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# Delaware Register of Regulations

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Issue Date: June 1, 2006

Volume 9 - Issue 12 Pages 1789 - 2023

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- Proposed
- Final

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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 May 15, 2006.

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The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

9 **DE Reg.** 1036-1040 (01/01/06)

Refers to Volume 9, pages 1036-1040 of the *Delaware Register* issued on January 1, 2006.

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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.

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## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title.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

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

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

ISSUE DATE	CLOSING DATE	CLOSING TIME
July 1	June 15	4:30 p.m.
August 1	July 17	4:30 p.m.
September 1	August 15	4:30 p.m.
October 1	September 15	4:30 p.m.
November 1	October 16	4:30 p.m.

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## DIVISION OF RESEARCH STAFF

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

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## Symbol Key

Arial 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.

## COUNCIL ON POLICE TRAINING

Statutory Authority: 11 Delaware Code, Section 8404(a)(5)  
(11 **Del.C.**, §8404(a)(5))

### PUBLIC NOTICE

The Council on Police Training (COPT), in accordance with 11 **Delaware Code** Section 8404(a)(14) and 29 **Delaware Code** Section 10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on June 22, 2006 at 9:00 a.m., in the first-floor conference room at the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the repeal of the current COPT Regulations in their entirety and reissue the COPT Regulations due to comprehensive changes both substantively and stylistically. The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain Elizabeth E. Shamany, Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Anyone wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903, or write to the above address.

### Proposed Revisions

*To repeal current COPT Regulations in their entirety and reissue due to comprehensive changes both substantively and stylistically.*

### Council on Police Training

Statutory Authority: 11 Delaware Code, Section 8404(a)(5) (~~11 Del.C. §8404(a)(5)~~)

#### 1.0 Objectives

1.1 The objectives of the Council on Police Training are:

1.1.1 To encourage & increase the professional competency of police officers by:

1.1.1.1 Establishing minimum pre-employment qualifications for police officer applicants, and;

1.1.1.2 Establishing minimum educational and training qualifications requisite to permanent

appointment as a police officer, and;

~~1.1.1.3 Prescribing standards for In-service or continued training of police officers, and;~~

~~1.1.1.4 Suspend or revoke certification in the event an individual obtained certification through fraud or deceit, has been convicted of a felony or moral turpitude misdemeanor, or has failed to successfully complete an in-service or advanced training course required by Council.~~

~~1.1.1.5 In all situations where the provisions of Section 8404(a)(4) or Section 8410(b) of this Chapter are to be applied to or invoked against any agency or individual, that agency or individual shall be entitled to a hearing in, the manner prescribed herein:~~

~~1.1.1.5.1 The Chairman shall select three (3) members of the Council to comprise a Board which will hear evidence on the allegation (hereinafter "Board").~~

~~1.1.1.5.2 Upon conclusion of the hearing provided for in this Section, the board shall submit its findings and recommendation to the full Council in writing for consideration and vote.~~

~~1.1.1.5.3 The ultimate findings of the Council shall be final, except that any ruling adverse to any party participating in the hearing may be appealed to the Superior Court within 15 days of receipt of written notification of said finding. Absent an appeal, all findings of the Council shall become final upon expiration of said appeal deadline.~~

~~1.1.1.5.4 All hearings shall be conducted in accordance with the Administrative Procedures Act of the Delaware Code.~~

## 2.0 Definitions

2.1 As used in this chapter:

~~"Approved school" means a school authorized by the Council to provide mandatory training and education for police officers as prescribed in this chapter.~~

~~"Council" means the Council on Police Training.~~

~~"Permanent appointment" means appointment by the authority of any municipality or government unit in or of this State or the University of Delaware to permanent status as a police officer.~~

~~"Probationary appointment" means appointment by the authority of any municipality or government unit in or of this State or the University of Delaware of any full time police officer who is intended to be granted permanent status, but prior to such certification. (Repealed 07/08/93)~~

~~"Part time appointment" (no longer valid - 1/1/88).~~

~~"Seasonal appointment" means appointment for less than 6 months each year, but more than 4 weeks, for police duties necessitated by seasonal demands. (May 1 - September 30)~~

~~"Temporary appointment" (no longer valid - (1/1/88).~~

~~"Police officer" means a sworn member of a police force or other lawenforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State.~~

~~For purposes of this chapter this term shall include permanent full-time law~~

~~enforcement officers of the University of Delaware Police Division; and~~

~~Permanent full-time law enforcement officers of the Department of Natural Resources and Environmental Control including Park Rangers, Fish & Wildlife Agents, and Environmental Protection Officers.~~

~~For purposes of this chapter this term shall not include the following:~~

~~A sheriff, regular deputy sheriff or constable;~~

~~A security force for a state agency or other governmental unit; or~~

~~A person holding police power by virtue of occupying any other position or office. (11 Del.C. 1953, & 8401; 57 Del. Laws, c. 264; 57 Del. Laws, c. 670, & 1 A, 63 Del. Laws, c. 31, & 1.)~~

~~"Inactive status" means status assumed by a certified police officer upon termination of employment with a law enforcement agency.~~

~~"Permanent basis" means continual employment with a law enforcement agency on a full-time or part-time basis.~~

## 3.0 Minimum Standards For Initial Employment

~~3.1 The applicant shall complete an application, the format of which has been approved by the Council.~~

~~3.2 The applicant shall be a citizen of the United States.~~

~~3.3 The applicant shall have reached his/her 18th birthday.~~

~~3.4 A licensed physician shall examine the applicant, at the expense of the employing agency, to~~

determine that he/she is physically fit for normal police duties. The following shall be met, in addition to those the physician determines are necessary to be met to perform police work:

3.4.1 The applicant shall be free from any major impediment of the senses.

3.4.2 The applicant shall possess an acuity of vision of not more than 20/200 correctable to 20/20 in each eye with soft contact lenses. The applicant shall have the ability to distinguish between the colors of red, green, and amber; and shall have no pathology of the eyes.

3.4.3 The applicant shall possess normal hearing in both ears.

3.4.4 The applicant shall have no communicable diseases.

3.4.5 The applicant shall have no physical deformities which would be detrimental to proper performance of police duties.

3.4.6 The applicant must pass a drug screening test prior to appointment or attendance at an approved basic police training school. The standards for such drug screening shall be adopted by the agency seeking to employ the applicant; at a minimum, these standards must provide for confirmatory testing in the event of an initial positive finding.

3.5 The applicant shall take and successfully complete a validated psychiatric/psychological test to show his/her competency to perform law enforcement duties. The applicant shall also be required to be examined by a licensed psychologist/psychiatrist to determine that his mental and emotional stability is suitable to perform law enforcement duties (i.e. race relations, use of force and authority, flexibility and maturity). Mental exam rejection: such as psychoneurotic reaction resulting in hospitalization, prolonged care by physician or loss of time for repeated periods.

3.6 The applicant shall be a high school graduate as evidenced by a diploma issued by a state accredited high school. An equivalency diploma issued by an accredited high school is acceptable.

3.7 The applicant shall possess a valid drivers license.

3.8 The applicant shall be of good reputation and character. The employing department shall conduct a character and background investigation on each applicant in the form and manner as prescribed by the Council. The chief, or his designee, of the hiring department, shall personally interview the applicant and all background investigation records shall be kept on file for a period of two years for inspection by the Council on Police Training or its authorized representative.

3.9 The applicant shall not have been convicted of a felony. The applicant shall be fingerprinted and a search made of local, state and national fingerprint files to disclose any criminal record; and the fingerprint cards and any identification records shall be made available for inspection to the Council on Police Training or its authorized representative. A conviction of any state or federal crime may be grounds for rejection of the applicant by the Council.

3.10 The applicant shall successfully complete a written job related examination, in the form and manner as prescribed by the Council on Police Training, and the results shall be retained for a period of two years for inspection by the Council or its authorized representative.

3.11 A bad conduct or a dishonorable discharge from military service shall disqualify the applicant. Any discharge, other than above, which is not honorable, may be grounds for rejection, determination to be made by the Council on Police Training.

3.12 The weight of the applicant shall be in proportion to his/her height and build. As identified in the medical history packet.

3.13 The above listed are minimum standards for initial employment. Higher standards are recommended whenever the availability of qualified applicants are available.

3.14 No requirement of this section is to be interpreted as precluding any agency from establishing higher standards. In no case, however, may the department head or agency employ persons with qualifications below the minimums set forth in these regulations for the position of police officer. Revised by Committee 1995

#### **4.0 Notification Of Employment Status**

4.1 Effective 1/1/88, the Council required that the Administrator be notified by the Chief of Police, in writing, within 15 days of the employment or termination of any police officer under his/her command.

#### **5.0 Minimum Standards For Training**

5.1 Basic Police Training Course

5.1.1 Each applicant for a position as a police officer in the State of Delaware must satisfactorily complete the Basic Police Training Course as prescribed in ~~11 Del.C., §8405a~~ (Amended 07/08/93) prior to being given or accepting an appointment as a police officer.

~~5.1.2 The Council on Police Training has certified (5) agencies as approved basic police training schools. These agencies are: The Delaware State Police; New Castle County Police; Wilmington Department of Police; Newark Police Department; and, the Dover Police Department.~~

~~5.1.3 As a condition of maintaining their status as an approved basic police training school, during the training period for applicants for certification as police officers, each school must conduct a minimum of one random drug screening test on each such applicant. The cost of conducting one test for drug samples pursuant to this section for each applicant undergoing training, including confirmatory testing in the event of an initial positive finding, shall be paid by the Council. The drug screening must be conducted according to standards adopted by the agency conducting the school; these standards must include confirmatory testing as described above.~~

## **~~6.0 Extension Of Time Limit For Course Completion~~**

~~6.1 The Council on Police Training may provide a modification from the application; application of any provision of this chapter or the Rules and Regulations promulgated thereunder, for any police officer of a municipality if:~~

~~6.1.1 The police officer is employed on a full-time basis, and;~~

~~6.1.2 The municipality makes application for such modification and establishes that it will suffer a hardship if the modification is not granted, and;~~

~~6.1.3 Application is made in writing to the Administrator of the Council on Police Training.~~

~~6.2 The Administrator will present the hardship application to the Council at the next regularly scheduled quarterly meeting. The Council will consider the request, debate its merits, and approve or deny the application by a majority vote of its members.~~

## **~~7.0 Waiver Of Equivalent Training—Reciprocity~~**

~~7.1 The Council on Police Training may waive the requirement of attending an approved Delaware Police Training School for those officers seeking Delaware certification of training after having completed equivalent training out-of-state.~~

~~7.2 The Chief of Police of the municipality seeking waiver of Delaware training must submit to the Council an "Application for Exemption from Mandatory Training".~~

~~7.3 The application must be completed in its entirety and submitted to the Administrator prior to appointment by the requesting agency. The officer must enclose a copy of the certificate of training from the police academy which provided basic police training. The officer must also enclose a copy of the curriculum from that academy which must include: description of courses taught; hours assigned to each course; and, a brief synopsis of the material taught in each course.~~

~~7.4 The Administrator will examine the equivalent training records and make a comparison with the Delaware Mandatory Requirements. Any areas not meeting Delaware standards will be required, prior to submission of the waiver application to Council for consideration.~~

~~7.5 At a minimum, training specific to Delaware shall be required prior to Council certification. These training areas include, but are not limited to:~~

- ~~-Delaware Criminal Code~~
- ~~-Delaware Motor Vehicle Code~~
- ~~-CPR/Emergency Care~~
- ~~-Firearms Certification~~
- ~~-Police Fire Survival~~

~~7.6 If the Council should determine that the out-of-state training was in the main, deficient, it may deny the waiver in its totality and require attendance at an approved Delaware police training school.~~

## **~~8.0 Certification Of Training~~**

~~8.1 The Council on Police Training, subject to **11 Del.C., §8404**, may:~~

~~8.1.1 Issue certification of completion of police officer training prescribed under this chapter;~~

~~8.1.2 Prescribe standards for in-service or continued training of police officers;~~

~~8.1.3 Establish minimum educational and training qualifications requisite to permanent appointment as a police officer;~~

~~8.1.4 Establish certification and recertification requirements for police officer applicants who have previously been certified as having completed the training by Council but have ceased to be employed on a permanent basis;~~

~~8.1.5 Prescribe equipment and facility standards for schools at which police training courses shall be conducted, including but not limited to existing county or municipal schools;~~

~~8.1.6 Establish minimum training requirements, attendance requirements and standards of operations for police training schools;~~

~~8.1.7 Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify such instructors to their particular courses of study;~~

~~8.1.8 Approve and issue certificates of approval to such police training schools, to inspect such schools from time to time and to revoke for cause any approval or certificate issued to such schools;~~

~~8.1.9 Suspend or revoke certification in the event that an individual:~~

~~8.1.9.1 Obtained a certificate by fraud or deceit;~~

~~8.1.9.2 Has been convicted of a felony or of a misdemeanor involving moral turpitude or of any local, state, or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or any drug law;~~

~~8.1.9.3 Has failed to successfully complete any in-service or advanced training required by Council;~~

~~8.1.9.4 Has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the powers and authority of a police officer;~~

~~8.1.9.5 Has been discharged from employment with a law enforcement agency for a breach of internal discipline; or has tendered his resignation prior to the entry of findings of fact concerning an alleged breach of internal discipline and who is found by the Council to have engaged in conduct constituting a breach of internal discipline for which the individual could have been legitimately discharged had he not resigned his position prior to an adverse finding of fact being entered on the issue by the employing agency.~~

~~8.1.9.6 Effective 1/1/88, the Basic Curriculum shall likewise be applicable for all new police officers regardless of the type of employment or hours of employment, excepting seasonal employment.~~

~~8.1.9.7 Effective 1/1/91, each police officer, certified by the Council, will be required to complete 16 hours of in-service training annually, in addition to the annual recertification in C.P.R., Firearms, and triannually in Emergency Care.~~

~~8.1.10 LETN Subscribers can receive one hour in-service credit for selective LETN Programs, but must meet the following criteria:~~

~~8.1.10.1 Have a pre and post test with a post grade of at least 70 percent.~~

~~8.1.10.2 Test must be administered by a certified COPT instructor.~~

~~8.1.10.3 Refer to the in-service training manual for additional information.~~

## **9.0 Recertification Requirements Of Police Officers**

### **9.1 Recertification Requirements**

~~9.1.1 If not employed on a permanent basis for a period of less than 12 months, an individual must complete all in-service requirements mandated by the Council pursuant to **11 Del.C., §8404 (a)(5)** prior to recommencing employment.~~

~~9.1.2 If not employed on a permanent basis for a period of greater than 12 months but less than 36 months, an individual must satisfy all minimum standards for initial employment established by the Council. These include, but are not limited to, the following:~~

~~9.1.2.1 Medical background including:~~

~~9.1.2.1.1 medical history/physical examination form~~

~~9.1.2.1.2 physicians affidavit~~

~~9.1.2.1.3 weight chart~~

~~9.1.2.1.4 substance abuse screen~~

~~9.1.2.2 The results of a validated psychiatric/psychological test indicating competency to perform law enforcement duties.~~

~~9.1.2.3 Current criminal history record check.~~

~~9.1.2.4 Background investigation.~~

~~9.1.2.5 Emergency Care and C.P.R. certification.~~

~~9.1.3 If not employed on a permanent basis for a period of greater than 36 months but less than 60 months, an individual must satisfy all minimum standards for initial employment established by the Council. These~~

include, but are not limited to, the following:

- 9.1.3.1 Medical background including:
  - 9.1.3.1.1 medical history/physical examination form
  - 9.1.3.1.2 physicians affidavit
  - 9.1.3.1.3 weight chart
  - 9.1.3.1.4 substance abuse screen

9.1.3.2 The results of a validated psychiatric/psychological test indicating competency to perform law enforcement duties.

9.1.3.3 Current criminal history record check.

9.1.3.4 Background investigation.

9.1.3.5 Emergency Care and C.P.R. certification.

9.1.3.6 Firearms certification.

9.1.3.7 In addition, such individuals must satisfy the following requirements:

9.1.3.7.1 Complete a basic academy course in procedures, criminal laws, and traffic laws.

9.1.3.7.2 Complete an entrance level firearms course.

9.1.3.7.3 Complete any other academic requirements imposed by the Director of the Delaware State Police Training Division following a review of the individual's training history.

9.1.4 If not employed on a permanent basis for a period of greater than 60 months, an individual must satisfy all requirements imposed by the Director of the Delaware State Police Training Division following a review of the individual's training history and after approval by the Council.

#### **10.0 Seasonal Police Officers**

##### **10.1 Minimum Training**

10.1.1 Due to their status, officers in this classification will receive a course of instruction that once completed will meet minimum standards established by the Council on Police Training. Seasonal officers are governed by administrative directive as per Council Mandate 10/17/90.

10.1.2 Due to the unique position of the Seasonal Police Officer, it will be stipulated that in lieu of training prior to active duty, they will instead be granted permission by the Council on Police Training to comply with Section 8404 (a) (16) within fifteen (15) days of their initial employment date.

10.1.3 Seasonal police officer employment will encompass the period of May 1 – September 30 only.

10.1.4 Seasonal police officers who carry firearms or operate police vehicles on patrol shall be trained as required under 8404 (a) (2). Reinforced by Council 08/24/94.

##### **10.2 Basic Curriculum – Seasonal 21 Hours**

###### **10.2.1 Police Discipline & Courtesy 1 Hour**

10.2.1.1 Basic why, when, and where of discipline and courtesy of police officers.

###### **10.2.2 Use Of Police Equipment (Mace/nightstick Or Baton/handcuffs) 3 Hours**

10.2.2.1 Basic procedures for the effective use of non-lethal equipment.

###### **10.2.3 Laws Of Arrest And Search Procedures 4 Hours**

10.2.3.1 The legal foundation of laws governing and limiting the police officer's authority in the areas of arrests. This treatment shall be afforded with respect to the laws of arrest with or without warrants, arrest for misdemeanors and arrest for felonies, the elements of probable cause, and the disposition of persons after lawfully arrested.

###### **10.2.4 Criminal Code (Minor Offenses) 2 Hours**

10.2.4.1 The course should make the officer familiar with the code and the common minor violations and to know how to make ready reference to the code for other violations.

###### **10.2.5 Traffic Control 1 Hour**

10.2.5.1 Designed to teach the officer the fundamentals and mechanics of traffic control and control devices; and to familiarize the officer with the proper signals and gestures used in point traffic control.

###### **10.2.6 Emergency Care (Basic "ABC") 4 Hours**

10.3.6.1 Training to develop first-aid techniques that enable an officer to meet the basic demands in most cases.

###### **10.2.7 Patrol Procedures (Basic Tactics) Hours**

10.2.7.1 The most important single function of the police; the prevention of crime, the protection of life and property, the preservation of peace, the enforcement of law, and the detection and arrest of violators of the law and the relationship of such purposes to the patrol functions.

10.2.8 Communications 1 Hour

10.2.8.1 Acquaints the officer with the features and use of communications equipment used in police operations, including telephone, teletype, and radio. Instruction also includes rules and regulations of the Federal Communications Commission with regard to radio transmissions.

10.2.9 Courtroom Procedure & Demeanor 2 Hours

10.2.9.1 The fundamentals of how to be most effective as a witness in court. Includes preparation of the case prior to courtroom presentation. Also, appearance, manner, and attitude in court and while waiting to testify.

NOTE: This will not preclude any department from expanding on and or providing more than the minimum as provided above.

### 11.0 Minimum Qualifications For Police Instructors

11.1 Proposed instructors shall forward a resume including information relative to their education, experience in law enforcement, experience and suitability in instruction, ability at oral and written communication, and physical and personal appearance to the Administrator of the Council on Police Training.

11.1.1 The instructors shall be of two types:

11.1.1.1 Those used in general police instruction and have been in law enforcement for a minimum of five years;

11.1.1.2 Those who, by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education shall have the five year minimum experience waived.

11.1.2 All candidates for instructor must meet one of the following criteria prior to certification. The order of preference is as follows:

11.1.2.1 Certification from a police instructor school as approved by the Delaware Council on Police Training.

11.1.2.2 Teachers certified by the State of Delaware, Department of Instruction.

11.1.2.3 Bachelor degreed persons with practical application in teaching police related subjects.

11.1.2.4 Those, who by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education may be given a certification limited in subject matter.

11.1.3 Evaluations

11.1.3.1 Newly certified instructors shall be closely monitored during their first year by the Director (or his designee) of the respective academy in which they are instructing.

11.1.3.2 Incumbent instructors shall be monitored a minimum of once a year by the Director of that academy or his designee.

11.1.3.3 Instructors who have not taught for three years (36 months) shall be monitored as set forth in Section C 1.

11.1.3.4 Evaluation reports shall be forwarded to the director of the training academy from which the instructor originates.

11.1.4 Complaint Process

11.1.4.1 Students having complaints relative to training shall direct such complaints to the director of the academy they are attending.

11.1.4.1.1 If remedial action is not forthcoming, the complaint;

11.1.4.1.1.1 In the case of officers attending their own academy, they shall follow the authorized chain of command of that agency.

11.1.4.1.1.2 In the case of officers attending an academy other than their own, they shall notify their training officer or chief of police.

11.1.4.2 The training director or chief of police making complaints relative to an instructor or the training shall make a written request to the Administrator for an evaluation. The Administrator, or his designee, shall provide such evaluation for every request. The designee shall be a director of an approved status academy or his assistant.

11.1.5 Decertification

~~11.1.5.1 Instructors who become certified but through the evaluation process are found to be unacceptable for training purposes may be decertified by the Council upon recommendation by two members of the agency's Academy staff.~~

~~11.1.5.2 Falsification of information which led to certification shall be just cause for decertification.~~

~~11.1.6 Appellate Process~~

~~11.1.6.1 There are no appeals of the decisions of the Council on Police Training concerning instructor decertification unless a claim of lack of due process can be substantiated.~~

## ~~12.0 Firearms Training~~

~~12.1 Firearms training defined: Weapons training conducted at a facility and by an instructor certified to teach such subjects by the Council on Police Training.~~

~~12.2 Duration and Curriculum: Due to the varying number of police officers that will be involved in the firearms training at any one given time, no specific total of hours will be attached to this subject. The curriculum will include classroom lectures on safety, nomenclature, care of weapons, and the viewing of training films. Range instruction emphasizes the practical application of police weapons related to actual combat conditions. The range officer of the involved training facility will attest to the qualifications of the respective officer. The officer must qualify with his departmental issued weapon. The officer must attain 75% of the possible score.~~

~~12.3 Depending on the number of persons being trained, and considering the amount of experience, or lack of experience the group has with firearms, this training period will vary in time between 2 and 5 days with the 5 day period being the most common.~~

~~12.4 Non-Qualification: Should an officer initially fail to qualify, that person will be permitted one (1) additional opportunity to attain certification. Scheduling for the additional attempt will be conducted at the convenience of the firearms officer. Under no circumstances, will an officer be permitted to carry a firearm on duty unless certified as per the requirements of Section 8404 of the Council on Police Training.~~

~~12.5 As authorized by 8404 (a)(5): In order to retain certification, all police officers in the State of Delaware must receive recertification in firearms proficiency annually. The recertification must be conducted by a Council on Police Training certified firearms instructor.~~

~~12.6 A minimum of three (3) requalification shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots is required. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.~~

~~12.7 Each training session shall consist of one minimum standards requalification course. An additional 50 rounds shall be fired for proficiency training. This is a total of 100 rounds per shoot as a minimum.~~

~~12.8 The Chief of Police shall forward to the Administrator, documentation of annual firearms recertification for each officer under his/her command within 90 days of the anniversary date of initial firearms certification.~~

~~12.9 All training ammunition shall be comparable to issued service ammunition in performance specifications. Service ammunition shall be collected annually and replaced with new. The collected ammunition may be used for training. All shooting is to be completed with authorized/issued weapons and equipment.~~

## ~~13.0 Minimum Standards for Firearms Qualifications~~

~~13.1 Handguns (Day)~~

~~A minimum of three qualification shoots per year, scheduled on at least two separate dates, with ninety days between qualification dates.~~

~~Of the three dates, there will be one mandatory "low light" qualification. Simulation of "low light" is permitted and the "low light" qualification may be combined with a day shoot.~~

~~All training ammunition shall be comparable to issued ammunition in performance.~~

~~Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.~~

~~A minimum of 150 rounds of ammunition will be fired annually for proficiency training. This ammunition will not include the ammunition required for qualification courses.~~

~~A minimum score of 80% must be obtained to be qualified with the approved handgun. The method of scoring and target selection will be determined by the instructor.~~

~~All qualifications are to be completed with authorized weapon and equipment (holster, speedloaders, pouches, etc.).~~

# PROPOSED REGULATIONS

Shooting will be conducted annually using the flashlight for target illumination and identification.

YARD LINE	COURSE OF FIRE	TOTAL ROUNDS
25/Greater	Behind Cover Two Different Positions	9
15 to 7	Advancing Towards Target	9
7	Centered Behind Barricade	12
5/Less	Move Back	6
5/Less	Lateral Movement	8
5/Less	One Hand Reload Strong/Weak Hand Only	6
TOTAL OF FIFTY ROUNDS		

The instructor will determine at what distance, in what manner, and how many rounds will be fired on each command.

### 13.2 ~~Low Light or Concealed Carry Standards Retiree Concealed Carry Standards for H.R. 218.~~

~~This regulation sets forth the minimum qualification standards for concealed weapon handguns for active duty police officers and for retired law enforcement officers who qualify under the Law Enforcement Officers Safety Act of 2004 (H.R. 218).~~

~~These are minimum standards and shall not prevent any police department from establishing more strict or additional rules or regulations to qualify to conceal carry a firearm on or off duty.~~

YARD LINE	COURSE OF FIRE	TOTAL ROUNDS
15 to 17	Advance Towards Target	9
7	Centered Kneeling Behind Barricade	16
5/Less	Lateral Movement	12
5/Less	Move Back	6
5/Less	One Hand Reload Strong/Weak Hand Only	7
TOTAL OF FIFTY ROUNDS		

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command.

~~Active duty and retired law enforcement officers must qualify a minimum of once annually and obtain a minimum score of 80%.~~

~~If the weapon system or holster is different from duty use, the officer must qualify a minimum of once annually and obtain a minimum of 80% score.~~

### 13.3 ~~Basic Patrol Long Gun~~

~~This basic patrol long gun course is not designed to replace training relevant to specific weapons such as sniping marksmanship and select fire weapons. It will be incumbent upon each police department to provide their respective officers with specific recognized training to have those officers certified.~~

~~Long guns include patrol level weapons designed to be fired from the shoulder (e.g., patrol rifle/~~

carbines, shotguns).

~~Police departments using long guns will be required to qualify three times a year. A two-day course and one "low light" course simulation of "low light" is permitted. A minimum of ninety days is required between the two-day courses. The "low light" course may be combined as part of a one-day qualification course.~~

~~Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.~~

~~All training ammunition shall be comparable to issued ammunition in performance.~~

~~Departments using long guns will fire a minimum of twenty rounds of ammunition for proficiency training per year. This ammunition will not include the ammunition required for qualification courses.~~

~~A minimum score of 80% must be obtained to be qualified. The method of scoring and what type of target used will be determined by the instructor.~~

~~All qualifications are to be completed with authorized weapons and ammunition.~~

~~Departments are required to qualify on each type of ammunition that is issued.~~

<del>YARD LINE</del>	<del>COURSE OF FIRE</del>	<del>TOTAL ROUNDS</del>
<del>3/Greater</del>	<del>Two Different Positions Three Different Places</del>	<del>10</del>
<del>TOTAL OF TEN ROUNDS</del>		

~~The instructor will determine at what distance, in what manner, and how many rounds are fired on each command depending on the weapon and the capability of the ammunition.~~

~~**9-DE-Reg-768 (11/1/05)**~~

#### ~~14.0 Re-certification of Basic Firearms Instructors~~

~~An eight hour firearms re-certification course will be held annually and will cover, but not be limited to: legal updates; use of force; and review of Council on Police Training standards.~~

~~To maintain certification, firearms instructors must attend a minimum of one re-certification course every three years and complete sixteen hours of additional training in firearms usage or complete sixteen hours of Academy-level instruction, or a combination of training and instruction in the same three-year period.~~

~~The head of the police department shall provide documentation of the required updated training to the COPT Administrator to include in the instructor's training records.~~

~~No firearms instructor shall be employed by any police department for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.~~

~~**9-DE-Reg-768 (11/1/05)**~~

#### ~~15.0 Emergency Care & C.P.R. Retraining~~

~~15.1 All police officers in the State of Delaware shall have successfully completed a First Responder course adhering to the United States Department of Transportation curriculum for First Responder courses as offered by the Delaware State Fire School or as taught in a certified police training academy by a credentialed medical services instructor.~~

~~**6-DE-Reg-949 (2/1/03)**~~

#### ~~16.0 Certification Of Schools Or Courses~~

~~16.1 The Council on Police Training may:~~

~~16.1.1 Prescribe equipment and facility standards for schools at which police training courses shall be conducted, including but not limited to existing county or municipal schools;~~

~~16.1.2 Establish minimum training requirements, attendance requirements and standards of operations for police training schools;~~

~~16.1.3 Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify such instructors to their particular courses of study;~~

~~16.1.4 Approve and issue certificates of approval to such police training schools, to inspect such schools from time to time and to revoke for cause any approval or certificate issued to such schools;~~

~~16.1.5 Consult and cooperate with all agencies of government, state and local, concerning the development and administration of the training and standard program and to contract with such agencies as it deems necessary to the performance of its powers and duties;~~

~~16.1.6 Effective 1/1/88, the Chief of Police of the Council approved training schools shall submit to the Administrator, in writing, the curriculum and names of instructors to be utilized, at least 15 days prior to the commencement of basic training for new police recruits.~~

~~16.1.7 The Administrator may then access the Council computer to determine the certification status of each instructor.~~

~~16.1.8 In any case, the Administrator will respond, in writing, to the approved school, advising the status of the request within 5 working days.~~

## ~~17.0 Council On Police Training Basic Curriculum~~

~~17.1 This is the mandatory curriculum for basic police training and reflects 498 hours of training as approved by the Council on Police Training. This curriculum will become effective January 1, 1991.~~

~~17.2 Introduction To Law Enforcement 2 Hours~~

~~17.2.1 To introduce law enforcement officers to the historical background and development of the police service with emphasis on its relationship to modern society. Also included is an analysis of the organizational structure.~~

~~17.3 Constitution And Bill Of Rights 2 Hours~~

~~17.3.1 An introduction to the history and development of the Federal and State Constitutions, particularly the Federal Bill of Rights, as interpreted by the courts down through the years, with emphasis on decisions of the United States Supreme Courts.~~

~~17.4 Other Police Agencies Jurisdiction 2 Hours~~

~~17.4.1 To acquaint officers with the jurisdiction, function, and availabilities of other enforcement agencies including federal departments such as the Secret Service and Federal Bureau of Investigation.~~

~~17.5 Criminal Code 20 Hours~~

~~17.5.1 The course should make the officer sufficiently familiar with the Code as to know all aspects of the most important and common violations and to know how to make ready reference to the Code for all other violations. This segment will also acquaint the officer with the more commonly encountered civil law violations.~~

~~17.6 Motor Vehicle Code 20 Hours~~

~~17.6.1 The purpose of this course is to acquaint the officer with the provisions of the Motor Vehicle Code Annotated. With this background, he may readily recognize a violation thereof and be able to: (1) define the elements of such violation and; (2) know the nature of the evidence necessary to prove such violation in court.~~

~~17.7 Laws Of Arrest 25 Hours~~

~~17.7.1 The legal foundation of laws governing and limiting the police officer's authority in the areas of arrest. This treatment shall be afforded with respect to: (1) the laws of arrest with or without warrants, arrest for misdemeanors and arrest for felonies, the elements of probable cause, and the disposition of persons after lawfully arrested; (2) the law applicable to criminal interrogation and resultant confessions under the 5th, 6th, and 14th Amendments of the Federal Constitution and; (3) the application of constitutional safeguards to electronic surveillance, chemical, and serological evidence.~~

~~17.8 Handling Abnormal People 8 Hours~~

~~17.8.1 The purpose of this course is to identify behavioral factors with which the officer has to deal, discusses the influence of group behavior or individual behavior, and emphasizes the importance of understanding unusual behaviors in order to handle that behavior most effectively. Also review commitment procedures.~~

~~17.9 Patrol Procedures 40 Hours~~

~~17.9.1 The most important single function of the police; the prevention of crime, the protection of life and property, the preservation of peace, the enforcement of law, and the detection and arrest of violators of the law and the relationship of such purposes to the patrol functions.~~

~~17.10 Emergency Care 21 Hours~~

~~17.10.1 Because accidents and other emergencies bring the police officer to the scene first, this training is to develop first aid techniques that enable him to efficiently fulfill his responsibilities. The course also offers sufficient instruction to enable the police officer to make an emergency child delivery.~~

~~17.11 Interview And Interrogation 8 Hours~~

~~17.11.1 To teach the officer the approved techniques of interrogation so that he may fully~~

develop information or evidence by conversation with witnesses and subjects. Emphasis on legal limitations.

17.12 Accident Investigation- 24 Hours

17.12.1 Develops the officer's skills in methods and techniques to be applied to this type of investigation, including measurements, photography, sketches, reporting, and interviewing of witnesses and drivers, hit and run accidents and manslaughter by motor vehicle cases.

17.13 Manual Traffic Control 2 Hours

17.13.1 Designed to teach the officer the fundamentals and mechanics of traffic control and control devices; and to familiarize the officer with the proper signals and gestures used in point traffic control.

17.14 Report Writing- 24 Hours

17.14.1 Instructs the officer in the essential mechanics of recording his investigations in report form suitable to serve both as an aid to further investigation and to the preparation and development of prosecution.

17.15 Juvenile Procedures- 8 Hours

17.15.1 This course is designed to acquaint the new officer with the family, social and economic conditions, and factors which foster and encourage juvenile delinquency. It stresses the role law enforcement can play in the overall effort to combat such conditions with emphasis on the planned programs existent within the State of Delaware.

17.16 Firearms- 40 Hours

17.16.1 Instruction includes classroom lectures on safety, nomenclature, care of weapons, and the viewing of training films. Range instruction emphasizes the practical application of police weapons related to actual combat conditions.

17.18 Community Relations- 12 Hours

17.18.1 The purpose of this course is to prepare the officer to deal fairly and effectively with minority groups in society. This course is intended to bring about increased understanding and respect of the duties of the police officer on the part of these minority groups with which the officer must deal.

17.19 Driving Under The Influence & Chemical Testing 10 Hours

17.19.1 Presents the elements of the offense of driving under the influence as defined by Delaware law. Provides knowledge on securing the necessary evidence, including scientific tests and reporting in order to successfully prosecute.

17.20 Courtroom Procedure And Demeanor- 10 Hours

17.20.1 The fundamentals of how to be most effective as a witness in court. Includes preparation of the case prior to courtroom presentation. Also, appearance, manner, and attitude in court and while waiting to testify.

17.21 Narcotics- 12 Hours

17.21.1 Acquaints the officer with the types of narcotics commonly used. It includes the terms of jargon, the general effects of various drugs and barbiturates, plus their relationship to crime. Field testing of various substances will also be included.

17.22 Latent Fingerprints/Crime Scene Processing- 12 Hours

17.22.1 Methods and importance of identification including the methods of dusting, photographing and lifting latent fingerprints and palm prints from all manner of surfaces and areas, inked and rolled fingerprints; not only of live and willing subjects, but also from unconscious, deceased, and decomposed bodies.

17.23 Weaponless Defense 30 Hours

17.23.1 Through the use of lecture, demonstration and individual participation, provide each new officer with sufficient skills to defend himself from attack. Instruction and practice in nature, theory, basic principles, safety precautions, the personal weapons, and vulnerable areas of attack. Instruction on the use of the police baton and crowd control.

17.24 Laws Of Evidence & Search And Seizure- 24 Hours

17.24.1 Acquaint the recruit with the rules and law of evidence exercised in a court of law so that he may recognize what is legally admissible. He must be able to differentiate between the various types of evidence and be familiar with the rules concerning maintaining the chain of evidence. Covers the laws of search and seizure under the provisions of the 4th and 14th Amendments including the exclusionary rule and the elements of a "reasonable" search and seizure of persons (a) incidental to arrest; (b) under a search warrant; (c) with consent.

17.25 Sex Crimes- 8 Hours

17.25.1 This course is calculated to teach the officer the elements, peculiar techniques of investigation, motives, and most productive sources of evidence, psychology of violators, modus operandi, etc.

- 17.26 Criminal Investigation 44 Hours  
 17.26.1 Presents a study of the basic fundamentals and procedures of investigation involving the more serious crimes. Includes establishment of the elements of burglary, robbery, auto theft, theft felony, homicide, and other major offenses such as gambling and organized crime.  
 17.26.2 Also discussed is a study of the more routine police criminal complaints. Covers techniques of investigating prowler, theft misdemeanor, plain drunk, obscene phone calls, domestic complaints, and other minor offenses.
- 17.27 Communications & Ncic 6 Hours  
 17.2.7.1 Acquaints the officer with the features and use of all communications equipment used in police operations, including telephone, computers, radio, and NCIC. Instruction also includes rules and regulations of the Federal Communications Commission with regard to radio transmissions.
- 17.28 Police Discipline And Ethics 8 Hours  
 17.2.8.1 Basic why, when, and where of discipline and courtesy of police officers. Ethics from a law enforcement perspective will be explored and discussed.
- 17.29 Civil Disobedience/Labor Disputes 4 Hours  
 17.29.1 Lecture and discussion of Delaware Labor Laws and the law enforcement role of protection of life and property with explanation of injunctive relief procedures. Actual situations involving labor strikes and picketing of companies, abortion clinics, animal rights groups, etc., will be discussed.
- 17.30 Use Of Deadly Force 6 Hours  
 17.30.1 This course will acquaint the officer with the laws governing the use of deadly force by police officers.
- 17.31 Domestic Violence 8 Hours  
 17.31.1 To acquaint the officer with the potential dangers that exist when answering calls of domestic disputes. Generally, such training is designed to prepare police officers to react effectively, efficiently, and sensitively to the crisis situations which they encounter.
- 17.32 Police Fire Survival 14 Hours  
 17.32.1 Delaware State Fire School explains the hazards of electrical fires, the proper use of various types of fire extinguishers, knowledge of structural fires, how to handle flammable liquids and gas and rescue techniques for removing trapped persons from vehicles.
- 17.33 Officer Survival 20 Hours  
 17.33.1 This course is designed to acquaint the new officer with the basic street survival techniques as accrued from years of experience from actual encounters on the street. Practical application of avoidance, deterrence, and handling of actual scenarios will familiarize officers with what to do when confronted with an armed combatant as well as what not to do.
- 17.34 Advanced Driving Course 24 Hours  
 17.34.1 This course is divided into approximately 2 hours of classroom instruction and 22 hours of driving on a skid pad. The classroom instruction stresses the importance of vehicle safety in teaching defensive and pursuit tactics. The student is taught to realize that the driving environment, which includes the vehicle, the road, and the driver all have limits. Some of the topics covered are the affects of weight transfer, affects of centrifugal force and friction, and skids and cornering.  
 17.34.2 The skid pad portion reinforces the student's understanding of the driving environment and other classroom material. The student is exposed to steering control, judging distances, the vehicles evasive capability, maximum braking ability without losing steering ability, and the affects of skidding and controlling skids.  
 Revised and Approved by C.O.P.T. October 17, 1990

## 18.0 Training Records

18.1 Upon submission of an "Authorization to Release Information" form and proper personal identification, the Council on Police Training will release training records and other personal information to the bearer of the properly executed release form.

18.2 The form should be sent to the Administrator at least 5 days in advance of the needed date to allow for processing of requests.

## 19.0 Administrator

19.1 The Director of the Delaware State Police Training Division shall be responsible for administering the

~~mandatory training and education for police officers program with responsibility and authority to obtain professional assistance from other police and professional organizations to accomplish the purposes and objectives of the program.~~

## **~~20.0—Reimbursement~~**

~~20.1 Every municipality or other governmental unit of this State or the University of Delaware intending to employ on a permanent basis police officers who have satisfactorily completed the mandatory training as required under this chapter and who have completed their training while in the employ of another municipality or another governmental unit of this State or the University of Delaware within 2 years from the date of satisfactory completion of such mandatory training, shall reimburse the municipality or other governmental unit or the University of Delaware with whom the police officer was employed at the time of attending the mandatory training program for the cost of training such officer, which shall include the salary, uniforms and equipment and other training expenses incurred while the officer was attending the mandatory training program. During the first year after completion of the mandatory training program the municipality or other governmental unit or the University of Delaware by whom the police officer was employed at the time of attending the mandatory training program shall be reimbursed for 100 percent for those expenses. During the second year the municipality or other governmental unit shall be reimbursed for 50 percent of those expenses.~~

~~20.2 Reimbursable expenses would include, but are not limited to, items such as salary, physical fitness training clothing, class uniforms, ammunition for the range, etc.~~

## **~~21.0—Uncertified Police Officers~~**

~~21.1 Police officers of the State or any county or municipality or the University of Delaware which do not meet the requirements of this chapter and the criteria as established by the Council shall not have the authority to enforce the laws of the State.~~

~~21.2 A police force of any county or municipality which does not meet the requirements of this chapter and the criteria established by the Council will be ineligible to apply for or receive state aid to local law enforcement funds. (SALLE Funds)~~

## **~~22.0—Right To Amend~~**

~~22.1 The Council reserves the right to amend these rules and regulations as authorized under 11 Delaware Code, Chapter 84, S8404 (a)(14).~~

~~22.2 When a change is made to the mandatory training act, the Administrator shall send the changes to all holders of this manual for addition or replacement of the affected section(s).~~

~~22.3 The Administrator may require a return receipt from all holders of this manual as proof of compliance.~~

## **~~23.0—Annual Report~~**

~~23.1 Annually, upon request of the Chairman, the Administrator may present to the Council a summary of its activity from the previous fiscal year.~~

## **1.0 Objectives**

1.1 The objectives of the Council on Police Training are:

1.1.1. To encourage and increase the professional competency of police officers by:

1.1.1.1 Establishing minimum pre-employment qualifications for police officer applicants and;

1.1.1.2 Establishing minimum educational and training qualifications requisite to permanent appointment as a police officer, and;

1.1.1.3 Prescribing standards for In-service or continued training of police officers, and;

1.1.1.4 Suspend or revoke certification in the event an individual obtained certification through fraud or deceit, has been convicted of a felony or moral turpitude misdemeanor, or has failed to successfully complete and in-service or advanced training course required by Council.

1.1.1.5 In all situations where the provisions of Section 8404(a)(4) or Section 8410(b) of this Chapter are to be applied to or invoked against any agency or individual, that agency or individual shall be entitled to a hearing in the manner prescribed herein:

1.1.1.5.1 The Chairman shall select three (3) members of the Council to comprise a Board, which will hear evidence on the allegation (hereinafter "Board").

1.1.1.5.2 Upon conclusion of the hearing provided for in this Section, the board

shall submit its findings and recommendation to the full Council in writing for consideration and vote.

1.1.1.5.3 The ultimate findings of the Council shall be final, except that any ruling adverse to any party participating in the hearing may be appealed to the Superior Court within 15 days of receipt of written notification of said finding. Absent an appeal, all findings of the Council shall become final upon expiration of said appeal deadline.

1.1.1.5.4 All hearings shall be conducted in accordance with the Administrative Procedures Act of the **Delaware Code**.

## 2.0 Definitions

2.1 As used in this chapter:

**“Approved Academy”** means a Police Basic Training School authorized by the Council to provide mandatory training and education for police officers as prescribed in this chapter.

**“Council”** means the Council on Police Training.

**“Inactive status”** means status assumed by a certified police officer upon termination of employment with a law enforcement agency.

**“Pathology”** means the branch of medicine concerned with the study of the nature of disease and its causes, processes, development and consequences.

**“Permanent appointment”** means appointment by the authority of any municipality or government unit in or of this State or the University of Delaware Police Department, Delaware State University Public Safety Department and the Delaware River and Bay Authority to permanent status as a police officer.

**“Permanent basis”** means continual employment with a law enforcement agency on a full-time or part-time basis.

**“Police officer”** means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State.

- For the purposes of this chapter this term shall include permanent full-time law enforcement officers of the University of Delaware Police Department, Delaware State University Public Safety Department and the Delaware River and Bay Authority.
- Permanent law enforcement officers of the Department of Natural Resources and Environmental Control including Park Rangers, Fish and Wildlife Agents, and Environmental Protection Officers.

For purposes of this chapter this term shall not include the following:

- A sheriff, regular deputy sheriff or constable;
- A security force for a state agency or other governmental unit
- A person holding police power by virtue of occupying any other position or office. (11 **Del.C.** 1953, & 8401; 57 **Del. Laws**, c. 261; 57 **Del. Laws**, c. 670, & 1A, 63 **Del. Laws**, c. 31, & 1.)

**“Seasonal appointment”** means appointment for no more than 6 months per calendar Year. Any deviation from this standard based on special circumstances will require prior approval by the Council.

**“University”** means the University of Delaware Police Department or Delaware State University Public Safety Department.

**“Validated test”** means a test that has been shown by scientific means to be specific related to job performance and job tasks and does not have an adverse impact.

## 3.0 Minimum Standards for Initial Employment

3.1 The applicant shall complete an application, the format of which has been approved by the Council. (See Section IV. Forms)

3.2 The applicant shall be a citizen of the United States.

3.3 The applicant shall have reached his/her 18<sup>th</sup> birthday as a seasonal officer and his/her 21<sup>st</sup> birthday as a full time officer.

3.4 A licensed physician shall examine the applicant, at the expense of the employing agency, to determine that he/she is physically fit for normal police duties. The following shall be met.

3.4.1 The applicant shall be free from any major impediment of the senses.

3.4.2 The applicant shall be examined by a licensed ophthalmologist and shall possess acuity of

vision of not more than 20/200 correctable to 20/20 in each eye with soft contact lenses. The applicant shall have the ability to distinguish between the colors of red, green, and amber; and shall have no pathology of the eyes. Applicant shall also possess acceptable depth perception.

3.4.3 The applicant shall possess normal hearing in both ears per current standards.

3.4.4 The applicant shall have no communicable diseases.

3.4.5 The applicant shall have no physical deformities, which would be detrimental to proper performance of police duties.

3.4.6 The applicant must pass a drug-screening test prior to appointment or attendance at an approved police basic training Academy. The standards for such drug screening shall be adopted by the agency seeking to employ the applicant; at a minimum, these standards must provide for confirmatory testing in the event of an initial positive finding.

3.5 The applicant shall take and successfully complete a validated psychiatric / psychological test to show his/her competency to perform law enforcement duties. The applicant shall also be required to be examined in person and receive endorsement by a licensed psychologist / psychiatrist to determine that his mental and emotional stability is suitable to perform law enforcement duties (i.e. race relations, use of force and authority, flexibility and maturity). Mental exam rejection: such as psychoneurotic reaction resulting in hospitalization, prolonged care by physician or loss of time for repeated periods.

3.6 The applicant shall be a high school graduate as evidenced by a diploma issued by a state accredited high school. An equivalency diploma issued by an accredited high school is acceptable.

3.7 The applicant shall possess a valid drivers license.

3.8 The applicant shall be of good reputation and character. The employing department shall conduct a character and background investigation on each applicant in the form and manner as prescribed by the Council (see form IV-14). The chief, or his designee, of the hiring department, shall interview the applicant in person and all background investigation records shall be kept on file for a period of two years for those applicants not hired and permanently for those applicants hired for inspection by the Council on Police Training or its authorized representative.

3.9 The applicant shall not have been convicted of a felony or misdemeanor, which precludes the individual from possessing a weapon. The applicant shall be fingerprinted and a search made of local, state and national fingerprint files to disclose any criminal record; and the fingerprint cards and any identification records shall be made available for inspection to the Council on Police Training or its authorized representative. A conviction of any state or federal crime may be grounds for rejection of the applicant by the Council.

3.10 The applicant shall successfully complete a written job related examination, in the form and manner as prescribed by the Council on Police Training, and the results shall be retained for a period of two years for inspection by the Council or its authorized representative. Form and manner being a validated test related to specific requirements needed to perform duties of a police officer

3.11 A bad conduct or dishonorable discharge from military service shall disqualify the applicant. Any discharge, other than above, which is not honorable, may be grounds for rejection, determination to be made by the hiring agency in conjunction with the Administrator of the Council on Police Training.

3.12 The weight of the applicant shall be in proportion to his/her height and build or body fat percentage as established by the Cooper Institute.

[www.healthchecksyste.ms.com/heightweightchart.htm](http://www.healthchecksyste.ms.com/heightweightchart.htm)

3.13 **Physical Ability Testing:** Each department sending recruits to a COPT approved academy within this state will be responsible to see that the applicant meets the minimum physical ability standards as set by the respective academy. Recruits found not to meet the minimum standard(s) are subject to dismissal from the respective training academy.

3.13.1 The COPT recommends a test battery for applicants as suggested by the Cooper Institute<sup>1</sup>. The Battery is as follows:

- |                  |                                       |
|------------------|---------------------------------------|
| <u>3.1.3.1.1</u> | <u>Vertical Jump</u>                  |
| <u>3.1.3.1.2</u> | <u>One Minute Sit Up</u>              |
| <u>3.1.3.1.3</u> | <u>300 Meter Run</u>                  |
| <u>3.1.3.1.4</u> | <u>Maximum Push-Up or Bench Press</u> |
| <u>3.1.3.1.5</u> | <u>1.5 Mile Run</u>                   |

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1. Procedure and Sequencing of Physical Fitness Tests in Law Enforcement; 2002 The Cooper Institute

# PROPOSED REGULATIONS

3.13.2 The procedure and order for testing is recommended as follows:

3.13.2.1 Warm up for 3 minutes, perform vertical jump test and rest for 2 minutes

3.13.2.2 Perform one minute sit-up test and rest for 5-10 minutes

3.13.2.3 Perform 300 Meter run and rest for 5-10 minutes

3.13.2.4 Perform Maximum Push-up test and rest for 5 to 15 minutes.

3.13.2.5 Perform Cardio-warm up for 2-3 minutes and then perform 1.5 mile run

followed by cardio-cool down for 5 minutes.

3.13.3 As a minimum, applicants should be capable of satisfactorily completing 3 of the recommended tests. Satisfactorily is held to mean the achievement in the 20<sup>th</sup> percentile as cited in the Cooper Fitness Norms, Single Norms<sup>1</sup>. The inability of a recruit to perform physical ability tests to the 20<sup>th</sup> percentile shall be reported to the director of training of the academy to which the recruit is enrolled. The Director of Training may require additional testing, specialized training, or may at his/her discretion, deny enrollment of said recruit in the respective training academy. In all cases where a recruit is denied enrollment, the Director of the COPT shall be notified in writing with the reasons for the denial clearly stated.

3.13.4 Physical Fitness/Wellness testing and training is to encourage and teach law enforcement officers to maintain a healthy fitness level throughout their career. Law enforcement officers who remain physically fit prove more readily able to cope with the day-to-day stress of job demands, and are better prepared to handle critical incidents. For this purpose, the COPT has established a minimum Physical Ability level for law enforcement recruit applicants, and officers currently employed in law enforcement out of state, and seeking law enforcement employment in Delaware. It will be the responsibility of each agency to test and determine fitness for duty levels of their respective recruit candidates.

3.13.5 While the COPT has established minimum standards, each department may establish higher standards based on the physical demands placed on officers within their respective jurisdiction. Agency heads, when establishing physical fitness standards for their agency are encouraged to familiarize themselves with Federal Legislation contained in Title VII of the Civil Rights act of 1964, and by the Civil Rights Act of 1991. This legislation requires that all employers of more than 15 employees must refrain from policies and procedures, which either expressly or effectively discriminates against specified categories of individuals except under limited circumstances.

3.14 No requirement of this section is to be interpreted as precluding any agency from establishing higher standards. In no case, however, may the department head or agency employ persons with qualifications below the minimums set forth in these regulations for the position of police officer. Higher standards are recommended whenever the availability of qualified applicants is available.

## **4.0 Notification of Employment Status**

4.1 The Council required that the Administrator be notified by the Chief of Police, in writing, within 5 days of the employment or termination of any police officer under his/her command. (See Section IV. Forms)

## **5.0 Minimum Standards For Training**

### **5.1 Police Basic Training Course**

#### **5.1.1 INTRO PARAGRAPH**

5.1.2 In order for training to be accepted by Council on Police Training the training must be instructed by Certified Instructors as set forth in II-12.

5.1.2.1 Each applicant for the position of police officer in the State of Delaware must satisfactorily complete the Police Basic Training Course as prescribed in 11 Delaware Code §8405(a) (Amended 07/08/93) prior to being given or accepting an appointment as a police officer.

5.1.2.2 The Council on Police Training has certified six agencies as approved police basic training academies. Those agencies are: The Delaware State Police; New Castle County Police; Wilmington Department of Police; Newark Police Department; Dover Police Department; and Delaware River and Bay Authority Police Department.

5.1.2.3 As a condition of maintaining their status as an approved police basic training academy during the training period for applicants for certification as police officers, each school must conduct a

1. Physical Fitness Specialist Course and Certification; 2002, The Cooper Institute

minimum of one random drug-screening test on each such applicant. The cost of conducting one test for drug samples pursuant to this section for each applicant undergoing training, including confirmatory testing in the event of an initial positive finding, shall be paid by the Council. The drug screening must be conducted according to standards adopted by the agency conducting the school; these standards must include confirmatory testing as described above.

5.1.2.4 Any arrest for criminal and/or traffic offense, the Council on Police Training should be notified within 5 days.

5.1.2.5 Person must meet PT standards of the academy to which they will be attending.

## 5.2 Waiver of Equivalent Training – RECIPROCITY

5.2.1 The Council on Police Training may waive the requirement of attending an approved Delaware Police Training Academy for those officers seeking Delaware certification of training after having completed equivalent training out-of-state, and having met all training considered indigenous to Delaware.

5.2.2 The Chief of Police of the municipality seeking waiver of training obtained in Delaware must submit to Council an application for Exemption from Mandatory Training. (See Section IV. Forms)

5.2.3 The application must be completed in its entirety and submitted to the Administrator prior to appointment by the requesting agency. The officer must enclose a copy of the certificate of training from the police academy, which provided police basic training. The officer must also enclose a copy of the curriculum from that academy which must include: description of courses taught; hours assigned to each course; and, a brief synopsis of the material taught in each course.

5.2.4 The Administrator will examine the equivalent training records and make a comparison with the Delaware Mandatory Requirements. Any areas not meeting Delaware Standards will be required, prior to submission of the waiver application to Council for consideration

5.2.5 If an applicant has completed an out-of-state Academy but was not employed as a police officer for 5 years immediately following graduation, that applicant must attend a Delaware approved Academy in its entirety. If the Council should determine that the out-of-state training was in the main, deficient, it may deny the waiver in its totality and require attendance at an approved Delaware police training academy.

5.2.6 If an applicant, upon review of their training, needs to take more than 40% or 200 hours of training in the state of Delaware, then they must attend a Delaware approved Academy in its entirety.

## 5.3 Annual required training to maintain certification

5.3.1 Each police officer, certified by the Council, will be required to complete 16 hours of in-service career related training annually.

5.3.2 In addition to the above 16 hours, the officer must also recertify in C.P.R., AED, and First Responders recertification as noted in Section II-16.

## **6.0 Extension of Time Limit For Course Completion**

6.1 The Council of Police Training may provide a modification from the application; application of any provision of this chapter or the Rules and Regulations promulgated hereunder, for any police officer of a municipality if:

6.1.1 The police officer is employed on a full-time basis, and;

6.1.2 The municipality makes application for such modification and establishes that it will suffer a hardship if the modification is not granted, and;

6.1.3 Application is made in writing to the Administrator of the Council on Police Training.

6.2 The Administrator will present the hardship application to the Council at the next regularly scheduled quarterly meeting. The Council will consider the request, debate its merits, and approve or deny the application by a majority vote of its members.

## **7.0 Power and Duties**

7.1 The Council on Police Training, subject to 11 Delaware Code §8404, may:

7.1.1 Issue certification of completion of police officer training prescribed under this chapter;

7.1.2 Prescribe standards for in-service or continued training of police officers;

7.1.3 Establish minimum educational and training qualifications requisite to certification by the Council and permanent appointment as a police officer;

7.1.4 Establish recertification requirements for police officers who have previously been certified as having completed the training by Council, but have ceased to be employed on a permanent basis and have become classified as inactive.

7.1.5 Prescribe equipment and facility standards for academies and schools at which police training

# PROPOSED REGULATIONS

courses shall be conducted, including but not limited to existing county or municipal schools:

7.1.6 Establish minimum training requirements, attendance requirements and standards of operations for police training academies and schools:

7.1.7 Prescribe minimum qualification for instructors at such academies and schools and certify, as qualified, or decertify such instructors to their particular courses of study:

7.1.8 Approve and issue certificates of approval to such police training academies and schools, to inspect such academies and schools and to revoke for just cause any approval or certificate issued to such schools:

7.1.9 Suspend or revoke certification in the event that an individual:

7.1.9.1 Obtained certification by fraud or deception:

7.1.9.2 Has been convicted of a felony or of a misdemeanor involving moral turpitude or of any local, state, or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or any drug law:

7.1.9.3 Has failed to successfully complete any annual re-certifications, in-service, or advanced training required by Council:

7.1.9.4 Has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the powers and authority of a police officer:

7.1.9.6 Effective 1/1/88 the Basic Curriculum shall be applicable for all new police officers, regardless of the type of employment or hours of employment, except seasonal employment.

7.1.9.5 Has been discharged from employment with a law enforcement agency for a breach of internal discipline; or has tendered his resignation prior to the entry of findings of fact concerning an alleged breach of internal discipline and who is found by the Council to have engaged in conduct constituting a breach of internal discipline for which the individual could have been legitimately discharged had he not resigned his position prior to an adverse finding of fact being entered on the issue by the employing agency.

7.1.9.6 Effective 1/1/88 the Basic Curriculum shall be applicable for all new police officers, regardless of the type of employment or hours of employment, except seasonal employment.

## **8.0 Re-activation Requirements of Police Officers**

### 8.1 Re-activation Requirements

8.1.1 If not employed on a permanent basis for a period of less than 12 months, an individual must complete all in-service requirements mandated by the Council pursuant to 11 **Del.C.** Section 8404(a)(5) prior to recommencing employment.

8.1.2 If not employed on a permanent basis for a period of greater than 12 months but less than 36 months, an individual must satisfy all minimum standards for initial employment established by the Council. These include, but are not limited to, the following:

8.1.2.1 Medical background including:

8.1.2.1.1 Medical history / physical examination form

8.1.2.1.2 Physicians affidavit

8.1.2.1.3 Weight chart

8.1.2.1.4 Substance abuse screen

8.1.2.2 The results of a validated psychiatric / psychological test and interview, indicating competency to perform law enforcement duties.

8.1.2.3 Current criminal history record check, including fingerprints obtained from the State Bureau of Investigations.

8.1.2.4 Background investigation. Standardized form (IV-14) which consists of a minimum checklist.

8.1.2.5 All training requirements prescribed by the Council, including, but not limited to First Responder and Firearms recertification.

8.1.2.6 Firearms training.

8.1.3 If not employed on a permanent basis for a period of greater than 36 months but less than 60 months, an individual must satisfy all minimum standards for initial employment established by the Council. These include, but are not limited to, the following:

8.1.3.1 Medical background including:

8.1.3.1.1 Medical history / physical examination form

8.1.3.1.2 Physicians affidavit

- 8.1.3.1.3 Weight chart
    - 8.1.3.1.4 Substance abuse screen
  - 8.1.3.2 The results of a validated psychiatric / psychological test and interview, indicating competency to perform law enforcement duties.
  - 8.1.3.3 Current criminal history record check, including fingerprints obtained from the State Bureau of Investigation.
  - 8.1.3.4 Background investigation. Standardized form (IV-14) which consists of a minimum checklist.
  - 8.1.3.5 First Responder recertification
  - 8.1.3.6 Complete a Firearms basic certification course.
  - 8.1.3.7 Complete an academy basic criminal procedures, criminal law and traffic law course.
  - 8.1.3.8 Complete any other academic requirement imposed by the Delaware State Police, Director of Training, following a review of the individuals training records.
- 8.1.4 If not employed on a permanent basis for a period of greater than 60 months, an individual must satisfy all requirements imposed by the Director of the Delaware State Police Training Division following a review of the individual's training history and after approval by the Council.

## **9.0 Seasonal Police Officers**

- 9.1 Minimum Training Requirements
  - 9.1.1 Due to their status, officers in this classification will receive a course of instruction that once completed will meet minimum standards established by the Council on Police Training. Seasonal officers are governed by administrative directive as per Council Mandate 10/17/90.
  - 9.1.2 Due to the unique position of the Seasonal Police Officer, it will be stipulated that in lieu of training prior to active duty, they will instead be granted permission by the Council on Police Training to comply with Section 8404(a)(16) within fifteen (15) days of their initial employment date. The course needs prior approval by the Director of Training of the Delaware State Police Training Academy.
  - 9.1.3 Seasonal police officer employment will encompass the restricted time frame of employment of more than 4 weeks and no more than 6 months.
  - 9.1.4 Seasonal police officers who carry firearms shall be trained as required under 8404(a)(16). Reinforced by Council 08/24/94.
  - 9.1.5 Seasonal police officers who operate police vehicles on patrol shall be trained in EVOC.
- 9.2 Basic Curriculum – Seasonal **48 Hours**
  - 9.2.1 Communications 1 Hour
    - 9.2.1.1 Acquaints the officer with the features and use of communications equipment used in police operations, including telephone, teletype, and radio. Instruction also includes rules and regulations of the Federal Communications Commission with regard to radio transmissions.
  - 9.2.2 Courtroom Procedure and Demeanor 2 Hours
    - 9.2.2.1 The fundamentals of how to be most effective as a witness in court. Includes preparation of the case prior to courtroom presentation. Also, appearance, manner, and attitude in court and while waiting to testify.
  - 9.2.3 Criminal Code (Minor Offenses) 4 Hours
    - 9.2.3.1 The course should make the officer familiar with the code and the common minor violations and to know how to make ready reference to the code for other violations.
  - 9.2.4 Cultural Diversity 4 Hours
    - 9.2.4.1 The purpose of this course is to prepare the officer to deal fairly and effectively with minority groups in society. This course is intended to bring about increased understanding and respect of the duties of the police officer on the part of these minority groups with which the officer must deal.
  - 9.2.5 DELJIS 8 Hours
    - 9.2.5.1 Each recruit will be instructed on the DELJIS System. Recruits will be able to navigate DELJIS and develop electronic warrants.
  - 9.2.6 Emergency Care (Basic “ABC” CPR/AED) 6 Hours
    - 9.2.6.1 Training to develop first aid techniques that enable an officer to meet the basic demands in most cases.
  - 9.2.7 Laws of Arrest and Search Procedures 6 Hours

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9.2.7.1 The legal foundation of laws governing and limiting the police officer's authority in the areas of arrests. This treatment shall be afforded with respect to the laws of arrest with or without warrants, arrest for misdemeanors and arrest for felonies, the elements of probable cause, and the disposition of persons after lawfully arrested.

