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# Delaware Register of Regulations



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Issue Date: August 1, 1998

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Volume 2 - Issue 2

Pages 157 - 333

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Regulations:

Proposed

Final

Governor

Appointments

Attorney General

Opinions

General Notices

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Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before July 15, 1998.

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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## DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

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

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## CITATION TO THE DELAWARE REGISTER

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

1:1 **Del. R.** 35 - 37 (July 1, 1997) refers to Volume 1, Issue 1, pages 35 - 37 of the Delaware Register issued on July 1, 1997.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$100.00 from January - December. Single copies are available at a cost of \$9.00 per issue, including postage. For more information contact the **Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.**

## CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

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

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

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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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

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

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Symbol Key

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

Proposed Regulations

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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.

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**DEPARTMENT OF  
ADMINISTRATIVE SERVICES**

**DIVISION OF PROFESSIONAL REGULATION**

**DELAWARE BOARD OF CLINICAL  
SOCIAL WORK EXAMINERS**

Statutory Authority: 24 Delaware Code,  
Section 3901, 3906(a)(1)  
(24 **Del.C.** 3901, 3906(a)(1))

The Delaware Board of Clinical Social Work Examiners shall, pursuant to Title 24, Sections 3901 and 3906(a)(1) of the Delaware Code, and Title 29, Section 10115 of the Delaware Code, conduct a public hearing on the proposed rules and regulations of the Delaware Board of Clinical Social Work Examiners for clinical social workers licensed in the State of Delaware.

The hearing shall be held on Monday, September 21, 1998 at 9:30 a.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The proposed rules and regulations include provisions: (1) requiring an applicant holding a degree from a program outside the United States to supply the Board with an educational credential evaluation; (2) changing the date by which licensees must submit documentation of continuing

education hours and providing for good cause extensions of time in which continuing education credits can be submitted; and (3) establishing procedures and requirements for licensees seeking inactive status.

Copies of the proposed rules and regulations of the Delaware Board of Clinical Social Work Examiners may be obtained by contacting Ms. Gayle L. Franzolino at (302) 739-4522 Extension 220, or by writing the Board of Clinical Social Work Examiners at 861 Silver Lake Blvd., Suite 203, Cannon Building, Dover, DE 19904-2467.

Persons wishing to comment in writing on the proposed rules and regulations must submit such comments to Ms. Gayle L. Franzolino at the above address on or before the scheduled hearing.

PROPOSED

DELAWARE BOARD OF CLINICAL SOCIAL WORK  
EXAMINERS  
RULES AND REGULATIONS

1. ELECTION OF OFFICERS AND RESPONSIBILITIES

1.1 Officers shall be elected in September of each year, for a one year term. Special election to fill vacancies shall be held upon notice and shall be only for the balance of the original term.



1.2 Officers have the following responsibilities:

- (a) The President will preside at all meetings and sign official documents on behalf of the Board.
- (b) The Vice-President will perform the duties of the President when the latter is unavailable or unable to perform the duties of the President.
- (c) The Secretary will preside over meetings in the absence of the President and Vice-President.

**2. PROFESSIONAL SUPERVISION**

2.1 Acceptable supervision shall be that amount of personal oversight by the licensed professional that would be considered usual and customary in the profession consistent with the applicant's level of skill, education and experience, but in any event should include the following activities, by way of example and not by way of limitation:

- (a) Individual case reviews.
- (b) Evaluations of diagnosis and courses of treatment.
- (c) Proper adherence to agency policy and procedures.

2.2 The amount of supervisory contact shall be at least one hour per week during the supervised period. This contact must be on a one-to-one face-to-face basis.

2.3 The Board shall require submission of the following information from the supervisor(s): supervisor's name, business address, license number, professional field and State in which the license was granted during the period of supervision; agency in which the supervision took place (if applicable); the number of qualifying practice hours toward the statutory requirement; and the number of one-to-one face-to-face supervisory hours.

