivance or device, for the purpose of hunting deer. This subsection does not preclude the use of bait for the purpose of attracting deer in order to hunt them on private land.

7.5 Seasons.

7.5.1 Shotgun Seasons. Deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the Friday in November that precedes Thanksgiving by thirteen (13) days through the second Saturday succeeding said Friday; and from the Saturday that precedes the third Monday in January through the following Saturday in January.

7.5.2 Archery Seasons. Deer may be hunted with longbow in accordance with statutes and regulations of the State of Delaware governing the hunting of deer: from September 1 (September 2, if September 1 is a Sunday) through the last day of January, provided hunter orange is displayed in accordance with § 718 of Title 7 when it also lawful to hunt deer with a firearm.

7.5.3 Muzzleloader Seasons. – Deer may be hunted with muzzle-loading rifles in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the ~~Saturday~~ Friday that precedes the second Monday in October through the ~~next~~ second Saturday that succeeds the Friday opening day; and from the Monday that follows the close of the January shotgun season through the next Saturday.

7.5.4 Special Antlerless Seasons. – Antlerless deer may be hunted with a shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer during all Fridays, Saturdays and Mondays in October except for during the October Muzzleloader season and the last Monday prior to the opening Friday of the October Muzzleloader season. Notwithstanding the foregoing, antlered deer may be taken with archery equipment that is legal during this October shotgun season. Antlerless deer may be hunted with shotgun in accordance with the statutes and regulations of the State of Delaware governing the hunting of deer: from the second Saturday in December through the third Saturday in December.

7.5.5 Crossbow Seasons. Crossbows may be

used in lieu of shotguns during that part of the November shotgun season that runs from Monday through Saturday of each year and in any shotgun or muzzleloader deer season open in December or January.

7.5.6 Special Shotgun Season for Young and Disabled Hunters. Deer may be hunted on the first Saturday of November by disabled (non-ambulatory) hunters using a wheelchair for mobility, and hunters 12 years of age or older but less than 16 years of age (12 to 15 inclusive) who have completed an approved course in hunter training. Young hunters must be accompanied by a licensed non-hunting adult who is 21 years of age or older. Young hunters must be of sufficient size, physical strength and emotional maturity to safely handle a shotgun.

**3 DE Reg. 289 (8/1/99)**

**6 DE Reg. 536 (10/1/02)**

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STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER FIFTY-SEVEN**

**RE: Declaring Friday, June 11, 2004 A Legal Holiday  
In Remembrance Of Former President Reagan**

**WHEREAS**, the people of Delaware have been greatly saddened by the death of former President Ronald Wilson Reagan, who passed away on June 5, 2004; and

**WHEREAS**, former President Reagan leaves behind millions of people, and countless Delawareans, who wish to respectfully mourn his passing, and recognize and celebrate his extraordinary life and accomplishments; and

**WHEREAS**, this Friday, June 11, 2004, has been declared a National Day of Mourning throughout the United States, and on that date there shall be a State funeral for former President Reagan; and

**WHEREAS**, many Delawareans wish to spend the National Day of Mourning and the occasion of the former President's funeral celebrating and remembering his life, and honoring his service to our nation; and

**WHEREAS**, the closing of State offices in honor of former President Reagan would be consistent with past actions to honor the memories of former presidents, as State offices were closed for the official state funerals of former Presidents Johnson and Eisenhower;

**NOW, THEREFORE, I, RUTH ANN MINNER,  
GOVERNOR OF THE STATE OF DELAWARE Do  
Hereby Order And Declare, This 8<sup>th</sup> Day Of June 2004:**

1. Friday, June 11, 2004, is declared a State holiday pursuant to Merit Rule 5.1.1.
2. Public facilities of the State subject to my authority shall be closed Friday, June 11, 2004.

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Board of Medical Practice	Katherine Salva, M.D.	6/21/2007
Cash Management Policy Board	Mr. John D. Hazelton Ms. Margaret A. Iorri	6/29/2007 6/24/2007
Commission on Adult Entertainment Establishments	Mr. Curtis E. Larrimore	6/24/2007
Delaware Interscholastic Athletic Association	Sister Ann Michele Zwosta	6/29/2007
Delaware Solid Waste Authority	Mr. Ronald G. McCabe, Director Ms. Tonda L. Parks, Director	6/24/2007 4/18/2005
Department of Safety and Homeland Security, Secretary	David B. Mitchell, J.D.	Pleasure of the Governor
Diamond State Port Corporation	Mr. Douglas B. Catts, Director	6/24/2007
Enhanced 911 Emergency Reporting System Service Board, Chair	The Honorable David B. Mitchell	Pleasure of the Governor
Environmental Appeals Board	Mr. Peter P. McLaughlin Mr. Gordon E. Wood, Sr.	6/29/2007 6/24/2007
Kent County Board of Elections	Ms. Marion H. Pfeifer	6/24/2008
Kent County, Clerk of the Peace	Ms. Loretta M. Wootten	To expire when a successor shall be duly qualified
New Castle County Justice of the Peace	The Honorable Robert C. Lopez The Honorable Marie E. Page	6/27/2010 6/30/2010
New Castle VoTech Board of Education	Mr. John J. McMahon	7/1/2011
Professional Standards Board	Mr. Norman A. Brown Ms. Angela J. Dunmore Ms. Valerie G. Hoffman Ms. Carla Z. Lawson Ms. Gretchen L. Pikus Harold E. Roberts, Ed.D., Chair	6/24/2007 6/30/2006 6/24/2007 6/24/2007 6/24/2007 6/24/2007
Public Employment Relations Board	Ms. Kathi A. Karsnitz	6/2/2010
Public Integrity Commission	Ms. Barbara H. Green Mr. Dennis L. Schrader	7/8/2005 6/30/2010
Public Service Commission	Mr. Joshua M. Twilley	5/1/2009
State Coastal Zone Industrial Control Board	Mr. John S. Burton, Sr.	6/24/2009
State Coastal Zone Industrial Control Board	Colonel Robert D. Welsh	6/24/2009