9.2.8 Patrol Procedures (Basic Tactics) 3 Hours

9.2.8.1 The most important single function of the police: the prevention of crime, the protection of life and property, the preservation of peace, the enforcement of law, and the detection and arrest of violators of the law and the relationship of such purposes to the patrol functions.

9.2.9 Police Discipline and Courtesy 1 Hour

9.2.9.1 Basic why, when, and where of discipline and courtesy of police officers.

9.2.10 Report Writing 2 Hours

9.2.10.1 Instructs the officer in the essential mechanics of recording his investigations in report form suitable to serve both as an aid to further investigation and to the preparation and development of prosecution.

9.2.11 Traffic Code 2 Hours

9.2.11.1 This class is designed to present the recruit with the fundamentals and mechanics of traffic control, control devices, proper signals and gestures.

9.2.12 Traffic Control 1 Hour

9.2.12.1 Designed to teach the officer the fundamentals and mechanics of traffic control and control devices; and to familiarize the officer with the proper signals and gestures used in point traffic control.

9.2.13 Use of Police Equipment (Mace/Nightstick or Baton/Handcuffs) 8 Hours

9.2.13.1 Basic procedures for the effective use of non-lethal equipment.

9.2.14 Note: This will not preclude any department from expanding on and or providing more than the minimum as provided above.

## **10.0 Minimum Qualifications For Police Instructors**

10.1 Proposed instructors shall forward a resume including information relative to their education, experience in law enforcement, experience and suitability in instruction, ability at oral and written communication, and physical and personal appearance to the Administrator of the Council on Police Training.

10.1.1 The instructors shall be of two types:

10.1.1.1 Those used in general police instruction and have been in law enforcement for a minimum of five years.

10.1.1.2 Those who, by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education shall have the five year minimum experience waived.

10.1.2 All instructors must meet one of the following criteria.

10.1.2.1 Certification from a police instructor school as approved by the Delaware Council on Police Training and instructed by a Council-certified master instructor.

10.1.2.2 Those, who by their special knowledge and preparation, are suited to instruct certain courses requiring such special knowledge and education may be given a certification limited in subject matter.

10.1.3 Evaluations

10.1.3.1 Certified instructors shall be monitored by the Director (or his designee) of the respective academy in which they are instructing.

10.1.3.2 Evaluation reports shall be forwarded to the director (or his designee) of the training academy from which the instructor originates.

10.1.4 Complaint Process

10.1.4.1 Students having complaints relative to training shall direct such complaints to the director of the academy they are attending.

10.1.4.1.1 If remedial action is not forthcoming, the complaint:

10.1.4.1.1.1 In the case of officers attending their own academy, they shall follow the authorized chain of command of that agency.

10.1.4.1.1.2 In the case of officers attending an academy other than their own, they shall notify their training officer or chief of police.

10.1.4.1.1.3 The training director or chief of police making complaints relative to an instructor or the training shall make a written request to the Administrator for an evaluation. The

Administrator, or his designee, shall provide such evaluation for every request. The designee shall be a director of an approved status academy or his assistant.

## 10.1.5 Decertification

10.1.5.1 Instructors who become certified, but through the evaluation process are found to be unacceptable for training purposes may be decertified by the Council upon recommendation by the Training Director of the agency's Academy, and the Administrator of the Council.

10.1.5.2 Falsification of information which led to certification shall be just cause for decertification.

## 10.1.6 Appellate Process:

10.1.6.1 There are no appeals of the decisions of the Council on Police Training concerning instructor decertification unless a claim of lack of due process can be substantiated.

## **11.0 Firearms Training**

11.1 Firearms training defined: Weapons training conducted at a facility and by an instructor certified to teach such subjects by the Council on Police Training.

11.2 Duration and curriculum: The curriculum will include classroom lectures on use of force, safety, nomenclature, care of weapons, police combat tactics and marksmanship. Range instruction emphasizes the practical application of police weapons related to actual combat conditions. The range officer of the involved training facility will attest to the qualifications of the respective officer. The officer must qualify with his departmental issued weapon. The officer must attain 75% of the possible score.

11.3 Depending on the number of persons being trained, and considering the amount of experience, or lack of experience the training population has with firearms, the training period will vary in time, but will consist of at least but not limited to 5 days.

11.4 Non-Qualification: Should an officer initially fail to qualify, that person would be permitted one (1) additional opportunity to attain certification. Scheduling for the additional attempt will be conducted at the convenience of the firearms officer. Under no circumstances, will an officer be permitted to carry a firearm on duty unless certified as per the requirements of Section 8404 of the Council on Police Training.

11.5 As authorized by 8404(a)(5): In order to retain certification, all police officers in the State of Delaware must receive recertification in firearms proficiency annually. The recertification must be conducted by a Council on Police Training certified firearms instructor.

11.6 A minimum of three (3) re-qualification shoots per year, scheduled on at least two (2) separate days, with at least 90 days between scheduled shoots required. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

11.7 Each training session shall consist of one minimum standards re-qualification course. An additional 50 rounds shall be fired for proficiency training. This is a total of 100 rounds per shoot as a minimum.

11.8 The Chief of Police shall forward to the Administrator, documentation of annual firearms recertification for each officer under his/her command within 90 days of the anniversary date of initial firearms certification. (See Section IV. Forms)

11.9 All training ammunition shall be comparable to issued service ammunition in performance specification. Service ammunition shall be collected annually and replaced with new. The collected ammunition may be used for training. All shooting is to be completed with authorized/issued weapons and equipment.

## **12.0 Minimum Standards Firearms Qualification**

### 12.1 Handgun (Day)

A minimum of three qualification shoots per year, scheduled on at least two separate days, with ninety days between qualification dates.

Of the three dates, there will be one mandatory "low light" qualification. Simulation of "low light" is permitted and the "low light" qualification may be combined with a day shoot.

All training ammunition shall be comparable to issued ammunition in performance.

Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.

A minimum of 150 rounds of ammunition will be fired annually for proficiency training. This ammunition will NOT include the ammunition required for qualification courses.

A minimum of 80% must be obtained to be qualified with the approved handgun. The method of

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scoring and target selection will be determined by the instructor.

All qualifications are to be completed with authorized weapon and equipment. (Holsters, speed loaders, pouches, etc.)

Shooting will be conducted annually using the flashlight for target illumination and identification.

<u>YARD LINE</u>	<u>COURSE OF FIRE</u>	<u>TOTAL ROUNDS</u>
<u>25/Greater</u>	<u>Behind Cover</u>	<u>9</u>
	<u>Two Different Positions</u>	
<u>15 to 7</u>	<u>Advancing Towards Target</u>	<u>9</u>
<u>7</u>	<u>Centered Behind Barricade</u>	<u>12</u>
<u>5/Less</u>	<u>Move Back</u>	<u>6</u>
<u>5/Less</u>	<u>Lateral Movement</u>	<u>8</u>
<u>5/Less</u>	<u>One Hand Reload</u>	<u>6</u>
	<u>Strong/Weak Hand Only</u>	
	<u>TOTAL OF FIFTY ROUNDS</u>	

The instructor will determine at what distance, in what manner, and how many rounds will be fired on each command.

## 12.2 Low Light or Concealed Carry Standards for H.R. 218

This regulation sets forth the minimum qualification standards for concealed weapon handguns for active duty police officers and for retired law enforcement officers who qualify under the Law Enforcement Officers Safety Act of 2004 (H.R. 218).

These are minimum standards and shall not prevent any police department from establishing more strict or additional rules or regulations to qualify to conceal carry a firearm on or off duty.

<u>YARD LINE</u>	<u>COURSE OF FIRE</u>	<u>TOTAL ROUNDS</u>
<u>15 to 17</u>	<u>Advance Towards Target</u>	<u>9</u>
<u>7</u>	<u>Centered Kneeling Behind Barricade</u>	<u>16</u>
<u>5/Less</u>	<u>Lateral Movement</u>	<u>12</u>
<u>5/Less</u>	<u>Move Back</u>	<u>6</u>
<u>5/Less</u>	<u>One Hand Reload</u>	<u>7</u>
	<u>Strong/Weak Hand Only</u>	
	<u>TOTAL OF FIFTY ROUNDS</u>	

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command.

Active duty and retired law enforcement officers must qualify a minimum of once annually and obtain a minimum score of 80%.

If the weapon system or holster is different from active duty use, the officer must qualify a minimum of once annually and obtain a minimum of 80%.

## 12.3 Basic Patrol Long Gun Minimum Standards

This basic patrol long gun course is not designed to replace training relevant to specific weapons such as sniping marksmanship and select fire weapons. It will be incumbent upon each department to provide their perspective officers with specific recognized training to have those officers certified.

Long guns include patrol level weapons designed to be fired from the shoulder (i.e. Patrol rifle, carbines, shotguns).

Departments using long guns will be required to qualify three times a year. Two day courses and one "low light" course. Simulation of "low light" is permitted. A minimum of ninety days is required between the two day courses. The "low light" course may be combined as part of one day qualification course.

Service ammunition will be collected annually and replaced with new ammunition. The collected ammunition may be used for training and qualification.

All training ammunition shall be comparable to issued ammunition in performance.

Departments using long guns will fire a minimum of twenty rounds of ammunition for proficiency

training per year. This ammunition will not include the ammunition required for qualification courses.

A minimum of 80% must be obtained to be qualified. The method of scoring and what type of target will be determined by the instructor.

All qualifications are to be completed with authorized weapons and ammunition.

Departments are required to qualify on each type of ammunition that is issued.

<u>YARD LINE</u>	<u>COURSE OF FIRE</u>	<u>TOTAL ROUNDS</u>
<u>3/Greater</u>	<u>Two Different Positions</u>	<u>10</u>
	<u>Three Different Places</u>	
	<u>TOTAL OF TEN ROUNDS</u>	

The instructor will determine at what distance, in what manner, and how many rounds are fired on each command depending on the weapon and the capability of the ammunition.

### **13.0 Recertification of Basic Firearms Instructors**

An eight-hour firearms re-certification course will be held annually and will cover, but not be limited to: legal updates, use of force, and review of Council on Police Training standards.

To maintain certification, firearms instructors must attend a minimum of one recertification course every three years and complete sixteen hours of additional training in firearms usage or complete sixteen hours of academy level instruction, or a combination of training and instruction in the same three year period.

The head of the police department shall provide documentation of the required updated training to the COPT Administrator to include in the instructor's training records.

No Firearms instructor shall be employed by any police department for purposes of certifying firearms instructors unless the certifying instructor has been approved by the Council on Police Training.

### **14.0 C.P.R., AED and First Responder Retraining**

14.1 As authorized by 8404(a)(14): All police officers in the State of Delaware shall have successfully completed a First Responder course adhering to the United States Department of Transportation curriculum for First Responder Courses as offered by the Delaware State Fire School or as taught in a certified police training academy by a credentialed emergency medical services instructor.

In order to retain certification, all police officers in the State of Delaware must receive recertification in C.P.R. and AED as recommended by the American Medical Association. This training will be conducted by a certified Council on Police Training instructor, Delaware State Fire School Instructor, or Health Care Professional certified in Advanced Cardiac Life Support.

The Chief of Police shall forward to the Administrator, documentation of recertification for each officer under his/her command within 90 days of the anniversary of date of initial C.P.R. and AED Certification. (See Section IV. Forms)

First Responder recertification shall be at the discretion of each department.

### **15.0 Certification of Schools or Courses**

15.1 The Council on Police training may:

15.1.1 Prescribe equipment and facility standards for training locations at which police training courses shall be conducted, including but not limited to existing county or municipal academies.

15.1.2 Establish minimum training requirements, attendance requirements and standards of operations for police training academies.

15.1.3 Prescribe minimum qualifications for instructors at such academies and certify, as qualified, or decertify such instructors to their particular courses of study.

15.1.4 Approve and issue certificates of approval to such police training academies to inspect such schools from time to time and revoke for cause any approval or certificate issued to such schools.

15.1.5 Consult and cooperate with all agencies of government, state and local, concerning the development and administration of the training program and to contract with such agencies as it deems necessary in the performance of its powers and duties.

15.1.6 Effective 1/1/88, the Council on Police Training approved training schools and seasonal training schools shall maintain in writing, the curriculum and names of instructors utilized for basic training for new police recruits.

15.1.7 The Administrator may then access the Council's computerized training records to determine the certification status of each instructor.

15.1.8 In any case, the Administrator will respond, in writing, to the approved school, advising the status of the request within 5 working days.

## **16.0 Basic Curriculum**

16.1 This is the mandatory curriculum for police basic training and reflects 568 hours of training as approved by the Council on Police Training.

### 16.2 Accident Investigation 24 Hours

16.2.1 Develops the officer's skills in methods and techniques to be applied to this type of investigation, including measurements, photography, sketches, reporting, and interviewing of witnesses and drivers, hit-and-run accidents and manslaughter by motor vehicle cases.

### 16.3 Advanced Driving Course 24 Hours

16.3.1 This course is divided into approximately 2 hours of classroom instruction and 22 hours of driving on a skid pad. The classroom instruction stresses the importance of vehicle safety in teaching defensive and pursuit tactics. The student is taught to realize that the driving environment, which includes the vehicle, the road, and the driver all have limits. Some of the topics covered are the affects of weight transfer, affects of centrifugal force and friction, and skids and cornering.

16.3.2 The skid pad portion reinforces the student's understanding of the driving environment and other classroom material. The student is exposed to steering control, judging distances, the vehicles evasive capability, maximum braking ability without losing steering ability, and the affects of skidding and controlling skids.

### 16.4 Civil Disobedience/Labor Disputes 4 Hours

16.4.1 Lecture and discussion of Delaware Labor Laws and the law enforcement role of protection of life and property with explanation of injunctive relief procedures. Actual situations involving labor strikes and picketing of companies, abortion clinics, animal rights groups, etc., will be discussed.

### 16.5 Constitution and Bill of Rights 2 Hours

16.5.1 An introduction to the history and development of the Federal and State Constitutions, particularly the Federal Bill of Rights, as interpreted by the courts down through the years, with emphasis on decisions of the United States Supreme Courts.

### 16.6 Courtroom Procedure and Demeanor 8 Hours

16.6.1 The fundamentals of how to be most effective as a witness in court. Includes preparation of the case prior to courtroom presentation. Also, appearance, manner, and attitude in court and while waiting to testify.

### 16.7 Criminal Investigation 44 Hours

16.7.1 Presents a study of the basic fundamentals and procedures of investigation involving the more serious crimes. Includes establishment of the elements of burglary, robbery, auto theft, theft felony, homicide, and other major offenses such as gambling and organized crime.

### 16.8 Cultural Diversity and Community Relations 12 Hours

16.8.1 The purpose of this course is to prepare the officer to deal fairly and effectively with minority groups in society. This course is intended to bring about increased understanding and respect of the duties of the police officer on the part of these minority groups with which the officer must deal.

### 16.9 Delaware Criminal Code 20 Hours

16.9.1 The course should make the officer sufficiently familiar with the Code as to know all aspects of the most important and common violations and to know how to make ready reference to the Code for all other violations. This segment will also acquaint the officer with the more commonly encountered civil law violations.

### 16.10 Delaware Motor Vehicle Code 20 Hours

16.10.1 The purpose of this course is to acquaint the officer with the provisions of the Motor Vehicle Code Annotated. With this background, he may readily recognize a violation thereof and be able to: (1) define the elements of such violation and; (2) know the nature of the evidence necessary to prove such violation in court.

### 16.11 Domestic Violence 8 Hours

16.11.1 To acquaint the officer with the potential dangers that exist when answering calls of domestic disputes. Generally, such training is designed to prepare police officers to react effectively, efficiently, and sensitively to

the crisis situations which they encounter.

16.12 Drug Enforcement and Controlled Substances 8 Hours

16.12.1 Acquaints the officer with the types of narcotics commonly used. It includes the terms of jargon, the general effects of various drugs and barbiturates, plus their relationship to crime. Field-testing of various substances will also be included.

16.13 Firearms 40 Hours

16.13.1 Instruction includes classroom lectures on safety, nomenclature, care of weapons, and the viewing of training films. Range instruction emphasizes the practical application of police weapons related to actual combat conditions.

16.14 First Responders 40 Hours

16.14.1 Because accidents and other emergencies bring the police officer to the scene first, this training is to develop first aid techniques that enable him to efficiently fulfill his responsibilities. The course also offers sufficient instruction to enable the police officer to make an emergency child delivery.

16.15 Fitness and Wellness 6 Hours

16.15.1 The purpose of Physical Fitness/Wellness testing and training is to encourage and teach law enforcement officers to maintain a healthy fitness level throughout their career. Law enforcement officers who remain physically fit prove more readily able to cope with the day-to-day stress of job demands, and are better prepared to handle critical incidents. For this purpose, within each academy a segment of instruction will be devoted to nutritional education, exercise physiology, lifestyle adjustment, and stress and stress relief methods. Other areas specific to fitness and wellness can and will be added as needed.

16.16 Handling Persons With Disabilities 8 Hours

16.16.1 The purpose of this course is to identify behavioral factors with which the officer has to deal, discusses the influence of group behavior or individual behavior, and emphasizes the importance of understanding unusual behaviors in order to handle that behavior most effectively. Also review 24-hour commitment procedures.

16.17 Homeland Security 16 Hours

16.17.1 National Incident Management System 4 Hours

16.17.1.1 National Incident Management System (NIMS) integrates effective practices in emergency preparedness and response into a comprehensive national framework for incident management. The NIMS will enable responders at all levels to work together more effectively and efficiently to manage domestic incidents no matter what the cause, size or complexity, including catastrophic acts of terrorism and disasters.

16.17.2 Incident Command System 8 Hours

16.17.2.1 ICS is a standardized on-scene incident management concept designed specifically to allow responders to adopt an integrated organizational structure equal to the complexity and demands of any single incident or multiple incidents without being hindered by jurisdictional boundaries.

16.17.3 Weapons of Mass Destruction / All Hazards (Awareness) 4 Hours

16.17.3.1 WMD/All Hazards awareness provides emergency responders with awareness-level instruction on recognition, avoidance, isolation and notification techniques in weapons of mass destruction and all hazards environment. The course covers prevention and deterrence, chemical, biological, radiological, nuclear, and explosive (CBRNE) hazards and other disasters.

16.18 Information Systems 44 Hours

16.18.1 Communications:

16.18.1.1 Acquaints the officer with the features and use of all communications equipment used in police operations, including telephone, computers, radio, and NCIC. Instruction also includes rules and regulations of the Federal Communications Commission with regard to radio transmissions.

16.18.2 Report Writing

16.18.2.1 Instructs the officer in the essential mechanics of recording his investigations in report form suitable to serve both as an aid to further investigation and to the preparation and development of prosecution.

16.18.3 LEISS: (Law Enforcement Investigative Support System)

16.18.3.1 Automated Crime reports. This training takes you through some of the more complex police reports and steps the user through the many features of this program. Various crime reports will be completed during this training along with all new system features covered. This allows the police crime report to be sent electronically to the State Bureau of Identification. This program also has links to the automated warrant system if a warrant is required; no dual keying of data is needed.

**16.18.4 LEISS – Warrants**

**16.18.4.1** This is a law enforcement application designed to provide court acceptable documents Exhibit A (charge sheet), Exhibit B (probable Cause statement). This warrant is electronically sent to the court and can be modified and changed at any time before the approval by a judge. From this original warrant document, information is loaded directly into the CJIS Wanted person files whenever a warrant is created without arrest information. Also included in the application is the Attorney General Intake for felony cases and an automated arrest report to be attached to the fingerprint cards. This is the instrument used statewide for arrests by all criminal justice agencies.

**16.18.5 DELJIS:**

**16.18.5.1** This course covers all the features of the CJIS system along with all new applications being developed. Users are given a security briefing along with an example of all the basic inquiries used for criminal justice. This course covers motor vehicles inquiries along with criminal history inquiries, Protection from Abuse orders, no contact orders along with Case Inquiry and much more.

**16.18.6 NCIC:**

**16.18.6.1** This block of instruction shall directly relate to the use of the National Crime Institute Center computer software. To include FBI mandates, lecture, testing and certification.

**16.19 Interview and Interrogation 8 Hours**

**16.19.1** To teach the officer the approved techniques of interrogation so that he may fully develop information or evidence by conversation with witnesses and subjects. Emphasis on legal limitations.

**16.20 Introduction to Law Enforcement 2 Hours**

**16.20.1** To introduce law enforcement officers to the historical background and development of the police service with emphasis on its relationship to modern society. Also included is an analysis of the organizational structure.

**16.21 Juvenile Procedures 8 Hours**

**16.21.1** This course is designed to acquaint the new officer with the family, social and economic conditions, and factors, which foster and encourage juvenile delinquency. It stresses the role law enforcement can play in the overall effort to combat such conditions with emphasis on the planned programs existent within the State of Delaware.

**16.22 Latent Fingerprints/Crime Scene Processing 12 Hours**

**16.22.1** Methods and importance of identification including the methods of dusting, photographing and lifting latent fingerprints and palm prints from all manner of surfaces and areas, inked and rolled fingerprints; not only of live and willing subjects, but also from unconscious, deceased, and decomposed bodies.

**16.23 Laws of Arrest, Laws of Evidence, and Search and Seizure 40 Hours**

**16.23.1** The legal foundation of laws governing and limiting the police officer's authority in the areas of arrest. This treatment shall be afforded with respect to: (1) the laws of arrest with or without warrants, arrest for misdemeanors and arrest for felonies, the elements of probable cause, and the disposition of persons after lawfully arrested; (2) the law applicable to criminal interrogation and resultant confessions under the 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> Amendments of the Federal Constitution and; (3) the application of constitutional safeguards to electronic surveillance, chemical, and serological evidence.

Acquaint the recruit with the rules and law of evidence exercised in a court of law so that he may recognize what is legally admissible. He must be able to differentiate between the various types of evidence and be familiar with the rules concerning maintaining the chain of evidence. Covers the laws of search and seizure under the provisions of the 4<sup>th</sup> and 14<sup>th</sup> Amendments including the exclusionary rule and the elements of a "reasonable" search and seizure of persons (a) incidental to arrest; (b) under a search warrant; (c) with consent.

**16.24 Manual Traffic Control 2 Hours**

**16.24.1** Designed to teach the officer the fundamentals and mechanics of traffic control and control devices; and to familiarize the officer with the proper signals and gestures used in point traffic control.

**16.25 NHTSA and Driving Under The Influence 24 Hours**

**16.25.1** Presents the elements of the offense of driving under the influence as defined by Delaware law. Provides knowledge on securing the necessary evidence, including scientific tests and reporting in order to successfully prosecute.

**16.26 Other Police Agencies Jurisdiction 2 Hours**

**16.26.1** To acquaint officers with the jurisdiction, function, and availabilities of other enforcement

agencies including federal departments such as the Secret Service and Federal Bureau of Investigation.

16.27 Police Communication & Crisis Intervention 20 Hours

16.27.1 The purpose of this course is to provide police officers with the knowledge, skills and ability to interact with people on a daily basis. Within this course the communications process will be described along with the barriers to communication. Students will be taught how to communicate with persons in crisis. Types of instruction include, but are not limited to verbal judo, active listening skills and suicide intervention. Role-play scenarios are a valuable part of this training.

16.28 Patrol Procedures/ Officer Survival 60 Hours

16.28.1 The most important single function of the police; the prevention of crime, the protection of life and property, the preservation of peace, the enforcement of law, and the detection and arrest of violators of the law and the relationship of such purposes to the patrol functions.

This course is designed to acquaint the new officer with the basic street survival techniques as accrued from years of experience from actual encounters on the street. Practical application of avoidance, deterrence, and handling of actual scenarios will familiarize officers with what to do when confronted with an armed combatant as well as what not to do.

16.29 Police Discipline and Ethics 8 Hours

16.29.1 Basic why, when, and where of discipline and courtesy of police officers. Ethics from a law enforcement perspective will be explored and discussed.

16.30 Police Fire Survival 14 Hours

16.30.1 Delaware State Fire School explains the hazards of electrical fires, the proper use of various types of fire extinguishers, knowledge of structural fires, how to handle flammable liquids and gas and rescue techniques for removing trapped persons from vehicles.

16.31 Sex Crimes 4 Hours

16.31.1 This course is calculated to teach the officer the elements, peculiar techniques of investigation, motives, and most productive sources of evidence, psychology of violators, modus operandi, etc.

16.32 Use of Deadly Force 6 Hours

16.32.1 This course will acquaint the officer with the laws governing the use of deadly force by police officers.

16.33 Weaponless Defense 30 Hours

16.33.1 Through the use of lecture, demonstration and individual participation, provide each new officer with sufficient skills to defend himself from attack. Instruction and practice in nature, theory, basic principles, safety precautions, the personal weapons, and vulnerable areas of attack. Instruction on the use of the police issued impact weapon and basic handcuffing techniques will be paramount to this course of instruction.

## **17.0 Training Records**

17.1 Upon submission of an "Authorization to Release Information" form and proper personal identification, the Council on Police Training will release training records and other personal information of the bearer of the properly executed release form.

17.2 The form should be sent to the Administrator at least 10 days in advance of the needed date to allow for processing of requests.

## **18.0 Administrator**

18.1 The Director of Training for the Delaware State Police will be the Administrator for the Council on Police Training. The Administrator will be responsible for administering mandatory training for all police officers in the State of Delaware. The Administrator will also oversee the Council on Police Training budget, policy issues, and will also provide current "practices in policing" to the Council on Police Training Board. In the absence of the Administrator, his/her designee will conduct these duties.

## **19.0 Reimbursement**

19.1 Every municipality or other governmental unit of this State or the University of Delaware and Delaware State University, intending to employ on a permanent basis police officers who have satisfactorily completed the mandatory training as required under this chapter and who have completed their training while in the employ of another municipality or another governmental unit of this State, the University of Delaware or Delaware State University, within 2 years from the date of satisfactory completion of such mandatory training, shall reimburse the municipality or other

governmental unit, University of Delaware or Delaware State University, with whom the police officer was employed at the time of attending the mandatory training program for the cost of training such officer, which shall include the salary, uniforms and equipment and other training expenses incurred while the officer was attending the mandatory training program. During the first year after completion of the mandatory training program the municipality or other governmental unit, the University of Delaware and Delaware State University of whom the police officer was employed at the time of attending the mandatory training program shall be reimbursed for 100 percent for those expenses. During the second year the municipality or other governmental unit, or University shall be reimbursed for 50 percent of those expenses.

19.2 Reimbursable expenses would include, but are not limited to, items such as salary physical fitness training clothing, class uniforms, ammunition for the range, etc.

### **20.0 Penalties for Non-Compliance**

20.1 Chapter 8409: Police officers of the State or any county or municipality or University, which do not meet the requirements of this chapter and the criteria as established by the Council shall not have the authority to enforce the laws of the State.

20.2 Chapter 8410: A police force of any county or municipality which does not meet the requirements of this chapter and the criteria established by the Council will be ineligible to apply for or receive state aid to local law enforcement funds. (SALLE Funds)

### **21.0 Right to Amend**

21.1 The Council reserves the right to amend these rules and regulations as authorized under 11 Delaware Code Chapter 84, §8404(a)(14).

21.2 When a change is made to the mandatory training act, the Administrator shall send the changes to all holders of this manual for addition or replacement of the affected section(s).

21.3 The Administrator may require a return receipt from all holders of this manual as proof of compliance.

### **22.0 Annual Report**

22.1 Annually, upon request of the Chairman, the Administrator may present to the Council a summary of its activity from the previous calendar year.

### **23.0 Part-Time Police Officers**

23.1 As authorized by 8404(a)(14), the previous 28-hour and 56-hour part-time police officer training courses have been eliminated effective 1/1/88. In their place, the Basic Mandatory Curriculum is required of all police officer appointments, except seasonal appointments.

### **24.0 Standardized Competency Examination**

24.1 As authorized by 8404(a)(2), effective 1/1/88, all police officer applicants seeking Council on Police Training certification shall successfully pass a standardized competency examination developed and approved by the Council

24.2 The Council has approved three examinations, each consisting of 100 multiple choice and true/false questions. The questions are divided into ten categories of general law enforcement knowledge. There are no agency-specific questions or topics.

24.3 Police officer applicants must score at least a 70% on each category to be considered eligible for Council certification.

24.4 Failure to attain a 70% on any subject area will require the applicant to retake that subject area only. The applicant will be given ample opportunity to study or attend training classes prior to attempting a retake of any subject area(s).

24.5 The Administrator will randomly select one examination from the three approved examinations to submit to the applicant. On any retake examination, the Administrator reserves the right to submit one of the two other examinations to the applicant to prevent possible memorization of the questions.

24.6 All three examinations are "open book", utilizing Delaware Motor Vehicle and Criminal Codes.

24.7 Successful completion of the competency examination must occur prior to certification by the Council.

24.8 Failure to pass the competency examination will render the applicant unable to become certified with police powers in the State of Delaware.

## 25.0 Substance Abuse Screen

### 25.1 Requirements

25.1.1 All applicants for police officers, who come under the requirements of the Mandatory Training Act (Title 11, Section 8401-8410) and as part of their pre-employment screening, will be required to submit to and successfully pass a pre-employment drug test.

25.1.2 A random drug test will be conducted, by and at, the discretion of the Academy staff sometime during their mandatory training period.

25.1.3 Urine tests will be conducted for the following:

25.1.3.1 Amphetamines (speed, uppers, meth)

25.1.3.2 Barbiturates (barbs, downers)

25.1.3.3 Benzodiazepines (tranquilizers, valium)

25.1.3.4 Cannabidiol (THC, pot, marijuana)

25.1.3.5 Cocaine (crack, snow)

25.1.3.6 Methaqualone (Quaaludes, ludes)

25.1.3.7 Opiates (heroin, smack, morphine)

25.1.3.8 Phencyclidine (PCP)

25.1.3.9 Designer Drugs (Estacy)

25.1.3.10 Steroids

### 25.2 How Costs will be Absorbed

25.2.1 Initial pre-employment test costs will be absorbed by the employing agency.

25.2.2 Random test costs will be absorbed by the Council on Police Training.

### 25.3 Testing Locations

25.3.1 As approved by the Council or Administrator.

### 25.4 Policy Procedures

25.4.1 A positive test at the pre-employment stage will mean the applicant has not met minimum qualifications (requirements) as established by the Council on Police Training, under Title 11, Section 8404(a)(1), of the Delaware Code, therefore applicant would not be eligible for employment.

25.4.2 A positive test during the training period will result in immediate dismissal from the participating academy and notification to the employing agency.

25.4.3 A positive test will be considered valid when confirmed by a second test procedure performed on the original sample.

25.4.4 Any additional disciplinary action will be the responsibility of the employing agency.

25.4.5 If a particular drug listed above is included in a prescription that has been prescribed by a physician and the test results in a positive reading then the following will be applied.

25.4.5.1 A formal letter will be obtained through the licensed physician that prescribed the drug, stating the reason(s) why that particular drug was prescribed. The physician must also state if the drug will affect someone from performing the duties of a police officer and if the particular person the medication is prescribed to is fit for duty.

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## **DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION**

Statutory Authority: 29 Delaware Code, Section 4815(b)(3)b.2.D  
(29 Del.C. §4815(b)(3)b.2.D)  
3 DE Admin. Code 502

### **PUBLIC NOTICE**

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 Del.C. §4815(b)(3)b.2.D and in compliance with Delaware's Administrative

Procedures Act, 29 **Del.C.** §10115. The proposed amended regulation constitutes a modification of an existing regulation. The regulation will now permit use of technology with the technique of embryo transfer allowing the program to become mainstream.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2005.

## 502 Delaware Standardbred Breeders Fund Regulations

### *(Break in Continuity of Sections)*

#### 2.0 Definitions

The following words and terms, when used in this part for 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 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 1st to August 1st of the calendar year.

**"Delaware-bred Horse"** means a Standardbred by a Delaware sire and registered with the Administrator by May 15th of the yearling year.

**"Delaware Resident"** means a person as defined in 3 **Del.C.** §10032.

**"Delaware Sire"** means a Standardbred stallion that regularly stands for a breeding season in Delaware and is registered with the Administrator of the Breeder's 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 the lease filed with the Administrator of the Program 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 a non-resident (or non-residents) of Delaware and standing the entire breeding season in Delaware with the same lease requirements as in b) above. A Delaware Sire may compete for purses within the State of Delaware at any time. However, a Delaware sire may compete for purses outside the State of Delaware, or enter claiming races within or without the State of Delaware, only after the breeding season in Delaware ends. A violation of this regulation will disqualify the Standardbred stallion from being registered with the Breeders' Program for the breeding season of the year following the violation.

**"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 breeding fee.

**"Registrant"** is a horse owner, the horse owner's agent of record or trainer of record, or the lessee of a horse.

**"Satisfactory Performance Line"** means the path of the Standardbred on the racetrack as charted by the licensed charter at Dover Downs and/ or Harrington Raceway during which the horse does not break stride for any reason.

6 DE Reg. 1497 (5/1/03)

8 DE Reg. 336 (8/1/04)

9 DE Reg. 111 (7/1/05)

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**\*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 Standardbred Breeders Fund is available at: <http://www.state.de.us/research/AdminCode/title3/500/502/index.shtml#TopOfPage>

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d)  
(14 Del.C. §122(d))  
14 DE Admin. Code 399

### PUBLIC NOTICE

#### 290 Approval of Teacher Education Programs

##### 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 399 Approval of Teacher Education Programs. The regulation is amended in order to bring the regulation into line with current procedures, add critical definitions and remove the references to the State Board of Education now that the Department of Education has total responsibility for the program approval process for teacher education programs. The regulation is also amended to change the number of the regulation from 399 to 290 moving the regulation to Section 200 Administration and Operations and to change the name of the regulation to Approval of Educator Preparation Programs.

##### C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses the approval of educator preparation Programs not student achievement.
2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation addresses the approval of educator preparation programs not equitable education issues.
3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses the approval of educator preparation programs not health and safety issues.
4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses the approval of educator preparation programs not students' legal rights.
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 amended regulation? There is no less burdensome method for addressing the purpose of the amended 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.

## **399 Approval of Teacher Education Programs**

### **1.0 General Regulations**

All programs of teacher education in Delaware institutions of higher education that lead to teacher licensure shall be reviewed through a fair and uniform application of standards and all forms used shall be those developed by the Department of Education.

1.1 Reviews will be pursuant to the 1989 Standards of the National Association of State Directors of Teacher Education and Certification (NASDTEC).

1.2 Institutions that seek accreditation through the National Council for Accreditation of Teacher Education (NCATE) may meet the level set by the NASDTEC Standards by successfully completing the NCATE process, at both institutional and individual program levels.

1.3 All institutions, whether they choose NCATE or NASDTEC routes of approval, also shall comply with the criteria for licensure and standards approved by the State Board of Education, where applicable, and these Regulations.

1.4 Institutions and programs that seek accreditation through NCATE and the NCATE specialty organizations and fail to achieve such accreditation, may thereafter seek review pursuant to NASDTEC Standards for continued State approval.

1.5 On-site reviews, by a team assembled by the administrator of programs for institutions of higher education shall take place every five to seven years, or, if through NCATE, in accordance with the schedule set by NCATE.

1.6 A final report on the reviews shall be forwarded to the State Board for action. The report shall make recommendations for full approval, provisional approval, or disapproval of the institution and of each of the individual programs. Copies of the final action report shall be sent to the chief executive officer of the institution and to the leader of the education unit.

1.7 All programs approved under NASDTEC Standards, or through NCATE accreditation, and that meet Delaware criteria for licensure, will be forwarded to the NASDTEC Interstate Agreement Committee for review for reciprocity.

1.8 An institution that has approved teacher education programs may request interim provisional program approval for new education programs for licensure added between regularly scheduled State reviews. Documentation to be supplied to the administrator shall include:

1.8.1 A description of the program for which approval is sought and other administrative information.

1.8.2 The curriculum for the program, including syllabi for any new courses.

1.8.3 Descriptions of the expected outcomes of the programs and of how those outcomes will be assessed.

1.8.4 Vitae for all new faculty delivering the program.

1.8.5 An institutional response to the specific NASDTEC or NCATE Standards for this program area, and any applicable State Board of Education criteria.

1.8.6 Descriptions of materials and media resources available for the program, and how technology is integrated into the curriculum.

1.9 A program meeting all requirements shall be given provisional approval; full approval may not be granted until a full on-site review of the institution takes place, or is directed by the State Board.

1.10 Experimental or innovative programs that do not meet the Standards or the criteria may be allowed by the State Board. Such an allowance may be requested by submitting the material for new programs, and where the Standards or criteria are not met, a rationale for the exception(s). Experimental or innovative programs that are approved by the State Board shall be given provisional approval; full approval may not be granted until a full on-site review of the program takes place, or it is directed by the State Board.

1.11 Programs that have received only paper review, without full onsite verification will be granted provisional approval. Full approval may not be granted until a full on-site review of the institution takes place, or is directed by the State Board.

- 1.12 All Delaware teacher education programs shall undertake ongoing self study.
- 1.12.1 Units and programs approved through NCATE accreditation, shall comply with NCATE self study requirements. Copies of any reports to NCATE shall also be submitted to the administrator.
- 1.12.2 Institutions and programs reviewed under NASDTEC requirements shall submit an annual report detailing how the weaknesses cited in the report have been addressed. The annual report shall be due to the administrator by June 30 of each year.
- 1.13 All persons participating as a part of the state team for an on-site review, shall meet the requirements of 7.0 and 9.0.
- 1.14 All programs shall submit portfolios to the Department of Education which meet the criteria listed in the Delaware Requirements for Portfolios.
- 1.14.1 Programs being reviewed by NCATE national specialty organizations shall submit to the Department of Education a copy of the materials sent to the specialty organization, and additional materials to meet the requirements of 5.0.
- 1.14.2 Programs being reviewed by the Department of Education under the 1989 NASDTEC Standards shall submit to the Department of Education materials addressing the appropriate standards, and additional materials to meet the requirements set out in 5.0.
- 1.15 In general, Approved Programs of colleges and universities in Delaware do not have to meet the specific course count criteria for licensure; however, the elements of those courses counted for licensure purposes must be found within the approved program. For example, if all of the elements of a science safety course are embedded in a science methods course, then two courses might be unnecessary. But, if a particular requirement is so glaringly absent, then a program may be required to adopt a course to meet the criteria.
- 1.16 The review and revision of these regulations shall be accomplished with the advise of the teacher education programs of Delaware colleges and universities, and with that of other Interested parties.

## **2.0 Reviews Pursuant to NASDTEC Standards Only**

- 2.1 Institutions of higher education not seeking NCATE initial or continuing accreditation shall be reviewed under the Standards for State Approval of Teacher Education of the National Association of State Directors of Teacher Education, 1989 Revised Edition, the criteria for licensure of the State Department of Education, and the applicable regulations.
- 2.2 At least one year before the impending review, the Department of Education will contact the institution. The Institution shall appoint one person to act as liaison for all of the programs at the institution with the Department of Education about the administration of the process of review. The administrator shall meet or have a telephone conference with the liaison to establish the dates of the visit of the state team and the areas to be reviewed. The decisions made shall be communicated by the administrator and the liaison to all programs. This process shall be complete by nine months prior to the review dates.
- 2.3 State Teams shall consist of five to seven members, one of whom shall be the chair, who shall be selected, in accordance with 6.0, at least six months prior to the review. Substitute members may be selected closer to the time of the review, if those initially selected are unable to serve.
- 2.4 The institution shall prepare an Institutional Report which addresses the appropriate NASDTEC Standards, these regulations, where applicable, and the licensure criteria of the State Board of Education in addition to NASDTEC and NCATE Standards.
- 2.4.1 The State Board licensure criteria includes Primary (K to 4), Middle Level (5 to 8), Special Education Elementary, Special Education and Secondary Block Requirements
- 2.4.2 Seven copies of the Institutional Report, and of all applicable catalogs, shall be submitted at least three months prior to the visit of the state team.
- 2.5 Each program for which initial or continued approval is sought shall prepare a portfolio to demonstrate how NASDTEC Standards for that program are being met. The portfolios shall meet the requirements of 5.0. Portfolios shall be submitted with the Institutional Report.
- 2.6 Portfolios for each program shall be reviewed by appropriate program portfolio reviewers of Department of Education and their reviews on the content and quality of each shall be submitted to the state team at least one month prior to the visit of the state team. Any conflict of interest of a Department of Education reviewer shall be disclosed on the review. If any portfolio is deemed inadequate, the administrator at his/her discretion may contact the institution to supplement the submission or may return the portfolio to the institution.

2.7 During the team visit, the state team will verify the accuracy of the portfolios, consider the review of the Department of Education, and produce a draft written report on the program.

2.8 The finalized report of the state team member on the program will be due to the administrator or the chair of the team, whomever is designated, three weeks after the last day of the visit.

2.9 Within 10 weeks of the last day of the visit, the administrator or the chair of the team, whomever is designated, will submit the final draft of the report to the institution for the correction of factual errors only. The institution shall return the final draft to the administrator, with factual errors and suggested corrections noted, within two weeks of its receipt.

### **3.0 Reviews under NCATE Standards, Procedures and Policies for the Accreditation of Professional Education Units**

3.1 Institutions shall submit letters of intent to seek accreditation to NCATE approximately 20 months before the scheduled visit. Statements of how NCATE's preconditions are met must be submitted before on-site reviews can be scheduled. Portfolios to be submitted to specialty organizations must be submitted to NCATE at least 18 months before the on-site reviews.

3.2 At least one year before the impending review, Department of Education will contact the institution. The Institution shall appoint one person to act as liaison for all of the programs at the institution with the Department of Education about the administration of the process of review. The administrator shall meet or have a telephone conference with the liaison in regard to the dates of review and the areas to be reviewed. The decisions made shall be communicated by the administrator and the liaison to all programs. This process shall be complete by ten months prior to the review dates.

3.3 State teams, and chairs, shall be selected in accordance with NCATE Partnership Agreement Guidelines, and notice given to the institution at least six months prior to the site review. Substitute members may be selected closer to the time of the review, if those initially selected are unable to serve the NCATE Delaware Partnership Agreement.

3.4 State team members and Department of Education subject area portfolio reviewers shall have participated in a training session on NCATE standards and procedures and state expectations (including NASDTEC Standards, where applicable) that is conducted and/or jointly developed by staff of NCATE and the State.

3.5 State team members shall be selected as follows:

3.5.1 Two members of the Department of Education, one of whom shall be the Administrator of Programs for Institutions of Higher Education, if the administrator has no conflicts as listed in 6.0.

3.5.2 Two to three other members, one of whom shall be a teacher, K to 12, and one of whom shall have experience in higher education or education administration.

3.6 The state team members shall be responsible for the following:

3.6.1 To meet with the NCATE Board of Examiners' (BOE) Team, and to assist in the informal deliberations of that group in accordance with NCATE requirements.

3.6.2 To review the reports of the specialty organizations (SOS) on those programs covered by NCATE Standards, to verify the accuracy of the reports and the conclusions reached by the NSO's, and to submit a report making recommendations to the State Board on the decisions of the NCATE NSOs. To make recommendations including a description of how the review was verified; whether the conclusions of the NSOs are verified, verified with exceptions or substantially in error, and, whether the program is recommended for approval, approval with exceptions, approval under NASDTEC Standards despite the conclusion of the NCATE SO, or disapproval.

3.6.3 To review the reviews by the Department of Education program portfolio reviewers, to visit the programs to verify the accuracy of the conclusions reached by the Department of Education program portfolio reviewers, and to prepare a report and make recommendations (see 3.6.2 for recommendation levels) to the State Board on each program covered by NASDTEC Standards which is reviewed by the state team member.

3.7 The report and the accreditation decision of the NCATE Unit Accreditation Board (UAB) will be used as part of the available data in determining whether the State will approve the university or college unit to operate teacher education programs to be certified by the State Board of Education.

3.8 In addition to individual program recommendations, the state team members shall make a recommendation on whether or not the State Board should authorize the university or college to operate teacher education programs.

3.9 There are two separate procedures for the submission of portfolios to the Department of Education, depending upon whether the program is required to send a portfolio to an NCATE specialty organization or not.

~~3.9.1 Programs sending portfolios to NCATE specialty organizations shall prepare their basic portfolio to meet the requirements of those organizations. A copy of whatever is sent to the specialty organization shall be sent to the state team or administrator, along with whatever else is required to meet the requirements in 5.0 shall be submitted to the Department of Education at least six months prior to the visit of the state team.~~

~~3.9.2 Each program which is not subject to review by a NCATE national specialty organization shall demonstrate how the NASDTEC Standards for that program, and the licensure criteria of the State Board of Education in addition to NASDTEC and NCATE Standard are being met. The portfolios shall meet the requirement in 5.0. Portfolios shall be submitted at least six months prior to the visit of the state team.~~

~~3.10 Portfolios for each program shall be reviewed by appropriate program portfolio reviewers of the Department of Education, and their reviews on the content and quality of each shall be submitted to the state team at least three months prior to the visit of the state team. Any conflict of interest of a Department of Education reviewer shall be disclosed on the review.~~

~~3.11 In general, approved programs of colleges and universities in Delaware do not have to meet the specific course count criteria for licensure; however, the elements of those courses counted for licensure purposes must be found within the Approved Program. Thus, if the elements of one course are embedded within another, portfolios submitted to the state team or administrator shall demonstrate how that is achieved and that teacher education students do incorporate the embedded learning in their performance.~~

## **4.0 Programs that do Not Pass NCATE or NASDTEC Review**

~~4.1 Institutions that do not receive NCATE unit accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the administrator and the liaison in which to submit additional materials which demonstrate how the institution meets the NASDTEC Organization and Administration Standards. Such programs will only be eligible for a grant of provisional approval for two years; renewal after that time would be contingent upon a full site review.~~

~~4.2 Individual programs submitted to NCATE specialty organizations that do not receive program approval from those organizations, and which have exhausted or decided not to use the NCATE rejoinder process, have up to 10 working days after the last day of the site review to supplement portfolios, if needed, to demonstrate how they meet the NASDTEC standards.~~

~~4.3 Individual programs that do not meet NASDTEC Standards at the full approval level, will be given either provisional approval or be disapproved to operate. All programs given provisional approval shall:~~

~~4.3.1 Report annually to the administrator on the progress made on those standards that were not met.~~

~~4.3.2 Undergo portfolio submission and onsite review within 2 or 3 years, as determined by the State Board.~~

~~4.4 Institutions that do not receive full or provisional approval through review pursuant to NASDTEC, will not be permitted to operate programs of teacher education in Delaware.~~

## **5.0 Delaware Requirements for Portfolios**

~~5.1 Portfolios submitted for program review shall contain the following elements:~~

~~5.1.1 A completed Delaware Portfolio Cover Sheet on the program and an explanation of the following elements of the program(s): conceptual framework, philosophy for its preparation, goals and objectives, and relationship of the program(s) to the mission of the university or college.~~

~~5.1.2 Student course(s) of studies, with all required courses clearly marked.~~

~~5.1.3 Descriptions of all field experiences, student teaching, internships and practica. include the amount of time and describe the each experience, its intent and the type/amount of supervision involved. Documentation will be reviewed at the site visit.~~

~~5.1.4 Descriptions of where the program is located in the professional unit and its interrelationships with other programs in the unit and the university or college.~~

~~5.1.5 List of faculty with descriptions of their primary assignments within the program, including courses taught. Provide rank, tenure status, teaching experience and responsibilities in the unit and in the university or college. Do not include vitae, but have current vitae available for review, if needed, at the time of the visit.~~

~~5.1.6 Number of graduates from the program(s), by year, for the last three years.~~

~~5.1.7 Syllabi for all courses if applicable, or submitted to NCATE.~~

5.1.8 Descriptions of the materials, and media resources available for the program and how technology is integrated into the curriculum.

5.1.9 Requirements for entrance into the program and for progression between levels, if any.

5.2 NCATE Specialty Organization or NASDTEC response document reference may be made to them in providing the information requested. Those programs required to make response to the 1989 NASDTEC Standards, should do so by providing Sections 3.1, 3.2, 3.3 and 3.4; for an undergraduate program; Sections 3.3, 3.4 and 4.1 for an entry level graduate program; or 4.1, and 4.3 (where applicable), for non entry level programs. The applicable Section 3.5.; or if a non entry level graduate program, 4.

5.3 Performance exemplars that demonstrate student learning in the program and the responses to the Standards for these requirements, including, for example: student portfolios, lesson plans developed by students, videos of student performance, compilations of research by students, assessments developed by students, resource sources developed by students, student log and instructor designed assessments. Exemplars presented may not consist of instructor designed assessments only.

5.4 Unless otherwise authorized by the Administrator of Programs for Institutions of Higher Education, all portfolios shall be submitted in expandable folders or binders, with a table of contents and numbered tab marked sections identifying the contents. Portfolios shall note how and where information on and performance exemplars of the criteria set out below are included in each program portfolio. The portfolio shall also contain a listing of resource references. Portfolios shall reflect the program as it is being delivered at the time of the site review. If substantial changes will be made between the time of the submission of the portfolio and the site review, those proposed changes shall be described in the portfolio.

5.5 Portfolios reviewed by Department of Education program portfolio reviewers will be considered according to the criteria.

5.5.1 Portfolios shall demonstrate that the program under review meets the criteria for licensure, where applicable. Institutions may meet this requirement in a variety of ways.

5.5.2 Portfolios shall demonstrate that the program includes a sequence of graduated clinical experiences, such as supervised practica, internships, student teaching, that is incremental and occurs in a variety of settings and grade levels, including the areas of specialization, and that is focused upon program objectives. Records of student participation shall be presented.

5.5.3 Portfolios shall demonstrate that students are taught the methodology of and have had clinical practice in the development and use of multiple types of assessments.

5.5.4 Portfolios shall demonstrate that methodologies on the use of technology in the classroom and other tools of inquiry are provided to students, and that students are provided clinical experiences which make it possible for them to integrate this learning into their instruction.

5.5.5 Portfolios shall demonstrate that strategies for effective teaching are suffused throughout the program, and that students are taught specific methodology on teaching diverse learners, including exceptionalities and multicultural studies; classroom management; individual behavior management; and teacher expectations; and are given supervised field experiences which make it possible for them to integrate this learning into their instruction.

5.5.6 Portfolios shall specifically indicate how students receive methodology in teaching reading in the content area(s) of the student's specialization, and are able to integrate this learning into their instruction.

5.5.7 Portfolios shall demonstrate that, throughout the program, students engage in reflection, particularly on their choices and actions for planning for instruction, assessment of teaching and learning, and teaching strategies. The portfolio should show how students grow over time as a result of the reflection.

5.5.8 Portfolios shall indicate how students learn about pupil growth and development and their relationship to teaching and learning, and demonstrate that students use age appropriate learning experiences.

## **6.0 Selection and Conduct of State Team Members**

6.1 Conflict of Interest: State team members shall not participate on a team if they have a close, active association with the institution to be visited. A close, active association will be presumed where:

6.1.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the institution.

6.1.2 The member has children or other close relatives in attendance at the institution, and those persons are matriculated into the education programs being reviewed.

6.1.3 The member has taught, consulted, or otherwise been employed in a paid position, at the institution within the past five years.

- ~~6.1.4 The member has ever been denied tenure by or forced to leave a position at the institution.~~
- ~~6.1.5 The member currently serves on, or has been nominated to, any advisory group at the institution.~~
- ~~6.1.6 The member maintains any current close personal or professional relationship with a person at the institution.~~
- ~~6.1.7 The member is an employee of another institution in the State with a teacher education program.~~
- ~~6.2 Evaluation: The performance of team members will be evaluated, and team members will not be used when past performance is deemed inadequate.~~
- ~~6.3 Team members shall refrain from publicly criticizing institutional personnel participating in the program approval process. The Department of Education's evaluation system will provide a vehicle for receiving feedback to the institution about the performance of their personnel.~~
- ~~6.4 Confidentiality:~~
- ~~6.4.1 All elements of the program approval process shall be treated in a confidential and professional manner, including the contents of the Institutional Report, questions and answers raised during the visit, team deliberations and analysis, team decisions and the team report. The final report shall be made public.~~
- ~~6.4.2 Information acquired from the institution during the program approval process may not be used for matter other than program approval without the permission of the institution.~~
- ~~6.4.3 The documents from the institution during the program approval process are the property of the institution, and should be returned to them at the end of the process.~~
- ~~6.4.4 Two archival copies of the Institutional Report and related documents will be maintained by the Department of Education.~~
- ~~6.5 The Department of Education personal subject area personnel shall not serve on a state team if they have been a program portfolio reviewer within the previous five years for the same program area they are asked to site visit as a part of the state team.~~
- ~~6.6 All persons serving on a state team shall receive training on NCATE Standards and NASDTEC Standards.~~

## **7.0 Selection and Conduct of Department of Education Portfolio Reviewers**

- ~~7.1 Conflict of Interest, Department of Education program portfolio reviewers shall disclose if they have a close, active association with the institution from which the portfolio they are to review comes. A close, active association will be presumed where:~~
- ~~7.1.1 The reviewer is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the institution.~~
- ~~7.1.2 The reviewer has children or other close relatives in attendance at the institution, and those persons are matriculated into the education programs being reviewed.~~
- ~~7.1.3 The reviewer has taught, consulted, or otherwise been employed in a paid position, at the institution within the past five years.~~
- ~~7.1.4 The reviewer has ever been denied tenure by or forced to leave a position at the institution.~~
- ~~7.1.5 The reviewer currently serves on, or has been nominated to, any advisory group at the institution.~~
- ~~7.1.6 The reviewer maintains any current close personal or professional relationship with a person at the institution.~~
- ~~7.1.7 The reviewer is an employee of another institution in the State with a teacher education program.~~
- ~~7.2 Department of Education program portfolio reviewers shall refrain from publicly criticizing the program approval process or the portfolio review materials submitted to them for review. The State's system of review will provide a vehicle for giving feedback to the institution about the portfolio.~~
- ~~7.3 Confidentiality:~~
- ~~7.3.1 All elements of the program approval process must be treated in a confidential and professional manner, including the contents of any portfolio reviewed. The final report to the State Board of Education shall be public.~~
- ~~7.3.2 Information acquired from the institution during portfolio review may not be used for matter other than program approval without the permission of the institution.~~

~~7.3.3 The documents from the institution during the portfolio review are the property of the institution, and should be returned to them at the end of the process.~~

~~7.3.4 Archival copies of the portfolio review documents will be maintained by the Department of Education.~~

~~7.4 All persons serving as the Department of Education program portfolio reviewers shall receive training on NCATE Standards and NASDTEC Standards.~~

~~7.5 Department of Education program portfolio reviewers must receive clear notice of deadlines to be met. Meeting those deadlines is essential for the NCATE process to work, and subject area reviewers shall consider the meeting of deadlines for the review of portfolios assigned to them as the highest priority.~~

### **8.0 Conduct of Institutions**

~~8.1 The institution shall facilitate a thorough and objective appraisal of its professional education programs by the visiting team and program reviewers.~~

~~8.2 The institution may refuse the selection of a visiting state team member only if a likely potential conflict of interest can be demonstrated.~~

~~8.2.1 Notice of the refusal of a team member shall be given within 30 days of the notice to the institution of the composition of the team;~~

~~8.2.2 The administrator shall make a good faith effort to find a trained substitute for the rejected member from those trained persons located in state.~~

~~8.2.3 In the event no available, trained substitute can be located, the administrator shall find one from out of state.~~

~~8.2.4 All transportation, hotel and food costs (on a par with those incurred by the BOE Team) of such a substitute, coming from out of state, or in state from a distance greater than sixty (60) miles, shall be borne by the institution making the refusal.~~

~~8.3 Institutional personnel shall refrain from publicly criticizing individuals participating in the program approval process. The performance of state team members will be evaluated by institutional personnel, and this information used in the determination of whether they will be selected to serve on subsequent state teams. The performance of institutions will be evaluated by State team members, and this information shall be returned to the institutions to assist in the revision of their procedures.~~

~~8.4 Institutions are encouraged to report perceived inadequacies of the state standards or procedures to visiting team members (particularly to the administrator) during the visit, rather than waiting for the evaluation instrument.~~

### **9.0 Training**

#### **9.1 General Regulation**

~~9.1.1 All persons participating in NASDTEC and NCATE reviews of programs of teacher education in Delaware institutions of higher education shall receive training in the background of, rationale for and procedure of the review process, prior to participating in any review, paper or on-site.~~

~~9.1.2 The Department of Education shall hold training sessions in order to have a sufficient pool of trained team members and program portfolio reviewers available to serve.~~

~~9.2 State team members shall receive training in, at least, the following areas prior participating in any review; NCATE policy and procedure, NASDTEC policy and procedure, state standards and criteria, procedure for folio review, procedure for site visits, completion of team report, reimbursement of expenses and evaluation of the institution and team members.~~

~~9.2.1 Persons taking part in state team member training shall be reimbursed for expenses in accordance with the Department of Education's guidelines. Persons coming from out of state can also be reimbursed for hotel accommodations in accordance with the Department's guidelines.~~

~~9.3 Department of Education program portfolio reviewers shall receive training in, at least, the following areas prior participating in any review; NCATE policy and procedure, NASDTEC policy and procedure, state standards and criteria, procedure for folio review, completion of portfolio report and reimbursement of expenses for substitutes.~~

~~9.3.1 Department of Education staff will be responsible for obtaining additional or substitute program portfolio reviewers for the areas for which they are responsible if that area has multiple programs to be reviewed or if the subject area Associate or Specialist is unable to participate in the folio review.~~

~~9.3.1.1 Before any request is made of a person outside of the Department of Education to participate in folio review, permission must be received from the Administrator for Postsecondary Program Approval. Substitutes suggested will be scrutinized carefully, for the necessary expertise and potential conflicts.~~

~~9.3.1.2 Substitutes shall be selected prior to the training process to ensure that the substitute receives the required training. No untrained persons will participate in the process.~~

#### **10.0 Format of the NCATE Joint Report**

~~10.1 NCATE Board of Examiners' portion of the report.~~

~~10.1.1 The NCATE Board of Examiners team shall report on the design of Professional Education Standards, Candidate Standards, Faculty Standards and Governance and Resource Standards.~~

~~10.1.2 The NCATE portion of the joint report shall consist of the following:~~

~~10.1.2.1 A summary of the Board of Examiners team's decision for each standard at the initial teacher preparation and advanced level.~~

~~10.1.2.2 Description of decision for each standard at the initial teacher preparation and advanced levels.~~

~~10.1.2.3 Exemplary practices of the professional education unit (if applicable).~~

~~10.1.2.4 List of individual interviewed and sources of evidence.~~

~~10.1.2.5 Addenda (if needed).~~

~~10.2 The state team's portion of the report~~

~~10.2.1 The state team shall report on the individual programs at the initial teacher preparation and advanced level;~~

~~10.2.2 The state team portion of the report shall consist of the following:~~

~~10.2.2.1 A summary of the findings of the state team, with an emphasis on commonalities between the findings on the individual programs, and on identifying those programs that have exemplary practices or show multiple weaknesses.~~

~~10.2.2.2 Description of decision for each program at the initial teacher preparation and advanced levels.~~

~~10.2.2.3 List of individual interviewed and primary sources of evidence for the decisions made on each program.~~

~~10.2.2.4 Team recommendations for each program.~~

~~10.2.3 The state team will also submit a recommendation on whether the institution, and each individual program, should receive approval to operate in Delaware and under the NASDTEC Interstate Reciprocity Agreement.~~

#### **11.0 Rejoinder Process**

~~11.1 Within thirty (30) days after the state team visit, the team chair will prepare a report of the team visit and make a recommendation on each program at the institution.~~

~~11.1.1 Two copies will be sent to the institution, one to the institution's president, and the other to the institution's liaison for the review process.~~

~~11.1.2 The institution will be asked for reactions to the accuracy of the information in the Report of the Team Visit. The institution has fifteen (15) days to respond.~~

~~11.2 Following the receipt of the NCATE Institutional Report, if unit accreditation is granted, the administrator shall schedule the submission of the Joint Report, and the recommendations of the state team, to the State Board. A copy of the Joint Report and the recommendations of the state team, and notice of the State Board will be sent to the institution by certified or express mail or through a private mail or parcel delivery service.~~

~~11.3 Following the receipt of the NCATE Institutional Report, if unit accreditation is not granted, the institution will have a period of time within which to submit additional materials, in accordance with 11.1.2, prior to the presentation to the State Board of the Joint Report, the report of the subsequent NASDTEC review, and the State Team recommendations. Copies of the report of the NASDTEC review, the Joint Report and the recommendations of the state team, and notice of the State Board meeting will be sent to the institution by certified or express mail or through a private mail or parcel delivery service.~~

~~11.4 The institution may rejoinder any of the recommendations of the state team, by a letter from the institution's president (or the president's designee) notifying the Secretary of Education in writing of their intent to do so, accompanied by a short statement listing the recommendations at issue, and why they are contested. The letter must~~

be received in the Secretary of Education's Office within ten (10) days of the delivery of the reports noted in paragraphs 2 and 3 of this Part.

~~11.5 The Secretary of Education shall schedule the recommendation, and if necessary a hearing on the rejoinder, before the State Board at a regularly scheduled meeting.~~

~~11.6 Written statements of position and legal memoranda or briefs may be submitted by the institution or the state team. They must be received by the Secretary of Education's Office not less than ten (10) days prior to the date scheduled for the presentation of the recommendations to the State Board.~~

~~11.7 There will be no oral testimony before the State Board of Education. If the institution wishes to make an oral summary of their position before the Board, they must file a request to do so not less than ten (10) days prior to the date scheduled for the presentation. The institution's oral summary will be limited to 15 minutes; the state team will have 15 minutes to respond.~~

~~11.8 The Board, after considering the evidence presented and the arguments made by the parties to the controversy, will make a decision and so inform the parties in writing of that decision. The State Board of Education's decision is final.~~

## 290 Approval of Educator Preparation Programs

### 1.0 Definitions

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

"Administrator" means Department of Education Associate charged with oversight of Program Approval for college and university educator preparation Programs.