2.4 A licensed Psychiatrist shall be defined as a licensed Medical Doctor with a specialty in psychiatry or a licensed Doctor of Osteopathic Medicine with a specialty in psychiatry.

**3. APPLICATION AND EXAMINATION**

3.1 Applications will be kept active and on file for two (2) years. If the applicant fails to meet the licensure requirements and/or pass the examination within two (2) years, the application shall be deemed to have expired and the applicant must reapply in the same manner as for initial application, i.e., by submitting the application documentation along with the proper fee to be eligible to sit for the examination.

- 3.2 The Board will not review incomplete applications.
- 3.3 All signatures must be original on all forms.

3.4 The applicant shall have obtained the passing score on the national clinical examination approved by the American Association of State Social Work Boards (AASSWB). The Board shall accept the passing grade as determined by the AASSWB.

3.5 Any applicant holding a degree from a program

outside the United States or its territories must provide the Board with an educational credential evaluation from International Consultants of Delaware, Inc., its successor, or any other similar agency approved by the Board, demonstrating that their training and degree are equivalent to domestic accredited programs. No application is considered complete until the educational credential evaluation is received by the Board. (29 Del. C. § 3907(a)(1))

**4. RENEWAL**

4.1 The licensee's failure to receive notices or letters concerning renewal will not relieve the licensee of the responsibility to personally assure delivery of his/her renewal application to the Board.

4.2 In order to be eligible for license renewal during the first year after expiration, the practitioner shall be required to meet all continuing education credits for continued licensure, pay the licensure fee, and pay any late fee established by the Division of Professional Regulation.

**5. CONTINUING EDUCATION**

5.1 Required Continuing Education Hours:

(a) All licensees must complete forty-five (45) hours of continuing education during each biennial license period. For license periods beginning January 1, 1999 and thereafter, documentation of all continuing education hours must be submitted to the Board for approval prior to the expiration date of the license: by October 31 of each biennial license period.

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

License Granted During First Year:	Credit Hours Required:
January 1 - June 30	35 hours
July 1 - December 31	25 hours

License Granted During Second Year:	Credit Hours Required:
January 1 - June 30	15 hours
July 1 - December 31	5 hours

(c) Any licensee seeking to submit continuing education hours for the Board's approval after the end of a licensing period must submit a written request to the Board before the end of the licensing period and pay the appropriate administrative fee. The Board will grant such extensions only on a showing of good cause. No extension shall be for more than 120 days after the end of the licensing period. No license shall be renewed unless the licensee has fulfilled the continuing education requirement or received a good cause extension from the Board.

## 5.2 Definition of Continuing Education:

(a) Continuing education is defined to mean courses in colleges and universities, televised and extension courses, independent study courses, workshops, seminars, conferences and lectures oriented toward the enhancement of clinical social work practice, values, skills and knowledge, including preparation of a first-time clinical course. This definition also includes staff development activities provided by the various agencies.

(b) Any program submitted for continuing education hours must have been attended during the current biennial licensing period.

(c) Clock hour credit will be for the actual number of hours during which instruction was given during the program, excluding meals and breaks.

## 5.3 Continuing Education Requirements:

Category I: A minimum of thirty (30) clock hours of continuing education shall be in the assessment, diagnosis, and treatment of mental, emotional, and psycho-social disorders, shall include at least three (3) clock hours in ethical social work practice.

Category II: The remaining hours can be taken in social research, psychology, sociology, human growth and development, child and family development, health, social action, advocacy, human creativity, and any other offering that directly relates to the licensee's practice. A maximum of five (5) clock hours may be given for a first-time preparation of a clinical social work course, in-service training, workshop, or seminar. A copy of the course syllabus and verification that the course was presented is required for Board approval.