**GOVERNOR'S APPOINTMENTS**

<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Supreme Court Chief Justice	The Honorable Myron T. Steele	5/26/2016
Supreme Court Justice	The Honorable Henry duPont Ridgely	7/22/2016
Sussex County Justice of the Peace	The Honorable William J. Hopkins, Jr. The Honorable Howard W. Mulvaney, III	7/13/2010 7/1/2010
Tax Appeals Board	Mr. Steven R. Director	5/2/2005
Violent Crimes Compensation Board	Ms. Vera Lynn Gregory Ms. Stephanie I. Liguori	6/24/2007 6/2/2007
Wastewater Facilities Advisory Council	Ms. Peggy J. Baunchalk	6/24/2007
Wilmington Area Planning Council (WILMAPCO)	Ms. Andrea Kreiner	Pleasure of the Governor

**DEPARTMENT OF ADMINISTRATIVE  
SERVICES****DIVISION OF PROFESSIONAL REGULATION  
BOARD OF CLINICAL SOCIAL WORK  
EXAMINERS****PUBLIC NOTICE**

The Delaware Board of Clinical Social Work Examiners is proposing to revise its rules and regulations pursuant to 29 Del.C. Chapter 101 and 24 Del.C. §3906(1). The Board is proposing changes to the following Regulations:

- Regulations 7.1 through 7.4 regarding the Definition and Scope of Continuing Education,
- Continuing Education Hourly Requirements and Continuing Education Reporting and Documentation.

A public hearing will be held on the proposed Rules and Regulations on Monday, September 20, 2004 at 9:00 a.m. in the Second Floor Conference Room "A" of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. If the number of persons desiring to testify at the Public Hearing is large, the amount of time allotted to each speaker will be limited.

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 Karin Stone at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Persons may view the proposed changes to the Regulations between the hours of 8:15 a.m. to 4:15 p.m., Monday through Friday, at the Board's office at the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. There will be a reasonable fee charged for copies of the proposed changes.

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

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**STATE BOARD OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, August 19, 2004 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES****DIVISION OF SOCIAL SERVICES****PUBLIC NOTICE****Acquired Brain Injury Waiver Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services / is proposing to amend the Division of Social Services Manual (DSSM) regarding the Acquired Brain Injury Waiver Program (ABIWP).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy, Program & Development Unit, Division of Social Services, and P.O. Box 906, New Castle, Delaware by August 31, 2004.

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

**Summary Of Proposed Changes**

The Acquired Brain Injury Medicaid Waiver Program (ABIMWP) is a community-based services program funded by the Division of Social Services (DSS), Delaware Medical Assistance Program (DMAP) and operated by the Division of Services for Aging and Adults with Physical Disabilities (DSAAPD). It is targeted to individuals with acquired brain injury who meet Medicaid nursing facility admission criteria.

The proposed set forth the rules and regulations governing the administration of the ABIWP, and describe the types of services available under the program. The regulations being proposed would also define the eligibility criteria that must be met by applicants for the services and the scope of services available to eligible applicants.

The earliest effective date for the ABIMWP is October 10, 2004.

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**DEPARTMENT OF INSURANCE**
**PUBLIC NOTICE**
**301 Audited Financial Reports  
[Formerly Regulation 50]**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Wednesday September 1, 2004, at 10:00 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 301 relating to **AUDITED FINANCIAL REPORTS**.

The purpose for amending Regulation 301 is to reflect the changes to the NAIC model regulation, upon which Regulation 301 is based, that have been adopted by the NIAC in the ten years since the regulation was last amended.

The hearing will be conducted in accordance with 19 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Ch. 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Wednesday September 1, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

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**PUBLIC NOTICE**
**1404 LONG-TERM CARE INSURANCE  
[Formerly Regulation 63]**

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a public hearing will be held on Wednesday September 1, 2004, at 10:30 a.m. in the Consumer Services Conference Room of the Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, Delaware. The hearing is to consider amending Regulation 1404 (formerly Regulation 63) relating to **LONG-TERM CARE INSURANCE**.

The purpose for amending Regulation 1404 is to add sections to the regulation dealing with (1) required disclosures of rating practices to consumers, (2) initial filing requirements, (3) premium rate schedule increases and (4) make technical corrections to the existing regulation.

The hearing will be conducted in accordance with 19 **Del.C.** §311 and the Delaware Administrative Procedures Act, 29 **Del.C.** Chapter 101. Comments are being solicited

from any interested party. Comments may be in writing or may be presented orally at the Hearing. Written comments, testimony or other written materials concerning the proposed change to the regulation must be received by the Department of Insurance no later than 4:30 p.m., Wednesday September 1, 2004, and should be addressed to Deputy Attorney General Michael J. Rich, c/o Delaware Department of Insurance, 841 Silver Lake Boulevard, Dover, DE 19904, telephone 302.739.4251.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES**
**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 1 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 September 13, 2004 beginning at 6:00 p.m., in Down's Lecture Hall, Delaware Technical & Community College, Terry Campus, 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 1 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 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 Vest, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

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