"Associate Degree" means a two (2) year degree conferred by a regionally accredited Institution of higher education or by a distance education Institution that is regionally or nationally accredited through an agency recognized by the U.S. Secretary of Education.

"Department" means the Delaware Department of Education.

"Department Approval" means the process by which a specific professional education Program is recognized by the State Department of Education as meeting state standards for the content and operation of such Programs.

"Educator" means a person licensed and certified by the State under 14 **Del.C.**, Ch. 12 to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board but does not include substitute teachers.

"Higher Education Degree Advanced Level" means post baccalaureate degree Programs for the advanced preparation of teachers, and the initial or advanced preparation of professional school personnel. Programs at the advanced level lead to a master's, specialist, or doctoral degree, or they may culminate in non degree licensure at the graduate level.

"Higher Education Degree Basic (Initial) Level" means programs leading to the initial preparation of teachers, commonly leading to a baccalaureate degree, a master of arts in teaching, or other Programs designed to prepare teachers for initial licensure.

"Institution" means the college or university offering baccalaureate and post baccalaureate degree teacher preparation programs.

"NASDTEC" means The National Association of State Directors of Teacher Education and Certification. The organization represents professional standards boards, commissions and departments of education in all 50 states, the District of Columbia, the Department of Defense Dependent Schools, the U.S. Territories, New Zealand, and British Columbia, which are responsible for the preparation, licensure, and discipline of educational personnel.

"NCATE" means The National Council for Accreditation of Teacher Education, a national accrediting body for schools, colleges, and departments of education authorized by the U.S. Department of Education.

"Professional Education Unit" means the school, college, department or other administrative body within an Institution of higher learning that is primarily responsible for the preparation of teachers and other professional education personnel.

"Program" means the sequence of courses and experiences required by a college or university for the preparation of professional education candidates to teach a specific subject or academic area, to provide professional education services, or to administer schools.

“Proposal for Program Approval for Education Preparation Programs Which do Not Have Specialized Professional Association (SPA) Approval” means the formal proposal that the Department requires higher education institutions to complete and submit in order to seek approval for teacher education programs in a Professional Education Unit for which there is no national Specialized Professional Association (SPA) or for which the institution has not received approval from the SPA.

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

“Specialized Professional Association (SPA)” means national bodies such as the American Alliance for Health, Physical Education, Recreation and Dance (AAHPERD) and the International Reading Association (IRA) whose Program review standards have been approved by NCATE.

## **2.0 Prior Approval from the Department Required to Offer Courses**

Pursuant to 14 Del.C. §122(b)(21), no individual, public or private educational association, corporation or Institution, including any Institution of post secondary education, shall offer a course, or courses, for the training of school teachers to be licensed in this State without first having procured the assent of the Department for the offering of such courses. In order to be approved by the Department, Programs of educator preparation in Delaware Institutions of higher education that lead to educator licensure and certification shall meet State and, where applicable, national standards appropriate to the Professional Education Unit and the Professional Education Unit's individual programs. All Professional Education Units and their Programs shall be reviewed through a fair and uniform application of standards.

2.1 The Department shall approve an Institution's educator preparation Programs. Approval attests to compliance with state standards for each Program. Approval is based on an Institutional self study report and an on site visit by a team trained and selected by NCATE, with Department representation. Institutions seeking approval of educator preparation Programs in the State shall meet the Institutional standards established by NCATE and the appropriate Program standards. All Programs shall also comply with the State's regulations for Educator licensure and certification, the Delaware Teacher or Administrator Standards, and other applicable regulations and standards as are established by the Department or the Professional Standards Board, in cooperation and consultation with the Department and with the concurrence of the State Board of Education.

## **3.0 NCATE State Partnership Review**

National Council for Accreditation of Teacher Education (NCATE) Standards, Procedures & Policies for the Accreditation of Professional Education Units and Programs.

3.1 The Department shall enter into agreements with the higher education governing boards and their Institutions for the purpose of coordination of review procedures on a seven (7) year cycle. Such agreements shall include, but are not limited to, Program review timetables, format and content of Institutional reports, selection, number and role of review team members and the reporting of Program results.

### 3.2 Accreditation Request

3.2.1 Institutions shall submit letters of intent to seek accreditation to NCATE at least twenty (20) months before the scheduled visit. Statements of how NCATE's preconditions are met shall be submitted to the Institution before on site reviews are scheduled.

3.2.2 Portfolios submitted to Specialized Professional Associations shall follow the NCATE Standards and shall be submitted to NCATE at least eighteen (18) months before the on site reviews.

### 3.3 The Review Team

3.3.1 The review team assembled by NCATE shall have up to three (3) members designated by the Department and the Department shall agree to comply with the schedule established by NCATE in the review and on site visits of NCATE accredited Institutions.

3.3.1.1 State members shall be selected in accordance with NCATE Partnership Agreement Guidelines. A list of members shall be given to the Institution at least six (6) months prior to the site review. Substitute members may be selected and the Institution notified of the substitute members closer to the time of the review, if those initially selected are unable to serve the NCATE and Delaware Partnership Agreement.

3.3.1.2 State members shall be selected from the following:

3.3.1.2.1 Employees of the Department of Education one of whom shall be the Administrator.

3.3.1.2.2 Persons who have experience in higher education or education administration.

3.3.1.3 State member(s) shall attend a training session on NCATE standards and procedures

# PROPOSED REGULATIONS

and State expectations paid for by the Department and conducted by the staff of NCATE.

3.3.1.4 The State members shall be responsible for the following:

3.3.1.4.1 Meeting with the NCATE Board of Examiners and assisting in the informal deliberations of that group in accordance with NCATE requirements:

3.3.1.4.2 Reviewing the reports of the SPA on those Programs covered by NCATE standards, to verify the accuracy of the reports and the conclusions reached by the SPA,

3.3.1.4.3 Making recommendations to the Secretary on the decisions of the SPA; and

3.3.1.4.4 Making recommendations including a description of how the review was verified; whether the conclusions of the SPA were verified, verified with exceptions or substantially in error, and whether the Program was recommended for approval, approval with exceptions despite the conclusion of SPA or disapproval.

3.3.2 Conflict of Interest: Team members from the State shall not participate on a team if they have a close, active association with the Institution to be visited. A close, active association shall be presumed where:

3.3.2.1 The member is currently in attendance at, or, within the past ten years, has received a degree from or has been forced to discontinue studies at the Institution;

3.3.2.2 The member has children or other close relatives in attendance at the Institution, and those persons are matriculated into the education Programs being reviewed,

3.3.2.3 The member has taught, consulted, or otherwise been employed in a paid position, at the Institution within the past five years;

3.3.2.4 The member has ever been denied tenure by or forced to leave a position at the Institution;

3.3.2.5 The member currently serves on, or has been nominated to, any advisory group at the Institution;

3.3.2.6 The member maintains any current close personal or professional relationship with a person at the Institution; or

3.3.2.7 The member is an employee of another Institution in the state with a teacher education Program.

## 3.4 Final Report

3.4.1 Professional Education Units and Programs approved through NCATE accreditation shall comply with NCATE self study requirements. Copies of any reports to NCATE shall also be submitted to the Administrator.

3.4.2 Programs being reviewed by SPA shall submit to the Administrator a copy of the materials sent to the Specialty Professional Association.

3.4.3 A final report on the reviews shall be forwarded to the Secretary for action. The report shall make recommendations for full approval, provisional approval, or disapproval of the Professional Education Unit and of each of the individual Programs.

3.4.3.1 Copies of the final report shall be sent to the chief executive officer of the Institution and to the leader of the Professional Education Unit.

3.4.4 The report and the accreditation decision of the NCATE Unit Accreditation Board shall be used to determine whether the Department will approve the teacher education Programs.

3.4.5 In addition to individual Program recommendations, a recommendation on whether or not the Department should authorize the university or college to operate teacher education Programs shall also be included.

3.4.6 Two copies of the final report and related documents shall be maintained by the Department and submitted to the State Archives as provided by the retention schedule for the State Archives.

## **4.0 Procedures for Teacher Education Programs in a Professional Education Unit Seeking Approval for Programs for Which There is no National Specialized Professional Association (SPA) or for Which the Institution has Not Received Approval from the SPA.**

4.1 Higher education institutions seeking approval for teacher education programs in a Professional Education Unit for which there is no national Specialized Professional Association (SPA) or for which the institution has not received approval from the SPA shall complete the Department's *Proposal for Program Approval for Education Preparation Programs Which Do Not Have Specialized Professional Association (SPA) Approval* and shall submit the Proposal to the Department at least 18 months before the on site reviews.

4.2 Time lines related to the submission of data and other documentation of the Institution's compliance with Program approval criteria, the scheduling of Program reviews, the role of Department review members, and the procedures for the reporting of Program review results shall follow NCATE guidelines.

4.3 At least one year before the impending review, the Institution shall contact the Department. The Institution shall appoint one person to act as liaison for all of the Programs at the Institution under this Non SPA State Review. The Administrator shall meet with the liaison to establish the dates of the review process and the areas to be reviewed. The decisions made shall be communicated by the Administrator and the liaison to all of the Programs. This process shall be completed nine months prior to the review dates.

4.4 Selection, Training and Conduct of the State Team Members for the Non SPA State Review

4.4.1 State Teams shall consist of three (3) to five (5) members including the Administrator or designee, one of whom shall be the chair, who shall be selected at least six months prior to the review. The Institution shall be notified as to the members chosen for the review.

4.4.1.1 If those initially selected are unable to serve, substitute members may be selected and the Institution notified of the substitute members closer to the time of the review.

4.4.2 Conflict of Interest is the same as defined in 3.3.2

4.4.3 Training of State Team Members

4.4.3.1 State Team members shall receive training at the Department in the following areas prior to participating in any review; the purpose of the self study, the State standards and criteria, the procedure for proposal review, the procedure for site visits, the review of timelines, the completion of team reports, the reimbursement of expenses, the evaluation of the Institution and the background of, rationale for, and the review procedure of NCATE.

4.4.4 Persons taking part in State Team member training shall be reimbursed for expenses in accordance with the Department's guidelines.

4.5 The Program shall prepare the Proposal which shows how it meets the Department of Education Program Approval Standards and the Delaware Licensure and Certification Regulations.

4.5.1 Five (5) copies of the self study, and all applicable catalogs, shall be submitted at least six (6) months prior to the visit of the state team.

4.5.2 Proposals, student exemplars, and additional materials requested for each Program shall be reviewed by appropriate Program Proposal reviewers at the Department and the review on the content and quality of each shall be made available to the State Team at least three (3) months prior to the visit of the State Team. If any aspect of the Proposal is deemed inadequate, the Administrator may contact the Institution to supplement the submission or may return the Proposal to the Program.

4.5.3 The Department Team shall verify the accuracy of the Proposal, consider the Department review and write a draft report on the Program. The report shall make recommendations for full approval, provisional approval, or disapproval of the Program.

4.6 The final report of the State Team members on the Program(s) shall be due to the Administrator or the chair of the team three (3) weeks after the last day of the visit.

4.7 Within ten (10) weeks of the last day of the visit, the Administrator or the chair of the State Team shall submit the final draft of the report to the Program for the correction of factual errors only. The Program shall return the final draft to the Administrator with factual errors and suggested corrections noted, within two (2) weeks.

4.8 All approved Programs shall be evaluated by Department staff for compliance with the NASDTEC reciprocity Agreement.

4.9 Institutions or Programs reviewed shall submit a report for any provisionally approved Programs as requested by the Department. The report shall detail how previous weaknesses, if any, have been addressed.

## **5.0 Provisional Program Approval for New Programs**

5.1 An Institution that has approved educator preparation Programs may request interim provisional Program approval for new education Programs added between regularly scheduled reviews. The following documentation shall be supplied to the administrator:

5.1.1 A description of the Program for which approval is sought and other administrative information;

5.1.2 The curriculum for the Program, including syllabi for any new courses;

5.1.3 Descriptions of the expected outcomes of the Programs and of how those outcomes will be assessed;

5.1.4 Vitae for all faculty delivering the Program; and

5.1.5 Descriptions of materials, media and resources available for the Program, and how technology is integrated into the curriculum or Program.

5.2 An Institution currently operating approved educator preparation Programs may seek approval for a Program in a teaching, specialist services or administrative area provided the self study contains sufficient justification to warrant the new specialization. The Institution is encouraged to collaborate with the Department during the Program's initial planning. The Institution must identify the Program objectives for the new Program from which the curriculum shall be developed.

5.3 Experimental or innovative Programs that do not meet NCATE standards may be allowed by the Department. Such an allowance may be requested by submitting the material for new Programs, and where the standards are not met, a rationale for the exception(s). Experimental or innovative Programs that are approved by the Department shall be given provisional approval; full approval may not be granted until a full on site review of the Program takes place, or it is recommended and approved by the Secretary.

5.4 Satisfactory Programs that have received only paper review, without full on site verification, will be granted provisional approval. Full approval may not be granted until a full on site review of the Institution takes place, or is recommended and approved by the Secretary.

### **6.0 Programs That Do Not Receive Accreditation by NCATE**

6.1 Institutions that do not receive NCATE accreditation, and which have exhausted or decided not to use the NCATE rejoinder process, will have a period of time agreed upon by the Institution and the liaison in which to submit additional materials which demonstrate how the Institution meets the NCATE Standards and Program Approval Standards. Such Programs will only be eligible for provisional approval for three (3) years; renewal after that time will be contingent upon a full site review.

6.2 Programs submitted to SPA that do not receive Program approval from those organizations, and which have exhausted or decided not to use the NCATE rejoinder process, have up to Thirty (30) working days after the chair submits the written report to supplement the portfolios, if needed, to demonstrate how they meet the NCATE Standards and Program Approval Standards.

6.2.1 Programs that do not receive SPA approval should submit materials to the Department in accordance with the provisions set forth in 4.0.

6.3 Programs that do not meet the NCATE standards, Delaware Teacher and Administrator Standards, or the State's licensure and certification regulations at the full approval level, shall be given either provisional approval or not be approved to operate. All Programs given provisional approval shall:

6.3.1 Report annually to the Administrator on the progress made on those standards that were not met.

6.3.2 Undergo portfolio submission and site review within three (3) years from the date of provisional approval.

6.4 Institutions that do not receive full or provisional approval through review pursuant to NCATE Standards or Delaware Program Approval Standards shall not be permitted to operate licensure Programs in Delaware.

### **7.0 Required Format**

The format of the NCATE report shall follow the format designated by NCATE and shall include recommendations on whether the Professional Education Unit and each individual Program shall receive approval to operate in Delaware.

### **8.0 Rejoinder Process**

8.1 NCATE Review

8.1.1 If the Professional Education Unit or Program accreditation is not granted by NCATE, the Institution may contest any of the recommendations through the NCATE rejoinder process. The Department shall accept the decision of NCATE when their rejoinder process is followed.

8.2 Non SPA State Review

8.2.1 Within thirty (30) days after the State Team visit, the team chair shall prepare a report of the team visit, make a recommendation on the Program(s) and send two copies to the Institution, one to the Institution's president, and the other to the Institution's liaison for the review process.

8.2.1.1 The Institution shall respond within fifteen (15) days as to the accuracy of the factual

information in the report of the team visit.

8.2.2 Intent to contest the recommendations: A letter shall be sent from the Institution's president or designee notifying the Secretary of their intent to contest the recommendations accompanied by a short statement explaining the rationale for contesting the review. The letter must be received in the Office of the Secretary within ten (10) days of the delivery of the reports.

8.2.2.1 The Secretary shall review the materials submitted by the Institution including written statements of position, exemplars and comments supporting the claims.

8.2.2.2 The Secretary, after considering the evidence presented and the arguments made by the parties, shall make a decision and so inform the parties in writing of that decision. The decision of the Secretary is final.

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## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(6)  
(14 Del.C. §122(b)(6))

### PUBLIC NOTICE

#### 502 Alignment of Local School District Curricula to the State Content Standards

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

New Regulation

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

The Secretary of Education intends to adopt 14 **DE Admin. Code** 502 Alignment of the Local School District Curricula to the State Content Standards in order to fulfill the requirements of 14 **Del.C.** §122(b)(6) concerning the development of a recommended statewide uniform curricula for all public schools in the State.

##### C. Impact Criteria

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation should help improve student achievement by requiring evidence that the school district curricula have been aligned with the State Content Standards.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation will help ensure that all students receive an equitable education by requiring that all students have access to curricula aligned with the State Content Standards...

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

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation addresses curriculum alignment issues not issues of students' legal rights.

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

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation will add the initial reporting and administrative requirements of providing evidence of the alignment of the district curricula to the State Content Standards.

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 new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation should enhance 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 develop regulations on this issue.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There may be some additional costs for the development of the aligned curricula depending on the level of alignment achieved thus far.

## 502 Alignment of Local School District Curricula to the State Content Standards

### 1.0 Purpose

The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

### 2.0 Definitions

**“Alignment Index”** means a correlational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.

**“Content Map”** means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

**“Grade Level Expectations”** means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.

**“Scope and Sequence”** means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.

**“Statewide Recommended Curriculum Frameworks”** means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.

**“Survey of Enacted Curriculum (SEC)”** means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.

**“Tile Chart”** means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.

**“Unit Summative Assessment”** means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.

### 3.0 Alignment Requirement

All school districts shall provide evidence to the Department of Education that their school district curricula are aligned with the State Content Standards. As of 2006 State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, and the Family and Consumer Sciences. Content standards as developed by the Department in the future shall also be included under this section

### 4.0 Use of the Statewide Recommended Curricula Frameworks

School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.

**5.0 Documentation of Curriculum Alignment**

5.1 Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department of Education no later than twelve (12) months following the official release by the Department of Education of the Statewide Recommended Curriculum Frameworks in each content area.

5.2 Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department of Education.

**6.0 Criteria for the Evaluation of the Alignment**

6.1 School districts shall be required to submit evidence of local curriculum alignment for each grade cluster (K-5, 6-8 and 9-12) from at least two of the permissible categories of evidence in 6.1.1 through 6.1.6. One of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.6. The school district may choose to vary the choice of the second category of evidence by grade cluster level. Evidence of alignment to each standard in a given content area shall be submitted.

6.1.1 Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.

6.1.2 Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K-5, 6-8 and 9-12) of the Survey of Enacted Curriculum for the content area under consideration. The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.

6.1.3 Category 3 is one unit of study from each marking period with a corresponding Unit Summative Assessment, showing the academic standards addressed. Evidence shall be from grades 3, 5, 8 and 10.

6.1.4 Category 4 is a description of the Scope and Sequence with a matrix of the primary academic standards addressed for each grade cluster.

6.1.5 Category 5 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The contractor's credentials shall be submitted.

6.1.6 Category 6 is a grade cluster Scope and Sequence with a sample unit from each grade cluster, combined with student assessment results. Evidence of alignment of formative student progress to the State Content Standards shall be required. For districts using commercial student progress assessments, evidence shall include evidence of alignment of student progress assessments to the Delaware content standards.

6.2 Required documentation for specific student subpopulations

6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

**7.0 Participation of Building Level Staff**

All school districts shall describe and document to the Department of Education the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.

**8.0 Subsequent Review of Alignment**

Each district shall resubmit evidence of alignment with the State Content Standards on forms developed and required by the Department of Education between three and five years from the initial approval and on a recurring cycle of three to five years as determined by the Department of Education. Further provided, the district shall be required to present evidence of curriculum alignment if there are major changes to the approved curricula.

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES**  
**DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code, Ch. 5, Section 512  
(31 Del.C., Ch. 5, 512)

**PUBLIC NOTICE****50100 Services Provided by Chronic Renal Disease Program**

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), with 42CFR §447.205 and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to provide a standard pharmacy benefit to Chronic Renal Disease Program recipients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2006.

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****Statutory Authority**

**Delaware Code**, Title 29, Chapter 79, Subchapter II, Sections 7932 – 7935, *The Chronic Renal Diseases Program*

**Background**

The Delaware Legislature established the Chronic Renal Disease Program (CRDP) effective 1970 by enacting Title 29, Chapter 79, Subchapter 11, Sections 7932-7935. The purpose of this program is to provide assistance to state residents diagnosed with End Stage Renal Disease (ESRD). The CRDP is not federally funded. CRDP is 100% State funded. Since there are limited funds available, the CRDP should only be utilized as a program of last resort. All third party resources (Medicare, Medicaid, Veteran's Benefits, and Private Insurance) must be considered before CRDP funds are utilized.

**Purpose of the Proposed Regulation**

The purpose of the proposed regulation is to provide a standard pharmacy benefit to Chronic Renal Disease Program (CRDP) recipients. Pharmaceutical charges have been offset with the implementation of Federal Medicare Part D benefits; thereby permitting the inclusion of all non-Part D covered medications as a standard benefit available to all qualified recipients.

**Summary of Proposed Changes**

The cost shift of medications to Medicare Part D has permitted the standardization of the pharmacy benefit to CRDP clients. The proposed changes removes the additional steps previously necessary to obtain individual authorizations for each medication required.

The anticipated benefit of expanding pharmacy access is improved health outcomes for CRDP recipients, thereby avoiding costs associated with the more serious health care issues that could occur from lack of access to medications.

The proposal amends DSSM 50100.1, *Medications* and 50100.2, *Nutritional Supplements* as follows:

1. As participation in Medicare Part D or proof of creditable coverage became a condition of CRDP eligibility, the CRDP program no longer provides primary pharmacy benefit coverage for many medications.
2. Prescription drugs will be reimbursed in accordance with current Delaware Medicaid and

Medical Assistance formulary limitations and procedures.

3. Reimbursement for medications will be made only for clients currently eligible and approved for participation in CRDP.
4. Refills may be authorized in compliance with appropriate pharmacy laws, and subject to Delaware Medicaid and Medical Assistance formulary restrictions.
5. At the point of sale, the pharmacist will determine electronically if another funding source is available, and bill that vendor(s) first, and then will determine if CRDP will fund the requested product.
6. At the point of sale, the pharmacist will be alerted if program quantity limits for nutritional supplements have been exceeded and if prior authorization is needed by EDS.
7. Approval of funding nutritional supplements is subject to Division of Medicaid and Medical Assistance formulary restrictions.
8. The CRDP will fund oral nutritional supplements for a period prescribed by the physician.

### **DMMA PROPOSED REGULATIONS #06-18**

#### **50100.1 Medications**

~~The CRDP has the ability to fund prescription medications, over-the-counter medications (OTC's) or both. Prescription drugs covered under CRDP are restricted to products manufactured by pharmaceutical companies that agree to provide manufacturer rebates. As participation in Medicare Part D or proof of creditable coverage became a condition of CRDP eligibility, the CRDP program no longer provides primary pharmacy benefit coverage for many medications. As such, to improve access to prescription and OTC medications, benefits may be offered to all CRDP eligible clients, regardless of individual need review.~~

~~Services covered include generic and brand name prescription drugs that have been approved as safe and effective by the Federal Food and Drug Administration, as well as, cost effective over-the counter drugs prescribed by a licensed practitioner. Prescription drugs will be reimbursed in accordance with current Division of Medicaid and Medical Assistance formulary limitations and procedures.~~

~~Reimbursement for medications will be made only for client's authorized by the clients currently eligible and approved for participation in CRDP. (All third party resources must be used before CDRP funds are utilized.) Client's eligibility for the medication benefit is based upon the outcome of their medical and financial assessment.~~

~~Prescription medications potentially will be funded as described above if prescribed by a physician ~~or licensed practitioner~~ for eligible CRDP clients. Refills may be authorized in compliance with appropriate pharmacy laws, and are subject to Division of Medicaid and Medical Assistance (DMMA) formulary restrictions. Reimbursements for OTC products for eligible clients are those, which the physician/practitioner has provided written a legal prescription or verbal authorization to the pharmacist. ~~These products must be for the client's personal use only. There will be no reimbursement for OTC products that are not prescribed by a physician/practitioner. Supplies such as mouthwash, toothpaste, shampoo, etc. will not be reimbursed.~~ OTCs are covered based on the DMMA policy with an exception for nutritional supplements (for additional information, refer to "DSSM 50100.2 Nutritional Supplements").~~

~~At the point of sale, the pharmacist will determine electronically if CRDP another funding source is available, and bill that vendor(s) first, and then will determine if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must ~~have~~ be a participating Delaware Medicaid provider, with a valid provider identification number.~~

~~Note: All third party resources must be used before CRDP funds are utilized.~~

**9 DE Reg. 774 (11/01/05)**

*(Break in Continuity of Sections)*

#### **50100.2 Nutritional Supplements**

~~Reimbursement for nutritional supplements will be made only for clients currently eligible and approved for participation in CRDP. All third party resources must be used before CRDP funds are utilized.~~

~~Nutritional supplements will be funded as described above if prescribed by a physician or licensed practitioner for eligible CRDP clients. Refills may be authorized in compliance with appropriate pharmacy laws and are subject to Division of Medicaid and Medical Assistance (DMMA) formulary restrictions. Reimbursements for nutritional~~

supplements for eligible clients are those, which the physician/practitioner has provided a legal prescription to the pharmacist.

At the point of sale, the pharmacist will determine electronically if another funding source is available, and bill that vendor(s) first, and then will determine if CRDP will fund the requested product. In order for the pharmacy to receive CRDP payment, they must be a participating Delaware Medicaid provider, with a valid provider identification number.

At the point of sale, the pharmacist will be alerted if program quantity limits for nutritional supplements have been exceeded and if prior authorization is needed by EDS.

Prior authorization criteria for eligible clients:

~~Nutritional supplements will only be funded by the CRDP if the~~ The client is **must be** diagnosed with ESRD, is on dialysis or has received a kidney transplant, and, exhibits signs and symptoms of malnutrition as determined by documentation of specific laboratory values. Additionally, **approval of funding the only** nutritional supplements **is subject to Division of Medicaid and Medical Assistance formulary restrictions.** ~~funded by the CRDP are those currently on the formulary as dictated by First Data Bank.~~

Other criteria that must be met include:

- it is reasonable and necessary part of the client's treatment plan;
- ordered by a physician or certified nurse practitioner as indicated by completion of a Medical Necessity Form;
- not furnished for the convenience of the client, client's family, attending practitioner, or other practitioner or supplier;
- necessary and consistent with generally accepted professional medical standards;
- monitored and assessed regularly by the attending practitioner to determine effectiveness and necessity.

~~The CRDP will fund oral nutritional supplements for a durational period of 6 months or less as needed as prescribed by the physician or licensed practitioner. The durational period is dependent upon the client's medical and financial situation. If the client will need the supplement past the authorized durational period, the practitioner must submit another Certificate of Medical Necessity Form. Upon submission CRDP will redetermine eligibility. Claims submitted without prior approval, or exceeding the authorized durational period may be denied.~~

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## DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

### DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapters 60 and 63 (7 **Del.C.** Chs. 60 and 63)

#### REGISTER NOTICE

#### SAN # 2006-05

**1. Title of the Regulations:**

*Delaware Regulations Governing Hazardous Waste (DRGHW)*

**2. Brief Synopsis of the Subject, Substance and Issues:**

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

**3. Possible Terms of the Agency Action:**

None

**4. Statutory Basis or Legal Authority to Act:**

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 **Delaware Code**, Chapters 60 and 63.

**5. Other Regulations that may be Affected by the Proposal:**

None

**6. Notice of Public Comment:**

The public hearing on the proposed amendments to DRGHW will be held on Wednesday June 28, 2006 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**7. Prepared by:**

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

## 1302 Regulations Governing Hazardous Waste

### *(Break in Continuity of Sections)*

**Section 122.1 Purpose and scope of Part 122.****(a) Coverage.**

(1) These permit regulations establish provisions for Delaware's Hazardous Waste Permit Program.

(2) The regulations in this part cover basic DNREC permitting requirements, such as application requirements, standard permit conditions, and monitoring and reporting requirements.

**(b) [Reserved]**

(c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Part 261. The terms "treatment", "storage", "disposal", and "hazardous waste" are defined in §122.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under §122.1(c)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as required under (c)(7) of this section. If a post-closure permit is required, the permit must address applicable Part 264 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of these regulations. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(1) Specific inclusions. Owners and operators of certain facilities require hazardous waste permits as well as permits under other programs for certain aspects of the facility operation. Hazardous waste permits are required for:

**(i) [Reserved]**

(ii) Treatment, storage, or disposal of hazardous waste at facilities requiring an NPDES permit. However, the owner and operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a hazardous waste permit for that waste if they comply with the requirements of §122.60(c) (permit-by-rule for POTWs).

(iii) Barges or vessels that dispose of hazardous waste by ocean disposal and onshore hazardous waste treatment or storage facilities associated with an ocean disposal operation. However, the owner and operator will be deemed to have a State permit for ocean disposal from the barge or vessel itself if they comply with the requirements of §122.60(a) (permit-by-rule for ocean disposal barges and vessels).

(2) Specific exclusions. The following persons are among those who are not required to obtain a State hazardous waste permit:

(i) Generators who accumulate hazardous waste on-site for less than the time periods and under the conditions provided in §262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in §262.70 of these regulations;

- (iii) Persons who own or operate facilities solely for the treatment, storage or disposal of hazardous waste excluded from regulations under this part by §§261.4 or 261.5 (small generator exemption).
- (iv) Owners or operators of totally enclosed treatment facilities as defined in §260.10.
- (v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in §260.10.
- (vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less. See also §263.12.
- (vii) Persons adding absorbent material to waste in a container (as defined in §260.10 of these regulations) and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and §§264.17(b), 264.171, and 264.172 of these regulations are complied with.
- (viii) Universal waste handlers and universal waste transporters (as defined in §260.10) managing the wastes listed below. These handlers are subject to regulation under Part 273.
- (A) Batteries as described in §273.2 of these regulations;
- (B) Pesticides as described in §273.3 of these regulations;
- (C) ~~Thermostats as described in §273.4 of these regulations;~~ Mercury-containing equipment as described in §273.4; and
- (D) Lamps as described in §273.5 of these regulations.
- (3) Further exclusions.
- (i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations:
- (A) A discharge of a hazardous waste;
- (B) An imminent and substantial threat of a discharge of hazardous waste;
- (C) A discharge of a material which, when discharged, becomes a hazardous waste.
- (D) An immediate threat to human health, public safety, property, or the environment from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §260.10.
- (ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.
- (iii) In the case of emergency responses involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.
- (4) Permits for less than an entire facility. DNREC may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all of the units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.
- (5) Closure by removal. Owners/operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under Part 265 standards must obtain a post-closure permit unless they can demonstrate to the Secretary that the closure met the standards for closure by removal or decontamination in §§ 264.228, 264.280(e), or 264.258, respectively. The demonstration may be made in the following ways:
- (i) If the owner/operator has submitted a Part B application for a post-closure permit, the owner/operator may request a determination, based on information contained in the application, that Part 264 closure by removal standards were met. If the Secretary believes that Part 264 standards were met, he/she will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in paragraph (c)(6) of this section.
- (ii) If the owner/operator has not submitted a Part B application for a post-closure permit, the owner/operator may petition the Secretary for a determination that a post-closure permit is not required because the closure met the applicable Part 264 closure standards.
- (A) The petition must include data demonstrating that closure by removal or decontamination standards were met, or it must demonstrate that the unit closed under State requirements that met or exceeded the applicable 264 closure-by-removal standard.
- (B) The Secretary shall approve or deny the petition according to the procedures outlined in paragraph (c)(6) of this section.

(6) Procedures for closure equivalency determination.

(i) If a facility owner/operator seeks an equivalency demonstration under §122.1(c)(5), the Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner/operator within 30 days from the date of the notice. The Secretary will also, in response to a request or at his/her own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning the equivalence of the Part 265 closure to a Part 264 closure. The Secretary will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.)

(ii) The Secretary will determine whether the Part 265 closure met 264 closure by removal or decontamination requirements within 90 days of its receipt. If the Secretary finds that the closure did not meet the applicable Part 264 standards, he/she will provide the owner/operator with a written statement of the reasons why the closure failed to meet Part 264 standards. The owner/operator may submit additional information in support of an equivalency demonstration within 30 days after receiving such written statement. The Secretary will review any additional information submitted and make a final determination within 60 days.

(iii) If the Secretary determines that the facility did not close in accordance with Part 264 closure by removal standards, the facility is subject to post-closure permitting requirements.

(7) Enforceable documents for postclosure care. At the discretion of the Secretary, an owner or operator may obtain, in lieu of a postclosure permit, an enforceable document imposing the requirements of §265.121. *Enforceable document* means an order, a plan, or other document issued by EPA or by an authorized State under an authority that meets the requirements of 40 CFR, 271.16(e) including, but not limited to, a corrective action order issued by EPA under Section 3008(h) or DNREC under 7 **Del.C.**, Chapter 63, a CERCLA remedial action, or a closure or postclosure plan.

(d) Transporters of listed or characteristic hazardous waste identified in Part 261 of these regulations, or used or waste oil as identified in Parts 263 or 279 of these regulations are required to obtain a transporters permit. (Amended August 29, 1988; August 10, 1990; June 19, 1992, August 23, 1996, January 1, 1999, July 11, 2002)

***(Break in Continuity of Sections)***

**Section 122.14 Contents of Part B: General Requirements.**

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§122.14 122.29 applicable to the facility. The Part B information requirements presented in §§122.14 122.29 reflect the standards promulgated in Part 264. These information requirements are necessary in order for DNREC to determine compliance with the Part 264 standards. It is recommended that the applicants contact DNREC for information on the format of Part B applications. If owners and operators of HWM facilities can demonstrate that the information prescribed in Part B can not be provided to the extent required, the Secretary may make allowance for submission of such information on a case by case basis. Information required in Part B shall be submitted to the Secretary and signed in accordance with requirements in §122.11. Certain technical data, such as design drawings and specifications, and engineering studies shall be certified by a registered professional engineer. For post-closure permits, only the information specified in §122.28 is required in Part B of the permit application.

(b) General information requirements. Include where applicable, as part of the inspection schedule, specific requirements in §§264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, and 264.1058.

(1) A general description of the facility.

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with Part 264 of these regulations.

(3) A copy of the waste analysis plan required by §264.13(b) and, if applicable §264.13(c).

(4) A description or the security procedures and equipment required by §264.14, or a justification demonstrating the reasons for requesting a waiver of this requirement.

(5) A copy of the general inspection schedule required by §264.15(b) of this part. Include where applicable, as part of the inspection schedule, specific requirements in §§264.174, 264.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1084, 264.1085, 264.1086, and 264.1088 of this part.

(6) A justification of any request for a waiver(s) of the preparedness and prevention requirements of Part 264, Subpart C.

(7) A copy of the contingency plan required by Part 264, Subpart D. Note: Include, where applicable, as part of the contingency plan, specific requirements in §§264.227, 264.255 and 264.200.

(8) A description of procedures, structures, or equipment used at the facility to;

- (i) Prevent hazards in unloading operations (for example, ramps, special forklifts);
- (ii) Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding (for example, berms, dikes, trenches);
- (iii) Prevent contamination of water supplies;
- (iv) Mitigate effects of equipment failure and power outages;
- (v) Prevent undue exposure of personnel to hazardous waste (for example, protective clothing); and
- (vi) Prevent releases to atmosphere.

(9) A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible waste as required to demonstrate compliance with §264.17 including documentation demonstrating compliance with §264.17(c).

(10) Traffic pattern, estimated volume (number, types of vehicles) and control (for example, show turns across traffic lanes, and stacking lanes (if appropriate); describe access road surfacing and load bearing capacity; show traffic control signals).

(11) Facility location information;

- (i) In order to determine the applicability of the seismic standard [§264.18(a)] the owner or operator of a new facility must identify the political jurisdiction (e.g., county, township, or election district) in which the facility is proposed to be located.

[Comment: If the county or election district is not listed in Appendix VI of Part 264, no further information is required to demonstrate compliance with §264.18(a).]

- (ii) If the facility is proposed to be located in an area listed in Appendix VI of Part 264, the owner or operator shall demonstrate compliance with the seismic standard. This demonstration may be made using either published geologic data or data obtained from field investigations carried out by the applicant. The information provided must be of such quality to be acceptable to geologists experienced in identifying and evaluating seismic activity. The information submitted must show that either;

- (A) No faults which have had displacement in Holocene time are present, or no lineations which suggest the presence of a fault (which have displacement in Holocene time) within 3,000 feet of a facility are present, based on data from:

- (1) Published geologic studies,
- (2) Aerial reconnaissance of the area within a five mile radius from the facility,

- (3) An analysis of aerial photographs covering a 3,000 foot radius of the facility, and

- (4) If needed to clarify the above data, a reconnaissance based on walking portions of the area within 3,000 feet of the facility, or

- (B) If faults (to include lineations) which have had displacement in Holocene time are present within 3,000 feet of a facility, no faults pass within 200 feet of the portions of the facility, no faults pass within 200 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted, based on data from a comprehensive geologic analysis of the site. Unless a site analysis is otherwise conclusive concerning the absence of faults within 200 feet of such portions of the facility, data shall be obtained from a subsurface exploration (trenching) of the area with a distance of no less than 200 feet from portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such trenching shall be performed in a direction that is perpendicular to known faults (which have had displacement in Holocene time) passing within 3,000 feet of the portions of the facility where treatment, storage, or disposal of hazardous waste will be conducted. Such investigation shall document with supporting maps and other analyses, the location of faults found.

[Comment: The Guidance Manual for the Location Standards provides greater detail on the content of each type of seismic investigation and the appropriate conditions under which each approach or a combination of approaches would be used.]

- (iii) Owners and operators of all facilities shall provide an identification of whether the

facility is located within a 100 year flood plain. This identification must include the source of data for such determination and include a copy of the relevant Federal Insurance Administration (FIA) flood map, if used, or the calculations and maps used where an FIA map is not available. Information shall also be provided identifying the 100 year flood level and any other special flooding factors (e.g., wave action) which must be considered in designing, construction, operating, or maintaining the facility to with stand washout from as 100 year flood.

[Comment: Where maps for the National Flood Insurance Program produced by the Federal Insurance Administration (FIA) of the Federal Emergency Management Agency are available, they will normally be determinative of whether a facility is located within or outside of the 100 year flood plain. However, where the FIA map excludes an area (usually areas of the floodplain less than 200 feet in width), the areas must be considered and a determination made as to whether they are in the 100 year floodplain. Where FIA maps are not available for a proposed facility location, the owner or operator must use equivalent mapping techniques to determine whether the facility is within the 100 year floodplain, and if so located, what the 100 year flood elevation would be.]

(iv) Owners and operators of facilities located in the 100 year floodplain must provide the following information:

(A) Engineering analysis to indicate the various hydrodynamic and hydrostatic forces expected to result at the site as consequence of a 100 year flood.

(B) Structural or other engineering studies showing the design of operational units (e.g., tanks, incinerators) and flood protection devices (e.g., flood walls, dikes) at the facility and how these will prevent washout.

(C) If applicable, and in lieu of paragraphs (A) and (B) above, a detailed description of procedures to be followed to remove hazardous waste to safety before the facility is flooded, including:

(1) Timing of such movement relative to flood levels, including estimated time to move the waste, to show that such movement can be completed before floodwaters reach the facility.

(2) A description of the location(s) to which the waste will be moved and demonstration that those facilities will be eligible to receive hazardous waste in accordance with the regulation under Parts 122, 124, 264 and 265 of these regulations.

(3) The planned procedures, equipment, and personnel to be used and the means to ensure that such resources will be available in time for use.

(4) The potential for accidental discharges of the waste during movement.

(v) Existing facilities NOT in compliance with §264.18(b) shall provide a plan showing how the facility will be brought into compliance and a schedule for compliance.

(12) An outline of both the introductory and continuing training programs by owners or operators to prepare persons to operate or maintain the HWM facility in a safe manner as required to demonstrate compliance with §264.16. A brief description of how training will be designed to meet actual job tasks in accordance with requirements in §264.16(a)(3).

(13) A copy of the closure plan and, where applicable, the post closure plan required by §§264.112, 264.118, and 264.197. Include, where applicable, as part of the plans, specific requirements in §§264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351 and 264.603.

(14) For hazardous waste disposal units that have been closed, documentation that notices required under §264.119 have been filed.

(15) The most recent closure cost estimate for the facility prepared in accordance with §264.142 and a copy of the documentation required to demonstrate financial assurance under §264.143. For a new facility, a copy of the required documentation may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(16) Where applicable, the most recent post closure cost estimate for the facility prepared in accordance with 264.144 plus a copy of the documentation required to demonstrate financial assurance under 264.145. For a new facility, a copy of the required documentation may be submitted may be submitted 60 days prior to the initial receipt of hazardous wastes, if that is later than the submission of the Part B.

(17) Where applicable, a copy of the insurance policy or other documentation which comprises compliance with the requirements of §264.147. For a new facility, documentation showing the amount of insurance meeting the specification of §264.147(a) and, if applicable, §264.147(b), that the owner or operator plans to have in effect before initial receipt of hazardous waste for treatment, storage, or disposal.

(18) [Reserved]

(19) A topographic map showing a distance of 1000 feet around the facility at a scale of 2.5 centimeters (1 inch) equal to not more than 61.0 meters (200 feet). Contours must be shown on the map. The contour interval must be sufficient to clearly show the pattern of surface water flow in the vicinity of and from each operational unit of the facility. For example, contours with an interval of 1.5 meters (5 feet), if relief is greater than 6.1 meters (20 feet), or an interval of 0.6 meters (2 feet), if relief is less than 6.1 meters (20 feet). Owners and operators of HWM facilities located in mountainous areas should use larger contour intervals to adequately show topographic profiles of facilities. The map shall clearly show the following:

- (i) Map scale and date.
- (ii) 100 year floodplain area.
- (iii) Surface waters including intermittent streams.
- (iv) Surrounding land uses (residential, commercial, agricultural, recreational).
- (v) A wind rose (i.e., prevailing wind speed and direction).
- (vi) Orientation of the map (north arrow).
- (vii) Legal boundaries of the HWM facility site.
- (viii) Access control (fences, gates).
- (ix) Injection and withdrawal wells both on site and off site.
- (x) Buildings; treatment, storage, or disposal operations; or other structure (recreation

areas, runoff control systems, access and internal roads, storm, sanitary, process sewerage systems, loading and unloading areas, fire control facilities, etc.)

- (xi) Barriers for drainage or flood control.
- (xii) Location of operational units within the HWM facility site, where hazardous waste is

(or will be) treated, stored, or disposed (include equipment cleanup areas).

[Note: For large HWM facilities the Department will allow the use of other scales on a case by case basis.]

(20) Applicants may be required to submit such information as may be necessary to enable the Secretary to carry out his duties under other State laws.

(21) For land disposal facilities, if a case by case extension has been approved under §268.5 or a petition has been approved under §268.6, a copy of the notice of approval for the extension or petition is required.

(22) A summary of the pre-application meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under §124.31(c).

(c) Additional information requirements. The following additional information regarding protection of groundwater is required from owners or operators of hazardous waste facilities containing a regulated unit except as provided in §264.90(b) of these regulations:

(1) A summary of the ground water monitoring data obtained during the interim status period under §§265.90-265.94, where applicable.

(2) Identification of the uppermost aquifer and aquifers hydraulically interconnected beneath the facility property, including ground water flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area).

(3) On the topographic map required under paragraph (b)(19) of this section, a delineation of the waste management area, the property boundary, the proposed "point of compliance" as defined under §264.95, the proposed location of ground water monitoring wells as required under §264.97, and, to the extent possible, the information required in paragraph (c)(2) of this section.

(4) A description of any plume of contamination that has entered the ground water from a regulated unit at the time that the application was submitted that:

(i) Delineates the extent of the plume on the topographic map required under paragraph (b)(19) of this section;

(ii) Identifies the concentration of each Appendix IX, of Part 264 of these regulations, constituent throughout the plume or identifies the maximum concentrations of each Appendix IX constituent in the plume.

(5) Detailed plans and an engineering report describing the proposed ground water monitoring program to be implemented to meet the requirements of §264.97.

(6) If the presence of hazardous constituents has not been detected in the ground water at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a detection monitoring program which meets the requirements of §264.98. This submission must address the following items specified under §264.98:

(i) A proposed list of indicator parameters, waste constituents, or reaction products that can provide a reliable indication of the presence of hazardous constituents in the ground water;

(ii) A proposed ground water monitoring system;

(iii) Background values for each proposed monitoring parameter or constituent, or procedures to calculate such values; and

(iv) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground water monitoring data.

(7) If the presence of hazardous constituents has been detected in the ground water at the point of compliance at the time of permit application, the owner or operator must submit sufficient information, supporting data, and analyses to establish a compliance monitoring program which meets the requirements of §264.99. Except as provided in §264.98(g)(5), the owner or operator must also submit an engineering feasibility plan for a corrective action program necessary to meet the requirements of §264.100, unless the owner or operator obtains written authorization in advance from the Secretary to submit a proposed permit schedule for submittal of such a plan. To demonstrate compliance with §264.99, the owner or operator must address the following items:

(i) A description of the wastes previously handled at the facility;

(ii) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(iii) A list of hazardous constituents for which compliance monitoring will be undertaken in accordance with §264.97 and §264.99;

(iv) Proposed concentration limits for each hazardous constituent, based on the criteria set forth in §264.94(a), including a justification for establishing any alternate concentration limits;

(v) Detailed plans and an engineering report describing the proposed ground water monitoring system, in accordance with the requirements of §264.97; and

(vi) A description of proposed sampling, analysis and statistical comparison procedures to be utilized in evaluating ground water monitoring data.

(8) If hazardous constituents have been measured in the ground water which exceed the concentration limits established under §264.94 Table 1, or if ground water monitoring conducted at the time of permit application under §§265.90 265.94 at the waste boundary indicates the presence of hazardous constituents from the facility in ground water over background concentrations, the owner or operator must submit sufficient information, supporting data, and analyses to establish a corrective action program which meets the requirements of §264.100. However, an owner or operator is not required to submit information to establish a corrective action program if he demonstrates to the Secretary that alternate concentration limits will protect human health and the environment after considering the criteria listed in §264.94. An owner or operator who is not required to establish a corrective action program for this reason must instead submit sufficient information to establish a compliance monitoring program which meets the requirements of §264.99 and paragraph (c)(6) of this section. To demonstrate compliance with §264.100, the owner or operator must address, at a minimum, the following items:

(i) A characterization of the contaminated ground water, including concentrations of hazardous constituents;

(ii) The concentration limit for each hazardous constituent found in the ground water as set forth in §264.94;

(iii) Detailed plans and an engineering report describing the corrective action to be taken;

(iv) A description of how the ground water monitoring program will demonstrate the adequacy of the corrective action; and

(v) The permit may contain a schedule for submittal of the information required in paragraphs (c)(8)(iii) and (iv) provided the owner or operator obtains written authorization from the Secretary prior to submittal of the complete permit application.

(d) Information requirements for solid waste management units.

(1) The following information is required for each solid waste management unit at a facility seeking a permit:

(i) The location of the unit on the topographic map required under paragraph (b)(19) of this section.

(ii) Designation of type of unit.

(iii) General dimensions and structural description (supply any available drawings).

(iv) When the unit was operated.

(v) Specifications of all wastes that have been managed at the unit, to the extent available.

(2) The owner or operator of any facility containing one or more solid waste management units must submit all available information pertaining to any release of hazardous wastes or hazardous constituents from such unit or units.

(3) The owner/operator must conduct and provide the results of sampling and analysis of groundwater, land surface, and subsurface strata, surface water, or wells, where the Secretary ascertains it is necessary to complete a RCRA Facility Assessment that will determine if a more complete investigation is necessary. (Amended June 19, 1992, August 1, 1995, January 1, 1999, August 23, 1999)

*(Break in Continuity of Sections)*

**Section 260.10 Definitions.**

When used in Parts 260 through 273 of these regulations, the following terms have the meanings given below:

"**Aboveground tank**" means a device meeting the definition of "tank" in §260.10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"**Act**" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6901 et seq.

"**Activelife Active Life**" of a facility means the period from the initial receipt of hazardous waste at the facility until the Secretary receives certification of final closure.

"**Active portion**" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of Part 261 of these regulations and which is not a closed portion. (See also "closed portion" and "inactive portion".)

"**Activity**" means construction, operation, or use of any facility, site, property or device.

"**Administrator**" means the Administrator of the Environmental Protection Agency, or his designee.

"**Ancillary equipment**" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal on site, or to a point of shipment for disposal off site.

"**Aquifer**" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"**Authorized representative**" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"**Battery**" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"**Boiler**" means an enclosed device using controlled flame combustion and having the following characteristics:

(1) (i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber, and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at

least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feed water pumps); or

(2) The unit is one which the Secretary has determined, on a case by case basis to be a boiler, after considering standards in §260.32.

**"Carbon regeneration unit"** means any enclosed thermal treatment device used to regenerate spent activated carbon.

**"Certification"** means a statement of professional opinion based on knowledge and belief.

**"CFR"** means Code of Federal Regulations.

**"Closed portion"** means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

**"Commingling"** means the transfer of hazardous wastes between DOT approved containers performed by a hazardous waste transporter where the containers holding such wastes may be opened and mixed with other hazardous waste.

**"Commission"** means the Commission on the Transportation of Hazardous Materials.

**"Component"** means either the tank or ancillary equipment of a tank system.

**"Confined aquifer"** means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

**"Consolidation"** means the transfer of containers of hazardous wastes between transport conveyances by a hazardous waste transporter where the containers holding such wastes are not opened or the wastes repackaged.

**"Container"** means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

**"Containment building"** means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subpart DD of Parts 264 or 265 of these regulations.

**"Contingency plan"** means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**"Corrosion expert"** means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

**"Department"** means the Department of Natural Resources and Environmental Control of the State of Delaware.

**"Designated facility"** means a hazardous waste treatment, storage, or disposal facility which

(1) (i) has received a permit (or interim status) in accordance with the requirements of Parts 122 or 124 of these regulations,

(2) (ii) has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271 or

(3) (iii) is regulated under §261.6(c)(2) or Subpart F of Part 266 of these regulations, and or

(4) (iv) that has been designated on the manifest by the generator pursuant to §260.20. ~~If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.~~

"Designated facility" also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §264.72(f) or §265.72(f) of these regulations.

If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

**"Destination facility"** means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§273.13 and 273.33 of these

regulations. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"**Dike**" means an embankment or ridge of either natural or man made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"**Dioxins and furans (D/F)**" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"**Discharge**" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, purging, emitting, emptying, or dumping of hazardous waste into or on any land or water.

"**Disposal**" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"**Disposal facility**" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

"**Division**" means the Division of Air and Waste Management.

"**Drip pad**" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"**Elementary neutralization unit**" means a device which:

(1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in §261.22 of these regulations, or are listed in Subpart D of Part 261 of these regulations only for this reason; and,

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in §260.10 of these regulations.

"**EPA hazardous waste number**" means the number assigned by DNREC to each hazardous waste listed in Part 261, Subpart D, of these regulations and to each characteristic identified in Part 261, Subpart C, of these regulations.

"**EPA Identification Number**" means the number assigned by DNREC to each generator, transporter, and treatment, storage, or disposal facility.

"**EPA region**" means the states and territories found in any one of the following ten regions:

Region I	Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.
Region II	New York, New Jersey, Commonwealth of Puerto Rico, and the U. S. Virgin Islands.
Region III	Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.
Region IV	Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.
Region V	Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.
Region VI	New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.
Region VII	Nebraska, Kansas, Missouri, and Iowa.
Region VIII	Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.
Region IX	California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.
Region X	Washington, Oregon, Idaho, and Alaska.

"**Engineer**" means an engineer registered and authorized to practice in Delaware as a Professional Engineer by the "Delaware Association of Professional Engineers".

"**Equivalent method**" means any testing or analytical method approved by the Secretary under Part 260 of Subpart C of these regulations.

"**Existing hazardous waste management (HWM) facility**" or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either

(2) (i) A continuous on site, physical construction program has begun; or  
 (ii) The owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction of the facility to be completed within a

reasonable time. Within this definition, "Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

**"Existing portion"** means that land surface area of an existing waste management unit included in the original Part A application, on which wastes have been placed prior to the issuance of a permit.

**"Existing tank system"** or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986 for HSWA tanks, as defined in §260.10, or August 29, 1988 for non-HSWA tanks, as defined in §260.10. Installation will be considered to have commenced if (1) the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and (2) either (i) a continuous on site physical construction or installation program has begun, or (ii) the owner or operator has entered into contractual obligations which cannot be canceled or modified without substantial loss for physical construction of the site or installation of the tank system to be completed within a reasonable time.

**"Explosives or munitions emergency"** means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

**"Explosives or munitions emergency response"** means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in place render safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

**"Explosives or munitions emergency response specialist"** means an individual trained in chemical or conventional munitions or explosives handling, transportation, render safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

**"Facility"** or "Hazardous Waste Management (HWM) Facility" means:

1. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combination of them).

2. For the purpose of implementing corrective action under §264.101, all contiguous property under the control of the owner or operator seeking a permit under 7 **Del.C.**, Chapter 63. This definition also applies to facilities implementing corrective action under 7 **Del.C.**, Chapter 63.

3. Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to §264.101, but is subject to corrective action requirements if the site is located within such a facility.

**"Federal agency"** means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

**"Federal, State and local approvals or permits necessary to begin physical construction"** means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

**"Final closure"** means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of these regulations are no longer conducted at the facility unless subject to the provisions in §262.34.

**"Food chain crops"** means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"**Freeboard**" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"**Free liquids**" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"**Generator**" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of these regulations or whose act first causes a hazardous waste to become subject to regulation.

"**Geologist**" means a geologist registered by the "Delaware State Board of Registration of Geologists."

"**Ground water**" means water below the land surface in a zone of saturation.

"**HSWA tank**" means a tank owned or operated by a small quantity hazardous waste generator, a new underground tank, or a tank which cannot be entered for inspection.

"**Hazardous waste**" means a hazardous waste as defined in §261.3 of these regulations.

"**Hazardous waste constituent**" means a constituent which caused the Secretary to list the hazardous waste in Part 261, Subpart D of these regulations, or a constituent listed in Table 1 of §261.24 of these regulations.

"**Hazardous waste management unit**" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"**Inactive portion**" means that portion of a facility which is not operated after the effective date of Part 261 of these regulations. (See also "active portion" and "closed portion".)

"Incinerator" means any enclosed device that:

- (1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
- (2) Meets the definition of infrared incinerator or plasma arc incinerator.

"**Incompatible waste**" means a hazardous waste which is unsuitable for:

- (1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
- (2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases. (See Part 265, Appendix V, of these regulations for examples.)

"**Individual generation site**" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (1) Cement kilns
- (2) Lime kilns
- (3) Aggregate kilns
- (4) Phosphate kilns
- (5) Coke ovens
- (6) Blast furnaces
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
- (8) Titanium dioxide chloride process oxidation reactors
- (9) Methane reforming furnaces
- (10) Pulping liquor recovery furnaces
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
- (12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
- (13) Such other devices as the Secretary may, after notice and comment, add to this list on the

basis of one or more of the following factors.

- (i) The design and use of the device primarily to accomplish recovery of material products;
- (ii) The use of the device to burn or reduce raw materials to make a material product;
- (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
- (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
- (v) The use of the device in common industrial practice to produce a material product;
- and
- (vi) Other factors, as appropriate.

**"Infrared incinerator"** means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

**"Inground tank"** means a device meeting the definition of "tank" in §260.10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

**"Injection well"** means a well into which fluids are injected. (See also "underground injection".)

**"Inner liner"** means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

**"In operation"** refers to a facility which is treating, storing, or disposing of hazardous waste.

**"Installation inspector"** means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

**"International shipment"** means the transportation of hazardous waste into or out of the jurisdiction of the United States.

**"Lamp"** also referred to as "universal waste lamp", is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

**"Landfill"** means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

**"Landfill cell"** means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

**"Land treatment facility"** means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

**"Leachate"** means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

**"Leak detection system"** means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tank) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

**"Liner"** means a continuous layer of natural or man made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

**"Management"** or "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

**"Manifest"** means the shipping document EPA form 8700 22, and if necessary, EPA form 8700-22A, originated and signed by the generator or offeror in accordance with the instructions included in Part 262, ~~Subpart B, Appendix II~~ of these regulations and the applicable requirements of DRGHW parts 262 through 265.

~~**"Manifest document number"** means the U.S. EPA 12 digit identification number assigned to the Generator~~

~~plus an optional unique 5 digit document number assigned to the Manifest by the generator for recording and reporting purposes.~~

"Manifest tracking number" means: The alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

"Mercury-containing equipment" means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective active management unit, unit eligible for a research, development, and demonstration permit under §122.65, or staging pile.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

"New hazardous waste management facility" or "new facility" means a facility which began operation, or for which construction commenced after November 19, 1980. (See also "Existing hazardous waste management facility".)

"New tank system" or "new tank component" means a tank system or component that will be used for storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986 for HSWA tanks, as defined in §260.10; except, however, for purposes of §264.193(g)(2) and 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986 for HSWA tanks and August 29, 1988 for non-HSWA tanks. (See also "existing tank system".)

"Non-HSWA tank" means a tank which is not owned or operated by a small quantity hazardous waste generator and is either an existing underground tank or a tank that can be entered for inspection.

"Onground tank" means a device meeting the definition of "tank" in §260.10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On site" means the same or geographically contiguous property which may be divided by public or private right of way, provided the entrance and exit between the properties is at a cross roads intersection, and access is by crossing as opposed to going along, the right of way. Non contiguous properties owned by the same person but connected by a right of way which he controls and to which the public does not have access, is also considered on site property.

"Open burning" means the combustion of any material without the following characteristics:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion;
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time;
- (3) Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment".)

"Operator" means the person responsible for the overall operation of a facility.

"Owner" means the person who owns a facility or part of a facility.

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Parts 264 and 265 of these regulations at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit.

management unit, while other units of the same facility continue to operate.

**"Person"** means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

**"Personnel"** or "facility personnel" means all persons who work at or oversee the operations of a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Parts 264 or 265 of these regulations. [Comment: For the purpose of personnel training, the definition of personnel or facility personnel includes emergency coordinators.]

**"Pesticide"** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (1) Is a new animal drug under FFDCA section 201(w), or
- (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

**"Pile"** means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

**"Plasma arc incinerator"** means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

**"Point source"** means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

**"Publicly owned treatment works"** or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality" (as defined by §502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

**"Qualified Engineer"** or **"Qualified Geologist"** shall mean that the responsible professional geologist or engineer is qualified by training and experience to gather and evaluate the data required by these regulations.

**"Qualified Ground-Water Scientist"** means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding ground-water monitoring and contaminant fate and transport.

**"Regional Administrator"** means the Regional Administrator for the Environmental Protection Agency Region in which the facility is located, or his designee.

**"Remediation waste"** means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing clean-up.

**"Remediation waste management site"** means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under §264.101, but is subject to corrective action requirements if the site is located in such a facility.

**"Replacement Unit"** means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

**"Representative sample"** means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

**"Run off"** means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

**"Run on"** means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

**"Saturated zone"** or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

"**Secretary**" means the Secretary of the Department of Natural Resources and Environmental Control, or his duly authorized designee.

"**Sludge**" means any solid, semi solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, stormwater management unit, or air pollution control facility not including the treated effluent from a water treatment plant or stormwater management unit.

"**Sludge dryer**" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"**Small Quantity Generator**" means a generator who generates less than 1000 kg of hazardous waste in a calendar month.

"**Solid waste**" means a solid waste as defined in §261.2 of these regulations.

"**Sorbent**" means a material that is used to soak up free liquids by either adsorption or absorption, or both.

"**Sorb**" means to either adsorb or absorb, or both.

"**Staging pile**" means an accumulation of solid, non flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Secretary according to the requirements of §264.554.

"**State**" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"**Storage**" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"**Sump**" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"**Surface impoundment**" or "impoundment" means a facility or part of a facility which is a natural topographic depression, man made excavation, or diked area formed primarily of earthen materials (although it may be lined with man made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"**Tank**" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"**Tank system**" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"**TEQ**" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

"**Thermal treatment**" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

"**Thermostat**" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 273.13(c)(2) or 273.33(c)(2).

"**Totally enclosed treatment facility**" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"**Transfer facility**" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

"**Transport vehicle**" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

"**Transportation**" means the movement of hazardous waste by air, rail, highway, or water.

"**Transporter**" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or

water.

**"Treatability Study"** means a study in which a hazardous waste is subjected to a treatment process to determine:

- (1) Whether the waste is amenable to the treatment process,
- (2) What pretreatment (if any) is required,
- (3) The optimal process conditions needed to achieve the desired treatment,
- (4) The efficiency of a treatment process for a specific waste or wastes, or
- (5) The characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of the §261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies.

A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

**"Treatment"** means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

**"Treatment Zone"** means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

**"Underground injection"** means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

**"Underground tank"** means a device meeting the definition of "tank" in §260.10 whose entire surface area is totally below the surface of and covered by the ground.

**"Unfit for use tank system"** means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

**"Universal Waste"** means any of the following hazardous wastes that are managed under the universal waste requirements of Part 273 of these regulations:

- (1) Batteries as described in §273.2 of these regulations;
- (2) Pesticides as described in §273.3 of these regulations;
- (3) ~~Thermostats as described in §273.4 of these regulations;~~ and Mercury-containing equipment

as described in §273.4 of these regulations; and

- (4) Lamps as described §273.5 of these regulations.

**"Universal Waste Handler":**

- (1) Means:

- (i) A generator (as defined in this section) of universal waste; or
- (ii) The owner or operator of a facility, including all contiguous property, that receives

universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

- (2) Does not mean:

- (i) A person who treats (except under the provisions of 273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles universal waste; or

- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

**"Universal Waste Transporter"** means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

**"Unsaturated zone"** or "zone of aeration" means the zone between the land surface and the water table.

**"United States"** means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

**"Uppermost aquifer"** means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

**"Used oil"** means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

**"Vessel"** includes every description of watercraft, used or capable of being used as a means of transportation

on the water.