## 5.4 Course Documentation:

To receive continuing education credits, each licensee must provide documentation which identifies the date and place of the course, the number of instructional hours attended, the agenda, outline or brochure of presentation, and certificate of attendance stating hours of attendance. The Board will accept and retain the original or photocopy of such documents.

## 6. INACTIVE STATUS (24 Del. C. § 3911(c))

6.1 A licensee asking to have his/her license placed on inactive status must notify the Board of his/her intention to do so, in writing, prior to the expiration of his/her current license. Each subsequent request for extensions of inactive status must be submitted to the Board in writing, before the end of the immediately prior inactive period.

6.2 A licensee on inactive status must comply with Rule 5, "Continuing Education," for each period of inactivity. A licensee on inactive status seeking to re-enter practice must notify the Board in writing of his/her intention, pay the

appropriate fee, and provide the Board with documentation of any continuing education hours required by Rule 5.

6.3 On written request and a showing of hardship, the Board may grant additional time for completion of continuing education requirements to licensees returning to practice from inactive status. "Hardship" includes, but is not limited to, illness and involuntary unemployment.

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## DEPARTMENT OF EDUCATION

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

**\* PLEASE NOTE THAT THE FOLLOWING REGULATORY CHANGES WILL BE PRESENTED TO THE STATE BOARD OF EDUCATION AT ITS MONTHLY MEETING ON AUGUST 20, 1998.**

### REPEAL OF POLICY FOR ESTABLISHING A SCHOOL DISTRICT PLANNING PROCESS

The Secretary seeks the approval of the State Board of Education to repeal the regulations, Policy for Establishing a School District Planning Process, L.9.a.,b. and c. on pages A-41 and A-42 in the Handbook for K-12 Education. The policy, established ten years ago, mandated that every school district develop a five year strategic plan and submit it to the Department of Education for approval and then submit progress reports to the Department for review thereafter. The regulation required that the local district's strategic plan include a list of defined components. The repeal is requested because the local districts should be permitted to select their own planning process and to carry it through as they see fit. In addition, school district planning is required through the Consolidated Grant Process which is not addressed in the current policy and the Department of Education has not had the resources to monitor the requirements set forth in the original policy.

### ~~L.9.POLICY FOR ESTABLISHING A SCHOOL DISTRICT PLANNING PROCESS~~

#### ~~a. Preface~~

~~The State Board of Education believes that systematic planning processes must be installed in each school district so that the districts can efficiently and effectively improve and accommodate change. Change is confronting public education from all quarters: demographic, economic, sociological, political, technological, environmental and educational. School policy makers must understand the changing context in which they find themselves and respond from an informed and reasoned position.~~

~~As part of its leadership role the State Board of Education, through a planning process, has developed long range goals to guide public education. The Board desires that each district~~

complement this action by developing and installing a planning process that considers the forces of change, builds consensus in the district and focuses resources on attaining both the state and local goals. Further, the Board believes that through an articulated state and local planning partnership, with commonly held goals, public education in Delaware will be positioned to confront change in a proactive manner. Therefore, the following policy is proposed:

**b. Policy**

Each school district shall develop a strategic planning process for guiding the district for a period of five years. The district planning process shall be submitted to the Department of Public Instruction for State Board of Education approval by August, 1991.

Once approved, the planning process will be implemented during the 1992-1993 school year. The initial district five year plan will be used to guide budgeting for the 1994-1995 school year. Through annual updates the district shall maintain a current five year plan. Progress reports based on the plan shall be submitted to the State Board for review.