**"Wastewater treatment unit"** means a device which:

- (1) Is part of a wastewater treatment facility which is subject to regulations under either §402 or §307(b) of the Clean Water Act; and
- (2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in §261.3 of these regulations, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of these regulations, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in §261.3 of these regulations; and
- (3) Meets the definition of tank or tank system in §260.10 of these regulations.

**"Water (bulk shipment)"** means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

**"Well"** means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

**"Well injection"**: (See "Underground injection".)

**"Zone of engineering control"** means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

(Amended November 21, 1985, August 29, 1988; August 10, 1990; June 19, 1992; November 19, 1993; July 26, 1994, August 1, 1995, July 23, 1996, August 21, 1997, January 1, 1999, June 2, 2000, April 23, 2001, February 12, 2004)

***(Break in Continuity of Sections)***

**Section 261.4 Exclusions.**

(a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this part:

- (1) (i) Domestic sewage: and  
(ii) Any mixture of domestic sewage and other wastes that passes through a sewage system to a publicly owned treatment works for treatment. Domestic sewage means untreated sanitary wastes that pass through a sewage system.
- (2) Industrial wastewater discharges that are point source discharges subject to regulation under §402 of the Clean Water Act as amended.  
(Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.)
- (3) Irrigation return flows.
- (4) Source, special nuclear or by product material as defined by the Atomic Energy Act of 1954, as amended, 42 USC §2011, et. seq.
- (5) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.
- (6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in §261.1(c) of these regulations.
- (7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in §261.1(c) of these regulations.
- (8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:
  - (i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
  - (ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
  - (iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
  - (iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.
- (9) (i) Spent wood preserving solutions that have been reclaimed and are reused for their

original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in (a)(9)(i) and (a)(9)(ii) of this section, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Part 265, Subpart W of these regulations, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Secretary one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Secretary for reinstatement. The Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148 and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in §261.24 of this part, when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12) (i) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 - including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under Part 261, Subpart D, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in Part 261 Subpart D; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in §279.1.

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to

recovery; and

(ii) Free of mercury switches, mercury relays and nickel cadmium batteries and lithium batteries.

(15) [Reserved]

(16) Comparable fuels or comparable syngas fuels (i.e., comparable, syngas fuels) that meet the requirements of §261.38.

(17) Spent materials (as defined in §261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in §260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Secretary providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of paragraph (a)(7) of this section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

(i) the oil is hazardous only because it exhibits the characteristic of ignitability (as defined

in Section 261.21) and/or toxicity for benzene (§261.24, waste code D018), and

(ii) the oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in §261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in §261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Secretary in whose jurisdiction the exclusion is being claimed, which contains the name, address and EPA I.D. number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator's or intermediate handlers' facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Secretary that, at a minimum, specifies the name, address and EPA I.D. number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded

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hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Secretary an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in §262.11 of these regulations, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in paragraph (a)(20)(ii)(A) of this section, and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of Parts 264 and 265.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of (a)(21)(ii) of this section. Such records must at a minimum include:

- (A) The dates and times product samples were taken, and the dates the samples were analyzed;
- (B) The names and qualifications of the person(s) taking the samples;
- (C) A description of the methods and equipment used to take the samples;

analyses of the samples were performed;

(D) The name and address of the laboratory facility at which

cleanup and sample preparation methods; and

(E) A description of the analytical methods used, including any

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

(b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous waste:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, (e.g., refuse derived fuel) or reused. Household waste means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility:

(i) Receives and burns only.

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by §266.112 of these regulations for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration development, or production of crude oil, natural gas or geothermal energy.

(6) (i) Wastes which fail the test for the Toxicity Characteristics because chromium is present or are listed in Subpart D due to the presence of chromium which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A), (B) and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/ wet finish; retan/wet finish; no beamhouse; through the blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry; hairpulp/chrome tan/retan/wet finish; hair save/chrome tan retan wet finish; retain/wet finish; no beamhouse; through the blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hairpulp/ chrome tan/retan/wet finish; hair save/chrome tan/retan wet finish; no beamhouse; through the blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet

finish; no beamhouse; through the blue; and shearling.

(E) Wastewater treatment sludges generated by the following sub categories of the leather tanning and finishing industry; hairpulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through the blue; and shearling.

(F) Wastewater treatment sludges generated by the following sub categories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/ wet finish; and through the blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO<sub>2</sub> pigment using chromium bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided by §266.112 of these regulations for facilities that burn or process hazardous waste.

(i) For purposes of §261.4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of §261.4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper

processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous

process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/

sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel

production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by §266.112 of these regulations for facilities that

burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of §261.24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under 7 **Del.C.**, Chapter 74, Delaware Underground Storage Tank Act.

(11) [Reserved]

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Non-terne plated used oil filters that are not mixed with wastes listed in Subpart D of this part if these oil filters have been gravity hot-drained using one of the following methods:

- (i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
- (ii) Hot-draining and crushing;
- (iii) Dismantling and hot-draining; or
- (iv) Any other equivalent hot-draining method that will remove used oil.

(14) Used oil re-finishing distillation bottoms that are used as feedstock to manufacture asphalt products.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, and K178, and K181, if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under Sections 307(b) or 402 of the Clean Water Act.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of paragraph (b)(15)(v) of this section after the emergency ends.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non waste treatment manufacturing unit, is not subject to regulation under Parts 262 through 265, 268, 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.** §§6304, 6306 and 6307, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d) Samples.

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this Part of Parts 262 through 268, or 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.** §§6304, 6306 and 6307 when:

- (i) The sample is being transported to a laboratory for the purpose of testing; or
- (ii) The sample is being transported back to the sample collector after testing; or
- (iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or
- (iv) The sample is being stored in a laboratory before testing; or
- (v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
- (vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).
- (2) In order to qualify for the exemption in paragraph (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:
- (i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
- (ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:
- (A) Assure that the following information accompanies the sample:
- (1) The sample collector's name, mailing address and telephone number;
- (2) The laboratory's name, mailing address, and telephone number;
- (3) The quantity of the sample;
- (4) The date of shipment; and
- (5) A description of the sample.
- (B) Package the sample so that it does not leak, spill, or vaporize from its packaging.
- (3) This exemption does not apply if the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.
- (e) **Treatability Study Samples.**
- (1) Except as provided in paragraph (e)(2) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in §260.10, are not subject to any requirement of Parts 261 through 263 of these regulations or to the notification requirements of 7 **Del.C.**, Chapter 63, nor are such samples included in the quantity determinations of §261.5 and §262.34(d) when:
- (i) The sample is being collected and prepared for transportation by the generator or sample collector; or
- (ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
- (iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
- (2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:
- (i) The generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and
- (ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and
- (iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.
- (A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
- (B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:
- (1) The name, mailing address, and telephone number of the originator of the sample; annual report.

perform the treatability study;

- (2) The name, address, and telephone number of the facility that will
- (3) The quantity of the sample;
- (4) The date of shipment; and
- (5) A description of the sample, including its EPA Hazardous Waste

Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under §261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

- (A) Copies of the shipping documents;
- (B) A copy of the contract with the facility conducting the treatability study;
- (C) Documentation showing:
  - (1) The amount of waste shipped under this exemption;
  - (2) The name, address, and EPA identification number of the laboratory

or testing facility that received the waste;

- (3) The date the shipment was made; and
- (4) Whether or not unused samples and residues were returned to the

generator.

(vi) The generator reports the information required under paragraph (e)(v)(C) of this section in its annual report.

(3) The Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and timeframes allowed in paragraph (e)(3)(i) and (ii) of this section are subject to all the provisions in paragraphs (e)(1) and (e)(2)(iii) through (vi) of this section. The generator or sample collector must apply to the DNREC Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Secretary considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing

treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this Part, Part 124, Parts 262266, 268, and 122, or to the notification requirements of 7 **Del.C.**, Chapter 63 provided that the conditions of paragraphs (f)(1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year (two years for treatability studies involving bioremediation) have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, onsite, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

- (iv) The total quantity of waste in storage each day;
- (v) The quantity and types of waste subjected to treatability studies;
- (vi) When each treatability study was conducted;
- (vii) The final disposition of residues and unused sample from each treatability study;

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under §261.3 and, if so, are subject to Parts 261 through 268, and Part 122 of these regulations, unless the residues and unused samples are returned to the sample originator under the §261.4(e) exemption.

(11) The facility notifies the Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) Dredged material that is not a hazardous waste. Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under Section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (g)(2)(i) and (ii) of this section, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990; July 26, 1994, August 1, 1995, August 21, 1997, January 1, 1999, August 23, 1999, June 2, 2000, July 1, 2002, February 12, 2004)

***(Break in Continuity of Sections)***

**Section 261.7 Residues of hazardous waste in empty containers.**

(a) (1) Any hazardous waste remaining in either (i) an empty container or (ii) an inner liner removed from an empty container, as defined in paragraph (b) of these regulations is not subject to regulation under Parts 261 through 265 of these regulations or Parts 268, 122 or 124 of these regulations or to the notification requirements of 7 **Del.C.**, §§6304, 6306 and 6307.

(2) Any hazardous waste in either (i) a container that is not empty or (ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under Parts 261 through 265, and Parts 268, 122 and 124 of these regulations and to the notification requirements of 7 **Del.C.**, §§6304, 6306 and 6307.

(b) (1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§261.31, 261.32, or 261.33(e) of these regulations is empty if:

(i) all wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(ii) no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or

(iii) (A) no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner ~~if the container is less than or equal to 110 gallons in size~~ less than or equal to 119 gallons in size; or

(B) no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than ~~440~~ 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in §§261.31, 261.32 or 261.33(e) is empty if:

- (i) the container or inner liner has been triple rinsed using a solvent capable of removing

the commercial chemical product or manufacturing chemicals intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product of manufacturing chemical intermediate with the container, has been removed.

(Amended November 21, 1985; August 10, 1990, August 1, 1995)

***(Break in Continuity of Sections)***

**Section 261.9 Requirements for Universal Waste.**

The wastes listed in this section are exempt from regulation under Parts 262 through 268 and 122 of these regulations except as specified in Part 273 of these regulations and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under Part 273:

(a) Batteries as described in §273.2;

(b) Pesticides as described in §273.3 of these regulations;

(c) ~~Thermostats as described in §273.4 of these regulations; and~~ Mercury-containing equipment as described in § 273.4 of these regulations; and

(d) Lamps as described in §273.5 of these regulations.

(Amended July 23, 1996, June 2, 2000)

***(Break in Continuity of Sections)***

**Section 261.32 Hazardous wastes from specific sources.**

a The following solid wastes are listed hazardous wastes from specific sources unless they are excluded under §§260.20 and 260.22 and listed in Appendix IX.

**Industry and Hazardous waste**  
**EPA**  
**Hazardous**  
**Waste No.**

**Hazard code**

**Organic Chemicals**

K181                      Nonwastewaters from the production of dyes and/or pigments (T) (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of this section that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Subtitle D landfill unit subject to the design criteria in 40 CFR §258.40, (ii) disposed in a Subtitle C landfill unit subject to either §264.301 or §265.301, (iii) disposed in other Subtitle D landfill units that meet the design criteria in §258.40, §264.301, or §265.301, or (iv) treated in a combustion unit that is permitted under Subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, dyes and/or pigments production is defined in paragraph (b)(1) of this section. Paragraph (d) of this section describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under §§261.21-261.24 and 261.31-261.33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met

(b) Listing Specific Definitions: (1) For the purposes of the K181 listing, dyes and/or pigments production is defined to include manufacture of the following product classes: dyes, pigments, or FDA certified colors that are classified as azo, triarylmethane, perylene or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

(c) K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

<u>Constituent</u>	<u>Chemical abstracts No.</u>	<u>Mass levels (kg/yr)</u>
<u>Aniline</u>	<u>62-53-3</u>	<u>9,300</u>
<u>o-Anisidine</u>	<u>90-04-0</u>	<u>110</u>
<u>4-Chloroaniline</u>	<u>106-47-8</u>	<u>4,800</u>
<u>p-Cresidine</u>	<u>120-71-8</u>	<u>660</u>
<u>2,4-Dimethylaniline</u>	<u>95-68-1</u>	<u>100</u>
<u>1,2-Phenylenediamine</u>	<u>95-54-5</u>	<u>710</u>
<u>1,3-Phenylenediamine</u>	<u>108-45-2</u>	<u>1,200</u>

(d) Procedures for demonstrating that dyes and/or pigment nonwastewaters are not K181. The procedures described in paragraphs (d)(1)-(d)(3) and (d)(5) of this section establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in paragraph (a) of this section). If the nonwastewaters are disposed in landfill units or treated in combustion units as described in paragraph (a) of this section, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the

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**PROPOSED REGULATIONS**

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K181 listing description, the generator must maintain documentation as described in paragraph (d)(4) of this section.

(1) Determination based on no K181 constituents. Generators that have knowledge (e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (see paragraph (c) of this section) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

(2) Determination for generated quantities of 1,000 MT/yr or less for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the paragraph (c) of this section listing levels of this section. To make this determination, the generator must:

(i) Each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons.

(ii) Track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of paragraph (d)(3) of this section for the remainder of the year.

(iii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(iv) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The quantity of dyes and/or pigment nonwastewaters generated.

(B) The relevant process information used.

(C) The calculations performed to determine annual total mass loadings for each

K181 constituent in the nonwastewaters during the year.

(3) Determination for generated quantities greater than 1,000 MT/yr for wastes that contain K181 constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in paragraphs ((d)(3)(i)-(d)(3)(xi) of this section) in order to make a determination that its waste is not K181.

(i) Determine which K181 constituents (see paragraph (c) of this section) are reasonably expected to be present in the wastes based on knowledge of the wastes (e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

(ii) If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in paragraph (d)(2) of this section and keep the records described in paragraph (d)(2)(iv) of this section. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described below in this section.

(iii) Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

fully:

(A) A discussion of the number of samples needed to characterize the wastes

samples:

(B) The planned sample collection method to obtain representative waste

spatial variability of the wastes.

(C) A discussion of how the sampling plan accounts for potential temporal and

preparation, clean up (if necessary), and determinative methods.

(D) A detailed description of the test methods to be used, including sample

plan.

(iv) Collect and analyze samples in accordance with the waste sampling and analysis

(A) The sampling and analysis must be unbiased, precise, and representative of

the wastes.

(B) The analytical measurements must be sufficiently sensitive, accurate and precise to support any claim that the constituent mass loadings are below the paragraph (c) of this section listing levels of this section.

(v) Record the analytical results.

(vi) Record the waste quantity represented by the sampling and analysis results.

(vii) Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

(viii) Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

(ix) Determine whether the mass of any of the K181 constituents listed in paragraph (c) of this section generated between January 1 and December 31 of any year is below the K181 listing levels.

(x) Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(A) The sampling and analysis plan.

(B) The sampling and analysis results (including QA/QC data)

(C) The quantity of dyes and/or pigment nonwastewaters generated.

(D) The calculations performed to determine annual mass loadings.

(xi) Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.

(A) The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(B) The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(C) If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

(4) Recordkeeping for the landfill disposal and combustion exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

(5) Waste holding and handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the subtitle C requirements during the interim period, the generator could be subject to an enforcement action for improper management.

***(Break in Continuity of Sections)***

**Appendix VII Basis for Listing Hazardous Waste**

**EPA  
hazardous  
waste  
No.**

**Hazardous constituents for which listed**

F001	Tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1 trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F002	Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1 trichloroethane, 1,1,2 trichloroethane, chlorobenzene, 1,1,2 trichloro1,2,2 trifluoroethane, orthodichlorobenzene, trichlorofluoromethane.
F003	N.A.

F004	Cresols and cresylic acid, nitrobenzene.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2ethoxyethanol, 2nitropropane.
F006	Cadmium, hexavalent chromium, nickel, cyanide (complexed).
F007	Cyanide (salts).
F008	Cyanide (salts).
F009	Cyanide (salts).
F010	Cyanide (salts).
F011	Cyanide (salts).
F012	Cyanide (complexed).
F019	Hexavalent chromium, cyanide (complexed).
F020	Tetra and pentachlorodibenzopdioxins; tetra and pentachlorodibenzofurans; tri and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F021	Penta and hexachlorodibenzopdioxins; penta and hexachlorodibenzofurans; pentachlorophenol and its derivatives.
F022	Tetra, penta, and hexachlorodibenzopdioxins; tetra, penta, and hexachlorodibenzofurans.
F023	Tetra, and pentachlorodibenzopdioxins; tetra and pentachlorodibenzofurans; tri and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F024	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1dichloroethane, 1,2dichloroethane, trans1,2dichloroethylene, 1,1dichloroethylene, 1,1,1trichloroethane, 1,1,2trichloroethane, trichloroethylene, 1,1,1,2tetrachloroethane, 1,1,2,2tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, allyl chloride (3chloropropene), dichloropropane, dichloropropene, 2chloro1,3butadiene, hexachloro1,3butadiene, hexachlorocyclopentadiene, hexachlorocyclohexane, benzene, chlorobenzene, dichlorobenzenes,1,2,4trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.
F025	Chloromethane; Dichloromethane; Trichloromethane; Carbontetrachloride; Chloroethylene; 1,1Dichloroethane; 1,2Dichloroethane; trans1,2Dichloroethylene; 1,1Dichloroethylene; 1,1,1Trichloroethane; 1,1,2Trichloroethane; Trichloroethylene; 1,1,1,2Tetrachloroethane; 1,1,2,2Tetrachloroethane; Tetrachloroethylene; Pentachloroethane; Hexachloroethane; Allyl chloride (3Chloropropene); Dichloropropane; Dichloropropene; 2Chloro1,3butadiene; Hexachloro1,3butadiene; Hexachlorocyclopentadiene; Benzene; Chlorobenzene; Dichlorobenzene; 1,2,4Trichlorobenzene; Tetrachlorobenzene; Pentachlorobenzene; Hexachlorobenzene; Toluene; Naphthalene.
F026	Tetra and pentachlorodibenzopdioxins; tetra and pentachlorodibenzofurans; tri and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F027	Tetra, penta, and hexachlorodibenzopdioxins; tetra, penta, and hexachlorodibenzofurans; tri, tetra, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F028	Tetra, penta, and hexachlorodibenzopdioxins; tetra, penta, and hexachlorodibenzofurans; tri, tetra, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine and other salts.
F032	Benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)-anthracene, indeno(1,2,3-cd)pyrene, pentachlorophenol, arsenic, chromium, tetra-, penta-, hexa-, heptachlorodibenzo-p-dioxins, tetra-, penta-, hexa-, heptachlorodibenzofurans.
F034	Benz(a)anthracene, benzo(k)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, naphthalene, arsenic, chromium.
F035	Arsenic, chromium, lead.
F037	Benzene, benzo(a)pyrene, chrysene, lead, chromium.
F038	Benzene, benzo(a)pyrene, chrysene, lead, chromium.

F039	All constituents for which treatment standards are specified for multisource leachate (wastewaters and nonwastewaters) under section 268.43(a), Table CCW, of these regulations.
K001	Pentachlorophenol, phenol, 2chlorophenol, pchloromcresol, 2,4dimethylphenyl, 2,4dinitrophenol, trichlorophenols, tetrachlorophenols, 2,4dinitrophenol, creosote, chrysene, naphthalene, fluoranthene, benzo(b)fluoranthene, benzo(a)pyrene, indeno(1,2,3cd)pyrene, benz(a)anthracene, dibenz(a)anthracene, acenaphthalene.
K002	Hexavalent chromium, lead
K003	Hexavalent chromium, lead.
K004	Hexavalent chromium.
K005	Hexavalent chromium, lead.
K006	Hexavalent chromium.
K007	Cyanide (complexed), hexavalent chromium.
K008	Hexavalent chromium.
K009	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid.
K010	Chloroform, formaldehyde, methylene chloride, methyl chloride, paraldehyde, formic acid, chloroacetaldehyde.
K011	Acrylonitrile, acetonitrile, hydrocyanic acid.
K013	Hydrocyanic acid, acrylonitrile, acetonitrile.
K014	Acetonitrile, acrylamide.
K015	Benzyl chloride, chlorobenzene, toluene, benzotrichloride.
K016	Hexachlorobenzene, hexachlorobutadiene, carbon tetrachloride, hexachloroethane, perchloroethylene.
K017	Epichlorohydrin, chloroethers [bis(chloromethyl) ether and bis (2chloroethyl) ethers], trichloropropane, dichloropropanols.
K018	1,2dichloroethane, trichloroethylene, hexachlorobutadiene, hexachlorobenzene.
K019	Ethylene dichloride, 1,1,1trichloroethane, 1,1,2trichloroethane, tetrachloroethanes (1,1,2,2tetrachloroethane and 1,1,1,2tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K020	Ethylene dichloride, 1,1,1trichloroethane, 1,1,2trichloroethane, tetrachloroethanes (1,1,2,2tetrachloroethane and 1,1,1,2tetrachloroethane), trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
K021	Antimony, carbon tetrachloride, chloroform.
K022	Phenol, tars (polycyclic aromatic hydrocarbons).
K023	Phthalic anhydride, maleic anhydride.
K024	Phthalic anhydride, 1,4naphthoquinone.
K025	Metadinitrobenzene, 2,4dinitrotoluene.
K026	Paraldehyde, pyridines, 2picoline.
K027	Toluene diisocyanate, toluene2, 4diamine.
K028	1,1,1trichloroethane, vinyl chloride.
K029	1,2 dichloroethane, 1,1,1trichloroethane, vinyl chloride, vinylidene chloride, chloroform.
K030	Hexachlorobenzene, hexachlorobutadiene, hexachloroethane, 1,1,1,2tetrachloroethane, 1,1,2,2 tetrachloroethane, ethylene dichloride.
K031	Arsenic.
K032	Hexachlorocyclopentadiene.
K033	Hexachlorocyclopentadiene.
K034	Hexachlorocyclopentadiene.
K035	Creosote, chrysene, naphthalene, fluoranthene benzo(b) fluoranthene, benzo(a)pyrene, indeno(1,2,3cd) pyrene, benzo(a)anthracene, dibenzo(a)anthracene, acenaphthalene.
K036	Toluene, phosphorodithioic and phosphorothioic acid esters.
K037	Toluene, phosphorodithioic and phosphorothioic acid esters.
K038	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.
K039	Phosphorodithioic and phosphorothioic acid esters.
K040	Phorate, formaldehyde, phosphorodithioic and phosphorothioic acid esters.

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K041	Toxaphene.
K042	Hexachlorobenzene, orthodichlorobenzene.
K043	2,4dichlorophenol, 2,6dichlorophenol, 2,4,6trichlorophenol.
K044	N.A.
K045	N.A.
K046	Lead.
K047	N.A.
K048	Hexavalent chromium, lead.
K049	Hexavalent chromium, lead.
K050	Hexavalent chromium.
K051	Hexavalent chromium, lead.
K052	Lead.
K060	Cyanide, naphthalene, phenolic compounds, arsenic.
K061	Hexavalent chromium, lead, cadmium.
K062	Hexavalent chromium, lead.
K064	Lead, cadmium.
K065	Do.
K066	Do.
K069	Hexavalent chromium, lead, cadmium.
K071	Mercury.
K073	Chloroform, carbon tetrachloride, hexachloroethane, trichloroethane, tetrachloroethylene, dichloroethylene, 1,1,2,2tetrachloroethane.
K083	Aniline, diphenylamine, nitrobenzene, phenylenediamine.
K084	Arsenic.
K085	Benzene, dichlorobenzenes, trichlorobenzenes, tetrachlorobenzenes, pentachlorobenzene, hexachlorobenzene, benzyl chloride.
K086	Lead, hexavalent chromium.
K087	Phenol, naphthalene.
K088	Cyanide (complexes).
K090	Chromium.
K091	Do.
K093	Phthalic anhydride, maleic anhydride.
K094	Phthalic anhydride.
K095	1,1,2trichloroethane, 1,1,1,2tetrachloroethane, 1,1,2,2tetrachloroethane.
K096	1,2dichloroethane, 1,1,1trichloroethane, 1,1,2trichloroethane.
K097	Chlordane, heptachlor.
K098	Toxaphene.
K099	2,4dichlorophenol, 2,4,6trichlorophenol.
K100	Hexavalent chromium, lead, cadmium.
K101	Arsenic.
K102	Arsenic.
K103	Aniline, nitrobenzene, phenylenediamine.
K104	Aniline, benzene, diphenylamine, nitrobenzene, phenylenediamine
K105	Benzene, monochlorobenzene, dichlorobenzenes, 2,4,6trichlorophenol
K106	Mercury
K107	1,1Dimethylhydrazine (UDMH)
K108	1,1Dimethylhydrazine(UDMH)
K109	1,1Dimethylhydrazine (UDMH)
K110	1,1Dimethylhydrazine(UDMH)
K111	2,4Dinitrotoluene
K112	2,4Toluenediamine, otoluidine, ptoluidine, aniline
K113	2,4Toluenediamine, otoluidine, ptoluidine, aniline
K114	2,4Toluenediamine, otoluidine, ptoluidine
K115	2,4Toluenediamine

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K116	Carbon tetrachloride, tetrachloroethylene chloroform, phosgene
K117	Ethylene dibromide
K123	Ethylene thiourea
K124	Ethylene thiourea
K125	Ethylene thiourea
K126	Ethylene thiourea
K131	Dimethyl sulfate, methyl bromide
K132	Methyl bromide
K136	Ethylene dibromide
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K149	Benzotrichloride, benzyl chloride, chloroform, chloromethane, chlorobenzene, 1,4-dichlorobenzene,
K156	Benomyl, carbaryl, carbendazim, carbofuran, carbosulfan, formaldehyde, methylene chloride, triethylamine.
K151	Benzene, carbon tetrachloride, chloroform, hexachlorobenzene, pentachlorobenzene, toluene, 1,2,4,5-tetrachlorobenzene, tetrachloroethylene.
K157	Carbon tetrachloride, formaldehyde, methyl chloride, methylene chloride, pyridine, triethylamine.
K158	Benomyl, carbendazim, carbofuran, carbosulfan, chloroform, methylene chloride.
K159	Benzene, butylate, eptc, molinate, pebulate, vernolate.
K161	Antimony, arsenic, metam-sodium, ziram.
K169	Benzene.
K170	Benzo(a)pyrene, dibenz(a,h)anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, 3-methylcholanthrene, 7,12-demethylbenz(a)anthracene.
K171	Benzene, arsenic.
K172	Benzene, arsenic.
K174	1,2,3,4,6,7,8-Heptachlorodibenzo-p-dioxin (1,2,3,4,6,7,8-HpCDD), 1,2,3,4,6,7,8-Heptachlorodibenzofuran (1,2,3,4,6,7,8-HpCDF), 1,2,3,4,7,8,9-Heptachlorodibenzofuran (1,2,3,6,7,8,9-HpCDF), HxCDDs (All Hexachlorodibenzo-p-dioxins), HxCDFs (All Hexachlorodibenzofurans), PeCDDs (All Pentachlorodibenzo-p-dioxins), OCDD (1,2,3,4,6,7,8,9-Octachlorodibenzo-p-dioxin), OCDF (1,2,3,4,6,7,8,9-Octachlorodibenzofuran), PeCDFs (All Pentachlorodibenzofurans), TCDDs (All Tetrachlorodibenzo-p-dioxins), TCDFs (All Tetrachlorodibenzofurans).
K175	Mercury.
K176	Arsenic, Lead.
K177	Antimony.
K178	Thallium.
<u>K181</u>	<u>Aniline, o-anisidine, 4-chloroaniline, p-cresidine, 2,4-dimethylaniline, 1,2-phenylenediamine, 1,3-phenylenediamine.</u>

N.A. Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity. (Amended February 5, 1985; November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990; June 19, 1992, August 1, 1995, August 21, 1997, January 1, 1999, August 23, 1999, April 23, 2001, July 1, 2002)

*(Break in Continuity of Sections)*

### Appendix VIII Hazardous Constituents

Common Name	Chemical Abstracts Name <i>(Break in Continuity of Sections)</i>	Chemical Abstracts Number	Haz. Waste #
<u>o-Anisidine (2-methoxyaniline)</u> * * * * *	<u>Benzenamine, 2- Methoxy-</u> * *	<u>90-04-0</u>	.....
<u>p-Cresidine</u> * * * * *	<u>2-Methoxy-5- methylbenzenamine</u> * *	<u>120-71-8</u>	.....
<u>2,4-Dimethylaniline (2,4- xylidine)</u> * * * * *	<u>Benzenamine, 2,4-dimethyl-</u> * *	<u>95-68-1</u>	.....
<u>1,2-Phenylenediamine</u> * * * * *	<u>1,2- Benzenediamine</u> * *	<u>95-54-5</u>	.....
<u>1,3-Phenylenediamine</u>	<u>1,3- Benzenediamine.</u>	<u>108-45-2</u>	.....

**Sedous waste without having received an EPA identification number from the Secretary.**

(b) A generator who has not received an EPA identification number may obtain one by applying to the Secretary using "State of Delaware Notification of Regulated Waste Activity" form. Upon receiving the request, the Secretary will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) A generator must submit a subsequent State of Delaware Notification of Regulated Waste Activity Form (8700-12) whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the Secretary no less than 10 days prior to implementation of the change(s).

*(Break in Continuity of Sections)*

**Section 262.12 EPA Identification Numbers.**

(a) A generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Secretary.

(b) A generator who has not received an EPA identification number may obtain one by applying to the Secretary using "~~State of Delaware Notification of Regulated Waste Activity~~" "RCRA Subtitle C Site Identification Form", EPA Form 8700-12. Upon receiving the request, the Secretary will assign an EPA identification number to the generator.

(c) A generator must not offer his hazardous waste to transporters or to treatment, storage, or disposal facilities that have not received an EPA identification number.

(d) A generator must submit a subsequent ~~State of Delaware Notification of Regulated Waste Activity Form~~ "RCRA Subtitle C Site Identification Form", EPA Form ~~(8700-12)~~ whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the Secretary no less than 10 days prior to implementation of the change(s).

*(Break in Continuity of Sections)*

**Section 262.20 General requirements.**

(a) (1) A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050 0039) on EPA Form 8700-22 and, if necessary EPA Form 8700 22A, according to the instructions included in ~~Appendix II of Part 262~~ the appendix to this part.

(2) The revised Manifest form and procedures in 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.33, 262.34, 262.54, 262.60, and the appendix to part 262 of these regulations shall not apply until September 5, 2006.

(b) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(c) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(d) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(e) [Reserved]

(f) The requirements of this subpart and §262.32(b) do not apply to transportation during an explosives or munitions emergency response or transport of military munitions as defined in §260.10 of these regulations on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. Notwithstanding §263.10(a), the generator or transporter must comply with the requirements for transporters set forth in §263.30 and §263.31 in the event of a discharge of hazardous waste on a public or private right-of-way.

(Amended September 20, 1984, August 10, 1990, January 1, 1999)

### *(Break in Continuity of Sections)*

#### **Section 262.21 ~~Acquisition of manifests~~ Manifest tracking numbers, manifest printing, and obtaining manifests.**

~~(a) Since the Department requires the use of the Uniform National Manifest System, Generators shipping wastes into or within (from a Delaware Generator to a Delaware Disposal Facility) Delaware must use the Delaware Manifest form.~~

~~(b) Generators in Delaware who ship out of state must use the form of the state which will receive the waste. If the state does not supply the manifest form, the generator must use the Delaware Manifest form.~~

~~(Amended September 20, 1984)~~

(a) (1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of this section.

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant must submit an initial application to the EPA Director of the Office of Solid Waste that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house (i.e., using its own printing establishments) or through a separate (i.e., unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (e.g., prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be preprinted on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest

tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will pre-print a unique number on each form (e.g., crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public (e.g., for purchase).

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (e.g., corporate brochures, product samples, customer references, documentation of ISO certification), so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this Section and that it will notify the EPA Director of the Office of Solid Waste of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA will review the application submitted under paragraph (b) of this section and either approve it or request additional information or modification before approving it.

(d) (1) Upon EPA approval of the application under paragraph (c) of this section, EPA will provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in paragraph (d)(3) of this section. The registrant's samples must meet all of the specifications in paragraph (f) of this section and be printed by the company that will print the manifest as identified in the application approved under paragraph (c) of this section.

(2) The registrant must submit a description of the manifest samples as follows:

(i) Paper type (i.e., manufacturer and grade of the manifest paper);

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA will evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant must print the manifest and continuation sheet according to its application approved under paragraph (c) of this section and the manifest specifications in paragraph (f) of this section. It also must print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets must be printed according to the following specifications:

(1) The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms 8700-22 and 8700-22A, respectively. However, information required to complete the manifest may be preprinted on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet must be printed on 8 1/2 x 11-inch white paper, excluding common stubs (e.g., top- or side-bound stubs). The paper must be durable enough to withstand normal use.

(4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.

(5) The manifest and continuation sheet must be printed as six-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

- (i) Page 1 (top copy): "Designated facility to destination State (if required)".
- (ii) Page 2: "Designated facility to generator State (if required)".
- (iii) Page 3: "Designated facility to generator".
- (iv) Page 4: "Designated facility's copy".
- (v) Page 5: "Transporter's copy".
- (vi) Page 6 (bottom copy): "Generator's initial copy".

(7) The instructions in the appendix to ~~40~~ CFR part 262 of these regulations must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

- (i) Manifest Form 8700-22.
  - (A) The "Instructions for Generators" on Copy 6;
  - (B) The "Instructions for International Shipment Block" and "Instructions for Transporters" on Copy 5; and
  - (C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.
- (ii) Manifest Form 8700-22A.
  - (A) The "Instructions for Generators" on Copy 6;
  - (B) The "Instructions for Transporters" on Copy 5; and
  - (C) The "Instructions for Treatment, Storage, and Disposal Facilities" on Copy 4.

(g) (1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of this section. A registered source may be a:

- (i) State agency;
- (ii) Commercial printer;
- (iii) Hazardous waste generator, transporter or TSDF; or
- (iv) Hazardous waste broker or other preparer who prepares or arranges shipments of

hazardous waste for transportation.

(2) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h) (1) If an approved registrant would like to update any of the information provided in its application approved under paragraph (c) of this section (e.g., to update a company phone number or name of contact person), the registrant must revise the application and submit it to the EPA Director of the Office of Solid Waste, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either will approve or deny the MRR2 revision. If the Agency denies the revision, it will explain the reasons for the denial, and it will contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the EPA Director of the Office of Solid Waste, along with the reason for requesting it. The Agency will either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under paragraph (e) of this section, then the registrant must submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under paragraph (e) of this section, a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it must submit three samples of the manifest or continuation sheet to the registry for approval. EPA will evaluate the manifests or continuation sheets and

either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under paragraph (d) or (h)(3) of this section if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision (e.g., a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant). A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant must notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under paragraph (e) of this section, EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA will contact the registrant and require modifications to the form.

(m) (1) EPA may suspend and, if necessary, revoke printing privileges if we find it finds that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant must provide information on its printing activities to EPA if requested.

***(Break in Continuity of Sections)***

**Section 262.27 Waste minimization certification.**

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;" or

(b) "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

***(Break in Continuity of Sections)***

**Section 262.32 Marking.**

(a) Before transporting or offering hazardous waste for transportation off site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172.

(b) Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator must mark each container of 440 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address \_\_\_\_\_

Generator's EPA Identification Number \_\_\_\_\_

Manifest Document Tracking Number \_\_\_\_\_

**Section 262.33 Placarding.**

Before transporting hazardous waste or offering hazardous waste for transportation off site, a generator must

placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR Part 172, Subpart F. If placards are not required, a generator must mark each motor vehicle according to 49 CFR 171.3(b)(1).

**Section 262.34 Accumulation time.**

(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of Part 265 except §§ 265.197(c) and 265.200; and/or

(iii) On drip pads and the generator complies with Subpart W of Part 265 and maintains the following records at the facility:

(A) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) The waste is placed in containment buildings and the generator complies with Subpart DD of Part 265, has placed its professional engineer certification that the building complies with the design standards specified in §265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for §§265.111 and 265.114.

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in Part 265, with §265.16, and with §268.7(a)(5).

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Part 264 and 265 and the permit requirements of Part 122 unless he has been granted an extension to the 90 day period. Such extension may be granted by DNREC if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case by case basis.

(c) (1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(i) Complies with §§265.171, 265.172, and 265.173(a) of these regulations; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in §261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply immediately with paragraph (a) of this section or other applicable provisions of these regulations. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(d) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous

waste in a calendar month may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status provided that:

- (1) The quantity of waste accumulated on site never exceeds 6000 kilograms;
- (2) The generator complies with the requirements of Subpart I of Part 265 of these regulations, except for §§ 265.176 and 265.178;
- (3) The generator complies with the requirements of §265.201 in Subpart J of Part 265;
- (4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of Subpart C of Part 265, the requirements of §268.7(a)(5); and
- (5) The generator complies with the following requirements:

(i) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d)(3)(iv) of this section. This employee is the emergency coordinator.

(ii) The generator must post the following information next to the telephone:

(A) The name and telephone number of the emergency coordinator;

(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and

(C) The telephone number of the fire department, unless the facility has a direct alarm.

(iii) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(iv) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(A) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(B) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(C) In the event of a fire, explosion or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24 hour toll free number: 800/424 8802) and the DNREC at (302) 739-5072 or (800) 662 8802 immediately. The report must include the following information:

(1) The name, address, and U.S. EPA Identification Number of the generator;

(2) Date, time, and type of incident (e.g., spill or fire);

(3) Quantity and type of hazardous waste involved in the incident;

(4) Extent of injuries, if any; and

(5) Estimated quantity and disposition of recovered materials, if any.

(e) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off site treatment, storage or disposal may accumulate hazardous waste on site for 270 days or less without a permit or without having interim status provided that he complies with the requirements of paragraph (d) of this section.

(f) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122 unless he has been granted an extension to the 180 day (or 270 day if applicable) period. Such extension may be granted by the DNREC Secretary if hazardous wastes must remain on site for longer than 180 days (or 270 days if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case by case basis.

(g) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the

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EPA hazardous waste code F006, may accumulate F006 waste onsite for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering F006 or otherwise released to the environment prior to its recycling;

(2) The F006 waste is legitimately recycled through metals recovery;

(3) No more than 20,000 kilograms of F006 waste is accumulated onsite at any one time; and

(4) The F006 waste is managed in accordance with the following:

(i) The F006 waste is placed:

(A) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265; and/or

(B) In tanks and the generator complies with the applicable requirements of Subparts J, AA, BB, and CC of Part 265, except §§ 265.197(c) and 265.200; and/or

(C) In containment buildings and the generator complies with Subpart DD of Part 265, and has placed its professional engineer certification that the building complies with the design standards specified in §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator must maintain the following records at the facility:

(1) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(2) Documentation that the unit is emptied at least once every 180 days.

(ii) In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for §§265.111 and 265.114.

(iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(iv) While being accumulated onsite, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(v) The generator complies with the requirements for owners or operators in Subparts C and D in Part 265, with §265.16, and with §268.7(a)(5).

(h) A generator who generates 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for the EPA hazardous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for offsite metals recovery, may accumulate F006 waste onsite for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of paragraphs (g)(1) through (g)(4) of this section.

(i) A generator accumulating F006 in accordance with paragraphs (g) and (h) of this section who accumulates F006 waste onsite for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste onsite is an operator of a storage facility and is subject to the requirements of Parts 264 and 265 and the permit requirements of Part 122 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by DNREC if F006 waste must remain onsite for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain onsite due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the Secretary on a case-by- case basis.

(j) A member of the Performance Track Program who generates 1000 kg or greater of hazardous waste per month (or one kilogram or more of acute hazardous waste) may accumulate hazardous waste on-site without a permit or interim status for an extended period of time, provided that:

(1) The generator accumulates the hazardous waste for no more than 180 days; and

(2) The generator first notifies the Regional Administrator and the DNREC Secretary in writing of its intent to begin accumulation of hazardous waste for extended time periods under the provisions of this section. Such advance notice must include:

(i) Name and EPA ID number of the facility, and specification of when the facility will

begin accumulation of hazardous wastes for extended periods of time in accordance with this section; and

(ii) A description of the types of hazardous wastes that will be accumulated for extended periods of time, and the units that will be used for such extended accumulation; and

(iii) A Statement that the facility has made all changes to its operations, procedures, including emergency preparedness procedures, and equipment, including equipment needed for emergency preparedness, that will be necessary to accommodate extended time periods for accumulating hazardous wastes; and

(iv) Reserved

(3) The waste is managed in:

(i) Containers, in accordance with the applicable requirements of Subparts I, AA, BB and CC of DRGHW Part 265 and DRGHW 264.175; or

(ii) Tanks, in accordance with the applicable requirements of Subparts J, AA, BB and CC of DRGHW Part 265, except for §§265.197(c) and 265.200; or

(iii) Drip pads, in accordance with Subpart W of DRGHW Part 265; or

(iv) Containment buildings, in accordance with Subpart DD of DRGHW Part 265; and

(4) The quantity of hazardous waste that is accumulated for extended time periods at the facility does not exceed 30,000 kg; and

(5) The generator maintains for a period of at least three years the following records at the facility for each unit used for extended accumulation times:

(i) A written description of procedures to ensure that each waste volume remains in the unit for no more than 180 days, a description of the waste generation and management practices at the facility showing that they are consistent with the extended accumulation time limit, and documentation that the procedures are complied with; or

(ii) Documentation that the unit is emptied at least once every 180 days; and

(6) Each container or tank that is used for extended accumulation time periods is labeled or marked clearly with the words "Hazardous Waste," and for each container the date upon which each period of accumulation begins is clearly marked and visible for inspection; and

(7) The generator complies with the requirements for owners and operators in Subparts C and D in DRGHW Part 265, with §265.16, and with §268.7(a)(5). In addition, such a generator is exempt from all the requirements in Subparts G and H of Part 265, except for §§265.111 and 265.114; and

(8) The generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants released to the environment prior to its recycling, treatment, or disposal; and

(9) The generator includes the following with its Performance Track Annual Performance Report, which must be submitted to the Regional Administrator and the DNREC Secretary:

(i) Information on the total quantity of each hazardous waste generated at the facility that has been managed in the previous year according to extended accumulation time periods; and

(ii) Information for the previous year on the number of off-site shipments of hazardous wastes generated at the facility, the types and locations of destination facilities, how the wastes were managed at the destination facilities (e.g., recycling, treatment, storage, or disposal), and what changes in on-site or off-site waste management practices have occurred as a result of extended accumulation times or other pollution prevention provisions of this section; and

(iii) Information for the previous year on any hazardous waste spills or accidents occurring at extended accumulation units at the facility, or during off-site transport of accumulated wastes; and

(iv) Reserved

(k) If hazardous wastes must remain on-site at a Performance Track member facility for longer than 180 days due to unforeseen, temporary, and uncontrollable circumstances, an extension to the extended accumulation time period of up to 30 days may be granted at the discretion of the DNREC Secretary on a case-by-case basis.

(l) If a generator who is a member of the Performance Track Program withdraws from the Performance Track Program, if the Regional Administrator terminates a generator's membership, or if use of the §262.34(j) provisions is terminated pursuant to §262.34(m), the generator must return to compliance with all otherwise applicable hazardous waste regulations for those waste being managed pursuant to §262.34(j) as soon as possible, but no later than 90 days after the date of withdrawal or termination.

(m) The use of the §262.34(j) provisions for accumulating hazardous wastes for extended periods of time by Performance Track member facilities may be terminated by the DNREC Secretary for noncompliance with the

requirements of these regulations.

(n) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §264.72 or §265.72 of these regulations may accumulate the returned waste on-site in accordance with paragraphs (a) and (b) or (d), (e) and (f) of this section, depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(Amended August 29, 1988; June 19, 1992, August 1, 1995, January 1, 1999, August 23, 1999, June 2, 2000, April 23, 2001)

***(Break in Continuity of Sections)***

**Section 262.54 Special manifest requirements.**

A primary exporter must comply with the manifest requirements of §§262.20 - 262.23 except that:

(a) In lieu of the name, site address, and EPA I.D. number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee.

(b) In lieu of the name, site address and EPA I.D. number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

~~(c) In Special Handling Instructions and Additional Information, the primary exporter must identify the point of departure from the United States;~~ In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and State) from the United States.

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA Acknowledgment of Consent";

~~(e) In lieu of the requirements of §262.21, the primary exporter must obtain the manifest form from the primary exporter's state if that state supplies the manifest form and requires its use. If the primary exporter's State does not supply the manifest form, the primary exporter may obtain a manifest form from any source. The primary exporter may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (e.g. states, waste handlers, and/or commercial form printers).~~

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of §262.20(d), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(1) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with §262.53(c) and obtain an EPA Acknowledgment of Consent prior to delivery; or

(2) Instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and

(3) Instruct the transporter to revise the manifest in accordance with the primary exporter's instructions.

(h) The primary exporter must attach a copy of the EPA Acknowledgment of Consent to the shipment of the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA Acknowledgment of Consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA Acknowledgment of Consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U. S. Customs official at the point the hazardous waste leaves the United States in accordance with §263.20(g)(4).

(Amended August 29, 1988)

*(Break in Continuity of Sections)***Section 262.60 Imports of hazardous waste.**

(a) Any person who imports hazardous waste from a foreign country into the United States must comply with the requirements of this part and the special requirements of this subpart.

(b) When importing hazardous waste, a person must meet all the requirements of §262.20(a) for the manifest except that:

(1) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(2) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(c) A person who imports hazardous waste ~~must~~ may obtain the manifest form from ~~the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.~~ any source that is registered with the U.S. EPA as a supplier of manifests (e.g., states, waste handlers, and/or commercial forms printers).

(d) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with §264.71(a)(3) and §265.71(a)(3) of this chapter.

(Amended August 29, 1988)

*(Break in Continuity of Sections)***Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions) U.S. EPA Form 8700–22**

VerDate jul<14>2003 18:53 Mar 03, 2005 Jkt 205001 PO 00000 Frm 00043 Fmt 4701 Sfmt 4700 Delaware Hazardous Waste Manifest and Instructions (EPA Form 8700-22 and Instructions)

**General Instructions**

~~Read all instructions before completing this form. There are 8 copies of the manifest form. The **FLOW & DISTRIBUTION OF THE FORM** identifies which party must mail or retain a copy of the form and to whom a copy must be mailed as necessary. The~~

~~**FILLING OUT OF THE FORM** is conducted by the Generator, Transporter, and Treatment, Storage and Disposal Facility (TSD). Each party must fill in the required information as discussed in that section of these instructions and sign the document upon~~

~~receipt as required by the Delaware Regulations Governing Hazardous Waste.~~

**FLOW & DISTRIBUTION OF THE MANIFEST FORM**

~~The Uniform Hazardous Waste Manifest (EPA Form 8700-22) is initiated by the Generator. This manifest has eight (8) copies, all of which must be totally legible. Copies 1, 2, 3, 4, and 5 are taken with the waste by the Transporter to the Treatment, Storage,~~

~~and Disposal (TSD) Facility. These copies are distributed as follows:~~

~~**Copy 1:** Must be completed and returned by the TSD Facility to the Disposal State. Copy 1 is then compared by the Disposal State with Copy 6 for a match.~~

~~**Copy 2:** Must be completed and returned by the TSD Facility to the Generator State. Copy 2 is then compared by the Generator State with Copy 7 for a match.~~

~~**Copy 3:** Must be completed and returned by the TSD Facility to the Generator. Copy 3 is then compared by the Generator with Copy 8 for a match.~~

~~**Copy 4:** Retained by TSD Facility.~~

~~**Copy 5:** Retained by Transporter.~~

~~**NOTE:** If a continuing transporter is used, the Generator is responsible for supplying him with a legible copy 5 photocopy, which must contain required signatures.~~

~~**Copy 6:** The Generator sends Copy 6 to the Disposal State. The Disposal State retains Copy 6 to compare with Copy 1 as outlined above.~~

~~**Copy 7:** The Generator sends Copy 7 to the Generator State. The Generator State retains Copy 7 to compare with Copy 2 as outlined above.~~

~~**Copy 8:** The Generator, retaining Copy 8, compares it with Copy 3 as outlined above.~~

~~Public reporting burden for this collection of information is estimated to average: 37 minutes for generator, 15 minutes for transporter, 10 minutes for treatment, storage and disposal facility. This includes time for reviewing instructions, gathering data, and~~

~~completing and reviewing the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: CHIEF, INFORMATION POLICY BRANCH, PM 233, U.S. ENVIRONMENTAL PROTECTION AGENCY, 401 M STREET SW, WASHINGTON, D.C. 20460; and to the OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, D.C. 20503.~~

~~Part 262-28~~

~~Part 262, Appendix II~~

~~Federal and State regulations requires Generators of hazardous waste and owners or operators of hazardous waste Treatment, Storage, and Disposal Facilities to use this form (Form 8700-22) and, if necessary, the continuation sheet (Form 8700-22A) for both inter and intra-state transportation. **THE FILLING OUT OF THE FORM** requirements are as follows:~~

~~The Delaware manifest contains 8 copies. **ALL COPIES MUST BE LEGIBLE.** Each form is designated for use on a 12 pitch (elite) typewriter; a firm ballpoint pen may be used only if you press down HARD. The 8 copies must be filled out by the appropriate parties as they are completed.~~

~~GENERATOR'S REQUIREMENTS.~~

~~**Item 1.** Generator's U.S. EPA ID Number Manifest Document Number. Enter the Generator's U.S. EPA twelve digit identification number and the unique five digit number assigned to this manifest (e.g., 00001) by the Generator.~~

~~**Item 2.** Page 1 of \_\_\_\_\_. Enter the total number of pages used to complete this Manifest, i.e. the first page (EPA Form 8700-22) plus the number of continuation sheets (EPA Form 8700-22A), if any.~~

~~**Item 3.** Generator's Name and Mailing Address. Enter the name and mailing address of the Generator. The address should be the location that will manage the return Manifest forms.~~

~~**Item 4.** Generator's Phone Number. Enter a telephone number where an authorized agent of the Generator may be reached in the event of an emergency.~~

~~**Item 5.** Transporter 1 Company Name. Enter the company name of the first Transporter who will transport the waste.~~

~~**Item 6.** U.S. EPA ID number. Enter the U.S. EPA twelve digit identification number of the first Transporter identified in Item 5.~~

~~**Item 7.** Transporter 2 Company Name. If applicable, enter the company name of the second Transporter who will transport the waste. If more than two~~

~~Transporters are used to transport the waste, use a Continuation Sheet(s) EPA Form 8700-22A and list the Transporters in the order they will be transporting the waste.~~

~~**Item 8.** U.S. EPA ID Number.~~

~~If applicable, enter the U.S. EPA twelve digit identification number of the second Transporter identified in Item 7.~~

~~**Note:** If more than two Transporters are used, enter each additional Transporter's company name and U.S. EPA twelve digit identification number in Items 24-27 on the Continuation Sheet (EPA Form 8700-22A). Each continuation Sheet has space to record two additional Transporters. Every Transporter used between the generator and the Designated Facility must be listed.~~

~~Part 262-29~~

~~Part 262, Appendix II~~

~~**Item 9.** Designated Facility Name and Site Address. Enter the company name and site address of the Facility designated to receive the waste listed on this Manifest. The address must be the site address, which may differ from the company mailing address.~~

~~**Item 10.** U.S. EPA ID Number.~~

~~Enter the U.S. EPA twelve digit identification number of the designated facility identified on Item 9.~~

~~**Item 11.** U.S. DOT Description (Including Proper Shipping Name, Hazard Class and ID Number (UN/NA)).~~

~~Enter the U.S. DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste as identified in 49 CFR 171 through 177.~~

~~**NOTE:** If additional space is needed for waste descriptions enter these additional descriptions in Item 28 on the Continuation Sheet (EPA Form 8700-22A).~~

~~**Item 12.** Containers (No. and Type).~~

Enter the number of containers for each waste and the appropriate abbreviation from Table 1 (below for the type of container):

**Table 1** = Types of Containers

**DM** = Metal drums, barrels, kegs

**DW** = Wooden drums, barrels, kegs

**DF** = Fiberboard or plastic drums, barrels, kegs

**TP** = Tanks portable

**TT** = Cargo tanks (tank trucks)

**TC** = Tank cars

**DT** = Dump truck

**CY** = Cylinders

**GM** = Metal boxes, cartons, cases

**GW** = Wooden boxes, cartons, cases

**GF** = Fiber or plastic boxes, cartons, cases

**BA** = Burlap, cloth, paper or plastic bags

**Item 13** = Total Quantity:

Enter the total quantity of waste described on each line.

**Item 14** = Unit (WT./Vol):

Enter the appropriate abbreviation from Table II (below) for the unit of measure.

**Table II** = Units of Measure

**G** = Gallons (liquids only)

**P** = Pounds

**T** = Tons (2,000 lbs.)

**Y** = Cubic yards

**L** = Liters (liquids only)

**K** = Kilograms

**M** = Metric tons (1000 kg)

**N** = Cubic meters

Part 262-30

Part 262, Appendix II

#### GENERATOR'S REQUIREMENTS

**Item 15** = Special Handling Instructions and Additional Information:

Generators may use this space to indicate special Transportation, Treatment, Storage, or Disposal information or Bill of Lading information. For international shipments, Generators must enter in this space the point of departure (City and State for those shipments destined for Treatment, Storage, or Disposal outside the jurisdiction of the United States.

**Item 16** = Generator's Certification:

The Generator must read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space below. If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space below.

Primary exporters shipping hazardous waste to a facility located outside of the United States must add to the end of the first sentence of the certification the following words "and conforms to the terms of the EPA Acknowledgment of Consent to the shipment."

In signing the waste minimization certification statement, those Generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under 7 **Del.C.**, Chapter 63 are also certifying that they have complied with the waste minimization requirements.

Generators may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator certifications.

**NOTE:** All of the above information except the handwritten signature required in Item 16 may be reprinted.

Items A-K are not required by Federal regulations. However, Delaware requires Generators, Transporters, and Owners or Operators of Treatment, Storage, or Disposal Facilities to complete the appropriate portions of Items A-K as part of the State manifest requirements.

**Item A** = STATE MANIFEST DOCUMENT NUMBER — Number preprinted by Delaware except for the continuation sheets. Enter

this number on each continuation sheet attached to or part of a manifest.

**Item B:** STATE GENERATOR'S ID NUMBER—The State Generator ID is the street address of the Generator's pick-up location. If the mailing address and the street address are the same, enter "same" in this block.

**Item C:** STATE TRANSPORTER'S PERMIT NUMBER—Enter the Delaware Hazardous Waste Hauler's permit number.

**Item D:** TRANSPORTER'S PHONE—Enter a telephone number with area code where an authorized agent of the Transporter can be reached.

**Item E:** STATE TRANSPORTER'S PERMIT NUMBER—If applicable, enter for Transporter number 2, the Delaware Hazardous Waste Hauler's permit.

**Item F:** TRANSPORTER'S PHONE—If applicable, enter for Transporters number 2, a telephone number with area code where an authorized agent of the Transporter may be reached.

**Item G:** STATE FACILITY'S ID NUMBER—Enter the Company mailing address, if different than site address in Item 9. If the mailing address and the site address are the same, enter "same" in this block.

**Item H:** FACILITY PHONE—Enter a telephone number with area code of the TSDf designated to receive the waste listed on the manifest.

Part 262-34

Part 262, Appendix II

**Item I:** WASTE NO.—Enter the 4 digit EPA hazardous waste number as it appears in 40 CFR Part 261 Subparts C & D.

**Item J:** ADDITIONAL DESCRIPTIONS FOR MATERIAL LISTED ABOVE

**Item K:** HANDLING CODES FOR WASTES LISTED ABOVE—The Generator must select the disposal method for each waste listed in Item 11. Only one disposal code can be entered for each waste. It should be the ultimate disposal method.

Place the code letter in the box. The handling codes are:

A—Land Disposal

B—Treatment

C—Incineration

D—Resource recovery of more than 75 percent of the total material.

## TRANSPORTERS REQUIREMENTS

**Item 17:** Transporter 1 Acknowledgment of Receipt of Materials.

Enter the name of the person accepting the waste on behalf of the first Transporter. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

**Item 18:** Transporter 2 Acknowledgment of Receipt of Materials.

Enter, if applicable, the name of the person accepting the waste on behalf of the second Transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**NOTE:** International Shipment—Transporter Responsibilities.

Exports—Transporters must sign and enter the date the waste left the United States in Item 15 of Form 8700-22.

Imports—Shipments of hazardous waste regulated by RCRA and transported into the State of Delaware from another country must upon entry be accompanied by the Delaware Uniform Hazardous Waste Manifest. Transporter who transport hazardous waste into the State of Delaware from another country are responsible for completing the Manifest (see 263.10(c)(1)).

## OWNERS AND OPERATORS OF TREATMENT, STORAGE, OR DISPOSAL FACILITIES REQUIREMENTS.

**Item 19:** Discrepancy Indication Space.

The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any significant discrepancy between the waste described on the Manifest and the waste actually received at the facility.

Owners and operators of facilities located in the State of Delaware should contact DNREC Solid and Hazardous Waste Management Branch for information on State Discrepancy Report requirements.

**Item 20:** Facility Owner or Operator: Certification of Receipt of Hazardous Materials Covered by This Manifest Except as Noted in Item 19.

Print or type the name of the person accepting the waste on behalf of the owner or operator of the TSDf.

That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

**NOTE:** Generators shipping wastes to a TSD facility in Delaware must use the Delaware Manifest form. Generators in Delaware who ship out of state must use the form of the state which will receive the waste. If that state does not supply the manifest form the generator must use the Delaware manifest form. The above instructions hold for Interstate and Intrastate shipments. If there are any questions or clarification regarding the instructions please contact the Department

of Natural Resources and Environmental Control, Solid and Hazardous Waste Management Branch, 89 Kings Highway, Dover, DE 19901 or call (302) 739-3689.

#### FLOW & DISTRIBUTION OF THE MANIFEST CONTINUATION SHEET

The Uniform Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A) is initiated by the Generator. This Continuation Sheet has eight (8) copies, all of which must be totally legible. Copies 1, 2, 3, 4 and 5 are taken with the waste by the Transporter to the Treatment, Storage, and Disposal (TSD) Facility. These copies are distributed as follows:

**Copy 1:** Must be completed and returned by the TSD Facility to the Disposal State. Copy 1 is then compared by the Disposal State with Copy 6 for a match.

**Copy 2:** Must be completed and returned by the TSD Facility to the Generator State. Copy 2 is then compared by the Generator State with Copy 7 for a match.

**Copy 3:** Must be completed and returned by the TSD Facility to the Generator. Copy 3 is then compared by the Generator with Copy 8 for a match.

**Copy 4:** Retained by TSD Facility.

**Copy 5:** Retained by Transporter 3.

**NOTE:** If a continuing transporter is used, the Generator is responsible for supplying him with a legible copy 5 photocopy, which must contain required signatures.

**Copy 6:** The Generator sends Copy 6 to the Disposal State. The Disposal State retains Copy 6 to compare with Copy 1 as outlined above.

**Copy 7:** The Generator sends Copy 7 to the Generator State. The Generator State retains Copy 7 to compare with Copy 2 as outlined above.

**Copy 8:** The Generator, retaining Copy 8, compares it with Copy as outlined above.

Federal and State regulations require Generators and Transporters of hazardous waste and owners or operators of hazardous waste, Treatment, Storage, and Disposal Facilities to use form (8700-22) and the continuation sheet (Form 8700-22A) for both inter and intra-state transportation. This form must be used as a continuation sheet to EPA form 8700-22 if:

! More than two transporters are to be used to transport the waste.

! More space is required for the U.S. DOT description and related information in Item 11 of U.S. Form 8700-22.

The **FILLING OUT OF THE FORM** requirements are as follows:

The Delaware continuation sheet contains 8 copies. **ALL COPIES MUST BE LEGIBLE.** Each form is designed for use on a 12-pitch (elite) typewriter; a firm ballpoint pen may be used only if you press down HARD. The 8 copies must be filled out by the appropriate parties as they are completed.

#### GENERATOR'S REQUIREMENTS

**Item 21.** Generator's U.S. EPA ID Number Manifest Document Number.

Enter the generator's U.S. EPA twelve-digit identification number and the unique five-digit number assigned to this Manifest (e.g., 00001) as it appears in Item 1 on the first page of the Manifest.

**Item 22.** Page \_\_\_\_\_. Enter the page number of this Continuation Sheet.

**Item 23.** Generator's Name. Enter the generator's name as it appears in Item 3 on the first page of the Manifest.

**Item 24.** Transporter \_\_\_\_\_ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Each Continuation Sheet will record the names of two additional transporters.

**Item 25.** U.S. EPA ID Number. Enter the U.S. EPA twelve-digit identification number of the transporter described in Item 24.

**Item 26.** Transporter \_\_\_\_\_ Company Name. If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet will record the names of two additional transporters.

**Item 27.** U.S. EPA ID Number. Enter the U.S. EPA twelve-digit identification number of the transporter described in Item 26.

**Item 28.** U.S. DOT Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA). Refer to Item 11.

**Item 29.** Containers (No. and Type). Refer to Item 12.

~~Item 30.~~ Total Quantity. Refer to Item 13.

~~Item 31.~~ Unit (Wt./Vol.) Refer to Item 14.

~~Item 32.~~ Special Handling Instructions.

Generators may use this space to indicate special transportation, treatment, storage, or disposal information or Bill of Lading information. States are not authorized to require additional, new, or different information in this space. Items F, G, H, I, and J are not required by Federal regulations for intra- or interstate transportation. However, Delaware requires Generators, Transporters, and Owners or Operators of Treatment, Storage, or Disposal Facilities to complete the appropriate portions of Items F, G, H, I, and J as part of State manifest requirements.

~~Item F:~~ STATE MANIFEST DOCUMENT NUMBER.

Enter the pre-printed manifest document number from Copy 1 of the manifest Form 8700-22 on each continuation sheet attached to or part of a manifest.

~~Item G:~~ GENERATOR PHONE NUMBER. Enter the telephone number with area code where an authorized agent of the Generator can be reached.

~~Item H:~~ TRANSPORTER'S PHONE NUMBER. Enter a telephone number with area code where an authorized agent of the Transporter No. 3 can be reached.

~~Item I:~~ TRANSPORTER'S PHONE. If applicable, enter a telephone number with area code where an authorized agent of the Transporter No. 4 may be reached. In the case of shipment with more than four transporters, contact the DNREG for further details.

~~Item J:~~ WASTE NO. Enter the 4-digit EPA hazardous number as it appears in 40 CFR Part 261 Subparts C & D.

## TRANSPORTERS REQUIREMENTS

~~Item 33.~~ Transporter—Acknowledgment of Receipt of Materials.

Enter the same number of the Transporter as identified in Item 24. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 24. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

## TRANSPORTERS REQUIREMENTS

~~Item 34.~~ Transporter—Acknowledgment of Receipt of Materials.

Enter the same number as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

## OWNERS AND OPERATORS OF TREATMENT, STORAGE OR DISPOSAL FACILITIES

~~Item 35.~~ Discrepancy Indication Space—Refer to Item 19.

Items F, G, H, I, and J are not required by Federal regulations for intra- or interstate transportation. However, Delaware requires generators and owners or operators of treatment, storage, or disposal facilities to complete all of Items F, G, H, I, and J as part of State Manifest reporting requirements.

~~NOTE:~~ Generators shipping wastes to a disposal facility in Delaware must use the Delaware Manifest Continuation Sheet. Generators in Delaware who ship out of state must use the sheet of the state which will receive the waste. If that state does not supply the sheet, the generator must use the Delaware Manifest Continuation Sheet. The above instructions hold for Interstate and Intrastate shipments. If there are any questions or clarification regarding the instructions please contact the Department of Natural Resources and Environmental Control, Solid and Hazardous Waste Management Branch, 89 Kings Highway, Dover, Delaware 19901.

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used—press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (8700-22) and, if necessary, the continuation sheet (8700-22A) for both inter- and intrastate transportation of hazardous waste.

## Manifest 8700-22

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form.

Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**I. Instructions for Generators***Item 1. Generator's U.S. EPA Identification Number*

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

*Item 2. Page 1 of I*

Enter the total number of pages used to complete this Manifest (i.e., the first page (EPA Form 8700-22) plus the number of Continuation Sheets (EPA Form 8700-22A), if any).

*Item 3. Emergency Response Phone Number*

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;
2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and
3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

**Note:** Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (e.g., consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

*Item 4. Manifest Tracking Number*

This unique tracking number must be preprinted on the manifest by the forms printer.

*Item 5. Generator's Mailing Address, Phone Number and Site Address*

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency or if the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

*Item 6. Transporter 1 Company Name, and U.S. EPA ID Number*

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

*Item 7. Transporter 2 Company Name and U.S. EPA ID Number*

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here. If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700-22A).

*Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number*

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

*Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)*

*Item 9a.* If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an "X" in this Item next to the corresponding hazardous material identified in Item 9b.

*Item 9b.* Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

**Note:** If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700-22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

*Item 10. Containers (Number and Type)*

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

**TABLE I.—TYPES OF CONTAINERS**

BA = Burlap, cloth, paper, or plastic bags.

CF = Fiber or plastic boxes, cartons, cases.

CM = Metal boxes, cartons, cases (including roll-offs).

CW = Wooden boxes, cartons, cases.

CY = Cylinders.

DF = Fiberboard or plastic drums, barrels, kegs.

DM = Metal drums, barrels, kegs.

DT = Dump truck.

DW = Wooden drums, barrels, kegs.

HG = Hopper or gondola cars.

TC = Tank cars.

TP = Portable tanks.

TT = Cargo tanks (tank trucks).

*Item 11. Total Quantity*

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and *do not* enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

*Item 12. Units of Measure (Weight/Volume)*

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

**TABLE II.—UNITS OF MEASURE**

G = Gallons (liquids only).

K = Kilograms.

L = Liters (liquids only).

M = Metric Tons (1000 kilograms).

N = Cubic Meters.

P = Pounds.

T = Tons (2000 pounds).

Y = Cubic Yards.

**Note:** Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

*Item 13. Waste Codes*

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

*Item 14. Special Handling Instructions and Additional Information.*

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking

number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

*Item 15. Generator's/Officer's Certifications*

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows:

I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, "On behalf of" in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

**Note:** All of the above information except the handwritten signature required in Item 15 may be pre-printed.

## **II. Instructions for International Shipment Block**

*Item 16. International Shipments*

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. Customs when exporting the waste across U.S. borders.

## **III. Instructions for Transporters**

*Item 17. Transporters' Acknowledgments of Receipt*

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters. If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

**Note:** Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

## **IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities**

*Item 18. Discrepancy*

*Item 18a. Discrepancy Indication Space*

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by §§264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for "empty" containers set forth in DRGHW 261.7(b).

2. For rejected loads and residues (DRGHW 264.72(d), (e), and (f), or DRGHW 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (i.e., rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a

container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (*i.e.*, states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(c) and 265.72(c)).

4. Owners or operators of facilities located in authorized States (*i.e.*, those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving "significant differences" to state officials.

*Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections*

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDf has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDf may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

*Item 18c. Alternate Facility (or Generator) Signature*

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDf.

*Item 19. Hazardous Waste Report Management Method Codes*

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDf) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDf.

*Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)*

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDf as offeror of the shipment.

## **Manifest Continuation Sheet Instructions—Continuation Sheet, U.S. EPA Form 8700–22A**

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard. This form must be used as a continuation sheet to U.S. EPA Form 8700–22 if:

More than two transporters are to be used to transport the waste; or

More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700–22. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700–22) and, if necessary, this continuation sheet (EPA Form 8700–22A) for both interstate and intrastate transportation.

*Item 21. Generator's ID Number*

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

*Item 22. Page I*

Enter the page number of this Continuation Sheet.

*Item 23. Manifest Tracking Number*

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is

attached.

Item 24.            *Generator's Name*

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25.            *Transporter—Company Name*

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26.            *Transporter—Company Name*

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word "Transporter" the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27.            *U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)*

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28.            *Containers (No. And Type)*

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29.            *Total Quantity*

Refer to the instructions for Item 11 of the manifest form.

Item 30.            *Units of Measure (Weight/Volume)*

Refer to the instructions for Item 12 of the manifest form.

Item 31.            *Waste Codes*

Refer to the instructions for Item 13 of the manifest form.

Item 32.            *Special Handling Instructions and Additional Information*

Refer to the instructions for Item 14 of the manifest form.

### **Transporters**

Item 33.            *Transporter—Acknowledgment of Receipt of Materials*

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34.            *Transporter—Acknowledgment of Receipt of Materials*

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

### **Owner and Operators of Treatment, Storage, or Disposal Facilities**

Item 35.            *Discrepancy Indication Space*

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36.            *Hazardous Waste Report Management Method Codes*

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

*(Break in Continuity of Sections)*

**Section 263.20 The Manifest System.**

(a) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of §262.20. In the case of exports other than those subject to Subpart H of Part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed in accordance with the provisions of §262.20, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of Subpart H of Part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by §262.84.

(a) (1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of §262.23.

(2) Exports. In the case of exports other than those subject to subpart H of 40 DRGHW part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of subpart H of 40 DRGHW part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 DRGHW 262.84.

(3) Compliance Date for Form Revisions. The revised Manifest form and procedures in §260.10, 261.7, 263.20, and 263.21, shall not apply until September 5, 2006.

(b) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(c) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent also accompanies the hazardous waste.

(d) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(1) Obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;

(2) Retain one copy of the manifest in accordance with §263.22; and

(3) Give the remaining copies of the manifest to the accepting transporter or designated facility.

(e) The requirements of paragraph (c), (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) The hazardous waste is delivered by water (bulk shipment) to the designated facility; and

(2) A shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent accompanies the hazardous waste; and

(3) The delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper; and

(4) The person delivering the hazardous waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(5) A copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §263.22.

(f) For shipments involving rail transportation, the requirements of paragraphs (c), (d) and (e) do not apply and the following requirements do apply:

(1) When accepting hazardous waste from a nonrail transporter, the initial rail transporter must:

(i) Sign and date the manifest acknowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the nonrail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next nonrail transporter, if any; or,

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designated to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with §263.22.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports an EPA Acknowledgment of Consent accompanies the hazardous waste at all times.

(3) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with §263.22.

(4) When delivering hazardous waste to a nonrail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with §263.22.

(5) Before accepting hazardous waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste out of the United States must:

(1) ~~Indicate on the manifest the date the hazardous waste left the United States; and (1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;~~

(2) ~~Sign the manifest and r~~ Retain one copy in accordance with §263.22(e)(d); and

(3) Return a signed copy of the manifest to the generator, and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United

States.

(Amended August 29, 1988)

### *(Break in Continuity of Sections)*

#### **Section 263.102 Permit denial/revocation/termination, modifications.**

(a) Permits may be amended or modified, upon application, for the following reasons;

(1) addition of a waste that will be transported by the permittee;

(2) addition or deletion in vehicle information, such as;

(3) changes in operation procedures;

(4) changes of address; or

(5) change of ownership.

(b) Permits may be modified, denied, terminated or revoked by the Secretary for the following reasons:

(1) Noncompliance by the permittee with any conditions of the permit, or requirements of these regulations;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any facts at any time, or failure to comply with the requirements of the application;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation or termination; or

(4) If a permit is modified, revoked or terminated, the applicant shall be given a written explanation for the action and an opportunity to a public hearing in accordance with 7 Del.C., Chapter 60.

~~(4)~~ (5) A permit may be terminated at the written requested of the permittee for such reasons as, but not limited to: the company is no longer conducting the permitted activity in Delaware, or is no longer in business.

(c) If an application for a permit is denied, the applicant shall be given a written explanation for the denial and an opportunity to a public hearing in accordance with 7 Del. C., Chapter 60.

(d) Change of ownership. Upon a change in ownership, the new owner shall successfully demonstrate compliance with the requirements of this subpart no more than ten (10) days after the change of ownership.

(Amended August 1, 1995; February 12, 2004)

### *(Break in Continuity of Sections)*

## **PART 264 -- Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities**

**Subpart A - General****Section 264.1 Purpose, Scope and Applicability.**

(a) The purpose of this part is to establish minimum standards which define the acceptable management of hazardous waste.

(b) The standards in this part apply to owners and operators of all facilities which treat, store, or dispose of hazardous waste, except as specifically provided otherwise in this part or Part 261 of these regulations.

(c) The requirements of this part apply to a person disposing of hazardous waste by means of ocean disposal subject to permit issued under the Marine Protection, Research, and Sanctuary Act, only to the extent they are included in a permit by rule granted to such a person under §122.60(a) of these regulations.

(d) The underground injection of hazardous waste is banned in the State of Delaware.

(e) The requirements of this part apply to the owner or operator of POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a permit by rule granted to such a person under Part 122.60(c) of these regulations.

(f) **[Reserved]**

(g) The requirements of this part do not apply to:

(1) The owner or operator of a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by §261.5 of these regulations;

(2) The owner or operator of a facility managing recyclable materials described in §261.6(a)(2), (3), and (4) of these regulations (except to the extent they are referred to in Part 279 or Subparts C, F, G or H of Part 266 of these regulations).

(3) A generator accumulating waste on site in compliance with §262.34 of these regulations.

(4) A farmer disposing of waste pesticides from his own use in compliance with §262.70 of these regulations;

(5) The owner or operator of a totally enclosed treatment facility as defined in §260.10.

(6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of these regulations, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in §268.40 of these regulations, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in §264.17(b).

(7) To a person who treats, stores, or disposes of hazardous waste in a state which is authorized under Subpart A or B of 40 CFR Part 271 if the state has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. The requirements and prohibitions that are applicable until a state receives authorization to carry them out include all Federal program requirements identified in 40 CFR §271.1(j).

(8) (i) Except as provided in paragraph (g)(8)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste;

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(D) An immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §260.10.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (g)(8)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part and Parts 122-124 of these regulations for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste

by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(9) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less, except as otherwise specified in §263.12.

(10) The addition of absorbent material to waste in a container (as defined in §260.10 of these regulations) or the addition of waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container; and §§264.17(b), 264.171, and 264.172 are complied with.

(11) Universal waste handlers and universal waste transporters (as defined in 260.10) handling the wastes listed below. These handlers are subject to regulation under Part 273, when handling the below listed universal wastes.

(i) Batteries as described in §273.2;

(ii) Pesticides as described in §273.3 of these regulations;

(iii) ~~Thermostats as described in §273.4 of these regulations~~ Mercury-containing equipment as described in §273.4 of these regulations; and

(iv) Lamps as described in §273.5 of these regulations.

(h) The requirements of this part apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in Part 268.

(i) Section 266.205 of these regulations identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under §266.202 of these regulations. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in Parts 260 through 268 and 122.

(j) The requirements of Subparts B, C, and D of this part and §264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional hazardous waste permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and §264.101 do apply to the facility subject to the traditional hazardous waste permit.) Instead of the requirements of Subparts B, C, and D of this part, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Secretary using EPA Form 8700 12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to this part and Part 268 of these regulations, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Secretary that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/ operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under Subparts I through O

and Subpart X of this part, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of §264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with §§264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, according to the requirements of §264.19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990, August 1, 1995, July 23, 1996, August 21, 1997, January 1, 1999, June 2, 2000)

***(Break in Continuity of Sections)***

**Subpart E - Manifest System, Recordkeeping, and Reporting**

**Section 264.70 Applicability.**

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as §264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, and to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under §266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(b) The revised Manifest form and procedures in DRGHW 260.10, 261.7, 264.70, 264.71, 264.72, and 264.76, shall not apply until September 5, 2006. The Manifest form and procedures in §260.10, 261.7, 264.70, 264.71, 264.72, and 264.76, contained in parts 260 to 265 shall be applicable until September 5, 2006.

14) Section 264.71 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (e) to read as follows:

**Section 264.71 Use of Manifest System.**

(a) (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his/her agent, must

~~Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;~~

(2) ~~Note any significant discrepancies in the manifest [as defined in §264.72(a)] on each copy of the manifest;~~

~~[Comment: The Department does not intend that the owner or operator of a facility whose procedures under~~

# PROPOSED REGULATIONS

~~§264.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]~~

- ~~(3) Immediately give the transporter at least one copy of the signed manifest;~~
- ~~(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and~~
- ~~(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.~~

sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

- (i) Sign and date, by hand, each copy of the manifest;
- (ii) Note any discrepancies (as defined in §264.72(a)) on each copy of the manifest;
- (iii) Immediately give the transporter at least one copy of the manifest;
- (iv) Within 30 days of delivery, send a copy of the manifest to the generator; and
- (v) Retain at the facility a copy of each manifest for at least three years from the date of

delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/ OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

- (1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received;
- (2) Note any significant discrepancies (as defined in §264.72(a) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper.

[Comment: The Department does not intend that the owner or operator of a facility whose procedures under §264.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 264.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

[Comment: Section 262.23(c) of these regulations requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).] signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) for at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of these regulations.

[Comment: The provision of §262.34 are applicable to the on site accumulation of hazardous wastes by generators. Therefore, the provisions of §262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

(d) (1) Within three working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the

facility for at least three years from the date of signature.

(2) A copy of the signed tracking document must also be submitted to the DNREC Secretary.

(Amended January 1, 1999)

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

## **Section 264.72 Manifest Discrepancies.**

~~(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:~~

~~(1) For bulk waste, variations greater than 10 percent in weight, and~~

~~(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.~~

~~(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.~~

~~(a) Manifest discrepancies are:~~

~~(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;~~

~~(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or~~

~~(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in §261.7(b) of these regulations.~~

~~(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.~~

~~(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.~~

~~(d) (1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in DRGHW 261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.~~

~~(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.~~

~~(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:~~

~~(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.~~

~~(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the~~

designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of this chapter.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offoror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §262.20(a) of this chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offoror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), and (6) of this section.

(8) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in §261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

***(Break in Continuity of Sections)***

**Section 264.76 Unmanifested waste report.**

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off site source without an accompanying manifest, or without an accompanying shipping paper as described in §263.20(e)(2) of these regulations, and if the waste is not excluded from the manifest requirement by §261.5 of these regulations, then the

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owner or operator must prepare and submit a single copy of a report to the Secretary within 15 days after receiving the waste. ~~The report form and instructions in Appendix II must be used for this report.~~ The unmanifested waste report must include the following information:

- ~~(a)~~ (1) The EPA identification number, name, and address of the facility;
- ~~(b)~~ (2) The date the facility received the waste;
- ~~(c)~~ (3) The EPA identification number, name, and address of the generator and the transporter, if available;
- ~~(d)~~ (4) A description and the quantity of each unmanifested hazardous waste and facility received;
- ~~(e)~~ (5) The method of treatment, storage, or disposal for each hazardous waste;
- ~~(f)~~ (6) The certification signed by the owner or operator of the facility or his authorized representative; and
- ~~(g)~~ (7) A brief explanation of why the waste was unmanifested, if known.

~~[Comment: Small quantities of hazardous waste are excluded from regulation under this part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the Department suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the Department suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.]~~

- (b) Reserved.

***(Break in Continuity of Sections)***

**Subpart G - Closure and Post Closure**

**Section 264.119 Post Closure Notices.**

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Secretary a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location, and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, ~~a notation on the deed to the facility property or on some other instrument which is normally examined during title search~~ an environmental covenant, per Delaware Code Title 7, Chapter 79, Subchapter II, with the deed to the facility property that will in perpetuity notify any potential purchaser of the property that:

- (i) The land has been used to manage hazardous wastes; and
- (ii) Its use is restricted under Subpart G regulations; and
- (iii) The survey plat and record of the type, location, and quantity of hazardous wastes

disposed of within each cell or other hazardous waste disposal unit of the facility required by §264.116 and §264.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Secretary, and

(2) Submit a certification, signed by the owner or operator, that he has recorded the notation specified in paragraph (b)(1) of this section, including a copy of the document in which the notation has been placed, to the Secretary.

(c) If the owner or operator or any subsequent owner or operator of the land upon which a hazardous waste disposal unit is located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, or contaminated soils, he must request a modification to the post closure permit in accordance with the applicable requirements in Parts 124 and 122. The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of §264.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of these regulations. If he is granted a permit modification or otherwise granted approval to conduct such removal activities, the owner or operator may request that the Secretary approve either:

(1) The ~~removal~~ termination of the notation on the deed to the facility property or other instrument normally examined during title search; or

(2) The ~~addition of a notation to~~ amendment of the deed environmental covenant or instrument indicating the removal of the hazardous waste.

(Amended August 29, 1988)

*(Break in Continuity of Sections)*

**Subpart M - Land Treatment**

**Section 264.276 Food-chain Crops.**

The Secretary may allow the growth of food chain crops in or on the treatment zone only if the owner or operator satisfies the conditions of this section. The Secretary will specify in the facility permit the specific food chain crops which may be grown.

(a) (1) The owner or operator must demonstrate that there is no substantial risk to human health caused by the growth of such crops in or on the treatment zone by demonstrating, prior to the planting of such crops, that hazardous constituents other than cadmium:

(i) Will not be transferred to the food or feed portions of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(ii) Will not occur in greater concentration in or on the food or feed portions of crops grown on the treatment zone than in or on identical portions of the same crops grown on untreated soils under similar conditions in the same region.

(2) The owner or operator must make the demonstration required under this paragraph prior to the planting of crops at the facility for all constituents identified in Appendix VIII of Part 261 of these regulations that are reasonably expected to be in, or derived from, waste placed in or on the treatment zone.

(3) In making a demonstration under this paragraph, the owner or operator may use field tests, greenhouse studies, available data, or in the case of existing units, operating data, and must:

(i) Base the demonstration on conditions similar to those present in the treatment zone, includes soil characteristics (e.g., pH, cation exchange capacity), specific wastes, application rates, application methods, and crops to be grown; and

(ii) Describe the procedures used in conducting any tests, including the sample selection criteria, sample size, analytical methods, and statistical procedures.

(4) If the owner or operator intends to conduct field tests or greenhouse studies in order to make the demonstration required under this paragraph, he must obtain a permit for conducting such activities.

(b) The owner or operator must comply with the following conditions if cadmium is contained in wastes applied to the treatment zone:

(1) (i) The pH of the waste and soil mixture must be 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

(ii) The annual application of cadmium from waste must not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or rootcrops grown for human consumption. For other food chain crops, the annual cadmium application rate must not exceed:

Annual Cd  
application rate  
(kilograms  
Time Period per hectare)

Present to June 30, 1984 2.0  
July 1, 1984 to Dec. 31, 1986 1.25  
Beginning Jan. 1, 1987 0.5

(iii) The cumulative application of cadmium from waste must not exceed 5 kg/ha if the waste and soil mixture has a pH of less than 6.5; and

(iv) If the waste and soil mixture has a pH of 6.5 or greater or is maintained at a pH of 6.5 or greater during crop growth, the cumulative application of cadmium from waste must not exceed: 5 kg/ha if soil cation exchange capacity (CEC) is less than 5 meq/100g; 10 kg/ha if soil CEC is 5 to 15 meq/100g; and 20 kg/ha if soil CEC is greater than 15 meq/100g; or

(2)(i) Animal feed must be the only food chain crop reduced;

(ii) The pH of the waste and soil mixture must be 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level must be maintained whenever food chain crops are grown;

(iii) There must be an operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The operating plan must describe the measures to be taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land uses; and

(iv) Future property owners must be notified by a stipulation in the ~~land record or property deed~~ environmental covenants which states that the property has received waste at high cadmium application rates and that food chain crops must not be grown except in compliance with paragraph (b)(2) of this section.

***(Break in Continuity of Sections)***

**PART 265 -- Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities**

**Subpart A - General**

**Section 265.1 Purpose, Scope and Applicability.**

(a) The purpose of this Part is to establish minimum state standards which define the acceptable management of hazardous waste during the period of interim status and until certification of final closure or, if the facility is subject to post closure requirements, until post closure responsibilities are fulfilled.

(b) Except as provided in §265.1080(b), the standards of this part, and of §§264.552, 264.553, and 264.554, apply to owners and operator's of facilities that treat, store or dispose of hazardous waste who have fully complied with the requirements for interim status under 7 **Del.C.**, §6307(g) and §122.10 of these regulations until either a permit is issued under 7 **Del.C.**, Chapter 63 or until applicable Part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by 7 **Del.C.**, Chapter 63 and/or failed to file Part A of the permit application as required by §122.10(e) and (g). These standards apply to all treatment, storage, or disposal of hazardous waste at these facilities after the effective date of these regulations, except as specifically provided otherwise in this part or Part 261 of these regulations.

(c) The requirements of this part do not apply to:

(1) A person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act;

[Comment: These Part 265 regulations do apply to the treatment or storage of hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in paragraph (b) of this section.]

(2) Reserved.

(3) The owner or operator of a POTW which treats, stores, or disposes of hazardous waste;

[Comment: The owner or operator of a facility under paragraph (c)(3) of this Section is subject to the requirements of Part 264 of these regulations to the extent they are included in a permit by rule granted to such a person under Part 122.60 of these regulations.]

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A or B of 40 CFR Part 271, except that the requirements of this part will continue to apply:

(i) As stated in paragraph (c)(2) of this section, if the authorized State with a RCRA hazardous waste program does not cover disposal of hazardous waste by means of underground injection; or

(ii) To a person who treats, stores, or disposes of hazardous waste in a State authorized under Subparts A or B of 40 CFR Part 271 if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in §271.1(j).

(5) The owner or operator of a facility permitted, licensed, or registered by the State to manage municipal or industrial solid waste, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this part by §261.5 of these regulations; of these regulations provides otherwise;

(6) The owner or operator of a facility managing recyclable materials described in §261.6(a)(2), (3), and (4) of these regulations (except to the extent they are referred to in Part 279 or Subparts C, D, F, or G of Part 266 of these regulations).

(7) A generator accumulating waste onsite in compliance with §262.34 of these regulations, except to the extent the requirements are included in §262.34 of these regulations;

(8) A farmer disposing of waste pesticides from his own use in compliance with §262.70 of these regulations; or

(9) The owner or operator of a totally enclosed treatment facility, as defined in §260.10.

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of these regulations, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in §268.40 of these regulations, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in §265.17(b).

(11) (i) Except as provided in paragraph (c)(11)(ii) of this section, a person engaged in treatment or containment activities during immediate response to any of the following situations:

(A) A discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of a hazardous waste;

(C) A discharge of a material which when discharged, becomes a hazardous waste; or

(D) An immediate threat to human health, public safety, property, or the environment,

from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in 40 CFR, 260.10.

(ii) An owner or operator of a facility otherwise regulated by this part must comply with all applicable requirements of Subparts C and D.

(iii) Any person who is covered by paragraph (c)(11)(i) of this section and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part and Parts 122-124 of these regulations for those activities.

(iv) In the case of an explosives or munitions emergency response, if a Federal, State, Tribal or local official acting within the scope of his or her official responsibilities, or an explosives or munitions emergency response specialist, determines that immediate removal of the material or waste is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition.

(12) A transporter storing manifested shipments of hazardous waste in containers meeting the requirements of §262.30 at a transfer facility for a period of ten days or less.

(13) The addition of absorbent material to waste in a container (as defined in §260.10 of these regulations) or the addition of waste to the absorbent material in a container provided that these actions occur at the time waste is first placed in the containers; and §265.17(b), §265.171, and §265.172 are complied with.

(14) Universal waste handlers and universal waste transporters (as defined in 260.10) handling the wastes listed below. These handlers are subject to regulation under Part 273, when handling the below listed universal wastes.

(i) Batteries as described in §273.2;

(ii) Pesticides as described in §273.3 of these regulations;

(iii) ~~Thermostats as described in §273.4 of these regulations~~ Mercury-containing equipment as described in §273.4 of these regulations; and

(iv) Lamps as described in §273.5 of these regulations.

(d) The following hazardous wastes must not be managed at facilities subject to regulation under this part.

(1) EPA Hazardous Wastes Nos. F020, F021, F022, F023, F026, or F027 unless:

(i) The wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system:

(ii) The waste is stored in tanks or containers:

(iii) The waste is stored or treated in waste piles that meet the requirements of §264.250(c) as well as all other applicable requirements of Subpart L of this part:

(iv) The waste is burned in incinerators that are certified pursuant to the standards and procedures in §265.352; or

(v) The waste is burned in facilities that thermally treat the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in §265.383.

(e) The requirements of this part apply to owners or operators of all facilities which treat, store or dispose of hazardous waste referred to in Part 268, and the Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards.

(f) Section 266.205 of these regulations identifies when the requirements of this part apply to the storage of military munitions classified as solid waste under §266.202 of these regulations. The treatment and disposal of hazardous waste military munitions are subject to the applicable permitting, procedural, and technical standards in Parts 260 through 268 and 122.

(Amended November 21, 1985; May 8, 1986; August 29, 1988; August 10, 1990, August 1, 1995, July 23, 1996, January 1, 1999, June 2, 2000)

### *(Break in Continuity of Sections)*

## **Subpart E Manifest System, Recordkeeping, and Reporting**

### **Section 265.70 Applicability.**

(a) The regulations in this subpart apply to owners and operators of both on site and off site facilities, except as §265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on site facilities that do not receive any hazardous waste from off site sources, and to owners and operators of off site facilities with respect to waste military munitions exempted from manifest requirements under DRGHW §266.203(a). (Amended August 29, 1988, January 1, 1999)

(b) The revised Manifest form and procedures in §§260.10, 261.7, 265.70, 265.71, 265.72, and 265.76, shall not apply until September 5, 2006. The Manifest form and procedures in §§260.10, 261.7, 265.70, 265.71, 265.72, and 265.76, contained in parts 260 to 265 shall be applicable until September 5, 2006.

### **Section 265.71 Use of Manifest System.**

(a) (1) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his/her agent, must: ~~Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received; complete all information on Part B of the manifest form.~~

(2) ~~Note any significant discrepancies in the manifest (as defined in §265.72(a) on each copy of the manifest;~~

~~[Comment: DNREC does not intend that the owner or operator of a facility whose procedures under §265.13(c) include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Section 265.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis].~~

~~(3) Immediately give the transporter at least one copy of the signed manifest;~~

~~(4) Within thirty (30) days after the delivery send a copy of the manifest to the generator and to the State(s) in which the generator and facility are located; and~~

~~(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery. sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.~~

~~(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:~~

~~(i) Sign and date, by hand, each copy of the manifest;~~

~~(ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;~~

~~(iii) Immediately give the transporter at least one copy of the manifest;~~

~~(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and~~

~~(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.~~

~~(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility~~

must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/ OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) If a facility receives from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste covered by the manifest or shipping paper was received.

(2) Note any significant discrepancies (as defined in §265.72(a)) in the manifest or shipping paper (if the manifest has not been received) on each copy of the manifest or shipping paper;

[Comment: DNREC does not intend that the owner or operator of a facility whose procedures under §265.13(c) include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Section 265.72(b), however, requires reporting an unreconciled discrepancy discovered during later analysis.]

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received).

(4) Within thirty (30) days after delivery send a copy of the signed and dated manifest/shipping paper to the generator and to the State(s) in which the generator and the facility are located; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must sign and date the manifest and return the appropriate portions to the generator and to the State(s) in which the generator and facility are located in lieu of the shipping paper; and

~~[Comment: Section 262.23(c) of these regulations requires the generator to send at least four (4) copies of the manifest to the facility when hazardous waste is sent by the rail or water (bulk shipment).] (if the manifest has not been received within 30 days after delivery) to the generator; and~~

(5) Retain at the facility a copy of the manifest and shipping paper (if signed in lieu of the manifest at the time of delivery) or at least three years from the date of delivery.

(c) Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of Part 262 of these regulations.

[Comment: The provisions of §262.34 are applicable to the on site accumulation of hazardous waste by generators. Therefore, the provisions of §262.34 only apply to owners or operators who are shipping hazardous waste which they generated at that facility.]

(d) (1) Within three working days of the receipt of a shipment subject to Part 262, Subpart H, the owner or operator of facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

(2) A copy of the signed tracking document must also be submitted to the DNREC Secretary. (Amended January 1, 1999)

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

### **Section 265.72 Manifest Discrepancies.**

~~(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:~~

~~(1) For bulk waste, variations greater than 10 percent in weight, and~~

~~(2) For batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.~~

~~(b) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the~~

~~discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.~~

~~(a) Manifest discrepancies are:~~

~~(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;~~

~~(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or~~

~~(3) Container residues, which are residues that exceed the quantity limits for "empty" containers set forth in §261.7(b) of these regulations.~~

~~(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.~~

~~(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Secretary a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.~~

~~(d) (1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in DRGHW 261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.~~

~~(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.~~

~~(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:~~

~~(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.~~

~~(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.~~

~~(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.~~

~~(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of this chapter.~~

~~(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.~~

~~(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.~~

~~(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.~~

~~(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §262.20(a) of this~~

chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offoror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in §261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

***(Break in Continuity of Sections)***

**Section 265.76 Unmanifested waste report.**

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off site source without an accompanying manifest, or without an accompanying shipping paper as described in §263.20(e)(2) of these regulations, and if the waste is not excluded from the manifest requirement by §261.5 of these regulations, then the owner or operator must prepare and submit a single copy of a report to the Secretary within 15 days after receiving the waste. ~~The report form and instructions in Appendix II must be used for this report.~~ The unmanifested waste report must include the following information:

~~(a)~~ (1) The EPA identification number, name, and address of the facility;

~~(b)~~ (2) The date the facility received the waste;

~~(c)~~ (3) The EPA identification number, name, and address of the generator and the transporter, if available;

~~(d)~~ (4) A description and the quantity of each unmanifested hazardous waste and facility received;

~~(e)~~ (5) The method of treatment, storage, or disposal for each hazardous waste;

~~(f)~~ (6) The certification signed by the owner or operator of the facility or his authorized representative; and

~~(g)~~ (7) A brief explanation of why the waste was unmanifested, if known.

~~[Comment: Small quantities of hazardous waste are excluded from regulation under this part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, the Department suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the Department suggests that the owner or operator file an unmanifested waste report for the hazardous waste movement.]~~

(b) Reserved.

**Subpart G - Closure and Post Closure****Section 265.119 Post closure Notices.**

(a) No later than 60 days after certification of closure of each hazardous waste disposal unit, the owner or operator must submit to the local zoning authority, or the authority with jurisdiction over local land use, and to the Secretary, a record of the type, location, and quantity of hazardous wastes disposed of within each cell or other disposal unit of the facility. For hazardous wastes disposed of before January 12, 1981, the owner or operator must identify the type, location and quantity of the hazardous wastes to the best of his knowledge and in accordance with any records he has kept.

(b) Within 60 days of certification of closure of the first hazardous waste disposal unit and within 60 days of certification of closure of the last hazardous waste disposal unit, the owner or operator must:

(1) Record, in accordance with State law, ~~a notation on the deed to the facility property or on some other instrument which is normally examined during title search~~ an environmental covenant, per Delaware Code Title 7, Chapter 79, Subchapter II, with the deed to the facility property that will in perpetuity notify any potential purchaser of the property that:

(i) The land has been used to manage hazardous wastes; and

(ii) Its use is restricted under Subpart G of these regulations; and

(iii) The survey plat and record of the type, location, and quantity of hazardous wastes disposed of within each cell or other hazardous waste disposal unit of the facility required by §265.116 and §265.119(a) have been filed with the local zoning authority or the authority with jurisdiction over local land use and with the Secretary, and

(2) Submit a certification signed by the owner or operator that he has recorded the notation specified in paragraph (b)(1) of this section and a copy of the document in which the notation has been placed to the Secretary.

(c) If the owner or operator or any subsequent owner of the land upon which a hazardous waste disposal unit was located wishes to remove hazardous wastes and hazardous waste residues, the liner, if any, and all contaminated structures, equipment, and soils, he must request a modification to the approved post closure plan in accordance with the requirements of §265.118(g). The owner or operator must demonstrate that the removal of hazardous wastes will satisfy the criteria of §265.117(c). By removing hazardous waste, the owner or operator may become a generator of hazardous waste and must manage it in accordance with all applicable requirements of these regulations. If the owner or operator is granted approval to conduct the removal activities, the owner or operator may request that the Secretary approve either:

(1) The ~~removal~~ termination of the ~~notation on the deed~~ environmental covenant to the facility property or other instrument normally examined during title search, or

(2) The ~~addition of a notation~~ amendment of to the ~~deed~~ environmental covenant or instrument indicating the removal of the hazardous waste.

(Amended August 29, 1988)

***(Break in Continuity of Sections)***

**Section 265.176 Special Requirements for Ignitable or Reactive Waste.**

(a) Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.

~~[Comment: See §265.17(a) for additional requirements]~~

(b) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waster. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waster.

***(Break in Continuity of Sections)***

**Subpart M - Land Treatment**

**Section 265.276 Food-chain Crops.**

(a) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must notify the Secretary within 60 days after the effective date of this part.

[Comment: The growth of food chain crops at a facility which has never before been used for this purpose is a significant change in process under §122.23(c)(3) of these regulations. Owners or operators of such land treatment facilities who propose to grow food chain crops after the effective date of this Part must comply with §122.23(c)(3) of these regulations.]

(b) (1) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless the owner or operator can demonstrate, based on field testing, that any arsenic, lead, mercury, or other constituents identified under §265.273(b):

(i) Will not be transferred to the food portion of the crop by plant uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(ii) Will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(2) The information necessary to make the demonstration required by paragraph (b)(1) of this Section must be kept at the facility and must, at a minimum:

(i) Be based on tests for the specific waste and application rates being used at the facility; and

(ii) Include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods, and statistical procedures.

(c) Food chair crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of paragraphs (c)(1)(i) through (iii) of this section or all requirements of paragraphs (c)(2)(i) through (iv) of this section are met.

(1) (i) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium at concentrations of 2 mg/kg (dry weight) or less;

(ii) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption for other food chain crops, the annual cadmium application rate does not exceed:

Time period	Annual Cd application rate (kg/ha)
Present to June 30, 1984	2.00
July 1, 1984 to Dec. 31, 1986	1.25
Beginning Jan. 1, 1987	0.50

(iii) The cumulative application of cadmium from waste does not exceed the levels in either paragraph (c)(1)(iii)(A) of this section or paragraph (c)(1)(iii)(B) of this section.

(A) Maximum cumulative application (kg/ha)

Soil cation exchange capacity (meq/100g)	Background soil pH less than 6.5	Background soil pH greater than 6.5
Less than 5	5	5
5 to 15	5	10
Greater than 15	5	20

(B) For soils with a background pH of less than 6.5, the cumulative cadmium application

rate does not exceed the levels below: Provided, that the pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food chain crops are grown.

<b>Soil cation exchange capacity (meq/100g)</b>	<b>Maximum cumulative application (kg/ha)</b>
Less than 5	5
5 to 15	10
Greater than 15	20

(2) (i) The only food chain crop produced is animal feed.

(ii) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(iii) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures to be taken to safeguard against possible health hazards from cadmium centering the food chain, which may result from alternative land uses.

(iv) Future property owners are notified by a stipulation in the ~~land record or property deed~~ environmental covenants which states that the property has received waste at high cadmium application rates and that food chain crops must not be grown except in compliance with paragraph (b)(2) of this section.

[Comment: As required by §265.73, if an owner or operator grows foods chain crops on his land treatment facility, he must place the information developed in this section in the operating record of the facility.]

## **PART 268 -- Land Disposal Restrictions**

### **Subpart A - General**

#### **Section 268.1 Purpose, Scope and Applicability.**

(a) This part identifies hazardous wastes that are restricted from land disposal and defines those limited circumstances under which aSn otherwise prohibited waste may continue to be land disposed.

(b) Except as specifically provided otherwise in this part or Part 261 of these regulations, the requirements of this part apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(c) Restricted wastes may continue to be land disposed as follows:

(1) Where persons have been granted an extension to the effective date of a prohibition under Subpart C of this part or pursuant to §268.5, with respect to those wastes covered by the extension;

(2) Where persons have been granted an exemption from a prohibition pursuant to a petition under §268.6, with respect to those wastes and units covered by the petition;

(3) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, are not prohibited if the wastes:

(i) Are disposed into a nonhazardous or hazardous injection well as defined under 40 CFR 144.6(a); and

(ii) Do not exhibit any prohibited characteristic of hazardous waste identified in Part 261, Subpart C at the point of injection.

(4) Wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this part, are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in §268.40, or are D003 reactive cyanide:

(i) The wastes are managed in a treatment system which subsequently discharges to waters of the U.S. pursuant to a permit issued under Section 402 of the Clean Water Act; or

(ii) The wastes are treated for purposes of the pretreatment requirements of Section 307 of the Clean Water Act; or

(iii) The wastes are managed in a zero discharge system engaged in Clean Water Act equivalent treatment as defined in §268.37(a); and

(iv) The wastes no longer exhibit a prohibited characteristic at the point of land disposal (i.e., placement in a surface impoundment).

(d) The requirements of this part shall not affect the availability of a waiver under §121(d)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

(e) The following hazardous wastes are not subject to any provision of Part 268:

(1) Waste generated by small quantity generators of less than 100 kilograms of non acute hazardous waste or less than 1 kilogram of acute hazardous waste per month, as defined in §261.5 of these regulations;

(2) Waste pesticides that a farmer disposes of pursuant to §262.70;

(3) Wastes identified or listed as hazardous after November 8, 1984 for which EPA has not promulgated land disposal prohibitions or treatment standards;

(4) De minimis losses of characteristic wastes to wastewaters are not considered to be prohibited wastes and are defined as losses from normal material handling operations (e.g. spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; and relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; rinsate from empty containers or from containers that are rendered empty by that rinsing; and laboratory wastes not exceeding one per cent of the total flow of wastewater into the facility's headworks on an annual basis, or with a combined annualized average concentration not exceeding one part per million in the headworks of the facility's wastewater treatment or pretreatment facility.

(f) Universal waste handlers and universal waste transporters (as defined in 260.10) are exempt from 268.7 and 268.50 for the hazardous wastes listed below. These handlers are subject to regulation under Part 273.

(1) Batteries as described in §273.2 of these regulations;

(2) Pesticides as described in §273.3 of these regulations;

(3) ~~Thermostats as described in §273.4 of these regulations~~ Mercury-containing equipment as described in §273.4 of these regulations; and

(4) Lamps as described in §273.5 of these regulations.

(Amended June 19, 1992, August 1, 1995, July 23, 1996, August 21, 1997, January 1, 1999, June 2, 2000)

***(Break in Continuity of Sections)***

**Subpart C - Prohibitions on Land Disposal**

**Section 268.20 Waste Specific Prohibitions--Dyes and/or Pigments Productions Wastes.**

(a) Effective August 23, 2005, the waste specified in part 261 as EPA Hazardous Waste Number K181, and soil and debris contaminated with this waste, radioactive wastes mixed with this waste, and soil and debris contaminated with radioactive wastes mixed with this waste are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in subpart D of this Part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under §268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under §268.44;

(4) Hazardous debris has met the treatment standards in §268.40 or the alternative treatment standards in §268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to §268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in §268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

# PROPOSED REGULATIONS

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**Section 268.21 through 268.29 [Reserved]**

**Section 268.40 Applicability of Treatment Standards.  
Subpart D - Treatment Standards**

Waste code	Waste description and treatment/reg-ulatory subcategory 1	Regulated hazardous constituent			Nonwastewater Concentration in mg/kg5 unless noted as "mg/L TCLP", or technology code
		Common name	CAS2 No.	Wastewaters Concentration in mg/L3, or technology code4	
*	*	*	*	*	*
<a href="#">F039</a> <a href="#">.....</a>	<a href="#">Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Waste retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026 F027, and/or F028).</a>	* * * * *			
		<a href="#">o-Anisidine (2-methoxyaniline)</a>	<a href="#">90-04-0</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		* * * * *			
		<a href="#">p-Cresidine</a>	<a href="#">120-71-8</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		* * * * *			
		<a href="#">2,4-Dimethylaniline (2,4-xylydine)</a>	<a href="#">95-68-1</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		* * * * *			
		<a href="#">1,3-Phenylenediamine</a>	<a href="#">108-45-2</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		* * * * *			
*	*	*	*	*	*
<a href="#">K181</a> <a href="#">.....</a>	<a href="#">Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in paragraph (c) of section 261.32 that are equal to or greater than the corresponding paragraph (c) levels, as determined on a calendar year basis.</a>	<a href="#">Aniline</a>	<a href="#">62-53-3</a>	<a href="#">0.81</a>	<a href="#">14</a>
		<a href="#">o-Anisidine (2-methoxyaniline)</a>	<a href="#">90-04-0</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		<a href="#">4-Chloroaniline</a>	<a href="#">106-47-8</a>	<a href="#">0.46</a>	<a href="#">16</a>
		<a href="#">p-Cresidine</a>	<a href="#">120-71-8</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		<a href="#">2,4-Dimethylaniline (2,4-xylydine)</a>	<a href="#">95-68-1</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
		<a href="#">1,2-Phenylenediamine</a>	<a href="#">95-54-5</a>	<a href="#">CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN</a>	<a href="#">CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN</a>
		<a href="#">1,3-Phenylenediamine</a>	<a href="#">108-45-2</a>	<a href="#">0.010</a>	<a href="#">0.66</a>
*	*	*	*	*	*

**Section 268.48 Universal treatment standards.**

**PART 273 - Standards For Universal Waste Management**

**Subpart A - General**

**Section 273.1 Scope.**

(a) This part establishes requirements for managing the following:

- (1) Batteries as described in §273.2;
- (2) Pesticides as described in §273.3;
- (3) ~~Thermostats as described in §273.4~~ Mercury-containing equipment as described in §273.4;

and

- (4) Lamps as described in §273.5.

(b) This part provides an alternative set of management standards in lieu of regulation under Parts 260 through 272.

***(Break in Continuity of Sections)*****Section 273.4 Applicability-Mercury-containing Equipment Thermostats.**

~~(a) Thermostats covered under this Part 273. The requirements of this part apply to persons managing thermostats, as described in §273.9, except those listed in paragraph (b) of this section.~~

~~(b) Thermostats not covered under Part 273. The requirements of this part do not apply to persons managing the following thermostats:~~

~~(1) Thermostats that are not yet wastes under Part 261 of these regulations. Paragraph (c) of this section describes when thermostats become wastes.~~

~~(2) Thermostats that are not hazardous waste. A thermostat is a hazardous waste if it exhibits one or more of the characteristics identified in Part 261, Subpart C.~~

~~(c) Generation of waste thermostats. (1) A used thermostat becomes a waste on the date it is discarded (e.g., sent for reclamation).~~

~~(2) An unused thermostat becomes a waste on the date the handler decides to discard it.~~

(a) Mercury-containing equipment covered under this part 273. The requirements of this part apply to persons managing mercury-containing equipment, as described in §273.9, except those listed in paragraph (b) of this section.

(b) Mercury-containing equipment not covered under this part 273. The requirements of this part do not apply to persons managing the following mercury-containing equipment:

(1) Mercury-containing equipment that is not yet a waste under part 261 of this chapter. Paragraph (c) of this section describes when mercury-containing equipment becomes a waste;

(2) Mercury-containing equipment that is not a hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in part 261, subpart C of this chapter or is listed in part 261, subpart D of this chapter; and (3) Equipment and devices from which the mercury-containing components have been removed.

(c) Generation of waste mercury-containing equipment. (1) Used mercury-containing equipment becomes a waste on the date it is discarded.

(2) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

***(Break in Continuity of Sections)*****Section 273.9 Definitions.**

"Ampule" means an airtight vial made of glass, plastic, metal, or any combination of these materials.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in §273.13(a) and (c) and §273.33(a) and (c). A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y).

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of these regulations or whose act first causes a hazardous waste to become subject to regulation.

"Lamp" also referred to as "universal waste lamp" is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

**"Large Quantity Handler of Universal Waste"** means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, ~~thermostats~~ mercury-containing equipment, or lamps, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms ~~or more total of universal waste is accumulated. limit is met or exceeded.~~

**"On-site"** means the same or geographically contiguous property which may be divided by public or private right-of-way, provided that the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along the right of way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, are also considered on-site property.

**"Mercury-containing Equipment"** means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

**"Pesticide"** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (a) Is a new animal drug under FFDCA section 201(w), or
- (b) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (c) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (a) or (b) of this section.

**"Small Quantity Handler of Universal Waste"** means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more total of universal waste (batteries, pesticides, ~~thermostats~~, mercury-containing equipment, or lamps, calculated collectively) at any time.

**"Thermostat"** means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of §273.13(c)(2) or §273.33(c)(2).

**"Universal Waste"** means any of the following hazardous wastes that are subject to the universal waste requirements of this Part 273:

- (1) Batteries as described in §273.2;
- (2) Pesticides as described in §273.3;
- (3) ~~Thermostats as described in §273.4~~ Mercury-containing equipment as described in §273.4;

and

- (4) Lamps as described in §273.5.

**"Universal Waste Handler":**

(a) Means:

- (1) A generator (as defined in this section) of universal waste; or
- (2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(b) Does not mean:

- (1) A person who treats (except under the provisions of §273.13(a) or (c), or §273.33(a) or (c)), disposes of, or recycles universal waste; or
- (2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

**"Universal Waste Transfer Facility"** means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.

**"Universal Waste Transporter"** means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

## Subpart B - Standards for Small Quantity Handlers of Universal Waste

### Section 273.13 Waste management.

(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

- (i) Sorting batteries by type;
- (ii) Mixing battery types in one container;
- (iii) Discharging batteries so as to remove the electric charge;
- (iv) Regenerating used batteries;
- (v) Disassembling batteries or battery packs into individual batteries or cells;
- (vi) Removing batteries from consumer products; or
- (vii) Removing electrolyte from batteries.

(3) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Part 261, Subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevent releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:

(1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of paragraph (b)(1) of this Section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or

(3) A tank that meets the requirements of Part 265, Subpart J, except for §265.197(c), §265.200, and §265.201; or

(4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

~~(c) Universal waste thermostats. A small quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:~~

~~(1) A small quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.~~

~~(2) A small quantity handler of universal waste may remove mercury containing ampules from universal waste thermostats provided the handler:~~

~~(i) Removes the ampules in a manner designed to prevent breakage of the ampules;~~

~~(ii) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to~~

collect and contain any mercury released from an ampule in case of breakage);

~~(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of §262.34;~~

~~(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of §262.34;~~

~~(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;~~

~~(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;~~

~~(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;~~

~~(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and~~

~~(3) (i) A small quantity handler of universal waste who removes mercury containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in Part 261, Subpart C:~~

~~(A) Mercury or clean-up residues resulting from spills or leaks; and/or~~

~~(B) Other solid waste generated as a result of the removal of mercury containing ampules (e.g., remaining thermostat units).~~

~~(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it is subject to Part 262.~~

~~(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.~~

~~(c) Mercury-containing equipment. A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:~~

~~(1) A small quantity handler of universal waste must place in a container any universal waste mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.~~

~~(2) A small quantity handler of universal waste may remove mercury containing ampules from universal waste mercury-containing equipment provided the handler:~~

~~(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules;~~

~~(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);~~

~~(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that meets the requirements of DRGHW 262.34;~~

~~(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of 262.34 of these regulations;~~

~~(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;~~

~~(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;~~

~~(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;~~

~~(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;~~

# PROPOSED REGULATIONS

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in the DRGHW Part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 272 of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with DRGHW Part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

## *(Break in Continuity of Sections)*

### **Section 273.14 Labeling/markings.**

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Battery(ies), or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in §273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in §273.3(a)(2) are contained must be labeled or marked clearly with:

(1) (i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (ii) of this section is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by a state; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

~~(d) Universal waste thermostats (i.e., each thermostat), or a container in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)".~~

(d) (1) Universal water mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste--Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostat may be labeled or marked clearly with any of the following phrases: "Universal Waster--Mercury Thermostat(s)," "Waster Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: "Universal Waste--Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

*(Break in Continuity of Sections)***Subpart C - Standards for Large Quantity Handlers of Universal Waste****Section 273.32 Notification.**

(a) (1) Except as provided in paragraphs (a)(2) and (3) of this section, a large quantity handler of universal waste must have sent written notification of universal waste management to the Secretary, and received an EPA Identification Number, before meeting or exceeding the 5,000 kilogram storage limit.

(2) A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA Identification Number is not required to renotify under this section.

(3) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in §273.3(a)(1) and who has sent notification to EPA as required by Part 265 is not required to notify for those recalled universal waste pesticides under this section.

(b) This notification must include:

(1) The universal waste handler's name and mailing address;

(2) The name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;

(3) The address or physical location of the universal waste management activities;

(4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, ~~thermostats~~ mercury-containing equipment, lamps);

(5) A statement indicating that the handler is accumulating more than 5,000 kg of universal waste at one time ~~and the types of universal waste (e.g., batteries, pesticides, thermostats, and lamps) the handler is accumulating above this quantity.~~

**Section 273.33 Management.**

(a) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):

(i) Sorting batteries by type;

(ii) Mixing battery types in one container;

(iii) Discharging batteries so as to remove the electric charge;

(iv) Regenerating used batteries;

(v) Disassembling batteries or battery packs into individual batteries or cells;

(vi) Removing batteries from consumer products; or

(vii) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in Part 261, Subpart C.

(i) If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 262.

(ii) If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(b) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the

environment. The universal waste pesticides must be contained in one or more of the following:

- (1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or
- (2) A container that does not meet the requirements of paragraph (b)(1) of this section, provided that the unacceptable container is overpacked in a container that does meet the requirements of paragraph (b)(1) of this section; or
- (3) A tank that meets the requirements of Part 265, Subpart J, except for §§265.197(c), 265.200, and 265.201; or
- (4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

~~(c) Universal waste thermostats. A large quantity handler of universal waste must manage universal waste thermostats in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:~~

~~(1) A large quantity handler of universal waste must contain any universal waste thermostat that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the thermostat, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.~~

~~(2) A large quantity handler of universal waste may remove mercury containing ampules from universal waste thermostats provided the handler:~~

- ~~(i) Removes the ampules in a manner designed to prevent breakage of the ampules;~~
- ~~(ii) Removes ampules only over or in a containment device (e.g., tray or pan sufficient to contain any mercury released from an ampule in case of breakage);~~
- ~~(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules, from the containment device to a container that meets the requirements of §262.34;~~
- ~~(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of §262.34;~~
- ~~(v) Ensures that the area in which ampules are removed is well-ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury;~~
- ~~(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;~~
- ~~(vii) Stores removed ampules in closed, non-leaking containers that are in good condition;~~
- ~~(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation; and~~

~~(3) (i) A large quantity handler of universal waste who removes mercury containing ampules from thermostats must determine whether the following exhibit a characteristic of hazardous waste identified in Part 261, Subpart C:~~

~~(A) Mercury or clean-up residues resulting from spills or leaks; and/or~~

~~(B) Other solid waste generated as a result of the removal of mercury containing ampules (e.g., remaining thermostat units).~~

~~(ii) If the mercury, residues, and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 260 through 268 and 122. The handler is considered the generator of the mercury, residues, and/or other waste and is subject to Part 262.~~

~~(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.~~

~~(c) Mercury-containing equipment. A large quantity handler of universal waster must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waster or component of a universal waster to the environment, as follows:~~

~~(1) A large quantity handler of universal waste must place in a container any universal waster mercury-containing equipment with noncontained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause~~

leakage under reasonably foreseeable conditions, and must be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

(2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

(i) Removes and manages the ampules in a manner designed to prevent breakage of the ampules:

(ii) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage):

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that meets the requirements of 262.34 of these regulations:

(iv) Immediately transfer any mercury resulting from spills or leaks from broken ampules from the containment device to a container that meets the requirements of §262.34 of these regulations:

(v) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure level for mercury:

(vi) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers:

(vii) Stores removed ampules in closed, non-leaking containers that are in good condition:

(viii) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation:

(3) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:

(i) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and

(ii) Follows all requirements for removing ampules and managing removed ampules under paragraph (c)(2) of this section; and

(4) (i) A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in the DRGHW Part 261, subpart C:

(A) Mercury or clean-up residues resulting from spills or leaks and/or

(B) Other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).

(ii) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of parts 260 through 272 of these regulations. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with DRGHW Part 262.

(iii) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations.

(d) Lamps. A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.

*(Break in Continuity of Sections)*

### Section 273.34 Labeling/markings.

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(a) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with the any one of the following phrases: "Universal Waste-Battery(ies)," or "Waste Battery(ies)," or "Used Battery(ies);"

(b) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in §273.3(a)(1) are contained must be labeled or marked clearly with:

(1) The label that was on or accompanied the product as sold or distributed; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s);"

(c) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in §273.3(a)(2) are contained must be labeled or marked clearly with:

(1) (i) The label that was on the product when purchased, if still legible;

(ii) If using the labels described in paragraph (c)(1)(i) of this section is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR Part 172;

(iii) If using the labels described in paragraphs (c)(1)(i) and (1)(ii) of this section is not feasible, another label prescribed or designated by the pesticide collection program; and

(2) The words "Universal Waste-Pesticide(s)" or "Waste-Pesticide(s)."

~~(d) Universal waste thermostats (i.e., each thermostat), or a container or tank in which the thermostats are contained, must be labeled or marked clearly with any one of the following phrases: "Universal Waste-Mercury Thermostat(s)," or "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)".~~

(d) (1) Universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Containing Equipment," "Waste Mercury-Containing Equipment," or "Used Mercury-Containing Equipment."

(2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."

(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: "Universal Waste--Lamp(s)", or "Waste Lamp(s)", or "Used Lamp(s)".

(Amended June 2, 2000)

*(Break in Continuity of Sections)*

## PART 279 - Standards for the Management of Used Oil

### Subpart C - Standards for Used Oil Generators

#### Section 279.22 Used oil storage.

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures (40 CFR Part 112) in addition to the requirements of this subpart. Used oil generators are also subject to the Delaware Regulations Governing Underground Storage Tanks (UST) standards for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of this subpart.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Parts 264 or 265 of these regulations.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration); and

(2) Not leaking (no visible leaks); and

(3) Always be closed during storage, except when it is necessary to add or remove oil.

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities must be labeled or marked clearly with the words "Used Oil".

(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the Delaware Regulations Governing Underground Storage Tanks (UST) and which has occurred after the effective date of Delaware's recycled used oil management program, a generator must perform the following cleanup steps:

- (1) Stop the release;
- (2) Contain the released used oil;
- (3) Clean up and manage properly the released used oil and other materials; and
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to

service.

(Amended August 21, 1997, August 23, 1999)

### *(Break in Continuity of Sections)*

## **Subpart H - Standards for Used Oil Fuel Marketers**

### **Section 279.74 Tracking.**

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner must keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivers the used oil to the burner;
- (2) The name and address of the burner who will receive the used oil;
- (3) The EPA identification number and Delaware Waste Transporter Permit Number of the transporter who delivers the used oil to the burner;
- (4) The EPA identification number of the burner;
- (5) The quantity of used oil shipped; and
- (6) The date of shipment.

(b) On specification used oil delivery. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under §279.11 must keep a record of each shipment of used oil to ~~an on-specification used oil burner~~ the facility to which it delivers the used oil. Records for each shipment must include the following information:

- (1) The name and address of the facility receiving the shipment;
- (2) The quantity of used oil fuel delivered;
- (3) The date of shipment or delivery; and
- (4) A cross reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under §279.72(a).

(c) Record retention. The records described in paragraphs (a) and (b) of this section must be maintained for at least three years.

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## **DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code, Ch. 60

(7 Del.C., Ch. 60)

### **PUBLIC NOTICE**

**Proposed Total Maximum Daily Loads (TMDLs) for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct two Public Workshops to review draft Total Maximum Daily Loads (TMDLs) Regulations for bacteria for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

The proposed Bacteria TMDL Regulations for the Chester River, Choptank River, Marshyhope Creek, and Pocomoke River Watersheds are necessary because the existing TMDL regulations that included both nutrient and bacteria allocations, promulgated on January 11, 2006 are being modified to include nutrients only. This change is required due to a clarification in the interpretation of the EPA-required, bacteria water quality standards that result in changes to the bacteria allocations.

**Possible Terms of the Agency Action**

Following the Public Workshops and after reviewing comments received during the comment period, Public Hearings will be scheduled to adopt the proposed Total Maximum Daily Loads for these Watersheds. Following adoption of the TMDL Regulations, DNREC will develop Pollution Control Strategies (PCSs) designed to achieve the necessary load reductions. PCSs will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

**Statutory Basis or Legal Authority to Act**

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 *et. seq.*, as amended.

**Other Legislation That May be Impacted**

None

**Notice of Public Workshops and Comment Period**

Proposed TMDLs for the Murderkill River and Appoquinimink River Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Monday, June 5, 2006 at the DNREC Auditorium, 89 Kings Highway, Dover, DE.

Proposed TMDLs for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) will be reviewed during a Public Workshop to be held at 6:00 p.m., Tuesday, June 6, 2006 at the University of Delaware Research and Education Center, 16483 County Seat Highway, Georgetown, DE.

Draft TMDL Regulations and technical support documents for these watersheds will be available as of Thursday, June 1, 2006 on the Department's website ([www.dnrec.delaware.gov](http://www.dnrec.delaware.gov)) by clicking on "TMDLs" under "Information" or by contacting Sam Myoda, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: ([samuel.myoda@state.de.us](mailto:samuel.myoda@state.de.us)).

The Department has developed these draft regulations pursuant to a federal Consent Decree that requires the establishment of these TMDLs by the end of Calendar Year 2006. In order to comply with the ambitious schedule set by the Court Order, the Department must receive comments as early as possible in the regulatory development process. Hence, the Department is requiring that written comments on the proposed regulations be submitted no later than 4:30 PM, Friday, June 30, 2006, in order to be considered. After consideration of the written public comments, the Department, upon public notice, will schedule a Public Hearing.

Please send written comments to Sam Myoda, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: ([samuel.myoda@state.de.us](mailto:samuel.myoda@state.de.us)). All written comments must be

received by 4:30 p.m., Friday, June 30, 2006. Electronic submission is preferred.

**Prepared By:**

John Schneider, Watershed Assessment Section, 739-9939

**7412 Total Maximum Daily Loads (TMDLs) for Nutrients for the Chester River Watershed in Delaware**

**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Chester River is impaired by ~~high levels of bacteria~~, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Chester River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen and phosphorous, ~~and Enterococcus bacteria~~.

**2.0 Total Maximum Daily Loads (TMDLs) for the Chester River Watershed in Delaware**

Article 1. The nonpoint source nitrogen load in the entire watershed shall be capped at the 2001-2003 baseline level. This shall result in a yearly-average total nitrogen load of 708 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 40 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 54.6 pounds per day to 32.3 pound per day.

~~Article 3. The nonpoint source bacteria load in the entire watershed shall be reduced by 75.6% from the 1997-2005 baseline levels. This shall result in reducing a yearly mean bacteria load from 1.9E+11 CFU per day to 4.6E+10 CFU per day.~~

Article 4 ~~3~~. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Chester River.

Article 5 ~~4~~. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**9 DE Reg. 1102 (01/01/06)**

**7413 Total Maximum Daily Loads (TMDLs) for Nutrients for the Choptank River Watershed in Delaware**

**1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Choptank River is impaired by ~~high levels of bacteria~~, elevated levels of the nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Choptank River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen, and phosphorous, ~~and Enterococcus bacteria~~.

## 2.0 Total Maximum Daily Loads (TMDLs) for the Choptank River Watershed in Delaware

Article 1. The nonpoint source nitrogen load in the entire watershed shall be capped at the 2001-2003 baseline level. This shall result in a yearly-average total nitrogen load of 1,359 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 40 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 127 pounds per day to 75.9 pound per day.

~~Article 3. The nonpoint source bacteria load shall be reduced by 87.8% from the 1997—2005 baseline level. This shall result in reducing a yearly mean bacteria load from 4.3E+11 CFU per day to 4.4E+10 CFU per day.~~

Article 4 ~~3~~. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Choptank River.

Article 5 ~~4~~. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**9 DE Reg. 1102 (01/01/06)**

## 7414 Total Maximum Daily Loads (TMDLs) for Nutrients for the Marshyhope Creek Watershed in Delaware

### 1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Marshyhope Creek is impaired by ~~high levels of bacteria~~, elevated levels of nutrients nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Marshyhope Creek on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen and phosphorous, ~~and Enterococcus bacteria~~.

## 2.0 Total Maximum Daily Loads (TMDLs) for Marshyhope Creek Watershed in Delaware

Article 1. The nonpoint source nitrogen load in the entire watershed shall be reduced by 20 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total nitrogen load from 2,687 pounds per day to 2,148 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 25 percent from the 2001-2003 baseline level. This shall result in reducing the yearly-average total phosphorous load from 109 pounds per day to 78.1 pound per day.

~~Article 3. The nonpoint source bacteria load shall be reduced by 85.7% from the 1997—2005 baseline levels. This shall result in reducing a yearly mean bacteria load from 1.1E+11 CFU per day to 1.6E+10 CFU per day.~~

Article 4 ~~3~~. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Marshyhope Creek.

Article 5 ~~4~~. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**9 DE Reg. 1102 (01/01/06)**

## 7415 Total Maximum Daily Loads (TMDLs) for Nutrients for the Pocomoke River Watershed in Delaware

### 1.0 Introduction and Background

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the Pocomoke River is impaired by ~~high levels of bacteria~~, elevated levels of the nutrients

nitrogen and phosphorous, and low dissolved oxygen, and that the designated uses are not fully supported by water quality in the stream.

Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed Pocomoke River on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen and phosphorous, ~~and Enterococcus bacteria.~~

## **2.0 Total Maximum Daily Loads (TMDLs) for the Pocomoke River Watershed in Delaware**

Article 1. The nonpoint source nitrogen load in the entire watershed shall be reduced by 55 percent from the 1997-2003 baseline level. This shall result in reducing the yearly-median total nitrogen load from 226 pounds per day to 102 pounds per day.

Article 2. The nonpoint source phosphorus load in the entire watershed shall be reduced by 55 percent from the 1997-2003 baseline level. This shall result in reducing the yearly-median total phosphorous load from 13.5 pounds per day to 6.1 pound per day.

~~Article 3. The nonpoint source bacteria load shall be reduced by 69.2% from the 1997-2005 baseline levels. This shall result in reducing a yearly mean bacteria load from 4.2E+11 CFU per day to 1.3E+11CFU per day.~~

Article 4 ~~3~~. Based upon water quality model runs and assuming implementation of reductions identified by Articles 1 through 3, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in Pocomoke River.

Article ~~5~~ 4. Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Teams, other stakeholders, and the public.

**9 DE Reg. 1102 (01/01/06)**

## **7403 Total Maximum Daily Loads (TMDLs) for Bacteria for the Appoquinimink River Watershed, Delaware**

### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Appoquinimink River Watershed are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Appoquinimink River Watershed on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for *enterococcus* bacteria.

### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for Appoquinimink River Watershed**

Article 1. The nonpoint source bacteria load in the fresh water portion of the Appoquinimink River Watershed shall be reduced by 11 percent from the 1997-2005 baseline level.

Article 2. The nonpoint source bacteria load in the marine water portion of the Appoquinimink River Watershed shall be reduced by 72 percent from the 1997-2005 baseline level.

Article 3. The MS4 point source bacteria load in the fresh water portion of the Appoquinimink River Watershed shall be reduced by 15 percent from the 1997-2005 baseline level.

Article 4. The MS4 point source bacteria load in the marine water portion of the Appoquinimink River Watershed shall be reduced by 73 percent from the 1997-2005 baseline level.

Article 5. The Middletown-Odessa-Townsend (MOT) wastewater treatment plant point source bacteria loading shall be capped at the current, geometric mean concentration level of 35 CFU *enterococcus*/100mL.

Article 6. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 5 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Appoquinimink River Watershed.

Article 7. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Team, other stakeholders, and the public.

### **7427 Total Maximum Daily Loads (TMDLs) for Bacteria for the Murderkill River Watershed, Delaware**

#### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River Watershed are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Murderkill River Watershed on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for *enterococcus* bacteria.

#### **2.0 Total Maximum Daily Loads (TMDLs) Regulation for Murderkill River Watershed**

Article 1. The nonpoint source bacteria load in the fresh water portion of the Murderkill River Watershed shall be reduced by 32 percent from the 1997-2005 baseline level.

Article 2. The nonpoint source bacteria load in the marine water portion of the Murderkill River Watershed shall be reduced by 67 percent from the 1997-2005 baseline level.

Article 3. All point source bacteria loading in the Murderkill River Watershed shall be capped at the current, geometric mean concentration level of 35 CFU *enterococcus*/100mL.

Article 4. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Murderkill River Watershed.

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Tributary Action Team, other stakeholders, and the public.

### **7428 Total Maximum Daily Loads (TMDLs) for Bacteria for the Inland Bays Drainage Basin, Delaware (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds)**

#### **1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Inland Bays Drainage Basin on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for *enterococcus* bacteria.

**2.0 Total Maximum Daily Loads (TMDLs) Regulation for Inland Bays Drainage Basin**

Article 1. The nonpoint source bacteria load in the fresh water portion of the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) shall be reduced by 40 percent from the 2000-2005 baseline level.

Article 2. The nonpoint source bacteria load in the marine water portion of the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) shall be reduced by 23 percent from the 2000-2005 baseline level.

Article 3. All point source bacteria loading in the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) will be capped at the current, geometric mean concentration level of 35 CFU *enterococcus*/100mL until all point sources are eliminated as required in the 1998 Inland Bays Nutrient TMDL Regulation.

Article 4. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 3 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds).

Article 5. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with Tributary Action Teams, other stakeholders, and the public.

**7429 Total Maximum Daily Loads (TMDLs) for Bacteria for the Chesapeake Bay Drainage Basin, Delaware (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds)****1.0 Introduction and Background**

Water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds) are impaired by high levels of bacteria and that the designated uses are not fully supported due to levels of this pollutant in these waters.

Section 303(d) of the Federal Clean Water Act (CWA) requires States to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impairment. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. A TMDL is composed of three components, including a Waste Load Allocation (WLA) for point source discharges, Load Allocation (LA) for nonpoint sources, and a Margin of Safety (MOS).

DNREC listed the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds) on several of the State's 303(d) Lists and proposes the following Total Maximum Daily Loads regulation for *enterococcus* bacteria.

**2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Chesapeake Bay Drainage Basin**

Article 1. The nonpoint source bacteria load in the entire Chester River Watershed shall be reduced by 35 percent from the 1997-2004 baseline level.

Article 2. The nonpoint source bacteria load in the entire Choptank River watershed shall be reduced by 29 percent from the 1997-2005 baseline level.

Article 3. The nonpoint source bacteria load in the entire Marshyhope Creek watershed shall be reduced by 21 percent from the 1997-2005 baseline level.

Article 4. The nonpoint source bacteria load in the entire Pocomoke River watershed shall be reduced by 30 percent from the 1997-2004 baseline level.

Article 5. The nonpoint source bacteria load in the entire Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, and Broad Creek Watersheds shall be reduced by 3% percent from the 2000-2005 baseline level.

Article 6. All point source bacteria loading in the entire Chesapeake Bay Drainage Basin (Chester River,

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**PROPOSED REGULATIONS**

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Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds) shall be capped at the current, geometric mean concentration level of 100 CFU *enterococcus*/100mL.

Article 7. Based upon cumulative distribution analyses and assuming implementation of reductions identified by Article 1 through Article 6 above, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds).

Article 8. Implementation of this TMDLs Regulation shall be achieved through the development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with Tributary Action Teams, other stakeholders, and the public.

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**Symbol Key**

Arial 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 AGRICULTURE  
HARNESS RACING COMMISSION**

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.**, §10005)  
3 **DE Admin. Code** 501

**ORDER**

Pursuant to 29 **Del.C.** §10118 and 3 **Del.C.** §10005, the Delaware Harness Racing Commission issues this Order adopting proposed amendments to the Commission's Rules. Following notice and a public hearing on April 25, 2006, the Commission makes the following findings and conclusions:

**SUMMARY OF THE EVIDENCE**

1. The Commission posted public notice of the proposed amendments in the April 1, 2006 *Register of Regulations* and for two consecutive weeks in the *Delaware Business Review* and *Delaware State News*. The Commission proposed to change rule 8.3.6.1.1 to allow for the administration of phenylbutazone to any horse of any age, so long as a test sample does not contain more than 2.5 micrograms per milliliter of blood plasma.

2. The Commission received no written comments during April 2006. The Commission held a public hearing on April 25, 2006 and received public comments from Sal DiMario, Robert Kinsey, Hugh Gallagher, Dr. Jay Baldwin, and Charles Lockhard. Mr. DiMario's comments were as follows: He is in favor of the change, and calls attention to Dr. Peters testimony last month that bute at this level is not harmful to the horse. Mr. DiMario relates that the Board of Directors of the Delaware Standard Bred Owners Association has approved this rule change and asks the Commission to adopt this rule change.

3. Robert Kinsey testified that he is a standard bred trainer and sometimes driver. He believes the only person who has spoken against this rule change is Stan Berstein, who doesn't have all of the facts. Mr. Kinsey believes this new rule would not allow for bute on race day, it just attempts to level the playing field. Mr. Kinsey believes this rule change is needed because once you get past a two year old's maiden race, she is racing against other older horses who are on bute. Bute is used for colic, fever and as an anti-inflammatory agent. Allowing the use of bute will

discourage people from going into the joint with more dangerous injections. Mr. Kinsey notes that the only bute violations in this state that he is aware of have been for over the limit violations, not bute use in two year olds. Mr. Kinsey believes that implementing a cut-off date for when bute can be used in a two year old will create a messy rule that will be difficult to harmonize with what other states are doing.

4. Hugh Gallagher encouraged the Commission to rely on the opinion of the veterinarians. He also asked the Board to give some thought to an implementation date regarding when the use of bute would be appropriate. Mr. Gallagher states that the ban on the use of bute in two year olds must have been put in place originally for some reason, and the Commission should consider if they are adequately protecting two year olds in implementing this rule change.

5. Dr. Jay Baldwin, paddock vet, recommended adopting the rule change as it has been written, without the addition of an implementation date. He believes the USTA definition of a two year old adequately addresses Mr. Gallagher's concerns without the need for additional, complicating implementation dates.

6. Charles Lockhard, vice-president of Dover Downs, asked for information regarding what other states allow. Mr. Gallagher then informed the Commission that Maryland, New Jersey, Virginia, New York, Illinois, and Kentucky allow bute at any age. Ohio, Florida, Indiana and California allow bute in two year old horses.

#### FINDINGS OF FACT AND CONCLUSIONS

7. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing on the proposed amendments to the Commission's Rules.

8. The Commission has considered the public comments at the April 25, 2006 hearing. The Commission does not find those comments require further revisions of the proposed rules. The Commission finds that the new rule 8.3.6.1.1 allows the use of bute in a horse of any age at therapeutic levels. Further, this rule change helps to bring the Commission's rules into harmony with the rules of other standard bred racing states.

The effective date of this Order will be ten (10) days from the publication of this Order in the *Register of Regulations* on June 1, 2006.

IT IS SO ORDERED this 12<sup>th</sup> day of May 2006.

Beth Steele, Chair

George P. Staats, Commissioner

Mary Ann Lambertson, Commissioner

Kenneth Williamson, Commissioner

#### 501 Harness Racing Rules and Regulations

\* Please note that no changes were made to the regulation as originally proposed and published in the April 2006 issue of the Register at page 1432 (9 DE Reg. 1432). Therefore, the final regulation is not being republished. A complete set of the rules and regulations for the Harness Racing Commission are available at: <http://www.state.de.us/research/AdminCode/title3/500/501/index.shtml#TopOfPage>

#### DIVISION OF POULTRY AND ANIMAL HEALTH

Statutory Authority: 3 Delaware Code, Section 407(a) (3 Del.C. §407(a))

#### ORDER

Pursuant to Title 3, Chapter 71 of the **Delaware Code**, the Delaware Department of Agriculture has proposed regulations for the prevention and control of Scrapie disease in sheep and goats in the State of Delaware. These will bring Delaware in line under federal regulation 9 CFR 79.6, making Delaware a Scrapie Consistent State.

A public notice of the regulations was posted in the March 1, 2006 *Register of Regulations* and for two consecutive weeks in the *Delaware Business Review* and *Delaware State News*. Written comments were requested.

A public hearing was held at the Delaware Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901 on March 30, 2006 at 1:30 pm. The regulations were presented by G. Robert Moore, of the Delaware

Department of Agriculture. No verbal or written comments were presented. The hearing was recorded.

The effective date of the implementation of these regulations will be ten (10) days from the publication of these regulations in the Register of Regulations.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of May, 2006.

Robert L. Ricker, Acting State Veterinarian  
Michael T. Scuse, Secretary of Agriculture

## **902 Scrapie Regulations**

### **1.0 Purpose**

Delaware Department of Agriculture Scrapie Disease Regulations to qualify the State of Delaware as a Scrapie Consistent State under 9CFR 79.6

### **2.0 Authority**

Title 3, Chapter 71 of the Delaware Code:

The Delaware Department of Agriculture shall protect the health of the domestic animals of the State, and determine and employ the most efficient and practical means for detection, prevention, suppression, control, or eradication of dangerous, contagious or infectious diseases among domestic animals, to include a blood test and injection test for the determination of the existence of any contagious or infectious disease. For these purposes it may establish, maintain, enforce, and regulate such quarantine and other measures relating to the movement and care of animals and their products, the disinfection of suspected localities and articles and the destruction of animals, as it deems necessary, and may adopt from time to time all such regulations as are necessary and proper for carrying out the purposes of this chapter and Chapter 73 of this title. In the case of a contagious disease, the Department or its authorized agents may put under quarantine the entire herd containing the suspected or diseased animal or animals.

### **3.0 Definitions:**

"Animal" means a sheep or goat.

"CVI" is a Certificate of Veterinary Inspection.

"Department" means the Delaware Department of Agriculture.

"Designated Scrapie Epidemiologist" means a state or federal veterinarian with knowledge of scrapie epidemiology selected to coordinate and evaluate the scrapie eradication program.

"High Risk Animal" means any genetically susceptible exposed animal; female offspring of a scrapie positive animal and any female that poses a risk based on the epidemiology of the flock.

"Low Risk Goat" is a goat that is not scrapie positive, not suspect, not high risk, not exposed, or commingled with sheep; and from an area flock with no history of scrapie.

"Official [Scrapie] Identification" is an identification mark or device approved by the USDA and the Department; this may be eartag, tattoo, brand, or microchip. When a registration tattoo is used for identification, the registration paper must accompany the animal.

"Scrapie Exposed" is any animal that has been with a scrapie positive female animal or resided in an infected source flock.

"Scrapie Positive Animal" is an animal for which a diagnosis of scrapie has been made by a laboratory approved by the Department and the USDA.

"Scrapie Suspect Animal" is a sheep or goat suspected of having scrapie by an accredited veterinarian or a Department or USDA, APHIS, VS representative.

### **4.0 Scrapie [Import Requirements] for Sheep and Goats.**

4.1 All animals [imported to Delaware] must be identified on an official certificate of veterinary inspection (CVI) issued by an accredited veterinarian; the certificate shall include a statement that "this flock has been inspected and found to be free of any infectious or contagious diseases and that there has been no cases of scrapie in this flock or herd during the past year".

4.2 Delaware is included in the National Scrapie Eradication Program. All eligible animals must have an official scrapie identification.

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# FINAL REGULATIONS

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4.3 The following animals are exempt from official scrapie identification:

4.3.1 Sheep and goat wethers.

4.3.2 Slaughter goats.

4.3.3 Slaughter goats under 18 months of age.

4.4 No sheep or goat may be removed from slaughter channels unless it is identified to the flock of birth and the animal is not scrapie-exposed or from an infected or source flock, and is from a scrapie consistent state.

4.5 An animal must have official scrapie identification upon transfer of ownership, when first commingling or interstate commerce occurs, or before joining with animals within the state but, from a different flock.

4.6 Scrapie is a reportable disease in the State of Delaware.

4.6.1 State animal health officials shall be notified, by the flock owner or veterinarian, within 24 hours when a clinically suspicious animal or test is found. State officials will notify the Area VS office of a suspicious animal.

4.6.2 When a clinical or test suspect, or test positive animal is found, the animal and entire flock will be placed under quarantine until the status of the animal is determined. The suspect animal(s) must be officially identified under the direction of a State or Federal representative. Owners must allow the collection and submission of tissues from all scrapie-suspect animals to a laboratory authorized by USDA, APHIS, VS to conduct scrapie tests. If the suspect animal is euthanized, after diagnostic tissues are collected, the carcass must be completely destroyed under the supervision of State or Federal officials.

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## DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))  
14 DE Admin. Code 1008

### REGULATORY IMPLEMENTING ORDER

#### 1008 DIAA Junior High and Middle School Interscholastic Athletics

##### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1008 DIAA Junior High and Middle School Interscholastic Athletics. The amendments add a new section, 2.7.5 and add the phrase "immediately preceding the school year" after "June 15" to section 2.1.1.1 in order clarify the eligibility rules for sports participation. A waiver provision has also been added to 2.7.5. In section 6.0 sub titles and numbering are amended in order to clarify the references to student attendance at athletic clinics and camps. Spelling and a **Delaware Code** reference have also been corrected.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 21, 2006, in the form hereto attached as Exhibit "A". A comment was received from the State Council for Persons with Disabilities that section 2.7.1 provides for a waiver of the rule on participation in sports for consecutive semesters but a similar rule in 2.7.5 does not include a waiver provision. The State Council feels that 2.7.5 should also have a waiver provision. Section 2.7.5 has been changed to include a waiver provision.

##### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1008 in order to clarify the eligibility rules for participating in sports and for attendance at athletic camps and clinics.

##### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1008.

Therefore, pursuant to 14 **Del.C.** Ch. 3, 14 **DE Admin. Code** 1008 attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1008 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** 1008 amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1008 in the Administrative Code of Regulations for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch. 3 on April 20, 2006. 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 18th day of May 2006.

DEPARTMENT OF EDUCATION  
Valerie A. Woodruff, Secretary of Education

Approved this 18th day of May 2006

**STATE BOARD OF EDUCATION**  
Jean W. Allen, President  
Richard M. Farmer, Jr., Vice President  
Mary B. Graham, Esquire  
Gregory A. Hastings  
Barbara B. Rutt  
Dennis J. Savage  
Dr. Claibourne D. Smith

#### 1008 DIAA Junior High and Middle School Interscholastic Athletics

#### *(Break in Continuity of Sections)*

#### **2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if He/She Does Not Meet the Following Requirements**

##### 2.1 Eligibility, Grades and Age

2.1.1 The junior high and middle school interscholastic program shall include grades 6 to 8, inclusive. No junior high or middle school student who has completed a season at the junior high or middle school level shall compete in the same sport at the senior high school level during the same school year. A junior high or middle school student who participates in a varsity or sub varsity game at the high school level shall be ineligible to participate at the junior high or middle school level in the same sport.

2.1.1.1 Eighth grade students who become 15 years of age on or after June 15 immediately preceding the school year in a school terminating in the eighth grade shall be eligible for all sports during the current school year provided all other eligibility requirements are met.

2.1.1.2 Permission shall be granted for 15 year old eighth grade students in a school terminating in the eighth grade who are ineligible for junior high or middle school competition to participate in the district high school athletic program provided they meet all other eligibility requirements. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.2 Requests for waiver of the age requirement shall be considered only for participation on an unofficial, non scoring basis in non contact sports.

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s) legal guardian(s) or Relative Caregiver in the attendance zone of the school which he/she attends in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court action. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligible. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/she shall be ineligible for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, is granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch. 4.

2.2.1.4 A student who is a non resident of Delaware shall be eligible to attend a public school, charter school or career technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent, legal guardian or Relative Caregiver is a full time employee of that district.

2.2.1.5 Notwithstanding 2.2.1, a student shall be eligible at a public school, charter school or career technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Relative Caregivers School Authorization.

2.2.1.5.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.6 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

2.3 Eligibility, Enrollment and Attendance

2.3.1 A student must be legally enrolled in the junior high or middle school which he/she represents in order to participate in a practice, scrimmage, or contest.

2.3.2 Students with disabilities who are placed in special schools or programs administered by a school district or charter school which sponsors junior high or middle school interscholastic athletics.

2.3.2.1 Definitions:

**"Campus"** means a contiguous land area containing one or more school buildings.

**"Special School or Program"** means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

**"Student With a Disability"** means a "child with a disability" as that term in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925.

2.3.2.2 A student with a disability who is placed in a special school or program administered by a school district or charter school which sponsors junior high or middle school interscholastic athletics shall be eligible to participate in interscholastic athletics as follows:

2.3.2.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.2.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular junior high or middle school for all or part of the school day, the student shall be eligible only at that regular junior high or middle school.

2.3.2.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular junior high or middle school, the student shall be eligible only at the regular junior high or middle school on the same campus.

2.3.2.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular junior high or middle school the student shall be eligible only at the regular junior high or middle school designated to serve the special school's or program's students.

2.3.2.2.4.1 School districts or charter schools which administer special schools or programs and have multiple middle schools or junior high schools shall decide which of its regular middle schools or junior high schools shall be designated to serve special school or program students in these circumstances.

2.3.3 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student's custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the choice district in order to legally enroll at his/her home school. Without a release, the student would not be legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.4 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in school or out of school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.5 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.6 A Student who fails to complete a semester or absence for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from his/her reentry to school.

2.3.7 An eligible student who practices in violation of 2.2.2 through 2.2.5 shall. When he/she regains her eligibility, be prohibited from practicing, scrimmaging or competing for an equivalent number of days.

## 2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged or competed in grades 6 through 8), is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district (1.4.6.1).

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, (except as permitted by 2.4.2.3) or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full

time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided:

2.4.2.5.1 The student has completed the registration process at the receiving school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team;

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities;

or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to affecting interscholastic athletic participation.

2.4.3 Transfer Because of a Change in the Program of Study or Financial Hardship. If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver's responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.3.1 Documentation for Change in Program of Study: Documentation for change in program of study (a multi year hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.3.1.1 The student's schedule;

2.4.3.1.2 The student's transcript;

2.4.3.1.3 Current course descriptions from both the sending and receiving schools;

2.4.3.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.3.1.5 A statement from the principals of both the sending and receiving school that the student is not transferring for athletic advantage (2.4.5).

2.4.3.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.3.2.1 Proof of extreme financial hardship caused by significant loss of income and increased expenses; and

2.4.3.2.2 A statement from the principal of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.5).

2.4.4 **Transfer Because of a Custody Change:** In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.5 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics, or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.6 A student who transfers from a public, private, career technical school or charter school to a school of choice, as authorized by 14 **Del.C.**, Ch. 4 shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.6.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport only.

2.4.7 A student who transfers from a school of choice to either a private school, public school, career technical school or, after completing his/her two year commitment, to a public charter school, shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year.

2.4.8 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

## 2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/ she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters competition under an assumed name. The surname and given name used by any player in the first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp or clinic. Accepting an event program or a complimentary item(s) (T shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/ her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to 180 school days provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

## 2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least four (4) courses. Two (2) of those courses must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study, shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/her individualized education plan (IEP).

2.6.2 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.2.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.2.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.2.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.3 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.4 Local school boards and nonpublic schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.5 An ineligible student who practices in violation of 2.6.1, 2.6.2 or 2.6.3, shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

## 2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive semesters from the date of his/her first entrance into the seventh grade in schools which restrict participation in interscholastic athletics to students in grades 7 and 8 unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than two (2) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 “**Hardship**” shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for promotion within the normal period of eligibility and the loss of all or part of one of his/ her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 No student shall represent a school in athletics after six (6) consecutive semesters from the date of his/her first entrance into the sixth grade in schools which permit students in grades 6, 7 and 8 to participate in interscholastic athletics unless a waiver is granted for hardship reasons **[as defined in section 2.7.1.]**

2.7.2.1 No student shall have more than three (3) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.2.2 Participation on the part of a sixth grade student shall be at the discretion of the individual school.

2.7.2.3 Sixth grade students shall not be permitted to participate in football unless the conference develops a classification system that is approved by the DIAA Board of Directors.

2.7.3 Students below the sixth grade shall not be permitted to practice, scrimmage, or compete on junior high or middle school interscholastic teams.

2.7.4 Participation shall be defined as taking part in a school sponsored practice, scrimmage, or contest on or after the first allowable date for practice in that sport.

2.7.5 In the event of a student that transfers between the types of schools described in 2.7.1 and 2.7.2, no student shall represent a school in athletics after six (6) consecutive semesters from the date of student's first entrance into sixth grade [unless a waiver is granted for hardship reasons as defined in section 2.7.1].

## 2.8 Student Eligibility Report Forms

2.8.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.8.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/she shall be adjudged eligible and the school assessed a \$10.00 fine.

## 2.9 Use of an Eligible Athlete:

2.9.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es) or point(s) won.

2.9.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.9.2.1 If the infraction occurs during a tournament, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament. Team and individual awards shall be returned to the event sponsor and team and individual records and performances shall be nullified.

2.9.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both cases, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings. A forfeit shall be automatic and not subject to refusal by the offending school's opponent.

2.9.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and points earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as any affected placements will be adjusted according to the rules of that sport.

2.9.3.1 If the infraction occurs during a tournament, the ineligible athlete shall be replaced by his/her most recently defeated opponent or next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.9.3.2 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.9.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school or DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties as stipulated in 2.9.1 and 2.9.2 shall be imposed.

2.9.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the number of days up to the length of the school year from the date the charge is substantiated.

2.9.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

2.9.7 If an athlete or his/her parent(s), legal guardian(s), or Relative Caregiver knowingly withholds information or provides false information that causes him/her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the number of days up to the length of the school year from the date the charge is substantiated.

#### 2.10 Determination of Student Eligibility and the Appeal Procedures

2.10.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.10.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.10.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with the procedure described in 14 DE Admin. Code 1006.10.1.3.

### *(Break in Continuity of Sections)*

## **6.0 ~~[Out of Season]~~ Athletic Camps and Clinic Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition**

### 6.1 ~~Out of Season~~ **[Out of Season]** Athletic Camps and Clinic Sponsorship

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp or clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp or clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp or clinic may only instruct their own athletes in accordance with 7.5.

### 6.2 Team Attendance at Out of Season Commercial Camps and Clinics

6.4-4-2.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.4-4-2.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.4-4-2.1.2 All applicants shall share equally in the funds provided.

6.4-4-2.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.4-4-2.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

### 6.23 Individual Attendance at Commercial Camps and Clinics

6.23.1 Commercial camps and clinics are defined as a camp or clinic operated for profit which provides coaching or other sports training for a fee.

6.23.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.23.2.1 The student must participate unattached and may not wear school uniforms.  
6.23.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.23.2.3 The school may not provide transportation or pay fees.  
6.23.2.4 The school coach may not require his/her athletes to participate in a camp or clinic or provide instruction to his/her returning athletes in a camp or clinic except as in accordance with 7.5.

## 6.34 Open Gym Programs

6.34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.34.1.3 The activities must be unstructured and student generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.34.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.34.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/ her assigned sport.

6.34.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.34.1.7 The participants must provide their own workout clothing.

## 6.45 Conditioning Programs

6.45.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.45.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.45.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.45.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.45.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.45.1.5 Sport specific equipment is prohibited.

6.45.1.6 The participants must provide their own workout clothing.

## 6.56 Non School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.56.1 A student may participate on a nonschool team or in a non-school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.56.2 Participation on a non school team or in a non school individual event shall be subject to the following conditions:

6.56.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.56.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.56.2.3 The school or a school affiliated support group may not provide transportation.

6.56.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.56.2.5 The school coach may not require his/her athletes to participate in non school competition or provide instruction to his/her athletes in non school competition except as in 7.5.

6.56.3 14 ~~Del.C. §122(15)(b)(14)~~ requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non school teams in that sport.

**\*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 Department of Education is available at: <http://www.doe.k12.de.us/>.**

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#### OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 1220(a) (14 **Del.C.** §1220(a))  
14 **DE Admin. Code** 275

#### REGULATORY IMPLEMENTING ORDER

#### 1009 DIAA Senior High School Interscholastic Athletics

#### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 1009 DIAA Senior High School Interscholastic Athletics. The amendments clarify when the fall sports season begins in 4.1.1 and in section 6.0 sub titles and numbering are amended in order to clarify the references to student attendance at athletic clinics and camps. A reference to the **Delaware Code** is also amended in 6.6.3.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 21, 2006, in the form hereto attached as Exhibit "A". A comment was received from Bill Legge at William Penn High School concerning the August 15th start date for conditioning drills before full practice and other sports. The start date will remain as it is for this year but changes will be considered for 2007-2008.

#### II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 1009 in order to clarify the age eligibility for sports participation, when the sports season begins and student attendance at athletic camps and clinics.

#### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 1009. Therefore, pursuant to 14 **Del.C.** Ch. 3, 14 **DE Admin. Code** 1009 attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 1009 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** 1009 amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 1009 in the Administrative Code of Regulations for the Department of Education.

#### V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Ch. 3 on April 20, 2006. 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 18th day of May 2006.

**DEPARTMENT OF EDUCATION**

Valerie A. Woodruff, Secretary of Education

Approved this 18th day of May 2006

**STATE BOARD OF EDUCATION**

Jean W. Allen, President

Richard M. Farmer, Jr., Vice President

Mary B. Graham, Esquire

Gregory A. Hastings

Barbara B. Rutt

Dennis J. Savage

Dr. Claibourne D. Smith

**1009 DIAA Senior High School Interscholastic Athletics**

*(Break in Continuity of Sections)*

**2.0 Eligibility: No Student Shall Represent a School in an Interscholastic Scrimmage or Contest if He/She Does Not Meet the Following Requirements**

2.1 Eligibility, Age

2.1.1 Students who become 19 years of age on or after June 15 immediately preceding the school year shall be eligible for all sports during the current school year provided all other eligibility requirements are met. In determining the age of a contestant, the birth date as entered on the birth record of the Bureau of Vital Statistics shall be required and shall be so certified on all eligibility lists.

2.1.1.1 Requests for a waiver of the age requirement shall only be considered for participation on an unofficial, nonscoring basis in non contact or non collision sports

2.2 Eligibility, Residence

2.2.1 With the exception of boarding school students, a student must be living with his/her custodial parent(s), legal guardian(s), or Relative Caregiver in the attendance zone of the school which he/she attends, or be a student 18 years of age or older and living in the attendance zone of the school which he/she attends (2.2.1.7) in order to be eligible for interscholastic athletics in that school. In cases of joint custody, the custodial parent shall be the parent with actual physical placement as determined by court. In the case of shared custody the parents must commit to sending the student to a particular school for the year. Maintaining multiple residences in order to circumvent this requirement shall render the student ineligible.

2.2.1.1 A student who, pursuant to established school board policy or administrative procedure, remains in a school he/she has been attending after his/her legal residence changes to the attendance zone of a different school in the same school district, may exercise, prior to the first official student day of the subsequent academic year, a one time election to remain at his/her current school and thereby not lose athletic eligibility. If a student chooses to remain at his/her current school and then transfers to the school in his/her new attendance zone on or after the first official student day of the subsequent academic year, he/ she shall be ineligible, for ninety (90) school days.

2.2.1.2 A student who changes residence to a different attendance zone after the start of the last marking period and, pursuant to established school board policy or administrative procedure, shall be granted permission to continue attending his/her present school, the student shall retain his/her athletic eligibility in that school for the remainder of the school year provided all other eligibility requirements are met.

2.2.1.3 A student shall be permitted to complete his/her senior year at the school he/she is attending and remain eligible even though a change of legal residence to the attendance zone of another school has occurred. This provision shall refer to any change of legal residence that occurs after the completion of the student's junior year.

2.2.1.4 A student may be residing outside of the attendance zone of the school which he/she attends if the student is participating in the Delaware School Choice Program as authorized by 14 **Del.C.**, Ch. 4.

2.2.1.5 A student who is a non resident of Delaware shall be eligible to attend a public school, charter school or career technical school if, in accordance with 14 **Del.C.** §607, his/her custodial parent or court appointed legal guardian or Relative Caregiver is a full time employee of that district.

2.2.1.6 Notwithstanding 2.2.1, a student shall be eligible at a public or career technical school if he/she is enrolled in accordance with 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.2.1.6.1 An exception would be a student whose Relative Caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the Relative Caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.2.1.7 A student who reaches the age of majority (18) and leaves his/her parents' place of residency and jurisdiction thereof, and moves to another attendance zone to continue his/her high school education shall be ineligible to participate in athletics for 90 school days commencing with the first day of official attendance on or after their 18<sup>th</sup> birthday. This provision shall not apply to a student participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, provided the student's choice application was properly submitted prior to his/her change of residence.

2.2.1.8 Notwithstanding 2.2.1, a student who is homeless as defined in the McKinney-Vento Act, 42 U.S.C. 11434a(2) shall be eligible to participate at the public school in which he/she is enrolled.

### 2.3 Eligibility, Enrollment and Attendance.

2.3.1 A student must be legally enrolled in the high school which he/she represents in order to participate in a practice, scrimmage or contest.

2.3.2 A shared time student who attends two (2) different schools during the regular school day shall be eligible to participate only at his/her home school. A student's home school shall be the school at which he/she is receiving instruction in the core academic areas and at which he/she is satisfying the majority of his/her graduation requirements; not a school at which he/she is receiving only specialized educational instruction such as vocational training.

2.3.3 Students with disabilities who are placed in special schools or programs.

#### 2.3.3.1 Definitions:

**"Campus"** means a contiguous land area containing one or more school buildings.

**"Special School or Program"** means a school or program approved by the Department of Education with the approval of the State Board of Education to serve students with disabilities, but does not include alternative schools.

**"Student With a Disability"** means a "child with a disability" as that term is defined in the Administrative Manual for Special Education Services (AMSES), 14 **DE Admin. Code** 925.

2.3.3.2 A student with a disability who is placed in a special school or program shall be eligible to participate in interscholastic athletics as follows:

2.3.3.2.1 If the special school or program sponsors the interscholastic sport in question, the student shall be eligible to participate only at the school or program.

2.3.3.2.2 If the special school or program does not sponsor the interscholastic sport in question and the student is served in a regular high school for all or part of the school day, the student shall be eligible only at that regular high school.

2.3.3.2.3 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is located on the campus of a regular high school, the student shall be eligible only at the regular high school on the same campus.

2.3.3.2.4 If the special school or program does not sponsor the interscholastic sport in question, and the student is served exclusively in the special school or program, and the special school or program is not located on the campus of a regular high school, the student shall be eligible only at the regular high school designated to serve the special school's or program's students.

2.3.3.2.4.1 School districts or charter schools which administer special

schools or programs and have multiple high schools shall decide which of its regular high schools shall be designated to serve special school or program students in these circumstances.

2.3.4 A student who is participating in the Delaware School Choice Program, as authorized by 14 **Del.C.** Ch. 4, is obligated to attend the choice school for a minimum of two (2) years unless the student[']s custodial parent(s), legal guardian(s) or Relative Caregiver relocate to a different school district or the student fails to meet the academic requirements of the choice school. If a student attends a choice school for less than two (2) years and subsequently returns to his/her home school, the student must receive a release from the "choice district" in order to legally enroll at his/her home school. Without a release, the student would not be eligible legally enrolled and consequently would be ineligible to participate in interscholastic athletics.

2.3.5 A student may not participate in a practice, scrimmage, or contest during the time a suspension, either in school or out of school, is in effect or during the time he/she is assigned to an alternative school for disciplinary reasons.

2.3.6 A student who is not legally in attendance at school due to illness or injury shall not be permitted to participate in a practice, scrimmage, or contest on that day.

2.3.7 A student who fails to complete a semester or is absent for one or more semesters for reasons other than personal illness or injury shall be ineligible for ninety (90) school days from the date of his/her reentry to school.

2.3.8 An ineligible student who practices in violation of 2.2.2 through 2.2.5 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

#### 2.4 Eligibility, Transfers

2.4.1 A student who has not previously participated in interscholastic athletics (previous participation is defined as having practiced, scrimmaged, or competed in grades 9 through 12) is released by a proper school authority from a sending school, has completed the registration process at the receiving school, and is pursuing an approved course of study shall be eligible immediately upon registration provided he/she meets all other DIAA eligibility requirements.

2.4.2 If a student has previously participated in interscholastic athletics, he/she shall be ineligible for a period of ninety (90) school days commencing with the first day of official attendance in the receiving school unless one of the following exceptions applies:

2.4.2.1 The transfer is within a school district and is approved by the district's superintendent pursuant to established school board policy or administrative procedure. This provision shall not apply to a student who transfers to his/her home school from a "choice school" within the district and who has not completed the two year attendance requirement unless he/she satisfies the conditions stipulated in 2.4.2.5.1 through 2.4.2.5.4. This provision shall also not apply to a student who transfers from a "choice school" to another "choice school" within the district.

2.4.2.2 The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, (except as permitted by 2.4.2.3), or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics.

2.4.2.3 The transfer is in accordance with the student being placed with a Relative Caregiver as per 14 **Del.C.** §202(f), the Caregivers School Authorization.

2.4.2.3.1 An exception would be a student whose relative caregiver does not provide the documentation required by the Relative Caregiver School Authorization (proof of relation and proof of full time care) but is permitted to register on the basis of a petition for the transfer of guardianship. A student who registers on the basis of a petition for the transfer of guardianship is not eligible to scrimmage or compete until the relative caregiver has provided the aforementioned required documentation or has received a signed court order designating him/her as the student's legal guardian.

2.4.2.4 The transfer is the result of a change in residence by the custodial parent(s) legal guardian(s) or Relative Caregiver from the attendance zone of the sending school to the attendance zone of the receiving school. A change in residence has occurred when all occupancy of the previous residence has ended. A student who transfers shall be eligible in the receiving school immediately, when the custodial parent(s) legal guardian(s) or Relative Caregiver has established a new legal residence in another public school attendance zone.

2.4.2.5 The transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year provided that the following has occurred:

2.4.2.5.1 The student has completed the registration process at the receiving

school prior to the first official student day of the academic year. The first official student day shall be defined as the first day on which students in any grade in that school are required to be in attendance.

2.4.2.5.2 The student has not attended class, excluding summer school, or participated in a scrimmage or contest at the sending school since the close of the previous academic year.

2.4.2.5.3 The student's legal residence is located in the attendance zone of the receiving school.

2.4.2.5.4 All other DIAA eligibility requirements have been met.

2.4.2.6 The transfer is the result of the student being homeless as defined in the McKinney - Vento Act, 42 U.S.C. 11434a(2).

2.4.2.6.1 Notwithstanding the above, the student shall be ineligible under the ninety (90) school day ineligibility clause where the student's homeless status is created by the student or his/her family for the primary reason of:

2.4.2.6.1.1 Seeking a superior team; or

2.4.2.6.1.2 Seeking a team more compatible with the student's abilities;

or

2.4.2.6.1.3 Dissatisfaction with the philosophy, policies, methods or actions of a coach or administrator pertaining to interscholastic athletics; or

2.4.2.6.1.4 Avoiding disciplinary action imposed by the school of origin related to or affecting interscholastic athletic participation.

2.4.3 Transfer Because of Promotion or Administrative Assignment: Transfer because of promotion or administrative assignment to the ninth grade from a school whose terminal point is the eighth grade, or to the tenth grade from a junior high school whose terminal point is the ninth grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.

2.4.4 Transfer Because of a Change in the Program of Study or Financial Hardship: If a waiver of the ninety (90) school day ineligibility clause is requested due to a desired change in the program of study or financial hardship, the parent(s), legal guardian(s) or Relative Caregiver is responsible for providing documentation to the DIAA Board of Directors to support the request.

2.4.4.1 Documentation for change in the program of study (a multi year, hierarchical sequence of courses with a common theme or subject matter leading to a specific outcome) shall include:

2.4.4.1.1 The student's schedule;

2.4.4.1.2 The student's transcript;

2.4.4.1.3 Current course descriptions from both the sending and receiving schools;

2.4.4.1.4 A statement from the principal of the sending school indicating that a significant part of the student's desired program of study will not be offered and that it will place the student at a definite disadvantage to delay transfer until the end of the current school year; and

2.4.4.1.5 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.6).

2.4.4.2 Documentation for Financial Hardship: Documentation for financial hardship shall include:

2.4.4.2.1 Proof of extreme financial hardship caused by significant and unexpected reduction in income or increase in expenses; and

2.4.4.2.2 A statement from the principals of both the sending and receiving schools that the student is not transferring for athletic advantage (2.4.6).

2.4.5 Transfer Because of Custody Change: In cases of joint or shared custody when a primary residence is established, a change in a student's primary residence without court action subjects the student to the ninety (90) school day ineligibility clause.

2.4.6 A change of custody or guardianship for athletic advantage shall render a student ineligible under the ninety (90) school day ineligibility clause if the reason for his/her transfer is one of the following: to seek a superior team, to seek a team more compatible with his/her abilities, dissatisfaction with the philosophy, policies, methods, or actions of a coach or administrator pertaining to interscholastic athletics or to avoid disciplinary action imposed by the sending school related to or affecting interscholastic athletic participation.

2.4.7 A student who transfers from a public, private, career technical, or charter school to a school of choice, as authorized by 14 Del.C. Ch. 4[;] shall be eligible immediately provided the transfer occurs after the close

of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.7.1 A student who transfers from a school of choice to another school of choice shall be ineligible to participate in interscholastic athletics during his/her first year of attendance at the receiving school unless the receiving school sponsors a sport(s) not sponsored by the sending school in which case the student shall be eligible to participate in that sport(s) only.

2.4.8 A student who transfers from a school of choice to either a private school, career technical school or, after completing his/her two year commitment, to a public charter school shall be eligible immediately provided the transfer occurs after the close of the sending school's academic year and prior to the first official student day of the receiving school's academic year.

2.4.9 If a student transfers with fewer than ninety (90) school days left in the academic year, he/she shall be ineligible for the remainder of the school year but shall be eligible beginning with the subsequent fall sports season provided he/she is in compliance with all other eligibility requirements.

## 2.5 Eligibility, Amateur Status

2.5.1 A student may not participate in an interscholastic sport unless he/she is considered an amateur in that sport. A student forfeits his/her amateur status if he/ she does any of the following:

2.5.1.1 Knowingly plays on or against a professional team which is defined as a team having one or more members who have received or are receiving directly or indirectly monetary consideration for their athletic services.

2.5.1.2 Signs a professional contract, accepts reimbursement for expenses to attend a professional tryout, or receives financial assistance in any form from a professional sports organization.

2.5.1.3 Enters a competition under an assumed name. The surname and given name used by any player in his/her first game of interscholastic competition shall be used during the remainder of the student's interscholastic career. Any change in spelling or use of another name shall be regarded as an attempt to evade this rule unless the change has been properly certified by the player to the principal of the school.

2.5.1.4 Receives remuneration of any kind or accepts reimbursement for expenses in excess of the actual and necessary costs of transportation, meals, and lodging for participating in a team or individual competition or an instructional camp or clinic. Reimbursement for the aforementioned expenses is permitted only if all of the participants receive the same benefit.

2.5.1.5 Receives cash or a cash equivalent (savings bond, certificate of deposit, etc.), merchandise (except as permitted by 9.1.4) or a merchandise discount, (except for discount arranged by school for part of team uniform) a reduction or waiver of fees, a gift certificate, or other valuable consideration as a result of his/her participation in an organized competition or instructional camp or clinic. Accepting an event program or a complimentary item(s) (t shirt, hat, equipment bag, etc.) that is inscribed with a reference to the event, has an aggregate retail value of no more than \$150.00, and is provided to all of the participants, shall not jeopardize his/ her amateur status.

2.5.1.6 Sells or pawns awards received.

2.5.1.7 Uses his/her athletic status to promote or endorse a commercial product or service in a newsprint, radio, or television advertisement or personal appearance.

2.5.2 Accepting compensation for teaching lessons, coaching, or officiating shall not jeopardize his/ her amateur status.

2.5.3 A student who forfeits his/her amateur status under the provisions of this rule is ineligible to participate at the interscholastic level in the sport in which the violation occurred. He/she may be reinstated after a period of up to the number of days in the school year provided that during the suspension, he/she complies with all of the provisions of this rule. The suspension shall date from the time of the last offense.

## 2.6 Eligibility, Passing Work

2.6.1 In order to be eligible for participation in interscholastic athletics, including practices, a student must pursue a regular course of study or its equivalent as approved by the local governing body, and must be passing at least five (5) credits. Two (2) of those credits must be in the areas of English, Mathematics, Science, or Social Studies.

2.6.1.1 A student who is receiving special education services and is precluded from meeting the aforementioned academic requirements due to modifications in the grading procedure or course of study[;] shall be adjudged eligible by the principal if he/she is making satisfactory progress in accordance with the requirements of his/ her individualized education plan (IEP).

2.6.2 In the case of a student in the twelfth grade, he/she must be passing all courses necessary for

graduation from high school in order to be eligible for participation. A course necessary for graduation shall be any course, whether taken during or outside the regular school day, that satisfies an unmet graduation requirement.

2.6.3 A student whose work in any regular marking period does not meet the above standards shall be ineligible to participate in interscholastic athletics, including practices, for the next marking period.

2.6.3.1 In the case of a conflict between the marking period grade and the final grade, the final grade shall determine eligibility.

2.6.3.2 The final accumulation of credits shall determine eligibility for the first marking period of the following school year. When a student makes up a failure or earns the required credit(s) during the summer, he/she shall become eligible provided he/she successfully completes the course work prior to the first official student day of the school year.

2.6.3.3 Written verification of the successful completion of a correspondence course must be received before a student shall regain his/her eligibility.

2.6.4 A student forfeits or regains his/her eligibility, in accordance with the provisions of this rule, on the day report cards are issued.

2.6.5 Local school boards and nonpublic schools may establish more stringent requirements for academic eligibility than the minimum standards herein prescribed.

2.6.6 An ineligible student who practices in violation of 2.6.1, 2.6.2, 2.6.3 or 2.6.4 shall, when he/she regains his/her eligibility, be prohibited from practicing, scrimmaging, or competing for an equivalent number of days.

#### 2.7 Eligibility, Years of Participation

2.7.1 No student shall represent a school in athletics after four (4) consecutive years from the date of his/her first entrance into the ninth grade unless a waiver is granted for hardship reasons.

2.7.1.1 No student shall have more than four (4) opportunities to participate in a fall sport or combination of fall sports, in a winter sport or combination of winter sports, or in a spring sport or combination of spring sports.

2.7.1.2 "**Hardship**" shall be defined as extenuating circumstances peculiar to the student athlete caused by unforeseen events beyond the election, control or creation of the student athlete, his/her family, or school which (1) deprive him/her of all or part of one of his/her opportunities to participate in a particular sports season; (2) preclude him/her from completing the academic requirements for graduation within the normal period of eligibility; and (3) deprive him/her of all or part of one of his/her opportunities to participate in a particular sport. The waiver provision is intended to restore eligibility that has been lost as a result of a hardship situation. Injury, illness or accidents, which cause a student to fail to meet the basic requirements, are possible causes for a hardship consideration.

2.7.1.2.1 A waiver shall not be granted under this section where DIAA finds that the student was academically eligible pursuant to DIAA's minimum passing work standards but was ineligible to participate under more stringent locally adopted academic standards and where the local school board has adopted its own waiver or exemption policy.

2.7.1.2.2 A clear and direct causal relationship must exist between the alleged hardship condition and the failure of the student to complete the academic requirements for graduation within the normal period of eligibility and the loss of all or part of one of his/ her opportunities to participate in a particular sports season.

2.7.1.2.3 The burden of proof rests with the student in conjunction with the waiver process as described in 14 **DE Admin. Code** 1006.9. Claims of extended illness, debilitating injury, emotional stress, etc., must be accompanied by appropriate documentation. Evidence must be submitted to verify that the student or his/her parent(s) or court appointed legal guardian(s) sought assistance to ameliorate the effects of the hardship condition.

2.7.2 Satisfactory completion of studies in accordance with promotion policies established by the local governing body shall determine when a student is beyond the eighth grade. If the eighth grade is part of the same administrative unit as grades 9 through 12, participation on the part of an eighth grade student toward five (5) years of eligibility shall be at the discretion of the individual school.

2.7.2.1 Eighth grade students who are enrolled or transfer to schools that meet the above criteria begin their five years of eligibility for senior high school athletic participation the first year they enter eighth grade.

2.7.3 Seventh grade students shall not be permitted to participate on senior high school interscholastic teams.

**2.7.4 Participation of Postgraduates**

2.7.4.1 Participation shall be defined as taking part in a school sponsored practice, scrimmage or contest on or after the first allowable date for practice in that sport.

2.7.4.2 Postgraduates shall not be eligible to participate in interscholastic athletics. All graduates of recognized senior high schools shall be considered postgraduates.

2.7.4.3 A regularly enrolled student taking courses in an institution of higher education shall be eligible provided he/she meets all other DIAA requirements.

2.7.4.4 Students whose commencement exercises are prior to the completion of the school's regular season schedule and the state tournament shall be eligible to compete.

**2.8 Eligibility of Foreign Exchange Students and International Students**

2.8.1 Notwithstanding 2.2, 2.3, and 2.4, foreign exchange students and international students may be eligible to participate in interscholastic athletics upon arrival at their host school provided they have not attained the age of 19 prior to June 15 and are enrolled as participants in a recognized foreign exchange program.

2.8.1.1 All foreign exchange programs which are included on the Advisory List of International Educational Travel and Exchange Programs of the Council on Standards for International Educational Travel (CSIET) and are two (2) semesters in length shall be considered as recognized.

2.8.1.2 Students participating in programs not included on the CSIET list shall be required to present evidence that the program is a bona fide educational exchange program before it shall be considered as recognized.

2.8.2 International students who are not participating in a foreign exchange program are considered to be transfer students and are ineligible to compete in interscholastic athletics unless they are in compliance with all DIAA eligibility requirements including 2.2.

2.8.3 Once enrolled, foreign exchange and other international students must comply with all DIAA eligibility rules.

2.8.3.1 Athletic recruitment of foreign exchange students or other international students by a member school or any other entity is prohibited, and any such students recruited shall be ineligible.

**2.9 Student Eligibility Report Forms**

2.9.1 Member schools shall use eligibility forms approved by the Executive Director. A copy of the original eligibility report and subsequent addenda must be either received by the Executive Director or postmarked prior to the first contest for which the students listed are eligible. Failure to file an eligibility report as prescribed shall result in a \$15.00 fine against the school.

2.9.1.1 In the case of a student who met all DIAA eligibility requirements but was omitted from the eligibility report due to administrative or clerical error, he/ she shall be adjudged eligible and the school assessed a \$10.00 fine.

**2.10 Use of an Ineligible Athlete:**

2.10.1 If a school uses an ineligible athlete, the administrative head or his/her designee shall notify the opposing school(s) or event sponsor, in the case of a tournament or meet, and the Executive Director in writing of the violation and the forfeiture of the appropriate game(s), match(es), and point(s) won.

2.10.2 The deliberate or inadvertent use of an ineligible athlete in the sports of soccer, football, volleyball, field hockey, basketball, baseball, softball, and lacrosse shall require the offending school to forfeit the contest(s) in which the ineligible athlete participated.

2.10.2.1 If the infraction occurs during a tournament, including a state championship, the offending school shall be replaced by its most recently defeated opponent. Teams eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament, team and individual awards shall be returned to the event sponsor and team and individual records and performances shall be nullified.

2.10.2.2 The offending school may appeal to the DIAA Board of Directors for a waiver of the forfeiture penalty. If the forfeiture penalty is waived, the offending school shall be reprimanded and fined \$200.00 unless the athlete or his/her parent(s) or court appointed legal guardian(s) knowingly withheld information or provided false information that caused him/her to be eligible for interscholastic competition. The burden of proof, in both instances, rests entirely with the offending school. A forfeit shall constitute a loss for the offending school and a win for its opponent for purposes of standings and playoff eligibility and shall be automatic and not subject to refusal by the offending school's opponent.

2.10.3 The deliberate or inadvertent use of an ineligible athlete in the sports of cross country, wrestling, swimming, track, golf, and tennis shall require the offending school to forfeit the matches won and points

earned by the ineligible athlete or by a relay team of which he/she was a member. The points contributed by an ineligible athlete to his/her team score shall be deleted and the contest score as well as the affected placements will be adjusted according to the rules of the sport.

2.10.3.1 If the infraction occurs during a tournament, including a state championship, the ineligible athlete shall be replaced by his/her most recently defeated opponent or the next highest finisher. Contestants eliminated prior to the most recently defeated opponent shall not be allowed to reenter the tournament.

2.10.3.1.1 Individual awards earned by the ineligible athlete and team awards, if necessary because of adjustments in the standings, shall be returned to the event sponsor. Individual records and performances by the ineligible athlete shall be nullified.

2.10.4 If an ineligible athlete participates in interscholastic competition contrary to DIAA rules but in accordance with a temporary restraining order or injunction against his/her school and DIAA, and the injunction is subsequently vacated, stayed, or reversed, or the courts determine that injunctive relief is not or was not justified, or the injunction expires without further judicial determination, the penalties stipulated in 2.10.1 and 2.10.2 shall be imposed.

2.10.5 The intentional use of an ineligible athlete by a member school or repeated indifference to its responsibility to determine the eligibility of its athletes will subject the school to additional penalties which may include suspension for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.6 If a coach knowingly withholds information or provides false information that causes an athlete to be eligible for interscholastic competition, the coach shall be suspended from coaching in any sport at any DIAA member school for the amount of days up to length of the school year from the date the charge is substantiated.

2.10.7 If an athlete or his/her parent(s), legal guardian(s) or Relative Caregiver knowingly withholds information or provides false information that causes him/ her to be eligible for interscholastic competition, the athlete shall be suspended from participation in any sport at any DIAA member school for up to the amount of days up to the length of the school year from the date the charge is substantiated.

#### 2.11 Determination of Student Eligibility and the Appeal Procedures

2.11.1 In cases of uncertainty or disagreement, the eligibility of a student shall be determined initially by the Executive Director. If the Executive Director determines that the student is ineligible, the school and the student shall be notified and the student suspended immediately from participation in interscholastic athletics.

2.11.2 The school and the student shall be informed that the decision of the Executive Director may be appealed to the DIAA Board of Directors.

2.11.3 Decisions of the DIAA Board of Directors to affirm, modify, or reverse the eligibility rulings of the Executive Director may be appealed to the State Board of Education in accordance with 14 **DE Admin. Code** 1006.11.

**9 DE Reg. 126 (7/1/05)**

### *(Break in Continuity of Sections)*

## **4.0 Sports Seasons, Practices Sessions and Maximum Game Schedules and Designated Sports Seasons**

### 4.1 Sports Seasons

4.1.1 The fall sports season shall begin ~~with the first approved day for practice on or after August 15th~~ and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. A conference championship game must also be completed before the start of the state tournament in that sport and practice for any fall sport shall not begin earlier than ~~21 days before August 15th. The first allowable competition date in the fall sports season shall be [21 days before]~~ the first Friday after Labor Day.

4.1.1.1 The first three (3) days of football practice shall be primarily for the purpose of physical conditioning and shall be restricted to non contact activities. Coaches may introduce offensive formations and defensive alignments, run plays "on air," practice non contact phases of the kicking game, and teach non contact positional skills. Protective equipment shall be restricted to helmets, mouth guards, and shoes. The use of dummies, hand shields, and sleds in contact drills is prohibited. Blocking, tackling, and block protection drills which involve any contact between players are also prohibited.

4.1.1.2 No member school shall participate in spring football games nor shall a member school conduct football practice of any type outside of the regular fall sports season except when participating in the state tournament. Organized football" or "organized football practice" shall be defined as any type of sport which is

organized to promote efficiency in any of the various aspects of football. Touch football, featuring blocking, tackling, ball handling, signaling, etc. shall be considered "organized football" and shall be illegal under the intent of this rule

4.1.2 The winter sports season shall begin with the first approved day for practice and end with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any winter sport shall not begin earlier than 21 days before the first Friday in December.

4.1.3 The spring sports season shall begin on March 1 and ends with the start of the state championship in that sport. Any regular season contest that was postponed must be rescheduled and played before the beginning of the state tournament in that sport. Conference championships must also be completed before the start of the state tournament in that sport and practice for any spring sport shall not begin earlier than March 1.

4.1.4 A school which participates in a game prior to the first allowable date or after the start of the state championship shall be required to forfeit the contest and be assessed a \$100.00 fine.

4.1.5 A school which conducts practice prior to the first allowable date shall pay a fine of \$100.00 per illegal practice day.

4.1.6 No member school shall participate in a post season contest without the written approval of the Executive Director.

## 4.2 Practice Sessions

4.2.1 A practice session shall be defined as any instructional activity on the field, court, mat, or track or in the pool, weight room, or classroom such as team meetings, film reviews, blackboard sessions, warmup and cool down exercises, drills or mandatory strength training. Member schools shall conduct a minimum of 21 calendar days of practice under the supervision of the school's certified, emergency or approved volunteer coaching staff prior to the first scheduled contest in all sports.

4.2.2 Practice sessions shall be limited to two (2) hours on official school days. Split sessions may be conducted but practice time shall not exceed two hours for any individual athlete. The two hour practice limitation does not include time for noninstructional activities such as dressing, showering, transportation, or training room care.

4.2.3 Practicing on holidays and weekends shall be left to the discretion of the individual schools and conferences. However there should be one day of no activity (practice, scrimmage, or contest) during any seven day period.

4.2.4 A student shall be required to practice for a period of at least seven (7) calendar days prior to participating in a contest. However, if a student has been participating in a state tournament during the preceding sports season and is unable to begin practicing at least seven (7) calendar days before his/her team's first contest, he/she shall be exempt from this requirement.

4.2.5 A school which exceeds the two hour practice limitation shall pay a \$100.00 fine.

## 4.3 Maximum Game Schedules and Designated Sports Seasons:

4.3.1 The maximum number of regularly scheduled interscholastic contests or competition dates for each team and individual in the recognized sports and their sports season shall be designated by the DIAA Board of Directors.

4.3.2 The third contest or competition date in a week shall be held on Friday (no early dismissal permitted), Saturday or Sunday. This requirement is waived when a school is closed for the entire week such as during winter or spring vacation.

4.3.2.1 A team shall not participate in two different cross country, indoor track or outdoor track meets on the same day.

4.3.2.2 Participation in a triangular meet shall count as two contests and participation in a quadrangular meet shall count as three contests toward the seasonal limitation.

4.3.2.3 Participation in any part of a quarter or half shall count as a quarter or half toward the weekly and daily limitations in that sport. However, in the case of football, participation on a free kick or a play from a scrimmage kick formation shall not count as a quarter. Overtime periods shall be considered as part of the fourth quarter or second half.

4.3.3 A week shall be designated as starting on Monday and ending on Sunday for all sports except football. A football week shall begin the day of the varsity game and end the day preceding the next varsity game or the following Friday.

4.3.3.1 The preceding game limitations, with the exception of the individual daily limitation, shall not prohibit the rescheduling of postponed games at the discretion and convenience of the member schools

involved provided the game was postponed due to inclement weather, unplayable field conditions, failure of the assigned officials to appear for the game, breakdown of the bus or van carrying the visiting team, or any other circumstances beyond the control of site management which preclude playing the game. However, a team may not participate in more than four (4) contests or competition dates in a week.

4.3.4 The maximum number of regularly scheduled contests for each of the recognized sports, except football, shall be exclusive of conference championships, playoffs to determine tournament state berths, and the state tournament or meet. The maximum number of regularly scheduled football contests shall be exclusive of the state tournament.

4.3.4.1 Any playoffs to determine state tournament berths shall be under the control and supervision of the DIAA tournament committee.

4.3.5 A student shall participate in a particular sport for only one season during each academic year.

4.3.6 A school which participates in more than the allowable number of contests in a season shall be suspended from the state playoffs or, if a nonqualifying team, fined \$200.00.

4.3.6.1 A school which exceeds the weekly contest limitation shall be required to forfeit the contest and pay a \$100.00 fine.

4.3.6.2 A student who exceeds the weekly or daily contest limitation shall be considered an ineligible athlete and the school subject to the process stipulated in 2.10.

**9 DE Reg. 126 (7/1/05)**

***(Break in Continuity of Sections)***

**6.0 ~~[Out of Season]~~ Athletic Camps and Clinics Sponsorship, Commercial Camps and Clinics and Open Gyms, Conditioning Programs and Non School Competition**

**6.1 ~~Out of Season~~ [Out of Season] Athletic Camps and Clinic Sponsorship**

6.1.1 DIAA does not restrict a student's decision to attend an out of season athletic camp or clinic. However, schools, school organizations, coaches, or school related groups, such as booster clubs, may not sponsor an athletic camp or clinic which limits membership to their own district, locale, or teams. Coaches employed by an out of season athletic camp or clinic may only instruct their returning athletes in accordance with 4.7.5.

**6.2 Team Attendance at Out of Season Commercial Camps and Clinics**

6.4-2.1 School related groups, such as booster clubs, which desire to sponsor the attendance of their school's enrolled students at an out of season athletic camp or clinic, may do so with the approval of the local school board or governing body. The disbursement of funds to pay for camp or clinic related expenses (fees, travel costs, etc.) shall be administered by the principal or his/her designee and the funds shall be allocated according to the following guidelines:

6.4-2.1.1 All students and team members shall be notified of the available sponsorship by announcement, publication, etc.

6.4-2.1.2 All applicants shall share equally in the funds provided.

6.4-2.1.3 All applicants shall be academically eligible to participate in interscholastic athletics.

6.4-2.1.4 All applicants shall have one year of prior participation in the sport for which the camp or clinic is intended or, absent any prior participation, he/she shall be judged by the coach to benefit substantially from participation in the camp or clinic.

**6.23 Individual Attendance at Commercial Camps and Clinics:**

6.23.1 Commercial camps and clinics are defined as a camp or clinic operated for profit which provides coaching or other sports training for a fee.

6.23.2 A student may participate in a commercial camp or clinic, including private lessons, both during and out of the designated sport season provided the following conditions are observed:

6.23.2.1 The student must participate unattached and may not wear school uniforms.

6.23.2.2 The student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.23.2.3 The school may not provide transportation or pay fees.

6.23.2.4 The school coach may not require his/her athletes to participate in a camp or clinic, or provide instruction to his/her returning athletes in a camp or clinic except as provided in 7.5.

**6.34 Open Gym Programs**

6.34.1 A member school may open its gymnasium or other facility for informal, recreational activities in accordance with the following provisions:

6.34.1.1 The open gym must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.34.1.2 Student participation must be voluntary and the open gym must not be a prerequisite for trying out for a particular team.

6.34.1.3 The activities must be unstructured and student generated. Organized drills in the skills or techniques of a particular sport are prohibited. Organized competition with fixed team rosters is also prohibited.

6.34.1.4 A coach may not predetermine that the open gym will include only his/her sport and publicize the open gym as being restricted to that sport. It is the responsibility of the adult supervisor to permit as many different activities as the facility can effectively and safely accommodate.

6.34.1.5 A coach may open the facility and distribute playing equipment but may not instruct, officiate, participate, organize the activities, or choose teams in his/ her assigned sport.

6.34.1.6 Playing equipment is restricted to that which is customarily used in a contest in a particular sport. Playing equipment which is only used in a practice session is prohibited.

6.34.1.7 The participants must provide their own workout clothing.

## 6.45 Conditioning Programs

6.45.1 A member school may conduct a conditioning program in accordance with the following provisions:

6.45.1.1 The conditioning program must be available to all interested students, must not be restricted to members of a particular team, and must be publicized as such.

6.45.1.2 Student participation must be voluntary. The conditioning program must not be a prerequisite for trying out for a particular team.

6.45.1.3 Permissible activities include stretching, lifting weights, jumping rope, running, calisthenics, aerobics, and similar generic conditioning activities. Organized drills in the skills or techniques of a particular sport are prohibited.

6.45.1.4 A coach may not provide instruction in sport specific skills or techniques.

6.45.1.5 Sport specific equipment is prohibited.

6.45.1.6 The participants must provide their own workout clothing.

## 6.56 Non-School Competition in which Participants are Competing Unattached and are Not Representing Their Schools

6.56.1 A student may participate on a non school team or in a non school individual event both during and out of the designated sport season. However, the student owes his/her primary loyalty and allegiance to the school team of which he/she is a member. A school shall have the authority to require attendance at practices and contests and students not in compliance shall be subject to disciplinary action as determined by the school.

6.56.2 Participation on a non school team or in a non school individual event shall be subject to the following conditions:

6.56.2.1 With the exception of organized intramurals, the student may not wear school uniforms.

6.56.2.2 With the exception of organized intramurals, the student may use only school equipment whose primary purpose is to protect the wearer from physical injury.

6.56.2.3 The school or a school affiliated support group may not provide transportation.

6.56.2.4 The school or a school affiliated support group may not pay entry fees or provide any form of financial assistance.

6.56.2.5 The school coach may not require his/her athletes to participate in non school competition or provide instruction to his/her athletes in non school competition except as in 7.5.

6.56.3 14 **Del.C.** §122(b)(~~45~~ 14) requires written parental permission prior to participation on a similar team during the designated sport season. Written authorization must be on file in the student's school prior to engaging in a tryout, practice, or contest with a similar team. Consent forms shall be available in all member schools. Similar teams shall include organized intramural teams as well as non school teams in that sport.

*(Break in Continuity of Sections)*

**\*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 Department of Education is available at: <http://www.doe.k12.de.us/>.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF MEDICAID AND MEDICAL ASSISTANCE**

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

## **ORDER**

### **Early and Periodic Screening, Diagnostic, and Treatment Program**

#### **Nature of the Proceedings**

Delaware Health and Social Services (Department) / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Title XIX Medicaid State Plan related to the reimbursement methodology for specialized dental services under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the April 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2006 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

#### **Summary of Proposed Amendment**

##### **Statutory Authority**

- 42 CFR §441 Subpart B, *Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) of Individuals Under Age 21*
- Social Security Act 1905(r), *Early and Periodic Screening, Diagnostic, and Treatment Services*

##### **Amending the Following State Plan Page**

Attachment 4.19-B, Page 19

##### **Background**

The Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) service is Medicaid's comprehensive and preventive child health program for individuals under the age of 21. EPSDT was defined by law as part of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) legislation and includes periodic screening, vision, dental, and hearing services. In addition, section 1905(r)(5) of the Social Security Act (the Act) requires that any medically necessary health care service listed at section 1905(a) of the Act be provided to an EPSDT recipient even if the service is not available under the State's Medicaid plan to the rest of the Medicaid population.

##### **Summary of Proposed Amendment**

To facilitate access to EPSDT dental services for Medicaid recipients and to facilitate provider participation in the program, DMMA proposes changes to its reimbursement methodology.

Traditionally, the Department of Public Health (DPH) reimbursed orthodontists for orthodontic care provided to Medicaid children under age 21. This state plan amendment (SPA) will enable the DMMA to assume that responsibility.

Currently, specialized dental services are reimbursed a percentage of charges for routine dental services. DMMA proposes to reimburse a fee-for-service under Medicaid for orthodontic related services.

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The proposed amendment to the state plan is subject to approval by the Centers for Medicare and Medicaid Services (CMS).

## Summary of Comments Received with Agency Response

The Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. DMMA has considered each comment and responds as follows:

### GACEC

The GACEC endorses the concept of allowing DMMA to process EPSDT dental claims to enhance efficiency; however, the Council would like to make the following comments:

The Council would strongly prefer the adoption of reimbursement approaches, which would provide sufficient incentive for dental providers to participate in the Medicaid program. We would also like to note that Council lacks sufficient information to endorse or disapprove of the change to the fee-based system for most orthodontic services. If more information is available, please let us know.

### SCPD

First, it is Council's understanding that the current arrangement in which the DPH processes EPSDT dental claims is somewhat backlogged. Therefore, the regulations contemplate processing of the claims by DMMA. This appears to be acceptable since DMMA may have a more extensive infrastructure for processing EPSDT claims.

Second, the more difficult issue is the provider reimbursement standard. The significant change is that most orthodontic services will be reimbursed based on a flat rate based on the 75<sup>th</sup> percentile of orthodontic rates paid by the DPH special dental program. This is ostensibly a favorable rate since the 50<sup>th</sup> percentile of the DPH would reflect the average DPH reimbursement standard. However, without more data, SCPD cannot determine if providers will generally be paid more under the percentage of charges approach or under the "75<sup>th</sup> percentile of DPH rates" approach.

In summary, SCPD endorses the concept of allowing DMMA to process EPSDT dental claims to enhance efficiency. In addition, Council strongly recommends adoption of reimbursement approaches, which provide sufficient incentive for dental providers to participate in the Medicaid program. Finally, SCPD lacks sufficient information to endorse or disfavor the change to the fee-based system for most orthodontic services.

**Agency Response:** We are proud to say that the Delaware Medicaid & Medical Assistance Program has been a leader in adopting innovative reimbursement approaches for the provision of dental care. It is well known nationally that Delaware is the only state, which pays an actual percentage of billed charges for routine dental care – 85%. Delaware's reimbursement methodology has been touted by CMS and prominent figures such as Dr. Burton L. Edelstein, Professor of Dentistry and Public Health at Columbia University and Founding Director of the Children's Dental Project, and Dr. James J. Crall, Director of the HRSA/MCH Bureau's National Oral Health Policy Center and Professor and Chair of Pediatric Dentistry at UCLA. CMS and these dental advocates have noted Delaware's reimbursement methodology as a model among states. As a result, the DMMA has seen the number of dentists participating in Delaware increase from 1 in 1997 to 140 currently. DMMA can say confidently that Delaware's reimbursement for dental services under EPSDT is not a barrier to participation.

Although, DMMA is adopting a fee-for-service methodology for orthodontic care, the rates proposed are factored from payment amounts made by the Division of Public Health to their contracted orthodontists. These rates easily meet or exceed those in the commercial sector and DMMA knows that from communication and feedback with the orthodontic community that the proposed rates are sufficient to encourage direct enrollment and participation in the Medicaid Program. DMMA is acutely attuned to the needs of the dental community in Delaware and know, too, that the rates DMMA pay must keep pace with growing treatment costs in order to maintain participation and satisfaction with our program. DMMA does intend to maintain appropriate levels of reimbursement so that Medicaid eligible children with handicapping malocclusions will have the necessary access to be treated comprehensively and timely.

**Findings of Fact**

The Department finds that the proposed changes as set forth in the April 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Title XIX Medicaid State Plan as it relates to the reimbursement methodology for dental services under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) Program is adopted and shall be final effective June 10, 2006.

Karryl McManus for  
Vincent P. Meconi, Secretary, DHSS, 5/16/06

\* Please note that no changes were made to the regulation as originally proposed and published in the April 2006 issue of the Register at page 1506 (9 DE Reg. 1506). Therefore, the final regulation is not being republished. Please refer to the April 2006 issue of the Register or contact the Department of Health and Social Services.

A complete set of the rules and regulations for the Department of Health and Social Services are available at: <http://www.dhss.delaware.gov/dhss/index.html>

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**DIVISION OF SOCIAL SERVICES**

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

**ORDER****Technical Eligibility for Cash Assistance****3008.1.1 Babies Born To Teen Parents****Nature of the Proceedings**

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend policies in the Division of Social Services Manual (DSSM) as it relates to technical eligibility for cash assistance for certain minors. 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 April 2006 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by April 30, 2006 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****Citation**

Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193)

**Summary of Proposed Change**

The proposed rule provides clarification to DSSM 3008.1.1, Babies Born to Teen Parents, to eliminate confusion over the policy and reduce staff requests for policy clarification. Language is added to clarify that this rule only applies to the child while the teen is under 18 years of age.

**Summary of Comments Received with Agency Response**

The State Council for Persons with Disabilities (SCPD) offered the following observations summarized below. DSS considered both comments and respond as follows.

First, the 1-sentence amendment appears consistent with Section 408 of the Act.

Second, there are multiple aspects of the regulation, which, do not ostensibly conform to Section 408, and DSS may wish to consider issuing another proposed amendment based on the following:

A. If both parents live in the home, DSS precludes eligibility unless both parents are 18 or married. This exclusion does not appear in Section 408. If one parent is 17 and one parent is 19, what is the policy rationale for precluding the 19 year old from applying for benefits? DSS is providing a disincentive for the parents of the child to live together and provide a traditional (father and mother) family setting for the child.

B. Consistent with the attached HHS summary of the Act, the law is intended to promote the unmarried teen parent living with his/her parents/responsible adult or in an adult-supervised setting. Concomitantly, Section 408 provides exceptions to barring teen parents from qualifying for benefits if living in an adult-supervised setting: 1) the teen has no parent or adult relative or their whereabouts are unknown; 2) the teen parent's parent or relative refuses to allow the teen parent to live with them; 3) the teen parent's parent/relative have a history of abuse/exploitation; or, 4) the State waives the eligibility bar based on the best interest of the child. The DSS regulation, Section 3008.1.1 does not include these exceptions to the eligibility bar.

**Agency Response:** *DSS appreciates the comments of the SCPD and respond as follows:*

The reason for this clarification, not a change in policy, is to remind staff that once the minor teen parent turns 18 years of age, the baby can get TANF with the mother. The intent is to avoid any misinterpretation by staff in the future.

DSS has policy addressing emancipation and adult-supervised living arrangements approved by the Division of Family Services (DFS), within the Department of Services for Children, Youth and Their Families (DSCYF) at DSSM 3027.2, Minor Parents. DSS is willing to consider Council's observations regarding teen parents when that section of the rule is revised. We will look at section 3027.2, in conjunction with DSSM 3008.1.1, to determine if changes are needed.

### Findings of Fact:

The Department finds that the proposed changes as set forth in the April 2006 *Register of Regulations* should be adopted.

**THEREFORE, IT IS ORDERED**, that the proposed regulation to amend the Division of Social Services Manual (DSSM) as it relates to technical eligibility for cash assistance for certain minors is adopted and shall be final effective June 10, 2006.

Karryl McManus for  
Vincent P. Meconi, Secretary, DHSS, 5/16/06

**\* Please note that no changes were made to the regulation as originally proposed and published in the April 2006 issue of the Register at page 1508 (9 DE Reg. 1508). Therefore, the final regulation is not being republished. Please refer to the April 2006 issue of the Register or contact the Department of Health and Social Services.**

**A complete set of the rules and regulations for the Department of Health and Social Services are available at: <http://www.dhss.delaware.gov/dhss/index.html>**

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### DIVISION OF SOCIAL SERVICES

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

### ORDER

### 3028 Assistance Units

### 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) regarding mandatory composition of assistance units. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10113 and its authority as prescribed by 31 **Delaware Code** Section 512.

**Nature of the Exempt Regulation:**

**Citations**

- 29 **Del.C.** §10113, Adoption of Regulations; Exemptions
- 45 CFR §233.90, Factors Specific to AFDC

**Summary of Proposed Change**

The proposed rule provides clarification to DSSM 3028.1, Mandatory Composition of Assistance Units to eliminate confusion over the policy by removing an incorrect example.

An unrelated caretaker cannot receive TANF for the children in their care. The unrelated caretaker must receive General Assistance for the children. This is because under TANF the caretaker must be related to the children in the home.

DSS is not changing existing policy or procedures.

**Findings of Fact:**

The Department finds that these changes are exempt from the procedural requirements of the Administrative Procedures Act (Title 29 Chapter 101).

**THEREFORE, IT IS ORDERED**, that the proposed revision regarding clarification changes to the policies regarding mandatory composition of assistance units be adopted informally as an exempt regulation and shall become effective June 10, 2006.

Karryl McManus for  
Vincent P. Meconi, Secretary, DHSS, 5/16/06

**DMMA EXEMPT REGULATION #06-20**

**REVISION:**

**3028.1 Mandatory Composition of Assistance Units**

In TANF, the assistance unit will always include:

1. The dependent child; and
2. The dependent child's blood related or adoptive siblings who are under 18 and who are also dependent children; and
3. The dependent child's natural or adoptive parent(s). If both parents live in the home, both parents must be included in the unit regardless of the parents' marital status. In a case where paternity has not been legally established, the putative father must acknowledge paternity as a condition of eligibility.

Note: In 2 and 3 above, the child or parent must also reside in the home and be otherwise eligible. Examples of persons who are not otherwise eligible include, but are not limited to SSI recipients, and the Employment and Training Program sanctioned individuals.

EXAMPLE: A grandmother has day to day care and control of her minor grandchild and is receiving TANF for herself and the child. The child's mother moves into the home, but the grandmother retains custody and continues to act as the child's caretaker. Since, according to TANF regulations, a parent is a mandatory member of the assistance unit, the mother must be added. If the mother has income, the income must be budgeted. The grandmother may remain in the

unit because TANF regulations allow for the inclusion of a needy caretaker relative.

EXAMPLE: In TANF, where children who live in the home include the caretaker's own children and a child who is related in some other manner (e.g., niece or nephew), establish two assistance units. One will include the caretaker and his/her children, and the other will include the other related child with the caretaker as payee only. When more than one such child lives in the home, each child will be placed in a separate assistance unit unless the children must be considered together as specified in 1 and 2 above.

EXAMPLE: In GA, establish a separate assistance unit for an unrelated child living in the home of a family that is also eligible to receive a grant. When more than one such child resides in the home, each child will be placed in a separate assistance unit. However, children who are siblings are always considered together and will be placed in the same assistance unit.

EXAMPLE: In GA, establish a separate assistance unit for an unrelated child and the adult caretaker who is also eligible to receive GA on their own. For instance, the adult caretaker is age 55 or older. Establish two separate GA assistance units; one for the caretaker and one for the child. (See DSSM 4001)

~~EXAMPLE: An unrelated caretaker provides day to day care and control of a minor parent and her baby. Place the minor parent and the minor parent's baby in on TANF assistance unit. The unrelated caretaker is payee for the minor parent and the minor parent's baby.~~

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## **DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL**

### **DIVISION OF AIR AND WASTE MANAGEMENT**

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

**Secretary's Order No.: 2006-A-0022**

**1102 Permits (Formerly Reg. No. 2)**

Date of Issuance: **May 15, 2006**

Effective Date of Amendment: **June 11, 2006**

#### **I. Background**

On Wednesday, April 26, 2006, a public hearing was held at 1:00 p.m. in the DNREC Auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to receive comment on proposed revisions to the State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards by amending Regulation No. 1102 (formally Regulation No. 2), "Permits", of the State of Delaware "Regulations Governing the Control of Air Pollution". The proposed amendments are (1) minor revisions to ensure that the regulatory language is clear that all permits issued under this regulation are federally enforceable, regardless of whether they are intended to limit Potential to Emit; and 2) renumbering the regulation to be consistent with the style manual of the Code of Delaware Regulations.

It should be noted that no members of the public attended this hearing on April 26, 2006, nor were any written comments received by the Department prior to the close of the public record regarding these proposed regulatory promulgations. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Report to the Secretary dated May 11, 2006, and that report is expressly incorporated herein by reference.

#### **II. Findings and Conclusions**

On the basis of the record developed in this matter, it appears that AQM has provided a sound basis for the

proposed amendments to Regulation No. 1102, as these amendments will clarify the existing language with regard to the federal enforceability of all permits issued under this particular regulation. The need for the Department to revise and update the numbering of this Regulation is also satisfied within these revisions, so as to make Regulation No. 1102 consistent with the style manual of the Code of Delaware regulations.

### III. Order

It is hereby ordered that the proposed revisions to Regulation No. 1102 (formally Regulation No. 2), "Permits" should be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

### IV. Reasons

Updating the numbering of this particular regulation will allow it to be consistent with the style manual of the Code of Delaware Regulations. Moreover, the revisions to the State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards by amending 1102 will result in clarification to the existing regulatory language contained therein, namely, that all permits issued pursuant to Regulation No. 1102 are federally enforceable, thus assisting the Department in furtherance of the policy and purposes of 7 **Del.C.**, Ch. 60.

John A. Hughes, Secretary

## 1102 Permits (Formerly Reg. No. 2)

### 1.0 General Provisions

1.1 This regulation establishes the procedures that satisfy the requirement of 7 **Del.C.** Ch. 60 to report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere, and, for construction or modification activities not subject to Regulation No. 1125, the procedures that satisfy the requirement of 40 CFR Part 51 Subpart I (July 7, 1994 edition) and Section 110(a)(2)(C) of the federal clean air act (CAA) as amended November 15, 1990.

1.2 This regulation establishes procedures that enable a person to, as an option, secure ~~federally enforceable~~ terms and conditions in a permit issued pursuant to this regulation that effectively limits potential to emit for the purpose of avoiding applicability of a federal standard, regulation or other federal requirement.

1.3 This regulation establishes procedures that enable a person subject to both this regulation and to Regulation No. 30 to, as an option, transfer the terms and conditions of a construction permit issued pursuant to this regulation into a Regulation No. 30 operating permit via the administrative permit amendment process specified in Regulation No. 30.

1.4 Within sixty (60) calendar days of receipt of a written request by the Department, an owner or operator of an existing facility, equipment, or air contaminant control device which emits or causes to be emitted any air contaminant shall submit to the Department any relevant information that the Department may request. Relevant information includes information that, in the Department's opinion, is relevant to any permit application/registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration. Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration. This provision does not limit the applicability of, nor does it sanction noncompliance with the requirements of Section 2.1 of this regulation.

1.5 Any approval granted by the Department pursuant to this Regulation, and any exemption from the requirements of this Regulation provided for in Section 2.2 shall not relieve an owner or operator of the responsibility of complying with applicable local, State, and Federal laws and regulations.

### *(Break in Continuity of Sections)*

### 5.0 Action on Applications

5.1 If an application is disapproved, the Department shall set forth its objections in the notice of disapproval.

5.2 Upon granting written approval for operation, the Department shall give notice of such approval to any

person who has submitted a written request for such notice.

~~06/01/07~~ [XX/XX/06-06/11/06]

**\*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 Division of Air and Waste Management is available at: <http://www.dnrec.delaware.gov/awm>.**

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## **DEPARTMENT OF STATE**

### **DIVISION OF PROFESSIONAL REGULATION**

#### **100 Board of Accountancy**

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 **Del.C.** §105(a)(1))  
24 **DE Admin. Code** 100

### **ORDER**

After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on April 26, 2006 at a scheduled meeting of the Delaware Board of Accountancy to receive comments regarding proposed amendments to multiple sections of the rules and regulations to conform to changes in practice requirements resulting from the enactment of Senate Bill 27 with House Amendment 1 in July of 2005. The amended rules and regulations also contain provisions for online renewal and attestation of having fulfilled continuing education requirements. The proposed regulations were published in the *Register of Regulations*, Vol. 9, Issue 9, March 1, 2006.

### **SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

No written comments were received. No public comment was received at the April 26, 2006 hearing.

### **FINDINGS OF FACT WITH RESPECT TO THE EVIDENCE AND INFORMATION SUBMITTED**

Prior to the enactment of Senate Bill No. 27 with House Amendment No. 1, persons were able to obtain a Delaware certified public accountant certificate without ever practicing accountancy in Delaware. A large number of these applications were processed by the Board each month. The Board finds that these changes conform the regulations to the revised Statute, which requires an applicant to complete an experience requirement in addition to the existing education requirement prior to obtaining both a certificate and a permit to practice as a certified public accountant, and further the Board's objectives.

The Board further finds that the revised regulations ease the biennial renewal process by enabling certificate and permit holders to attest to their completion of the required continuing education and renew their certificates and permits online. The revised regulations also provide a means for those individuals who do not wish to renew or attest online to do so by providing paper documentation.

In summary, the Board finds that adopting the amendments to the regulations as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the general public, particularly the recipients of accountancy services. It is also in the best interests of those individuals regulated by the Board.

### **THE LAW**

The Board's rulemaking authority is provided by 24 **Del.C.** §105 (a)(1).

### **DECISION AND EFFECTIVE DATE**

The Board hereby adopts the changes to the rules and regulations, to be effective 10 days following publication of this order in the *Register of Regulations*.

## TEXT AND CITATION

The text of the revised rule remains as published in *Register of Regulations*, Vol. 9, Issue 9, March 1, 2006, and as attached hereto as Exhibit A.

**SO ORDERED** this 17th day of May, 2006.  
BOARD OF ACCOUNTANCY  
James R. Zdimal, President, CPA Member  
Sandra S. Gulledge, Secretary, CPA Member  
Norma Rohleder, CPA Member  
Cathel R. Tanner, PA Member  
Joyce Dyer, Public Member  
Douglas Phillips, CPA Member

\* Please note that no changes were made to the regulation as originally proposed and published in the March 2006 issue of the Register at page 1339 (9 DE Reg. 1339). Therefore, the final regulation is not being republished. Please refer to the March 2006 issue of the Register or contact the Department of State, Division of Professional Regulation.

A complete set of the rules and regulations for the Division of Professional Regulation are available at: <http://www.dpr.delaware.gov/default.shtml>

**DIVISION OF PROFESSIONAL REGULATION**  
**2500 Board of Pharmacy**

Statutory Authority: 24 Delaware Code, Section 2509 (24 Del.C. §2509) 24 DE Admin. Code 2500

**ORDER**

The State Board of Pharmacy, at the regularly scheduled meeting on April 19, 2006, and in accordance with 24 Del.C. §2509, has amended its rules and regulations related to pharmacy closing procedures, as follows:

**Summary of the Evidence and Information Submitted**

No period of public comment is required for non-substantive changes. 29 Del.C. §10113(b)(4). The text of the amended Regulation 4.0 is shown in its entirety in Exhibit A attached hereto.

**Findings of Fact with Respect to the Evidence and Information Submitted**

**WHEREAS**, the Delaware General Assembly has mandated the Board of Pharmacy ("Board") enforce certain of its regulations previously enforced by the Office of Narcotics and Dangerous Drugs;

**WHEREAS**, the Board wishes to reflect the statutory change in its regulations;

**NOW, THEREFORE**, in consideration of these premises, and with the authority in 24 Del.C. §2509, the Board hereby adopts the proposed non-substantive changes to Regulation 4.0 as they appear in Exhibit A attached hereto.

**Decision and Effective Date**

The Board of Pharmacy hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the *Register of Regulations*.

**Text and Citation**

The text of the amended Rules and Regulations will appear in the *Register of Regulations*, Vol. 9, Issue 12, June 1, 2006.

**SO ORDERED** this 19th day of April, 2006

## STATE BOARD OF PHARMACY

John E. Murphy, R.Ph., Chair

Don Holst, R.Ph., Vice Chair

Daniel Hauser, Pharm. D.

Karen J. Dey, R.Ph.

Angelo Chiari, R.Ph.

Nancy E. Weldin

Carolyn Calio

**2500 Board of Pharmacy****(Break in Continuity of Sections)****4.0 Pharmacy Closing Procedure**

The Executive Secretary of the Delaware State Board of Pharmacy shall be notified by letter via certified mail, or hand delivered written notification of the intent to close a licensed Delaware pharmacy. The Executive Secretary shall be notified at least 14 days in advance of the closing date. In the event of death of the owner/pharmacist-in-charge, the Executive Secretary will be notified immediately.

The closing procedure will be completed by a Delaware licensed pharmacist-in-charge or in the event of death, a Delaware licensed pharmacist designated to perform the closing procedure. Should the permit to operate a pharmacy be revoked or suspended by the Delaware State Board of Pharmacy, the procedure following such action will be directed by the Board. ~~The agents of the Delaware Office of Narcotics and Dangerous Drugs Board of Pharmacy and its authorized agents~~ will enforce this regulation under the authority of ~~Chapter 25, 24~~ **Delaware Code**, Section 2535.

## 4.1 Permanent Closing of a Pharmacy

## 4.1.1 Board Notification:

4.1.1.1 Certified letter at least 14 days prior to the planned closing to the Executive Secretary of the Delaware Board of Pharmacy.

4.1.1.2 In the event of death of owner/pharmacist-in-charge, notification immediately to the Executive Secretary of Delaware Board of Pharmacy.

4.1.1.3 In case of fire or water damage, notify the Executive Secretary of the Delaware Board of Pharmacy immediately.

4.1.2 Required Information to be submitted to the Executive Secretary of the Delaware Board of Pharmacy:

4.1.2.1 Name, address and phone number.

4.1.2.2 Pharmacy permit and Delaware Controlled Substance registration number and D.E.A. registration numbers.

4.1.2.3 Name of pharmacist-in-charge responsible for closing.

4.1.2.4 Date of closing.

4.1.2.5 Name, address, phone number of licensed pharmacy to which prescription drugs, (including controlled substances) prescription files and patient profiles will be transferred.

4.1.2.6 A closing inventory signed and dated of all controlled substances to be sent to the Office of Narcotics and Dangerous Drugs for their records.

4.1.2.7 Name, address, and phone number of custodian of controlled substance records (i.e. invoices, etc.) for the two-year period after closing as required by 21 CFR.

## 4.1.3 Public Notification:

4.1.3.1 A publication in a local newspaper for one week informing the public the pharmacy is

closing on a specific date and the name of the pharmacy to which the prescriptions will be transferred.

4.1.3.2 Name and phone number of person to contact in emergency after closing of pharmacy.

4.1.3.3 A sign posted in the window of pharmacy 14 days prior to closing and to remain 14 days after closing informing the public where prescriptions are being transferred.

4.1.3.4 Remove all signs within 30 days of closing that refer to, "pharmacy," "apothecary," "drugs" or "medicine."

4.1.4 Permits and registration to be surrendered upon closing:

4.1.4.1 Pharmacy permit (Executive Secretary, Board of Pharmacy)

4.1.4.2 Delaware Controlled Substance certificate (Delaware Office of Narcotics & Dangerous Drugs).

4.1.4.3 Federal Controlled Substance certificate (D.E.A.).

4.1.4.4 All unused 222 Schedule II order forms (D.E.A.).

4.1.5 Sale of prescription drugs:

Should the pharmacy be sold, including prescription drugs, or if the prescription drugs are sold separately, the Office of Narcotics and Dangerous Drugs Board of Pharmacy must be notified to verify that the buyer is currently licensed to possess these drugs.

4.1.6 All above procedures must be accomplished within 7 days after closing or upon discretion of the Executive Secretary. Drugs must be properly secured in accordance with all laws and regulations until they are removed.

4.2 Temporary Closing of a Pharmacy

4.2.1 The Board office must be notified according to 24 **Del.C.** §2528.

4.2.2 Board notification must include the following:

4.2.2.1 The exact date the pharmacy will be closing.

4.2.2.2 The name, address and telephone number to be used in an emergency.

4.2.3 A public notice must be posted in a highly visible place within the prescription department at least 5 days prior to the temporary closing of a pharmacy (24 **Del.C.** §2528(B)) and also on a window visible to the public from outside the store. The notice must state:

4.2.3.1 Dates the pharmacy will be closed.

4.2.3.2 A contact number in case of emergency.

4.2.4 If the closing extends past the date given to the Board office, the pharmacy would automatically be put into the status of a permanently closed pharmacy and procedure established by Board regulation must be followed.

## DIVISION OF PROFESSIONAL REGULATION

### 5200 Board of Nursing Home Administrators

Statutory Authority: 24 Delaware Code, Section 5204(1) (24 **Del.C.** §5204(1))  
24 **DE Admin. Code** 5200

### ORDER

At the regularly scheduled meeting of the Board of Examiners of Nursing Home Administrators on May 9, 2006, the Board amended Regulation 7.0 Pre-Examination Requirements; Condition Precedent.

### Summary of the Evidence and Information Submitted

No period of public comment is required for non-substantive changes. 29 **Del.C.** §10113(b)(4). The text of the amended Regulation 7.0 is shown in its entirety in Exhibit A attached hereto.

### Findings of Fact with Respect to the Evidence and Information Submitted

**WHEREAS**, the Board of Examiners of Nursing Home Administrators ("Board") has identified numbering and

minor punctuation errors in its Regulation 7.0;

**WHEREAS**, the errors may create confusion;

**WHEREAS**, the Board wishes to fix the errors;

**NOW, THEREFORE**, in consideration of these premises, and with the authority in 24 **Del.C.** §5204(1), the Board hereby adopts the proposed non-substantive changes to Regulation 7.0 as they appear in Exhibit A attached hereto.

#### **Decision and Effective Date**

The Board of Examiners of Nursing Home Administrators hereby adopts the Rules and Regulations as proposed to be effective 10 days following final publication in the *Register of Regulations*.

#### **Text and Citation**

The text of the amended Rules and Regulations will appear in the *Register of Regulations*, Vol. 9, Issue 12, June 1, 2006.

**SO ORDERED** this 9th day of May, 2006

#### **BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

Alonzo Keiffer, President  
Jerrold Spilecki, Vice President  
Lillie Mae Johnson, Secretary  
Linda Jones  
Carolyn Cotter  
William Daisey

#### **5200 Board of Nursing Home Administrators**

#### **7.0 Pre-Examination Requirements; Conditions Precedent**

7.1 The Board shall admit to examination for licensure as a Nursing Home Administrator, any candidate who meets the qualifications or demonstrates to the satisfaction of the Board that within 30 days after the examination he/she will meet the following standards:

7.1.1 Is at least ~~21~~ 18 years of age.

7.1.2 Shall meet the requirements of ~~4 or 2 or 3~~ either 7.1.2.1, 7.1.2.2, or 7.1.2.3 asset forth below:

7.1.2.1 Possesses a baccalaureate or graduate degree in Health & Human Services, Hospital Administration or Business Administration, and;

7.1.2.1.1 has three months experience as a Nursing Home Administrator or

7.1.2.1.2 has successfully completed six months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program), or

7.1.2.2.1.3 has demonstrated administrative experience as the Board deems sufficient, ~~or,~~

7.1.2.32 Possesses a baccalaureate or graduate degree in a specialty other than Health & Human Services, Hospital Administration or Business Administration and,

7.1.2.32.1 has six months experience as a Nursing Home Administrator, or

7.1.2.32.2 has successfully completed nine months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10, Content of the Administrator-In-Training Program), or

7.1.2.32.3 has demonstrated administrative experience as the Board deems sufficient, ~~or,~~

7.1.2.4.3 Possesses an associate degree or a current Delaware license as a Registered Nurse, and,

7.1.2.43.1 has twelve months experience as a Nursing Home Administrator, or

7.1.2.4-3.2 has successfully completed twelve months in a pre-approved Nursing Home Administrator-In-Training Program under Direct supervision of the applicant's Preceptor(s) (this program will include all subjects as listed in Rule 10.0, Content of the Administrator-In-Training Program), or

7.1.2.43.3 has demonstrated administrative experience as the Board deems sufficient to satisfy this requirement.

7.1.3 In addition to the degree requirements listed in Rule 7.0:

7.1.3.1 has completed a course of study administered by an accredited educational institution, provided that both the course of study and the educational institution has been pre-approved by the Board as providing adequate academic preparation for nursing home administration, or

7.1.3.2 has demonstrated comprehensive experience and education which the Board deems sufficient to satisfy this requirement.

## DEPARTMENT OF TRANSPORTATION

### DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302 and 29 Delaware Code, Chapter 101  
(21 Del.C. §302 and 29 Del.C. Ch. 101)

#### ORDER

- 2203 Implied Consent and Administrative Per Se Other Administrative Hearings of Record (Formerly Reg. No. 17)**
- 2206 Revocation of a Driver's License/Driving Privilege Pursuant to Section 4103(b) and Section 2732(a-8) (Formerly Reg. No. 40)**
- 2207 Suspension of Permanent Licenses (Formerly Reg. No. 41)**
- 2208 Concerning Driver Improvement Problem Driver Program (Formerly Reg. No. 45) (Renumbered) (7 DE Reg. 1021 (02/01/04))**
- 2210 Issuance of a Conditional License as the Result of a Suspension Due to a Conviction for Passing a Stopped School Bus. (Formerly Reg. No. 57)**
- 2211 The Issuance of Restricted Driving Privileges as the Result of a Suspension or Revocation Order Received from Family Court Relative to a Juvenile Being in Violation of 21 Del.C. 4177. (Formerly Reg. No. 63)**
- 2212 Issuance of Occupation Driver's License After Conviction of No Insurance on a Vehicle (Formerly Reg. No. 78)**
- 2259 Mopeds (Formerly Regs. No. 24 and 26)**
- 2277 Approved Tinting for Side Windows (Formerly Reg. No. 76)**
- 2286 Transferring Titles with Multiple Names**

In the April 2006 edition of the *Delaware Register*, 9 Del. Reg. 1541, the Division of Motor Vehicles published proposed regulation for ten revised or new policy regulations.

Written comments concerning the proposed regulations were to be sent by April 30, 2006 to Jack Eanes, Chief of Operations, Division of Motor Vehicles, 303 Transportation Circle, P.O. Box 698, Dover, Delaware 19903. Comments were received from one agency concerning changes made to old policy regulations 24 and 26. The old policy regulations had been combined into a new regulation 2259. The agencies concerns were taken into consideration and minor changes were made to proposed Policy Regulation 2259 to address their issues. No other comments were received.

#### Findings of Fact

The Department finds that the proposed regulations as shown in the April issue of the *Register of Regulations*

should be adopted with minor changes to Policy Regulation 2259.

## Text and Citation

See attached regulations.

## Decision

Pursuant to the authority in 21 **Del.C.** §302 and 29 **Del.C.** Ch. 101, and after due notice as required under the Administrative Procedures Act, the Department of Transportation is hereby adopting the repeal of these Division of Motor Vehicle Regulations effective June 10, 2006.

**APPROVED:** Carolann D. Wicks, Secretary, Department of Transportation, 5/16/06

## 2259 Mopeds (Formerly Regs. No. 24 and 26)

### 1.0 Authority

Pursuant to Sections 101 and ~~4194A~~ 4198M, Title 21, **Delaware Code**, the following regulations are hereby adopted.

### 2.0 Mopeds

- 2.1 Manufacturer's Statement of Origin must be presented to the Division at the time application for registration is submitted.
- 2.2 Manufacturer's Statement of Origin must include:
  - 2.2.1 Manufacturer's name
  - 2.2.2 Year of manufacturer
  - 2.2.3 Vehicle identification or serial number
  - 2.2.4 Maximum piston displacement less than 55cc.
  - 2.2.5 Brake horsepower rated at no more than 2.7
  - ~~2.2.6 Maximum speed obtainable 25 m.p.h.~~
  - 2.2.6 Name and address of manufacturer.
- 2.3 Certificate of title will be issued, same as on other vehicles. Fee for the title will be the same.
- 2.4 Vehicle document fee must be paid, same as on all other vehicles.
- 2.5 Registration card will be issued, same as on other vehicles.
- 2.6 Fee for registration is \$5.00 and shall be valid for 3 years. A moped license plate will be issued and has to be displayed on the rear of the moped so it is clearly visible. All moped registrations will expire on December 31st.
- 2.7 Records shall be maintained on the vehicle computer files, same as all other vehicles.
- 2.8 Duplicate title and duplicate registration card fees are the same.
- 2.9 No inspection of the vehicle is required for mopeds purchased in Delaware unless supporting ownership papers are in question. (For ~~serial~~ VIN inspection only). Mopeds purchased out of state must be presented for inspection of the ~~Vehicle Serial Number~~ VIN.
- 2.10 Liens can be recorded, same as on all other vehicles.
- 2.11 No insurance is required.
- 2.12 No helmet is required by operator, **[unless under 16 years of age]**.
- 2.13 Operator must hold a valid driver's license. The license does not have to be endorsed for a motorcycle. License must always be in possession of operator when moped is being operated.
- 2.14 Regulations applicable to bicycles shall apply whenever a moped is operated upon any public road or upon any path set aside for the exclusive use of bicycles.
- 2.15 Mopeds shall not be operated on:
  - 2.15.1 interstate highways, such as I-95
  - 2.15.2 limited access highways
  - 2.15.3 the right of way of an operating railroad.
  - 2.15.4 any path set aside for the exclusive use of bicycles unless the helper motor has been turned

off.

~~[2.16 The Department having no reliable method to determine the maximum speed of a moped will use the maximum piston displacement and brake horsepower to determine if the vehicle is a moped or a motorcycle.]~~

### 3.0 Registration and Licensing

3.1 Due to numerous inquiries from non residents concerning what Delaware will legally recognize for the operation of mopeds, the following information is provided:

Resident of	Moped Must Be Registered	Operator Must Hold A Valid Driver's License
Delaware	Yes	Yes
Maryland	No	Yes
Virginia	No	Yes
New Jersey	<del>No</del> <u>Yes</u>	Yes
Pennsylvania	Yes	Yes
District of Columbia	Yes	Yes
North Carolina	No	Yes
South Carolina	No	Yes

3.2 Of the above, only the states of Delaware, Maryland, Pennsylvania and District of Columbia actually have laws requiring the operator of a moped to be a licensed driver. But as a matter of policy, so as to be consistent with the intent of Title 21, Section 4194A(b) 4198M all moped operators must hold valid drivers' licenses when such mopeds are being operated in the State of Delaware.

3.3 Delaware will honor the law of the home state of the moped in regards to the registration of such vehicle. However, the operator of a moped must hold a valid driver's license from his state of residence, regardless of the law in the resident's home state.

3.4 State of residence may be determined by witnessing the driver's license of the operator of the moped.

**\* Please note that no changes were made to the regulations, except to Regulation 2259 Mopeds, as originally proposed and published in the April 2006 issue of the Register at page 1541 (9 DE Reg. 1541). Therefore, the final regulations, except for Regulation 2259 Mopeds, are not being republished. Please refer to the April 2006 issue of the Register or contact the Department of Transportation, Division of Motor Vehicles.**

**A complete set of the rules and regulations for the Division of Motor Vehicles are available at: <http://www.dmv.de.gov>**

## DIVISION OF MOTOR VEHICLES

Statutory Authority: 21 Delaware Code, Section 302 and 29 Delaware Code, Chapter 101 (21 Del.C. §302 and 29 Del.C. Ch. 101)

### ORDER

In the February 2006 edition of the Delaware *Register*, 9 DE Reg. 1163, the Division of Motor Vehicles published a draft proposal to repeal thirty-three rules and regulations previously enforced by the Division, and described in detail below. The repeals were proposed because these rules and regulations are either obsolete under later-enacted state or federal laws, or have already become part of state law. Written comments concerning this proposed repeal were to be sent by March 2, 2006, to Jack Eanes, Chief of Operations, Division of Motor Vehicles, 303 Transportation Circle, P.O. Box 698, Dover, Delaware 19903. Comments were received from one agency concerning the deletion of Policy Regulation 61. The agency was informed that the information in the policy regulation is now in Delaware law and thus a policy regulation was no longer required. No other comments were received.

## Findings of Fact

The Department finds that the proposed repeal of the regulations as set forth in the February issue of the Register of Regulations should be adopted.

## Text and Citation

See attached regulations.

## Decision

Pursuant to the authority in 21 **Del.C.** §302 and 29 **Del.C.** Ch. 101, and after due notice as required under the *Administrative Procedures Act*, the Department of Transportation is hereby adopting the repeal of these Division of Motor Vehicle Regulations effective June 10, 2006.

**APPROVED:** Carolann D. Wicks, Secretary, Department of Transportation, 5/16/06

## Driver and Vehicle Services, Repeal of Certain Regulations

\* Please note that no changes were made to the regulation as originally proposed and published in the February 2006 issue of the Register at page 1163 (9 DE Reg. 1163). Therefore, the final regulation is not being republished. Please refer to the February 2006 issue of the Register or contact the Department of Transportation, Division of Motor Vehicles.

A complete set of the rules and regulations for the Division of Motor Vehicles are available at: <http://www.dmv.de.gov>

**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER EIGHTY-FOUR**

**RE: Creating A Task Force To Study Licensed Speech/Language Pathologists**

**WHEREAS**, it is necessary to have a sufficient number of qualified speech/language pathologists in the State of Delaware; and

**WHEREAS**, speech/language pathologists in Delaware must be regulated by the state and possess a valid professional license in order to protect the safety and well being and provide high quality services for Delaware citizens; and

**WHEREAS**, in order to be a licensed speech/language pathologists in Delaware, a person must have earned a Master's degree or its equivalent from an accredited college or university; and

**WHEREAS**, such Master's degree is required to entail a major emphasis in speech language pathology, audiology, communication disorder or speech/language and hearing science; and

**WHEREAS**, there is no college or university in Delaware that currently offers a Master's degree with an emphasis in the applicable subjects in order for a person to become a licensed speech/language pathologist in our state; and

**WHEREAS**, potential licensed speech/language pathologists from Delaware must complete their educational requirements in other states, often finding competitive jobs in our surrounding states and not returning to Delaware to provide such critical services; and

**WHEREAS**, the demand for licensed speech/language pathologists in Delaware has continued to increase and the demand for licensed speech/language pathologists in Delaware is not being met; and

**WHEREAS**, the public school system in Delaware, which is vital to the educational development of our children, is currently facing a severe shortage of licensed speech/language pathologists, and there is a need to confront this shortage and develop strategies to address this demand for critical services in our state.

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. A Task Force is created to examine issues surrounding the shortage of licensed speech/language pathologists in the State of Delaware and develop recommendations to address that shortage.
2. The members of the Task Force shall consist of the following:
  - a. two members of the Delaware House of Representatives appointed by the Governor, one to be appointed from each Caucus;
  - b. two members of the Delaware Senate appointed by the Governor, one to be appointed from each Caucus;
  - c. the Secretary of Education for the State of Delaware or her designee;
  - d. one representative from the Early Childhood and Exceptional Children's WINK Group in the Department of Education;
  - e. one representative from the Delaware Department of Health and Social Services;
  - f. one representative from Easter Seals, appointed by the Easter Seals;
  - g. one representative from A.I. Dupont Hospital for Children, appointed by the Hospital;
  - h. the Provost of the University of Delaware or his designee;
  - i. one representative from the Education Department of Delaware State University;
  - j. the State Speech/Language Pathologist;
  - k. one member of the business community appointed by the Delaware State Chamber of Commerce;
  - l. one representative of the Delaware Speech and Hearing Association's Executive Council, appointed by the Council;
  - m. one member of the Governor's Advisory Council for Exceptional Citizens, appointed by the Council;
  - n. the Director of Family and Workplace Connection or her designee; and

o. one parent of a child in Delaware with developmental and learning needs appointed by the Governor.

All members shall serve during the pleasure of the person or authority appointing them.

3. The Chairperson of the Task Force shall be appointed from among its members by the Governor and serve at the pleasure of the Governor.

4. The Task Force shall develop recommendations for improving the shortage of licensed speech/language pathologists in Delaware, including the identification of revenue sources for the implementation of an accredited Master's program at a college and/or university in Delaware.

5. The Task Force shall submit its findings to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor by June 15, 2006.

Approved: April 13, 2006

Ruth Ann Minner,  
Governor

ATTEST:

Harriet Smith Windsor, Secretary of State

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STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER NUMBER EIGHTY-FIVE**

**RE: Creating The Delaware Redevelopment Authority**

**WHEREAS**, the Major Robert Kirkwood United States Army Reserve Center (hereinafter "Army Reserve Center" or "Reserve Center") has made a significant and valuable contribution to the Metropolitan Wilmington area, New Castle County and the State of Delaware; and

**WHEREAS**, the Final Report of the 2005 Base Closure and Realignment Commission recommended the closure of the Army Reserve Center; and

**WHEREAS**, the operational and economic impact the closure of the Army Reserve Center spans multiple jurisdictions, and the future utilization of this valuable facility is a great concern for the citizens in the State of Delaware; and

**WHEREAS**, it is essential to have a proper and adequate revitalization plan in order to provide for the citizens and enhance the communities that are likely to be adversely affected by the closure of the Army Reserve Center;

**NOW THEREFORE, I, RUTH ANN MINNER**, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Delaware Redevelopment Authority (hereafter "Authority") is hereby established.
2. The Authority will serve as the Local Redevelopment Authority to respond to the needs of the Delawareans and communities impacted by the closure of the Reserve Center.
3. The Authority shall work with the Department of Defense to transition the Reserve Center from military ownership to private, state or local government control.
4. The Authority shall examine and make recommendations for the public benefit concerning the closure of the Reserve Center in the areas of economic development, infrastructure, transportation and environment.
5. The members of the Authority shall consist of the following:
  - a. one member of the Delaware House of Representatives appointed by the Governor;
  - b. one member of the Delaware Senate appointed by the Governor;
  - c. the Director of the Delaware Economic Development Office or her designee;
  - d. the Adjunct General of the Delaware National Guard or his designee;
  - e. one representative of the New Castle County Government to be appointed by the New Castle County Executive;
  - f. one representative appointed by each member of the Delaware Congressional delegation;

and

g. four members appointed by the Governor; one of whom shall be a representative of the private sector with relevant business experience or background; one of whom shall be knowledgeable in environmental protection, conservation and land use issues; one of whom shall be knowledgeable of needs of the homeless in Wilmington, New Castle County and the State; and one of whom shall be a representative of the local community being impacted by the closure of the Center.

All members of the Authority shall serve at the pleasure of the person or authority appointing them. The Chairperson of the Authority shall be appointed from among its members by the Governor and serve at the pleasure of the Governor.

6. The Authority shall report its progress to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor by May 1, 2007.

Approved: April 13, 2006  
Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER NUMBER EIGHTY-SIX**

**RE: Executive Order Number Eighty-Six Amending Executive Order Number Eighty-One**

**WHEREAS**, on February 1, 2006, I adopted Executive Order Number 81, which continues certain equal opportunity hiring standards and practices in Delaware State government; and

**WHEREAS**, the recitals of Executive Order No. 81 recognize that Delaware law or executive order prohibits discrimination in State employment based on gender, race color, religion, national origin, age, marital status, disability, sexual orientation, or Vietnam Era veterans' status; and

**WHEREAS**, Section 711 of Title 19 of the Delaware Code further prohibits discrimination in employment based upon genetic information; and

**WHEREAS**, for purposes of clarity and ease of reference, Executive Order No. 81 should be amended so that its recitals conform to the substantive provisions of the Order and also conform to Delaware law prohibiting all forms of discrimination that are unlawful under Title 19 of the Delaware Code,

**NOW THEREFORE, IT IS HEREBY ORDERED AND DECREED THAT:**

1. Executive Order No. 81 is amended, by striking the first recital paragraph of said Order and replacing it with the following:

"**WHEREAS**, Delaware law and/or executive order prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, Vietnam Era veterans status, or genetic information; and"

2. Except as otherwise provided herein, the provisions of Executive Order No. 81 shall remain effective in their entirety.

Approved: May 2, 2006  
Ruth Ann Minner,  
Governor

ATTEST:  
Harriet Smith Windsor, Secretary of State

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# GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Directors of the Delaware Institute of Medical Education and Research	Galicano F. Inguito, Jr., M.D.	03/01/2008
Board of Examiners of Private Investigators and Private Security Agencies	Mr. Harvey A. Woods, III	03/23/2009
Board of Medical Practice	Lindsey M. Slater, M.D.	04/10/2009
Board of Professional Counselors of Mental Health and Chemical Dependency Professionals	Mr. Maynard R. Gregory Mr. William F. Northey, Jr.	01/27/2008 03/23/2009
Board of Professional Land Surveyors	Mr. Theodore W. Ressler	03/23/2009
Board of Speech/Language Pathologists, Audiologists, and Hearing Aid Dispensers	Ms. Mary Ann Connolly Gaskin Mr. Kenneth W. Jones	03/23/2009 03/23/2009
Cherry Island Landfill Citizens Advisory Council	Mr. Scott L. MacKenzie	Pleasure of the Governor
Child Placement Review Board, New Castle	Ms. Mary Lou Edgar	03/23/2009
Community Involvement Advisory Council	Ms. Janice A. Durham The Honorable Robert G. Frederick	03/31/2008 03/28/2009
Council on Housing	Mr. Vincent M. White	04/05/2007
Delaware Bicycle Council	Mr. Walter J. Bryan	12/23/2006
Delaware Economic and Financial Advisory Council	The Honorable Carolann D. Wicks	Pleasure of the Governor
Delaware Health Resources Board, Vice Chair	Mr. S. Bernard Ableman	08/30/2008
Delaware Health Resources Board, Member	Mr. Christiaan J. Francke Mr. Alfred L. Hatchett Ms. Mary E. Torsch	03/28/2009 03/28/2009 04/19/2007
Delaware State Arts Council	Reverend John D. Ranney	08/05/2006
Governor's Advisory Council for Exceptional Citizens	Ms. Darlene E. Arena	Pleasure of the Governor

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## GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Governor's Council on Hispanic Affairs	Mr. Eloy Acosta	10/13/2007
	Ms. Mercedes Fernandez-Peters	01/12/2007
	Mr. Israel Figueroa	08/05/2006
	Mr. Eli Ramos	04/12/2008
Human Relations Commission	Ms. Whittona R. Burrell	01/07/2009
Interagency Coordinating Council	Ms. Michelle M. Lamers	04/12/2008
State Board of Accountancy	Mr. Douglas R. Phillips	04/25/2008
Statewide Labor Management Committee	Mr. Vincent J. DiSabatino	Pleasure of the Governor
	Mr. Wilbur F. Justice	Pleasure of the Governor
	Mr. David J. Knight	Pleasure of the Governor
	Mr. Joseph A. Swiski	Pleasure of the Governor
Tourism Advisory Board	Mr. George J. Fiorile	04/05/2007

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## STATE BOARD OF EDUCATION

Statutory Authority: 14 Delaware Code, Section 104(a)  
(14 Del.C. §104(a))

### IMPLEMENTING ORDER

#### State Board of Education Procedures Manual

##### Background and Context of Regulation

The State Board of Education's *Procedures Manual* includes descriptions of the Board's organization and operations, its meeting procedures and its rules of hearing practice, among other items.

The State Board concludes it is necessary to amend the *Procedures Manual* to: (1) include the P-20 Council under "Other Committees" of the Board and (2) reorder the "Agenda Format" to allow all Department Action Items and all Professional Standards Board Items to be consecutive as well as remove the specific action item for Higher Education.

These changes are exempted from the procedural requirements of the *Administrative Procedures Act* pursuant to 29 Del.C. §§10113(b)(1), (2), (4) and (5). As a result, the State Board may adopt these changes informally.

##### ORDER ADOPTING REGULATIONS

The State Board of Education concludes that it is appropriate to amend the *Procedures Manual* as described above. The amended regulations are attached as Exhibit "A" and are hereby adopted by the State Board of Education as its *Procedures Manual*, effective immediately.

Approved this 20<sup>th</sup> day of April 2006

##### State Board of Education

Jean W. Allen, President  
Richard M. Farmer, Jr., Vice President  
Mary B. Graham, Esquire  
Gregory A. Hastings  
Barbara B. Rutt  
Dennis J. Savage  
Dr. Clairbourne D. Smith

State Board of Education  
Procedures Manual  
September 1998  
(Revised: 2001, 2002, 2004 and 2006)

##### Legal Basis and Related Issues

##### Statutory Basis

The State Board exists pursuant to 14 Del.C. §104(a), which states the following:

- (a) The State Board of Education shall be composed of 7 members who shall be citizens of the State and shall be appointed by the Governor and confirmed by the Senate. The Governor shall name the President of the Board who shall serve at the Governor's pleasure. Each of the remaining members of the Board shall be appointed to serve for 6 years and until his or her successor qualifies.

##### Board Structure

**Membership**

In accordance with 14 **Del.C.** §104(a), the State Board is composed of 7 members.

**Appointment**

In accordance with 14 **Del.C.** §104(a), the State Board members are appointed by the Governor and confirmed by the Senate.

**Qualifications**

The qualifications for membership on the State Board of Education are specified in 14 **Del.C.** §104(d), which states the following:

(d) The members of the Board shall be appointed solely because of their character and fitness subject to the following qualifications: At least 2 members of the Board shall have had prior experience on a local board of education; no more than 4 members of the Board shall belong to the same political party; no person shall be eligible to appointment who has not been for at least 5 years immediately preceding appointment a resident of this state; and no person shall be appointed to the Board who is in any way subject to its authority.

Any member of the Board shall be eligible for reappointment unless otherwise disqualified by this title. In constituting the Board, the President shall be appointed from the State at large, but the appointments of the remaining 6 members shall be made so that there shall be on the Board at least 1 resident of the City of Wilmington, 3 residents from New Castle County outside the City of Wilmington, 1 from Kent County and 1 from Sussex County.

**Terms**

The President of the Board serves at the pleasure of the Governor 14 **Del.C.** §104(a). The terms for the remaining 6 members are "6 years and until his or her successor qualifies" 14 **Del.C.** §104(a). However, §104(f) provides that the "Governor may appoint members for confirmation by the Senate for terms shorter than 6 years where that is necessary to ensure that Board members' terms expire on a rotating annual basis".

**Compensation**

The compensation of State Board members is specified in 14 **Del.C.** §104(h), which states the following:

(h) The members of the Board shall receive \$100 for each day's attendance at the meetings of the Board not to exceed 24 days' attendance in any 1 calendar year; and they shall be reimbursed for the actual travel and other necessary expenses incurred in attending meetings and transacting the business of the Board.

**Vacancies**

"Vacancies on the Board for any cause shall be filled by the Governor for the unexpired term and until a successor shall qualify" 14 **Del.C.** §104(e).

**Powers, Duties and Responsibilities**

The powers, duties, and responsibilities of the State Board of Education are delineated primarily in **Delaware Code**, Title 14. The general powers are specified in 14 **Del.C.** §104(b), which follows. However, the specific powers, duties, and responsibilities, as cited in the **Code**, are detailed more fully in Appendix A, where the specific citations and a brief paraphrase of the statutes are given.

(b) The State Board of Education shall have powers, duties, and responsibilities as specified in this title. Included among the powers, duties and responsibilities are those specified in this subsection. The State Board of Education shall:

(1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult

with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

(2) Provide the Secretary of Education with advice and guidance on the Department's annual operating budget and capital budget requests;

(3) Provide the Secretary of Education with guidance in the preparation of the annual report specified in §124 of this title, including recommendations for additional legislation and for changes to existing legislation;

(4) Provide the Secretary of Education with guidance concerning the implementation of the student achievement and statewide assessment program specified in §122(b)(4) of this title;

Decide, without expense to the parties concerned, certain types of controversies and disputes involving the administration of the public school system. The specific types of controversies and disputes appropriate for State Board resolution and the procedures for conducting hearings shall be established by rules and regulations pursuant to §121 (12) of this title;

(6) Fix and establish the boundaries of school districts, which may be doubtful or in dispute, or change district boundaries as provided in §§1025, 1026, and 1027 of this title;

(7) Decide on all controversies involving rules and regulations of local boards of education pursuant to §1058 of this title;

(8) Subpoena witnesses and documents, administer and examine persons under oath, and appoint hearing officers as the State Board finds appropriate to conduct investigations and hearings pursuant to paragraphs (5), (6), and (7) of this subsection;

(9) Review decisions of the Secretary of Education, upon application for review, where specific provisions of this title provide for such review. The State Board may reverse the decision of the Secretary only if it decides, after consulting with legal counsel to the Department, that the Secretary's decision was contrary to a specific state or federal law or regulation, was not supported by substantial evidence, or was arbitrary and capricious. In such cases, the State Board shall set forth in writing the legal basis for its conclusion;

(10) Approve such Department rules and regulations as require State Board approval, pursuant to specific provisions of this title, before such regulations are implemented;

(11) Approve rules and regulations governing institutions of postsecondary education that offer courses, programs of courses, or degrees within the State or by correspondence to residents of the State pursuant to §§121(16) and/or 122(b)(7).

## Conduct of Members

**Delaware Code**, Title 29, Chapter 58 provides the laws regulating the conduct of officers and employees of the State of Delaware. Members of the State Board of Education are subject to certain of the provisions of that statute in that they are included in the definition of "state agency" 29 **Del.C.** §5804(10) and the definition of "honorary state official" 29 **Del.C.** §5804(13). For that reason, members of the Board are encouraged to become familiar with the provisions of that chapter. The following issues are of particular concern.

### Conflicts of Interest

Section 5805 details the State's conflict of interest provisions, which apply to members of the State Board of Education. As applied to State Board that means that a member may not participate on behalf of the State in the review or dispositions of any matter pending before the State in which he or she has a personal or private interest 29 **Del.C.** §5805(a). There are also restrictions on representing another's interest §5805(b); against contracting with the State for goods or services §5805(c); or for representing or assisting private enterprise within two years after appointed service §5805(d). The code of conduct is further detailed in 29 **Del.C.** §5806.

### Financial Disclosure

Subchapter II, Chapter 58, 29 **Del.C.**, contains the requirements for financial disclosure of public officers.

Because State Board of Education members are not included in the definition of "public officer" contained in §5812, it would appear that members are not required to file the annual disclosure reports mandated by this statute. However, nothing would prohibit a member who chose to do so from voluntarily completing such a report.

### **Dual Compensation**

"There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State" 29 **Del.C.** §5821(a). The statute prohibits such individuals from receiving dual compensation for their time. Thus, State Board members, who are employed by the agencies and organizations specified, are encouraged to acquaint themselves with the specific provisions of this statute.

## **Organization**

### **Officers**

#### **President**

The Governor shall name the President of the Board who shall serve at his/her pleasure 14 **Del.C.** §104(a). The President is responsible for the integrity of the Board process. Integrity includes the efficient, orderly deliberation of Board issues and conduct of Board affairs.

The President has no authority over Department of Education activities. However, the President does have authority, subject to any applicable Board policy, to (1) call special meetings of the Board; (2) represent, in person or through a designee, Board positions and symbolize the Board image in public and at ceremonial events; and (3) decide mechanics of Board procedures. Subject to Board approval, the President (1) determines Board agendas and committee charges, and (2) makes Board appointments to committees. The President shall be an ex officio member of all committees, and shall have all privileges of membership but shall not be counted in the committee quorum.

The President shall have the same right to make or second motions and to vote on pending questions as any other member of the Board.

The President shall determine the appropriate action to take in reference to any uncertainty regarding any expense statement submitted by a member of the State Board.

The President shall be responsible for initiating the annual evaluation of the Board's progress toward achieving the goals delineated in the five-year plan (See Vision, Mission, and Goals).

#### **Vice President**

The Vice President shall be elected at the annual meeting and shall serve until the next annual meeting or until a successor has been named 14 **Del.C.** §105(a). The Vice President shall assist the President in the duties of the President's office, as the President may direct, and shall preside at meetings and appoint members of committees during the President's absence. In the event of the President's death, resignation, incapacity, or disqualification, the Vice President shall act in place of the President in all respects until the vacancy shall be filled or the incapacity removed.

#### **Executive Secretary**

Pursuant to 14 **Del.C.** §104(c), the Secretary of Education, in addition to his or her other duties of office, shall serve as Executive Secretary of the State Board.

The Executive Secretary is responsible for keeping of the minutes and other official records of the State Board, either in person or by an assistant.

#### **Legal Counsel**

Legal counsel to the State Board of Education is provided by the State Department of Justice and the Attorney General's Office in accordance with 29 **Del.C.** §2504. (In accordance with 29 **Del.C.** §2507, no agency board, or commission shall employ legal counsel except with approval of the Attorney General and Governor.)

#### **Staff Assistance**

Section 104(c), 14 **Del.C.**, provides in part, that: "The Department, through the Secretary, shall provide reasonable staff support to assist the State Board in performing its duties pursuant to this title ...". In addition, the

annual appropriations act provides funding for a single independent staff person to provide support and policy advice to the State Board of Education.

## Committees

### Subcommittees of the Board

The Board may, from time to time, establish temporary committees to help carry out its responsibilities. To preserve Board holism, committees will be used sparingly, only when other methods have been deemed inadequate or to improve efficiency of operations. Board committees, whether external or internal, may not speak for the Board. No more than three Board members may serve on a Board committee. Board members may express their interest and willingness to serve on any committee. Subject to Board approval, the President will identify the charge of the committee and appoint a committee chair and members of the committee. It is expected that committees will report back to the full Board on a regular basis.

### Special Board Committees

The Board may, from time to time, create special committees to advise the Board on specific issues, and shall vote to do so at a formal meeting of the Board. Such committees may include membership outside the Board or Department of Education.

### Other Committees

Under **Delaware Code**, a member of the State Board must serve on each of the following committees:

- President of the Board serves as co-chair of the P-20 Council 14 **Del.C.** §107
- Equalization Committee 14 **Del.C.** §1707(i)
- President of the State Board serves ex-officio on the Board of Trustees of the University of Delaware 14 **Del.C.** §5105

Traditionally, Board members also serve on numerous external boards and committees at both the State and national level. Examples include the following:

- Delaware School Boards Association Board of Directors
- Delaware School Boards Association Legislative Committee
- Education Consortium
- Committees and study groups of the National Association of State Boards of Education
- Education Task Forces and Committees established by Executive Orders and Legislation.

### Committees Appointed by the Secretary of Education

In accordance with 14 **Del.C.** §103(a)(11), the Secretary must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval. The Board's view shall be expressed in the form of a vote on the proposed committee membership.

### New State Board Member Orientation

The State Board of Education is responsible for the orientation of new members to the State Board. A subcommittee of the Board shall be responsible for planning the orientation of new members. The Secretary of Education shall be an ex-officio member of this committee.

### Board Member Development

The State Board of Education shall be responsible for its own development as a Board. This development shall take place through membership and participation in organizations such as the National Association of State Boards of Education, Delaware School Boards Association, the National School Boards Association, and other activities such as Board retreats, conferences, conventions, workshops, or committees.

### Evaluation

The Board will monitor its own process and performance to ensure continuity of Board improvements, integrity of Board actions and progress toward Board goals. The Board will be accountable to the public for competent, conscientious, and effective accomplishment of its obligations as a Board.

The Board may seek the input from others regarding the effectiveness or impact of Board initiatives as part of the evaluation process, and may utilize the services of an independent consultant in doing so.

**Consultants**

The Board may, within available financial resources, hire consultants as needed. The Board shall formally approve the consultant and fee.

**State Board Appropriations**

Reimbursement to Board members for the normal mileage and incidental expenses are paid by the Department of Education from funds appropriated to the Board and budgeted for that purpose. Reimbursement requests for expenses for conferences or meetings outside the state must be initiated by the Board president. For other expenditures in excess of \$1,000 Board approval is required.

**Meetings****Annual Meeting**

Pursuant to 14 **Del.C.** §105(a), the annual meeting of the State Board of Education shall be held in Dover during the month of July. Election of the Vice President of the Board shall occur at this meeting.

**Regular Meetings**

Regular meetings of the State Board of Education are held once a month in the Cabinet Room of the John G. Townsend Building, Dover. The meetings are normally scheduled on the third Thursday of each month beginning at 1:00\_p.m. but may vary as need dictates.

**Special Meetings**

Special meetings of the State Board of Education may be held to address emergency issues, conduct hearings, develop goals, evaluate board operations, or for in depth study and review of an issue. Special meetings are held at a time and place agreed upon by the Board.

**Executive Sessions**

The State Board of Education may meet in executive session for the reasons specified in 29 **Del.C.** §10004. The Board must vote in a public meeting to go into executive session stating the purpose for the executive session.

**Board Meeting Procedures****Public Notice of Meetings**

As specified in 29 **Del.C.** §10004(e)(1) the State Board is required to give public notice of all meetings, including executive sessions closed to the public, at least 7 days prior to the meeting. The notice must include the agenda and the date, time, and place of the meeting. The notice is posted on the bulletin board outside the Cabinet Room of the Townsend Building, Dover.

In addition, notices of all regular meetings are mailed to the district superintendents, state officials, the media, heads of state education organizations and other interested parties. Persons and organizations may request that they be placed on the mailing list by contacting Dani Moore at the Department of Education. Telephone 302/739-4603. Fax 302/739-7768. Email: [damoore@state.de.us](mailto:damoore@state.de.us)

**Agenda Format - Order of Business**

The order of business for regular meetings is as follows:

- I. Opening
  - A. Call to Order
  - B. Approval of Agenda
  - C. Approval of Minutes
- II. Formal Public Comment
- III. State Board Business
  - A. Reports/Discussions

- B. Budget Items
- C. Other
- IV. Presentations
  - A. State Board of Education
  - B. Department of Education
  - C. Other Presentations
  - D. Secretary's Report, Review and Discussion
- V. Action Items
  - A. Department of Education
  - B. Professional Standards Board
  - C. Charter Schools
  - D. Other Action Items
  - E. Appeals and Reviews
- Information Items

### **Agenda Preparation and Dissemination**

Items included on the Board's agenda for regular meetings are recommended jointly by the Policy Analyst to the State Board and the Cabinet of the Department of Education. The final agenda is subject to the approval of the Board President. Any member of the Board may request that an item be placed on the agenda.

Agendas with all background materials are distributed to Board members at least 5 days prior to the meeting. Board agendas are also distributed to district and state officials and to others on a request basis.

The State Board Agenda is also posted on the Department of Education Web Site prior to the meeting at [www.doe.state.de.us](http://www.doe.state.de.us)

### **Rules of Order**

The Board uses the rules of parliamentary procedure to conduct its meetings, but it is not strictly bound by Robert's Rules of Order. The general conduct of the meeting is determined by the Board President with input from other board members and advice from the Board's legal counsel.

### **Quorum**

Four (4) members of the State Board must be present to conduct the business of the Board 14 **Del.C.** §105(a)).

### **Voting Method**

Votes by the State Board are taken by voice. When the vote is not a unanimous one, a roll call vote is taken in alphabetical order with the President voting last. All questions before the Board must be approved by a majority (4) of the members of the whole Board.

### **Minutes**

As prescribed in 29 **Del.C.** §10004(f) the State Board maintains minutes of all its meetings including executive sessions. The minutes must include the names of board members present and a record, by individual member, of all votes taken and action agreed upon. The minutes, along with the printed agenda and its backup materials, shall constitute the official record of the Board.

Highlights of the State Board meetings are available on the Department of Education Website within 10 days of the State Board meeting at [www.doe.state.de.us](http://www.doe.state.de.us). Official Board Minutes are posted on the web site within five days of their approval at the subsequent monthly meeting of the Board.

### **Public Participation at Board Meetings**

There are three ways that individuals and groups may address the Board at its regular meetings:

1. An individual or group may request time on the Board's agenda to make a formal presentation to the Board. Such a request should be in writing, and be submitted to the President of the State Board of Education, John G. Townsend Building, 401 Federal Street, Suite 2, P.O. Box 1402, Dover, DE 19903-1402, at least 20 days prior to the meeting. The decision to include the presentation will be made by the Board President. (Such presentations are included in Section IV.C. of the agenda.)

2. Time will be allocated at the beginning of the meeting (Section II) for individuals or groups to address the State Board on general issues. In addition, individual and/or groups may address the State Board on agenda items at the time that they are before the Board for discussion. Persons wishing to make comments should sign up on the appropriate form at least 15 minutes prior to the call to order. Each group should choose one representative to speak and comments should be limited to five minutes. Speakers will be recognized by the Board President in the order their names appear. If a large number of people sign up to speak, the Board President may at his/her discretion, limit the number of persons allowed to speak as well as designate the appropriate time for comments.

Normally the Board will not respond to questions or comments at the meeting but will respond in writing to each person or group. Written responses will not be made to persons/groups addressing action items on the agenda.

### **Appeals and Reviews**

The State Board of Education has several responsibilities under the **Code** to hear appeals and to review decisions of the Secretary of Education. Those responsibilities are outlined in 14 **Del.C.** §104(b)(5), (b)(6), (b)(7), and (b)(9). The types of controversies and disputes appropriate for Board resolution and the procedures for conducting such hearings are contained in Appendix B.

### **Policy Development**

One of the primary functions of the State Board of Education is to assist the Secretary of Education in the development of policy. Subsection 104(b)(1), 14 **Delaware Code** states:

(1) Provide the Secretary of Education with advice and guidance with respect to the development of policy in those areas of education policy where rule- and regulation-making authority is entrusted jointly to the Secretary and the State Board. The State Board shall also provide guidance on new initiatives, which may from time to time be proposed by the Secretary. The Secretary shall consult with the State Board regularly on such issues to ensure that policy development benefits from the breadth of viewpoint and the stability which a citizens' board can offer and to ensure that rules and regulations presented to the State Board for its approval are developed with input from the State Board. Consistent with its role in shaping critical educational policies, the State Board of Education may also recommend that the Secretary undertake certain initiatives which the State Board believes would improve public education in Delaware;

In order to meet that responsibility, the State Board has set aside time at each regular meeting for discussions of State Board initiatives (Section III.A.), presentations from the Department of Education and the Secretary of Education's Report (Sections IV A. and B., respectively) and for Board action on policy, rules, and regulations (Section V.).

It is the expectation of the Board that the Secretary and the Department of Education will use those opportunities to obtain advice and counsel from the board as a whole in keeping with the spirit of the statute quoted above.

### **Appendix A**

The following is a list of the powers, duties, and responsibilities of the State Board of Education. Each pertinent section of the Code is paraphrased and annotated. A general description of the powers, duties, and responsibilities can also be found in 14 **Delaware Code**, §104(b), which is quoted in its entirety in the body of this document.

#### **Advisory Board to the Secretary**

The State Board shall participate in meetings of the Advisory Board to the Secretary of Education 14 **Del.C.** §106.

#### **Alternative Assessments**

The State Board of Education must approve any alternative assessment administered pursuant to §151(i) of Title 14 **Del.C.**

## Approval of Charter Schools

The State Board of Education must approve charter schools authorized by the Department 14 **Del.C.** §503 and §511(c). The State Board is also involved in any charter revocation under 14 **Del.C.** §515 and §516.

## Approval of Rules and Regulations of the Professional Standards Board

The State Board of Education must approve rules and regulations promulgated by the Professional Standards Board before they become effective 14 **Del.C.** §1203. Such rules and regulations cover a number of areas including the following:

1. Qualifications and certification of educators in the public schools 14 **Del.C.** §1092, §1201, §1230, §1260, §1261, §1264(b), and §3310(4).
2. Licensure of substitute teachers 14 **Del.C.** §1230.
3. Establishment of a special institute for teacher certification 14 **Del.C.** §1250.
4. Regarding alternative routes for teacher certification 14 **Del.C.** §1230.
5. Regarding professional development activities that qualify for Skills and Knowledge Salary Supplements 14 **Del.C.** §1305(l).
6. Regarding authorization of stipends for employees who have achieved certification from the National Board for Professional Teaching Standards or an equivalent program 14 **Del.C.** §1305(m).
7. Regarding activities that qualify for Additional Responsibility Salary Supplements 14 **Del.C.** §1305(m).

## Approval of Regulations of the Higher Education Commission

The State Board of Education must approve rules and regulations promulgated by the Higher Education Commission before they become effective 14 **Del.C.** §104(b) (13).

## Approval of Rules and Regulations

The State Board of Education must approve rules and regulations promulgated by the Department of Education before they become effective. Such rules and regulations cover a number of areas including the following:

1. Issuance of certificates and diplomas for the public schools 14 **Del.C.** §122(b)(3).
2. Statewide assessment of student achievement and the assessment of the educational attainments of the public school system 14 **Del.C.** 151(i).
3. Minimum courses of study for all public elementary schools and public high schools 14 **Del.C.** §122(b)(5).
4. Instruction in driver education in the nonpublic high schools 14 **Del.C.** §122(b)(13).
5. Issuance of Delaware Public Education Profiles on all public schools, including charter schools 14 **Del.C.** §124(a).
6. Delaware performance Appraisal System II 14 **Del.C.** §1270.
7. Excusal of educational hour requirements specified in 14 **Del.C.** §122 (b)(8) and §1049(1).
8. Enforcement of school attendance laws 14 **Del.C.** §122(b)(9) and 14 **Del.C.** §2705(b) and truancy 10 **Del.C.** §901(14).
9. Instruction in driver education during summer months 14 **Del.C.** §122(b)(13).
10. Conduct of interscholastic athletics 14 **Del.C.** §122(b)(14).
11. Mandatory drug and alcohol educational programs 14 **Del.C.** §122(b)(16).
12. Operation of adult education and family literacy programs 14 **Del.C.** §122(b)(17).
13. Conduct of the teacher scholarship loan program in critical curriculum areas 14 **Del.C.** §1106 and the student loan program in critical curriculum areas (14 **Del.C.** §1108).
14. Concerning the employment of school principals 14 **Del.C.** §1307(2).
15. Regarding the employment of school nurses 14 **Del.C.** §1310(b).
16. Concerning parent advisory committees, a peer review committee, a human rights committee, and an autistic program monitoring board 14 **Del.C.** §1332(f).
17. Relating to related services for children with disabilities 14 **Del.C.** §1716A(c) and §1716A(d).
18. Governing the design and operation of school buses 14 **Del.C.** §2901, and the transportation of students of nonpublic nonprofit schools 14 **Del.C.** §2905.
19. Regarding the creation and operation of programs designed to serve exceptional students, primarily children with disabilities (numerous citations throughout 14 **Del.C.** Chapter 31).

20. Regarding the extent and content of the instruction in the public schools in the Constitution of the United States, the Constitution and government of Delaware and the free enterprise system 14 **Del.C.** §4103.
21. Regarding interstate agreements on the qualifications of education personnel 14 **Del.C.** §8212.

**Approval of Shared School Decision Making Grants**

The State Board of Education must approve guidelines for district transition grants for shared decision making 14 **Del.C.** §803(b); must approve guidelines for school transition grants 14 **Del.C.** §805(b); and must approve guidelines for school improvement grants 14 **Del.C.** §806(a).

**Approval of Vocational Centers**

The State Board of Education must approve the creation of vocational-technical centers or schools 14 **Del.C.** §205.

**Approval of Neighborhood School Plans**

The State Board of Education must approve neighborhood school plans submitted by districts 14 **Del.C.** §205.

**Committee Appointments**

The Secretary of Education must consult with the State Board of Education in the appointment of committees formed to assist in developing policies or regulations which would require State Board approval 14 **Del.C.** §103(a)(11).

**Critical Curriculum Areas**

The State Board of Education must approve areas, which are to be designated as critical curriculum areas 14 **Del.C.** §1101; approve academic year programs 14 **Del.C.** §1104; and approve summer in-service programs 14 **Del.C.** §1105.

**Deciding Certain Controversies**

The State Board of Education shall decide without expense to the parties concerned certain controversies and disputes involving the administration of the public school system 14 **Del.C.** §121(12) and 14 **Del.C.** §104(b)(5). Rules and regulations regarding such hearings by the Board are contained in Appendix B.

**Deciding Controversies Concerning Local Rules and Regulations**

The State Board of Education shall decide controversies involving rules and regulations of local school boards 14 **Del.C.** §1058 and some rules and regulations of charter schools 14 **Del.C.** §104b(12).

**Drug/Alcohol Education Programs**

The State Board of Education must approve of statewide alcohol/substance abuse programs established and implemented by the Department of Education 14 **Del.C.** §4116(a).

**Employment of Aides in Autistic Program**

The State Board of Education may review decisions of the Department and Secretary of Education regarding requests to employ aides in lieu of teachers in the autistic program 14 **Del.C.** §1332(e).

**Establishment of Programs for Children with Disabilities**

The State Board of Education must approve the establishment of schools, classes or programs for the disabled 14 **Del.C.** §203, §1703(d), §1703(k), §1703(l), §1703(m), §1703(n) and §1721.

**Number and Length of School Days**

The State Board of Education must approve a reduction in the number of school hours and the length of full workdays for employees of the school system 14 **Del.C.** 1305(i)(j).

**Reorganization of School Districts**

The State Board of Education determines and establishes appropriate reorganized school districts through consolidation, division, or a combination of the two as well as establishing tax rates and tax districts for the same. 14 **Del.C.** §1025, §1026, §1027, §1028, §1065, §1924, and §1925.

## **Review of Decisions Regarding Children with Disabilities**

The State Board of Education may review a variety of decisions made by the Department regarding services to children with disabilities (numerous citations in 14 **Del.C.** Chapter 31).

## **Standards for Interpreter/Tutors**

The State Board of Education must approve standards prescribed for interpreter/tutors 14 **Del.C.** §1331(b).

## **Statewide Programs for Children with Disabilities**

The State Board of Education must approve the designation of a district to serve as administrative agency for the deaf-blind program 14 **Del.C.** §1321(e)(15)a.; to administer a program for the physically impaired 14 **Del.C.** §1321(e)(16); the establishment of intensive learning centers 14 **Del.C.** §1321(e)(17); and the designation of an administering district for the autistic program 14 **Del.C.** §1332(a).

## **Use of Cash Options in Lieu of Salary Funds**

The State Board of Education may review decisions of the Department and Secretary of Education regarding district requests to elect cash options in lieu of receiving salary funds from the State 14 **Del.C.** §1321(e)(11), §1321(e)(12), §1321(e)(15)b., §1321(e)(16), §1332(d), and §1332(e).

## **Use of Special Education Funds**

The State Board of Education may review decisions on the use of special education funds that a district seeks to use in another way if an objection is made to the Department's decision 14 **Del.C.** §1703(o) and §1716A(h).

## **Vacancies on Local School Boards**

The State Board of Education appoints interim members to a local board of education in the event a majority or the entire membership vacates the seats at the same time. The Board may also set the date for a special election to fill the vacancies 14 **Del.C.** §1054.

## **Waiver of a Regulation**

The State Board may, within 30 days or at its next meeting, deny any waiver of a regulation, it must promulgate or approve, granted by the Department of Education 14 **Del.C.** §122(g)(2).

## **Waiver of Rules Under School Discipline Programs**

The Department of Education is authorized to waive certain rules and regulations in the implementation of school discipline programs. The State Board of Education may deny the waiver within a fixed period of time 14 **Del.C.** §1606.

## **Appendix B**

### **HEARING PROCEDURES AND RULES**

**RULE MAKING HISTORY:**Initial adoption date September 1998

Revised 2000

Revised date 10-1-01 (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications))

Revised date 11-1-04 (see Register of Regulations at [www.legis.state.de.us/onlinepublications](http://www.legis.state.de.us/onlinepublications))

#### **1.0 Scope and Purpose of Rules**

The State Board of Education ("the State Board") is authorized by several sections of the Education Code (Title 14 of the **Delaware Code**) to adopt or approve rules and regulations, resolve disputes, hear appeals, and review decisions of the Secretary of Education. The State Board is also governed by the Administrative Procedures Act (Chapter 101 of Title 29 of the **Delaware Code**), except where specifically exempted by other law.

These Hearing Procedures and Rules ("Rules") shall govern the practice and procedure before the State Board

in hearings, appeals, and regulatory proceedings.

## **2.0 General Provisions**

2.1 These Rules shall be liberally construed to secure a just, economical, and reasonably expeditious determination of the issues presented in accordance with the State Board's statutory responsibilities and with the Administrative Procedures Act.

2.2 The State Board may for good cause, and to the extent consistent with law, waive any of these Rules, either upon application or upon its own motion.

2.3 Whether a proceeding constitutes an evidentiary hearing, an appeal or regulatory action shall be decided by the State Board on the basis of the applicable laws. A party's designation of the proceeding shall not be controlling on the State Board or binding on the party.

2.4 The State Board may appoint a representative to act as a hearing officer for any proceeding before the State Board. Except as otherwise specifically provided, the duties imposed, and the authority provided, to the State Board by these Rules shall also extend to its hearing officers.

2.5 Notwithstanding any part of these Rules to the contrary, the State Board, or its counsel, designee or hearing officer, may conduct pre-hearing conferences and teleconferences to clarify issues, confer interim relief, specify procedures, limit the time available to present evidence and argument, and otherwise expedite the proceedings.

2.6 The State Board may administer oaths, issue subpoenas, take testimony, hear proofs and receive exhibits into evidence at any hearing. Testimony at any hearing shall be under oath or affirmation.

2.7 The State Board may elect to conduct joint hearings with the Department of Education and other state and local agencies. These Rules may be modified as necessary for joint hearings.

2.8 Any party to a proceeding before the State Board may be represented by counsel. An attorney representing a party in a proceeding before the State Board shall notify the Executive Secretary of the State Board ("Executive Secretary") of the representation in writing as soon as practical. Attorneys who are not members of the Delaware Bar may be permitted to appear *pro hac vice* before the State Board in accordance with Rule 72 of the Rules of the Delaware Supreme Court.

2.9 The State Board may continue, adjourn or postpone proceedings for good cause at the request of a party or on its own initiative. Absent a showing of exceptional circumstances, requests for postponements of any matter scheduled to be heard by the State Board shall be submitted to the Executive Secretary in writing at least three (3) business days before the date scheduled for the proceeding. The President of the State Board shall then decide whether to grant or deny the request for postponement. If a hearing officer has been appointed, the request for postponement shall be submitted to the hearing officer, who shall then decide whether to grant or deny the request.

2.10 A copy of any document filed with or submitted to the State Board or its hearing officer shall be provided to all other parties to the proceeding, or to their legal counsel. Where a local or other school board participates in a proceeding, copies of filed documents shall be directed to the executive secretary of the board, unless that board appoints a different representative for such purpose.

2.11 For purposes of these Rules, unless otherwise specified "day" shall mean a calendar day. "Business day" shall mean weekdays Monday through Friday, except when those days fall on a legal holiday.

## **3.0 De Novo and Other Evidentiary Hearings**

3.1 Section 3.0 governs proceedings where a statute or regulation provides the right to an original or to a de novo hearing before the State Board to decide a specific controversy or dispute.

### **3.2 Petitions for Hearing**

3.2.1 A party may initiate a hearing on matters within the State Board's jurisdiction by mailing or delivering a petition for hearing to the Executive Secretary. The petition shall be in writing and shall be signed by the party making the request (or by the party's authorized representative). It shall set forth the grounds for the action in reasonable detail and shall identify the source of the State Board's authority to decide the matter. Petitions may not be delivered to the Executive Secretary by facsimile or other electronic means.

3.2.2 The petition for hearing shall be filed within a reasonable time after the controversy arises, but in no event shall a petition be filed more than thirty (30) days after the petitioning party's receipt of notice that official action has been taken by an authorized person, organization, board or agency.

3.2.3 A copy of the petition for hearing shall be delivered to all other parties to the proceeding at the time it is sent to the Executive Secretary. A copy of any other paper or document filed with the State Board or its

hearing officer shall, at the time of filing, also be provided to all other parties to the proceeding. If a party is represented by legal counsel, delivery to legal counsel is sufficient.

3.2.4 Upon receipt of an adequately detailed petition for hearing, the Executive Secretary shall place the matter on the agenda of the next State Board meeting. At the next meeting, the State Board will either assign the matter to a hearing officer or determine a hearing date for the matter. The parties shall be given at least twenty (20) days notice of the hearing date.

3.2.5 A party shall be deemed to have consented to an informal hearing (as that term is used in Section 10123 of the Administrative Procedures Act) unless the party notifies the Executive Secretary in writing that a formal public hearing is required. Such notice must be delivered to the Executive Secretary within three (3) days of the receipt of the notice scheduling the hearing.

### 3.3 Record of Prior Proceedings

3.3.1 If proceedings were previously held on the matters complained of in the petition, the agency which conducted those proceedings shall file a certified copy of the record of the proceedings with the Executive Secretary.

3.3.2 The record shall contain any written decision, a certified copy of any rule or regulation involved, any minutes of the meeting(s) at which a disputed action was taken, a certified, verbatim transcript of the proceedings conducted by the agency below and all exhibits presented to the agency. The certified transcript shall be prepared at the direction and expense of the agency below.

3.3.3 The record shall be filed with the Executive Secretary within ten (10) days of the date the Executive Secretary notifies the agency that the petition has been filed, unless directed otherwise. A copy of the record shall be sent to the petitioner when it is submitted to the Executive Secretary.

### 3.4 Record Review

3.4.1 If a hearing was previously held on the matters complained of in the petition, the parties to the proceeding before the State Board may agree to submit the matter to the State Board or its hearing officer on the existing record without the presentation of additional evidence.

3.4.2 If the parties agree to submit the matter for decision on the existing record, they shall support their positions in written statements limited to matters in the existing record. The parties' written statements shall be submitted according to a schedule determined by the State Board.

3.4.3 If the parties agree to submit the matter for decision on the existing record, they may nonetheless request oral argument by notifying the Executive Secretary in writing at least ten (10) days before the date written statements are due. Oral argument shall be limited to the matters raised in the written statements and shall be limited to fifteen (15) minutes per side with an additional five (5) minutes for rebuttal.

3.4.4 If the parties agree to submit the matter for decision on the existing record, the State Board's decision shall be based on the existing record, the written statements and oral argument, if any.

### 3.5 Evidentiary hearings

3.5.1 Evidentiary hearings will be held when there has not been a prior hearing, when the parties do not agree to rest on the existing record, or when the State Board or its hearing officer otherwise decide to receive additional evidence.

3.5.2 The hearing will proceed with the petitioner first presenting its evidence and case. The responding party may then present its case. The petitioner will then have an opportunity to present rebuttal evidence.

3.5.3 Opening and closing arguments and post hearing submissions of briefs or legal memoranda will be permitted in the discretion of the State Board or hearing officer.

3.5.4 Any person who testifies as a witness shall also be subject to cross examination by the other parties to the proceeding. Any witness is also subject to examination by the State Board or its hearing officer.

### 3.6 Evidence

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

3.6.2 The State Board or its hearing officer may exclude evidence and limit testimony as provided in Section 10125(b) of the Administrative Procedures Act.

3.6.3 Objections to the admission of evidence shall be brief and shall state the grounds for the objection. Objections to the form of the question will not be considered.

3.6.4 Any document introduced into evidence at the hearing shall be marked by the State Board or the hearing officer and shall be made a part of the record of the hearing. The party offering the document into evidence shall provide a copy of the document to each of the other parties and to each of the State Board members present for

the hearing unless otherwise directed.

3.6.5 Requests for subpoenas for witnesses or other sources of evidence shall be delivered to the Executive Secretary in writing at least fifteen (15) days before the date of the hearing, unless additional time is allowed for good cause. The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

3.7 Creation of Record before State Board

3.7.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing or oral argument. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

3.7.2 If a stenographic reporter is not present at the hearing or argument, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing.

3.8 State Board Decision

3.8.1 When the State Board has appointed a hearing officer, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

3.8.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within a reasonable time of the conclusion of the proceedings before the hearing officer.

3.8.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order.

3.8.4 To the extent possible, the State Board shall consider a matter conducted by a hearing officer at its next regular meeting following the parties' submissions, if any, or the end of the comment period, whichever comes first.

3.8.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and written comments thereto, if any, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

#### 4.0 Appeals

4.1 Section 4.0 governs proceedings where a statute or regulation provides the right to appeal to the State Board a decision which resolved a specific controversy or dispute. These proceedings include, but are not limited to, appeals of school district decisions involving rules and regulations of the school board 14 Del.C. §1051<sup>1</sup> and appeals of decisions of the Delaware Interscholastic Athletic Association (DIAA) and appeals of decisions by the board of directors of a charter school to suspend or expel a student for disciplinary reasons..

4.2 For purposes of Section 4.0:

4.2.1 "Party" shall mean any person or organization who participated in the proceedings before the agency which rendered the decision being appealed.

4.2.2 "Decision" shall mean the official action taken to resolve the dispute presented below and shall include the factual findings, the rule involved and the agency's conclusion. "Decision" shall not include policy making or the adoption of rules and regulations of future applicability.

4.3 For purposes of determining the State Board's jurisdiction under Section 1058 of the Education Code, "controversies involving the rules and regulations of the school board" shall mean the presentation before the local school board of a dispute involving the application of rules and regulations of the local board in a particular factual context. Certain decisions involving the application of rules and regulations of the local board may not be appealed to the State Board, including:

4.3.1 Decisions involving student disciplinary actions where a student is suspended from school for ten (10) or fewer days, except where a request to expunge the disciplinary action from the student's record has been

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1. Note: The State Board of Education has held that the local boards of education are not subject to the *Administrative procedures Act* while conducting disciplinary proceedings. See *R.T. v. Sussex County Vocational-Technical School District Board of Education*, SBE No.99-12 (February 17, 2000) and *M.B. v. Sussex Technical School District Board of Education*, SBE No. 03 (April 3, 2000)

denied by the local board.

4.3.2 Personnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board.

4.3.3 Termination of employees conducted in accordance with Chapter 14 of the Education Code.

4.3.4 Termination or non-renewal of public school administrators and confidential employees, as those terms are defined in Section 4002 of the Education Code, at the conclusion of an employment contract.

4.4 Decisions for the Board of Directors of a charter school to suspend a student from school for ten (10) or fewer days may not be appealed to the State Board, except where a request to expunge the disciplinary action from the student's record has been denied by the board of directors.

4.5 Notice of appeal

4.5.1 A party may initiate an appeal by mailing or delivering a notice of appeal to the Executive Secretary. The notice shall be in writing, shall be signed by the party making the request (or by the party's authorized representative). Notices of Appeal may not be delivered to the Executive secretary by facsimile or other electronic means.

4.5.2 The notice of appeal shall briefly state the decision from which the appeal is taken, the law, rule or regulation involved in the decision, the names of the parties, and the grounds for the appeal.

4.5.3 A notice of appeal form is included at the end of these Rules. People filing appeals are not required to use the form, but may find it helpful to do so.

4.5.4 The notice of appeal must be postmarked by or delivered to the Executive Secretary within thirty (30) days of the day the party initiating the appeal receives the written decision from which the appeal is taken.

4.5.5 A copy of the notice of appeal shall be mailed or delivered to the agency which made the decision at the same time the original notice of appeal is mailed or delivered to the Executive Secretary. A copy of any other paper or document filed with the State Board shall be provided to all parties to the proceeding at the same time it is filed with the State Board.

4.5.6 Upon receipt of an adequately detailed notice of appeal involving a student disciplinary decision or a decision of the Delaware Interscholastic Athletic Association (DIAA), the Executive Secretary shall assign the matter to a hearing officer from a roster of hearing officers approved by the State Board. The Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting.

4.5.7 Upon receipt of an adequately detailed notice of appeal involving any matter other than a student disciplinary decision or a decision of DIAA, the Executive Secretary shall consult with the President of the State Board to determine whether the matter should be assigned to a hearing officer or placed on the State Board's next meeting agenda. The President shall have the authority to authorize the Executive Secretary to assign a hearing officer to the matter from a roster of hearing officers approved by the State Board. In such case, the Executive Secretary shall provide the notice of appeal and the hearing officer assignment to the State Board at its next meeting. Nothing in this subsection shall prevent the State Board from later assigning the matter to a hearing officer.

4.6 The record on appeal

4.6.1 Unless instructed otherwise, within ten (10) days of the receipt of the notice of appeal, the agency which made the decision under appeal shall forward the record of the proceedings below to the Executive Secretary. A copy of the record shall be sent to the party filing the appeal at the same time.

4.6.2 The record shall include the agency's written decision, a copy of any rule or regulation involved, the minutes of the meeting(s) at which the decision was made, a verbatim transcript of the hearing conducted by the agency or party below, and all exhibits presented to the agency. The transcript shall be prepared at the direction and expense of the agency below.

4.6.3 The agency's executive secretary, executive director or comparable administrator shall complete the "Certification of Record" form provided at the end of these Rules and attach it to the record when the record is forwarded to the Executive Secretary.

4.6.4 If a transcript of the proceedings below is not or cannot be provided to the State Board, the Executive Secretary shall remand the case to the agency with an instruction that the agency hold a new hearing within ten (10) days.

4.7 Proceedings on appeal

4.7.1 The State Board of Education or its hearing officer shall establish and notify the parties of the date when the State Board or its hearing officer will consider the appeal, hereafter referred to as the consideration date. The parties shall be given at least twenty (20) days notice of the consideration date. The parties may agree to shorten or waive the notice of the consideration date.

4.7.2 Written statements of position and legal briefs or memoranda, if any, shall be filed no later than (10) days prior to the consideration date. Failure to file a written statement by the time specified may result in a postponement of the consideration date until the statement is filed, or a consideration of the appeal without the written statement, at the discretion of the State Board or its hearing officer.

4.7.3 The written statement must clearly identify the issues raised in the appeal. Briefs or legal memoranda shall be submitted with the written statement if the appeal concerns a legal issue or interpretation.

4.7.4 Oral argument

4.7.4.1 A party may request that oral argument be heard on the consideration date. A request for oral argument shall be submitted with the written statement of appeal. There will be no oral argument unless it is requested when the written statement of appeal is submitted.

4.7.4.2 Oral argument, if requested, shall be limited to fifteen (15) minutes per side with five additional minutes for rebuttal.

4.7.4.3 Any party may request the presence of a stenographic reporter at oral argument by notifying the Executive Secretary at least ten (10) days prior to the date of the argument. The requesting party shall be liable for the expense of the reporter. If a stenographic reporter is not present at the argument, the State Board or hearing officer shall cause an electronic transcript of the hearing to be made by tape recorder or other suitable device. Electronic transcripts shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the appeal.

4.7.4.4 If the State Board or hearing officer permits a party to present oral argument on an issue which was not identified by the party in their written statement, briefs or legal memoranda, or if in the course of the argument, the State Board or hearing officer raises an issue which was not previously raised by either party, the parties shall have a reasonable opportunity to comment in writing within five (5) business days of the oral argument.

4.7.4.5 The State Board or its hearing officer may limit or restrict argument that is irrelevant, insubstantial or unduly repetitive.

4.8 Standard and Scope of Review

4.8.1 The appellate review of the State Board shall be limited to the record of the proceedings below. Neither the State Board nor the hearing officer will consider testimony or evidence which is not in the record. If the State Board determines that the record is insufficient for its review, it shall remand the case to the agency below with instructions to supplement the record.

4.8.2 The standard of review shall be determined by the law creating the right of appeal. In the absence of a specific statutory standard, the substantial evidence rule will be applied, that is, neither the State Board nor the hearing officer will substitute its judgment for that of the agency below if there is substantial evidence in the record for its decision and the decision is not arbitrary or capricious. The State Board will make an independent judgment with respect to questions of law.

4.9 State Board Decision

4.9.1 After considering the record from the proceedings below, the written submissions and the arguments made by the parties, if any, the hearing officer shall submit a proposed written decision for the consideration of the State Board.

4.9.2 The proposed decision shall comply with Section 10126(a) of the Administrative Procedures Act. The proposed decision shall be submitted to the State Board and the parties within fifteen (15) days of the consideration date or the filing of any post argument submissions.

4.9.3 The parties shall have twenty (20) days from the date the proposed order is delivered to them to submit in writing to the State Board and the other party any exceptions, comments and arguments respecting the proposed order. The parties may agree to shorten or waive the comment period, or to consent to the hearing officer's recommendation without additional comment. When the parties consent to the hearing officer's recommendation, they shall so advise the Executive Secretary.

4.9.4 The State Board shall consider the appeal at its next regular meeting following receipt of the parties' exceptions, comments, and arguments, if any, or the end of the comment period, whichever occurs first.

4.9.5 The State Board shall consider the entire record of the case and the hearing officer's proposed decision and any written comments thereto, in reaching its final decision. The State Board's decision shall be incorporated in a final order which shall be signed and mailed to the parties.

4.10 Student Discipline Appeals

4.10.1 To the extent possible, appeals of decisions involving student discipline will be scheduled for consideration by the hearing officer within thirty (30) days of the receipt of the notice of appeal.

4.10.2 If an appeal involves disciplinary action against a student receiving special education and related services, the record must include evidence that a Manifestation Determination Review was conducted pursuant to the Department of Education's Administrative Manual for Special Education Services. Failure to provide such evidence may result in reversal or remand to agency for additional proceedings.

4.10.3 An appeal of or dispute about the Manifestation Determination Review must be made to the Department of Education as provided in the Administrative Manual for Special Education Services. The State Board of Education will not review such determinations.

## **5.0 Public Regulatory Hearings**

5.1 Section 5.0 governs public hearings before the State Board or its hearing officers where the State Board is required to hold, or decides to hold, such hearings before adopting or approving rules and regulations or taking other regulatory action. See Note 1.

5.2 Notice that the State Board has scheduled a public regulatory hearing shall be provided as required in Section 10115 of the Administrative Procedures Act. Notice of the public hearing shall also be circulated to individuals and agencies on the State Board's mailing list for meeting agendas. The notice of the hearing shall indicate whether the State Board will conduct the hearing, or designate a hearing officer for that purpose.

### **5.3 Creation of record of public hearing**

5.3.1 Any party may request the presence of a stenographic reporter on notice to the Executive Secretary at least ten (10) days prior to the date of the hearing. The requesting party shall be liable for the expense of the reporter and of any transcript the party requests.

5.3.2 If a stenographic reporter is not present at the hearing, the State Board shall cause an electronic recording of the hearing to be made by tape recorder or other suitable device. Electronic recordings shall be destroyed unless a written request to preserve it is made to the Executive Secretary within three months of the final order issued in the hearing. Any party requesting that a written transcript be made from the recording shall bear the cost of producing the transcript.

### **5.4 Subpoenas**

5.4.1 The State Board or its hearing officer may issue subpoenas for witnesses or other evidence for the public hearing. Where possible, such subpoenas shall be delivered to the party to whom they are directed at least ten (10) days prior to the public hearing.

5.4.2 The State Board or its hearing officer may also, in its discretion, issue subpoenas at the request of a person interested in the proceedings. Requests for such subpoenas shall be delivered to the Executive Secretary at least fifteen (15) days prior to the date of the hearing, unless additional time is allowed for good cause.

5.4.3 The party requesting the subpoena is responsible for delivering it to the person to whom it is directed.

### **5.5 Documents**

5.5.1 The State Board or its hearing officer shall, at the beginning of the hearing, mark as exhibits any documents it has received from the public as comment and any other documents which it will consider in reaching its decision. Documents received during the hearing shall also be marked as exhibits.

5.5.2 Any person or party submitting a document before or during the public hearing shall provide at least eight (8) copies of the document to the State Board, unless directed otherwise.

### **5.6 Witnesses**

5.6.1 The order of witnesses appearing at the hearing shall be determined by the State Board or its hearing officer. The State Board or its hearing officer may direct an agency or organization to designate a single person to present the agency or organization's position at the public hearing.

5.6.2 The State Board or its hearing officer may limit a witness's testimony and the admission of other evidence to exclude irrelevant, insubstantial or unduly repetitious comment and information.

5.6.3 Any person who testifies at a public hearing shall be subject to examination by the State Board or its hearing officer. The State Board or its hearing officer may in their discretion allow cross examination of any witness by other participants in the proceedings.

5.7 At the conclusion of the public hearing, the State Board shall issue its findings and conclusions in a written order in the form provided in Section 10118(b) of the Administrative Procedures Act. The Board's order shall be rendered within a reasonable time after the public hearing.

Note : The State Board is not subject to the Administrative Procedures Act when approving (or refusing to approve)

# GENERAL NOTICES

regulations or regulatory action of the Department of Education, provided that the Department has complied with applicable portions of the Act. See 14 Del.C. §105(b).

## STATE BOARD OF EDUCATION OF THE STATE OF DELAWARE

xxxx,

Petitioner

v.

xxxx,

Respondent.

No. 200x-xx

### CERTIFICATION OF RECORD

I, [name of executive secretary, executive director or comparable administrator], am the [title] of the [agency name].

I hereby certify that the attached documents constitute the true and complete record of the proceedings that occurred before the [agency name] in the captioned matter.

I further certify that the following documents are included in the attached record:

- a. the agency's written decision;
- b. the rules or regulations involved;
- c. the minutes of the meeting(s) at which the decision was made;
- d. a verbatim transcript of the hearing;
- e. all exhibits presented; and
- f. if this matter involves disciplinary action against a student receiving special education and related services, documentation evidencing the Manifestation Determination Review.

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

Reference: State Board of Education *Hearing Procedures and Rules*, Sections 4.5 and 4.9.3.

### NOTICE OF APPEAL TO THE STATE BOARD OF EDUCATION

To: **Executive Secretary of the State Board of Education**

I, ----- [name of person filing appeal] request that the State Board of Education accept this appeal and enter a decision and order as further explained in this Notice.

1. I am filing this Notice of Appeal on behalf of [myself or my child (give child's name)].
2. Please contact me at: [give address, telephone number(s) and email address if available]
3. I am appealing a decision made by [give name of agency] on [date of]

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# GENERAL NOTICES

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written decision . I received the written decision on  [date]  .

4. I believe the State Board may hear this appeal because it involves:

\_\_\_\_\_ A decision by a school district board of education that decided a controversy involving the district's rules and regulations (including disciplinary rules).

\_\_\_\_\_ A decision by the Delaware Interscholastic Athletic Association that decided a controversy involving athletic rules and regulations.

\_\_\_\_\_ A decision by the board of directors of a charter school to suspend or expel a student for disciplinary reasons.

\_\_\_\_\_ Other (explain why the State Board of Education has authority to consider your appeal): \_\_\_\_\_.

5. I am appealing this decision because (you may attach additional pages if you need more room):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. I want the State Board of Education to do the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The information I have provided in this Notice of Appeal is true and correct to the best of my understanding and knowledge. I will send a copy of this Notice to the agency involved when I mail or deliver the Notice of Appeal to the State Board of Education.

I understand that appeals to the State Board of Education are decided "on the record" of the hearing that was held by the agency and that the State Board will not accept new testimony or other new evidence during this appeal.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

## Additional Instructions

1. Please print or type.

2. Provide all of the information requested.

3. Attach a copy of the written decision that you are appealing. The State Board of Education may not consider an appeal until a written decision has been issued.

4. Keep a copy of this Notice for your use and reference.

Mail or deliver this Notice and any attachments to the Executive Secretary of the State Board of Education at [add address].

5. Send a copy of this Notice and any attachments to the agency involved at the same time you mail or deliver the Notice to the State Board of Education.

6. The State Board of Education's *Hearing Procedures and Rules* are available at the State Board web page at [www.doe.state.de.us](http://www.doe.state.de.us) or by calling the State Board's offices at 302-739-4603. Rule 4 addresses appeals.

**DEPARTMENT OF STATE**  
**PUBLIC SERVICE COMMISSION**

Statutory Authority: 26 Delaware Code, Section 1008(b)(1)b) (26 **Del.C.** §1008(b)(1)b)

IN THE MATTER OF THE COMMISSION'S  
COMBINED CONSIDERATION OF THE  
UTILIZATION OF ADVANCED METERING  
TECHNOLOGIES UNDER 26 **DEL.C.**  
§1008(b)(1)b. AND THE IMPLEMENTATION  
OF FEDERAL STANDARDS FOR TIME-BASED  
METERING AND TIME-BASED RATE  
SCHEDULES UNDER 16 U.S.C. §§2621(d)  
(14) AND 2625(i)  
(OPENED MAY 9, 2006)

PSC REGULATION DOCKET NO. 57

**ORDER NO. 6912**

**Public Service Commission Regulation Docket No. 57, In the Matter of the Commission's Combined Consideration of the Utilization of Advanced Metering Technologies**

This 9<sup>th</sup> day of May, 2006, the Commission determines and Orders the following:

1. The provisions of 26 **Del.C.** §1008(b)(1)b.,<sup>1</sup> tell this Commission to initiate a proceeding to "evaluate the desirability, feasibility, and cost-effectiveness of requiring advanced metering technology, including time of use metering, to be used throughout or selectively in the service territories [sic] of [Delmarva Power & Light Company]." This must be done by June 5, 2006. Somewhat similarly, federal law – in the form of 2005 amendments to the Public Utility Regulatory Policies Act of 1978 ("PURPA") – directs state utility commissions (such as this one) to consider whether to have regulated electric utilities (and retail electric suppliers) implement a new PURPA standard related to "Time-Based Metering and Communications."<sup>2</sup> Moreover, while the language of the state mandate focuses on the feasibility of deploying advanced metering technology, the state provision recognizes that such inquiry also encompasses an evaluation of time-based rate structures.<sup>3</sup> Conversely, while the new federal standard speaks in terms of utilities offering each customer (within every class) the option of a time-based rate schedule, consideration of that standard necessarily entails exploring the implementation of time-based meters for those utility customers.<sup>4</sup> The

1. as added by the Electric Utility Retail Customer Supply Act of 2006, 75 **Del. Laws** ch. 242 §7 (April 6, 2006) (§ 1008(b)(1)").

2. See 16 U.S.C. §§2621(d)(14) & 2625(b)(i), both added by the Energy Policy Act of 2005, Pub. L. No. 109-58 §1252(a), (b), 119 Stat. 594, \_\_\_\_\_ (2005) ("EPAAct 2005"). Under the PURPA amendments, a state commission must initiate its proceeding to consider the Time-Based Metering standard by August 8, 2006, and must make its determinations by February or August, 2007. 16 U.S.C. §§2621(d)(14)(F); 2622(b)(4), (c), all added by EPAAct 2005 §1252(a), (g), & (h). Of course, a state commission may determine that the proposed federal standard is not appropriate for implementation. See 16 U.S.C. §2621(a).

3. See 26 **Del.C.** §1008(b)(1)b. (in evaluating advanced metering deployment, the Commission "shall review all customer pricing implications of any particular metering technology investigated"). See also 26 **Del.C.** §1008(b)(1) (demand-side management programs to be designed "to reduce overall electricity consumption by [DP&L's] customers and/or to reduce usage by customers during peak periods, such as time of use rates, advanced metering infrastructure . . ."). However, the 2006 state law amendments seemingly bar the Commission from approving "peak time billing" for use by either Delmarva Power & Light Company ("DP&L") or the Delaware Electric Cooperative, Inc. ("DEC"). Similarly, the new state law precludes the Commission from permitting use of "30-day peak demand billing" even if time-based metering technology might eventually be deployed. 26 **Del.C.** §1008(b)(1)b.

deployment of time-based meters and the use of time-based or load-factor schedules necessarily go hand-in-hand; one can hardly be beneficial without the other.

2. The Commission now initiates this docket and proceeding to perform the evaluation required by §1008(b)(1)b. At the same time, and in the same proceeding, the Commission will also concurrently “consider” the newly proposed “Time-Based Metering and Communications” standard under PURPA. While the two directives for this proceeding come from differing sources, and may differ in scope and some details, they both share the same focus: a Commission review of the benefits, and costs, that might flow from the widespread deployment of time-based metering that allows customers to monitor and manage electric consumption.

3. In doing so, the Commission does note that, currently, DP&L does provide several time-based rate schedules for customers within its Medium, General, and Large service classifications. Those rate schedules depend on the use of demand, or in some instances, interval metering. DP&L also now provides “Hourly Priced” (i.e., “real-time” priced) Standard Offer Service to GS-T customers as well as electing GS-P customers. Finally, for several years, DP&L’s tariff has included several time-of-use rate schedules that are available to a small pool of its residential class of customers that utilize time-based meters. Staff reports that, as of now, participation in such pilot program is minimal.<sup>1</sup>

4. Both the state and federal directives come with some procedural requirements. Section 1008(b)(1)b. calls for “hearings” to precede any Commission determination to require any deployment of advance metering technology throughout, or selectively within, DP&L’s service area.<sup>2</sup> PURPA announces its own set of procedural prerequisites that must surround a state commission’s determination whether to adopt or reject any federally proposed standard.<sup>3</sup> By this Order, the Commission initiates “the docket” and sends the matter to a designated Hearing Examiner. He is to conduct further proceedings to culminate in a Report with recommendations. The Commission leaves it to the Hearing Examiner to ensure that, going-forward, the proceedings comply with the notice, participation, and record-making requirements imposed by both State law and PURPA.

5. The Commission does note one issue concerning the scope of the proceeding. The investigation under §1008(b)(1)b. relates to the use of advanced metering technologies in the “service territories [sic]” of DP&L. The Electric Utility Retail Customer Supply Act does not explicitly call for a similar investigation into the use of time-based metering in the areas served by DEC, this State’s other electric distribution company. Rather, the State Act directs that DEC, “at a minimum,” must “maintain its current efforts in providing Demand-Side management programs” and must provide an initial report about its Demand-Side management efforts to the Commission, the Legislature, and the executive branch by January 31, 2007.<sup>4</sup> In contrast, under PURPA, the Commission must consider the proposed federal time-based metering standard “with respect to each electric utility for which [the Commission] has rate-making authority.”<sup>5</sup> This language would seemingly include DEC, which is subject to the Commission’s rate-making authority in its roles as a distribution utility and Standard Offer service supplier. However, the 2005 amendments to PURPA set forth a number of “prior State actions” that exempt the state commission from having to consider the new time-based metering Standard.<sup>6</sup> The Commission leaves it to DEC to decide whether it wishes to advance the position that it is not subject to the PURPA time-based metering proceeding. Similarly, it is left to DEC to decide whether it wishes to argue

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4. See 16 U.S.C. §§2621(d)(14)(B), (C) (listing types of time-based rate schedules that may be offered in conjunction with provision of time-based meters); 2625(i) (time-based rate schedule standard includes investigation into deployment of time-based meters). The federal standard includes “critical peak pricing” as one of the time-based rate schedules that might be considered. 16 U.S.C. §2621(d)(14)(B)(ii).

1. As part of the merger settlement approved by PSC Order No. 5941 (Apr. 16, 2002), DP&L agreed to work with Staff and other interested parties to initiate a pilot program designed to test the efficiency of various metering technologies. The pilot program was put on a hold earlier in anticipation of a more encompassing advanced metering investigation.

2. See 26 Del.C. §1008(b)(1)b.

3. See 16 U.S.C. §§2621(b), 2631 & 2632.

4. See 26 Del.C. §1008(b)(2), as added by the Electric Utility Retail Customer Supply Act of 2006, 75 Del. Laws ch. 242 §7 (April 6, 2006).

that the provisions in the Retail Customer Supply Act pre-ordain the Commission's decision with respect to the federal Standard's application to DEC's ratepayers. If DEC asserts either of such positions, the Hearing Examiner can determine how such questions can best be addressed – initially by him, and eventually by the Commission – consistent with the PURPA procedural requirements.

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

1. That this docket, and proceeding, is hereby opened to allow the Commission to consider and evaluate the desirability, feasibility, and cost-effectiveness of requiring advanced metering technology (including time-based metering), to be utilized throughout, or selectively within, the service territory of Delmarva Power & Light Company. Such proceeding is commenced under the directives set forth in 26 **Del.C.** §1008(b)(1)b.

2. That, in this docket, and as part of the proceeding, the Commission shall (with respect to each electric utility for which it has rate-making authority) also concurrently consider and determine whether it is appropriate for jurisdictional electric utilities and retail electric suppliers to implement the federal standard established by 16 U.S.C. §2621(d)(14), as added by the Energy Policy Act of 2005. In making such determination, the Commission will, in this matter, undertake the investigation and enter the decision related to the provision of time-based metering as described in 16 U.S.C. §2625(i), as added by the Energy Policy Act of 2005.

3. That, pursuant to 26 **Del.C.** §502 and 29 **Del.C.** ch. 101, William F. O'Brien is assigned as the Hearing Examiner for this docket. Senior Hearing Examiner O'Brien shall conduct such procedures and hearings as may be necessary to construct a record complete enough for the Commission to make the determinations required by 26 **Del.C.** §1008(b)(1)b. and 16 U.S.C. §§2621(d)(14) & 2625(i). Senior Hearing Examiner O'Brien shall conduct such proceedings in accord with the notice and other procedural requisites imposed by State law and those required under the Public Utility Regulatory Policies Act of 1978, as amended. Senior Hearing Examiner O'Brien is delegated the authority, under 26 **Del.C.** §102A, to determine the manner and content of any needed, or appropriate, public notice. Senior Hearing Examiner O'Brien is also delegated the authority to grant or deny petitions to intervene. After the compilation of the record (with the opportunity for full participation), Senior Hearing Examiner O'Brien shall submit a Report with his proposed findings and recommendations concerning: (a) the feasibility of utilizing advanced metering technology (with attendant time-based rate schedules) as called for by 26 **Del.C.** §1008(b)(1)b.; (b) the adoption (in whole or in part) of the time-based metering standard set forth in 16 U.S.C. §§2621(d)(14); and (c) the feasibility for regulated utilities to install time-based meters and communication devices for each of their customers as described in 16 U.S.C. §2625(i).

4. That Senior Hearing Examiner O'Brien shall endeavor to compile the record and submit his Report in sufficient time to allow the Commission to make final determinations in this docket related to the feasibility of time-based metering before February 8, 2007.

5. That, the Secretary shall publish the notice attached hereto as Exhibit "A," in the following newspapers on the described dates:

<u>The News Journal</u>	(May 15, 2006)
<u>Delaware State News</u>	(May 16, 2006)

The Secretary shall promptly file proof of such publications in this docket. The Secretary shall also transmit a copy of such notice to the *Delaware Registrar of Regulations* for publication in the next edition of the *Delaware Register of Regulations*. In addition, the Secretary shall send a copy of this Order (with the attached notice), by United States mail, to the following:

- (a) The Division of the Public Advocate;
- (b) Delmarva Power & Light Company;
- (c) Delaware Electric Cooperative, Inc.;
- (d) Delaware Energy Office;
- (e) all electric suppliers currently holding certificates from this Commission;

5. See 16 U.S.C. §§2621(a), 2625(a). DEC presumably meets the retail sales threshold under PURPA (16 U.S.C. §2612(a)). See PSC Order No. 3685 (Oct. 26, 1993) (considering application of earlier PURPA standards to DEC). Also, the new federal standard for time-based meters and rate schedules would apply in the case of supply provided by retail electric suppliers. 16 U.S.C. §2621(d)(14)(E), as added by EPAAct 2005 §1252(a).

6. See 16 U.S.C. §2622(e), as added by EPAAct 2005 §1252(i)(1).

(f) all persons who have previously requested notice of rule-makings.

Finally, the Secretary shall post a copy of the notice on the Commission's Internet website under an appropriate heading with a link to this Order.

6. That James McC. Geddes, Esquire, is designated Rate Counsel for this matter.

7. That, pursuant to 26 **Del.C.** §§114 and 1012(c)(2), all electric distribution companies and electric suppliers are notified that they will be charged the costs of this proceeding.

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

BY ORDER OF THE COMMISSION:

Arnetta McRae	Chair
Joann T. Conaway	Commissioner
Dallas Winslow	Commissioner
Jaymes B. Lester	Commissioner
Jeffrey J. Clark	Commissioner

ATTEST:

Karen J. Nickerson Secretary

## **EXHIBIT "A"**

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

IN THE MATTER OF THE COMMISSION'S  
COMBINED CONSIDERATION OF THE  
UTILIZATION OF ADVANCED METERING  
TECHNOLOGIES UNDER 26 **DEL.C.**  
§1008(b)(1)b. AND THE IMPLEMENTATION  
OF FEDERAL STANDARDS FOR TIME-BASED  
METERING AND TIME-BASED RATE  
SCHEDULES UNDER 16 U.S.C. §§2621(d)  
(14) AND 2625(i)  
(OPENED MAY 9, 2006)

PSC REGULATION DOCKET NO. 57

### **NOTICE OF INITIATION OF TIME-BASED METERING PROCEEDING**

Pursuant to the provisions of 26 **Del.C.** §1008(b)(1)b., as added by the Electric Utility Retail Customer Supply Act of 2006 (75 Del. Laws ch. 242 (2006)), the Public Service Commission ("PSC") must initiate a proceeding to consider the desirability, feasibility, and cost-effectiveness of requiring advanced metering technology (with time-based rate schedules) to be utilized throughout, or selectively within, the electric service territory of Delmarva Power & Light Company ("DP&L"). Similarly, under the provisions of 16 U.S.C. §§2621(d)(14) and 2625(i), as added by the federal Energy Policy Act of 2005 (Pub. L. No. 109-58 (2005)), the PSC is charged to consider whether regulated electric utilities and third-party electric suppliers should be required to adhere to a federal Standard that all electric customers be afforded the option of a time-based rate schedule that, in conjunction with time-based meters, would allow the customer to manage energy use and hence the resulting charges under such time-based rate schedule. This Standard, if adopted, might apply to customers of Delmarva Power & Light Company, the Delaware Electric Cooperative, Inc., and competitive electric suppliers.

By PSC Order No. 6912 (May 9, 2006), the PSC initiated the above-captioned proceeding to undertake, concurrently, the investigations called for by the above state and federal laws. If you wish to participate in this proceeding, you must file a petition for intervention under Rule 11 of the Commission's Rules of Practice and Procedure. Such petition should be filed with the PSC at the following address:

Public Service Commission  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904  
Attn: Reg. Dckt. No. 57

You may, but are not required to, file comments with your petition. *You must file your petition on or before Tuesday, June 15, 2006.* After that date, the PSC's designated Hearing Examiner will, after consultation with PSC Staff and the parties, determine the course of further proceedings in this matter.

You can review Order No. 6912 at the PSC's office in Dover or at the PSC's Internet website located at [www.state.de.us/delpsc](http://www.state.de.us/delpsc). If you have questions, please call the Commission at (800) 282-8574 (in-State only) or (302) 739-4247 (including text telephone). Inquiries can also be sent by Internet e-mail to [janis.dillard@state.de.us](mailto:janis.dillard@state.de.us). If you are disabled and need assistance to be able to participate, please contact the Commission to make arrangements for such assistance.

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## COUNCIL ON POLICE TRAINING

### NOTICE OF PUBLIC COMMENT PERIOD

The Council on Police Training (COPT), in accordance with 11 **Delaware Code** Section 8404(a)(14) and 29 **Delaware Code** Section 10115 of the Administrative Procedures Act, hereby gives notice that it shall hold a public hearing on June 22, 2006 at 9:00 a.m., in the first-floor conference room at the Delaware State Police Training Academy, N. DuPont Highway, Dover, Delaware 19903.

The Council on Police Training will receive written comments or oral testimony from interested persons regarding the repeal of the current COPT Regulations in their entirety and reissue the COPT Regulations due to comprehensive changes both substantively and stylistically. The final date for interested persons to submit written comments shall be the date of the public hearing. Written comments should be addressed to: Captain Elizabeth E. Shamany, Director, Delaware State Police Training Academy, P.O. Box 430, Dover, DE 19903-0430.

Anyone wishing to make written or oral comments who would like a copy of the proposed regulations may contact the COPT at (302) 739-5903, or write to the above address.

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## DEPARTMENT OF AGRICULTURE HARNESS RACING COMMISSION

### NOTICE OF PUBLIC COMMENT PERIOD

The State of Delaware, Department of Agriculture's Standardbred Breeders' Fund (herein "the Fund") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to adopt such measures found at 29 **Del.C.** §4815(b)(3)b.2.D and in compliance with Delaware's Administrative Procedures Act, 29 **Del.C.** §10115. The proposed amended regulation constitutes a modification of an existing regulation. The regulation will now permit use of technology with the technique of embryo transfer allowing the program to become mainstream.

The Fund solicits, and will consider, timely filed written comments from interested individuals and groups concerning these proposed amended regulations. The deadline for the filing of such written comments will be thirty days (30) after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*.

Any such submissions should be mailed or delivered to Ms. Judy Davis-Wilson, Administrator, Delaware Standardbred Breeders' Fund whose address is State of Delaware, Department of Agriculture, 2320 South duPont Highway, Dover, Delaware 19901 by June 1, 2005.

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## DEPARTMENT OF EDUCATION

The Department of Education will hold its monthly meeting on Thursday, June 15, 2006 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

### NOTICE OF PUBLIC COMMENT PERIOD

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**), with 42CFR §447.205 and under the authority of Title 31 of the **Delaware Code**, Chapter 5, Section 512,

Delaware Health and Social Services (DHSS) / Division of Medicaid and Medical Assistance (DMMA) is proposing to provide a standard pharmacy benefit to Chronic Renal Disease Program recipients.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Sharon L. Summers, Policy and Program Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 by June 30, 2006.

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.

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**DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL  
DIVISION OF AIR AND WASTE MANAGEMENT**

**NOTICE OF PUBLIC HEARING**

**Title of the Regulations:**

*Delaware Regulations Governing Hazardous Waste (DRGHW)*

**Brief Synopsis of the Subject, Substance and Issues:**

In order for the State of Delaware to maintain authorization from the U. S. Environmental Protection Agency (EPA) to administer its own hazardous waste management program, the State must maintain a program that is equivalent to and no less stringent than the Federal program. To accomplish this, the State regularly amends the DRGHW by adopting amendments previously promulgated by EPA. In addition, the State will be proposing to make miscellaneous changes to the DRGHW that correct existing errors in the hazardous waste regulations, add clarification or enhance the current hazardous waste regulations.

**Notice of Public Comment:**

The public hearing on the proposed amendments to DRGHW will be held on Wednesday June 28, 2006 starting at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

**Prepared by:**

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management - (302) 739-9403

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**DIVISION OF WATER RESOURCES**

**Proposed Total Maximum Daily Loads (TMDLs) for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds, Delaware**

**NOTICE OF PUBLIC COMMENT PERIOD**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct two Public Workshops to review draft Total Maximum Daily Loads (TMDLs) Regulations for bacteria for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth

Canal Watersheds), and the Murderkill River and Appoquinimink River Watersheds. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

The proposed Bacteria TMDL Regulations for the Chester River, Choptank River, Marshyhope Creek, and Pocomoke River Watersheds are necessary because the existing TMDL regulations that included both nutrient and bacteria allocations, promulgated on January 11, 2006 are being modified to include nutrients only. This change is required due to a clarification in the interpretation of the EPA-required, bacteria water quality standards that result in changes to the bacteria allocations.

#### **Possible Terms of the Agency Action**

Following the Public Workshops and after reviewing comments received during the comment period, Public Hearings will be scheduled to adopt the proposed Total Maximum Daily Loads for these Watersheds. Following adoption of the TMDL Regulations, DNREC will develop Pollution Control Strategies (PCSs) designed to achieve the necessary load reductions. PCSs will identify specific pollution reduction activities and timeframes and will be developed in concert with Tributary Action Teams, other stakeholders, and the public.

#### **Notice of Public Workshops and Comment Period**

Proposed TMDLs for the Murderkill River and Appoquinimink River Watersheds will be reviewed during a Public Workshop to be held at 6:00 p.m., Monday, June 5, 2006 at the DNREC Auditorium, 89 Kings Highway, Dover, DE.

Proposed TMDLs for the Chesapeake Bay Drainage Basin (Chester River, Choptank River, Marshyhope Creek, Nanticoke River, Gum Branch, Gravelly Branch, Deep Creek, Broad Creek, and Pocomoke River Watersheds), the Inland Bays Drainage Basin (Buntings Branch, Little Assawoman Bay, Assawoman Bay, Indian River Bay, Iron Branch, Indian River, Rehoboth Bay, and Lewes-Rehoboth Canal Watersheds) will be reviewed during a Public Workshop to be held at 6:00 p.m., Tuesday, June 6, 2006 at the University of Delaware Research and Education Center, 16483 County Seat Highway, Georgetown, DE.

Draft TMDL Regulations and technical support documents for these watersheds will be available as of Thursday, June 1, 2006 on the Department's website ([www.dnrec.delaware.gov](http://www.dnrec.delaware.gov)) by clicking on "TMDLs" under "Information" or by contacting Sam Myoda, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: ([samuel.myoda@state.de.us](mailto:samuel.myoda@state.de.us)).

The Department has developed these draft regulations pursuant to a federal Consent Decree that requires the establishment of these TMDLs by the end of Calendar Year 2006. In order to comply with the ambitious schedule set by the Court Order, the Department must receive comments as early as possible in the regulatory development process. Hence, the Department is requiring that written comments on the proposed regulations be submitted no later than 4:30 PM, Friday, June 30, 2006, in order to be considered. After consideration of the written public comments, the Department, upon public notice, will schedule a Public Hearing.

Please send written comments to Sam Myoda, Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: ([samuel.myoda@state.de.us](mailto:samuel.myoda@state.de.us)). All written comments must be received by 4:30 p.m., Friday, June 30, 2006. Electronic submission is preferred.

#### **Prepared By:**

John Schneider, Watershed Assessment Section, 739-9939

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