**c. Strategic Planning Process**

The strategic planning process, as a minimum, must include the following components:

Strategies for:

- (1) Developing wide community involvement and consensus building in the school district
- (2) Developing a mission statement for the district
- (3) Documenting the district's history, strengths and shortcomings
- (4) Recognizing the unique aspects and/or limitations of the school district
- (5) Addressing the national and state goals for education
- (6) Developing five-year goals for the district
- (7) Translating the district goals into action at the school level
- (8) Budgeting the plan
- (9) Developing accountability procedures and indicators of progress
- (10) Updating the plan annually

(State Board Approved September 1990) }

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

**MIDDLE LEVEL EDUCATION REGULATION**

**A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF REGULATION**

The Secretary seeks the approval of the State Board of

Education to repeal parts of the Middle Level Education Section of the Handbook for K-12 Education, Section III, Pages C-1 through C-4, and to amend other parts. Parts A.1. and 2., Middle Level Education Policy, should be repealed with the exception of the second half of the first paragraph under A.2., page C-1, on certification which reads as follows: "Beginning and newly employed teachers, administrators and counselors who work in middle level programs shall, by September, 1998, hold either a Middle Level Endorsement or a Certificate. This endorsement or certificate will assure that the middle level educator has knowledge of the middle level curriculum and the instructional strategies as well as understanding the nature and needs of adolescent students".

Part B.1., Middle Level Programs, should be repealed because it is simply a list of programs provided for technical assistance purposes. Part B.2.a., Programs in English Language Arts, Mathematics, Science and Social Studies, should be repealed because the content is covered in two other regulations. Part B.2.b.(1) and (2), Visual and Performing Arts, should be amended along with Parts II.D.2.a. and b., pages B-4 and B-5, of the Elementary Section and Parts IV.A.3.b.(1) and (2), page D-3, of the Secondary Section of the Handbook as a separate regulation which reflect all three existing parts by requiring that all schools provide a program of study in the visual and performing arts. Part B.2.c., Gifted and Talented Education, should be repealed because it only provides technical assistance information. Part B.2.d., Comprehensive Health and Family Life Education, should be repealed because it exists as a separate regulation and only appears in this section for information purposes. Part B.2.e., Physical Education, will remain until a new regulation for K-12 defining health and physical education can be proposed following the development of standards for these areas. Part B.2.f., Home Economics, should be amended to refer to all pre-vocational areas and to career awareness and not just refer to Home Economics and Technology Education. Part B.2.g., Instruction in the Constitution of the United States was repealed previously because it is in the Code. Part B.2.h., Metric System, and Part B.2.i., Consumer Education, were repealed previously. Part B.2.j., Minimum Class Periods, and Part B.2.k., Prevocational Courses, should be repealed because the content is covered in the vocational-technical program regulations. These changes are being recommended because it is the position of the Secretary that although the elements in the existing middle level education policy Parts A.1. and 2. represent good strategies that are research based, the organization of middle level education programs should be left to the discretion of the local districts and local boards. The Department of Education will continue to support this as a model for middle level programs through technical assistance and through the certification requirements, pre-vocational/career education and visual and performing arts requirements, but final decisions on the overall organization of middle level programs will be local decisions.

## C. IMPACT CRITERIA

1. Will the amended parts of the regulation help improve student achievement as measured against state achievement standards?

The amended parts of the regulation will help to improve student achievement as measured against state improvement standards.

2. Will the amended parts of the regulation help ensure that all students receive an equitable education?

The amended parts of the regulation are written to ensure that all students receive the same opportunities throughout their Middle Level Education Program.

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

The amended parts of the regulation do not address health and safety issues.

4. Will the amended parts of the regulation help to ensure that all students' legal rights are respected?

The amended parts of the regulation do not specifically deal with equal rights issues.

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

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

6. Will the amended parts of the regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

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

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

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

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

The amended parts of the regulation will not be an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation?

The amended parts of the regulation are needed to provide clarity and focus.

10. What is the cost to the state and local school boards of compliance with the amended parts of the regulation?

The amendment parts of the regulation do not add any additional cost.

## FROM HANDBOOK FOR K-12 EDUCATION

### III. MIDDLE LEVEL EDUCATION

#### A. MIDDLE LEVEL EDUCATION POLICY

##### 1. PHILOSOPHY

~~The State Board of Education recognizes that Middle Level Education is special and unique in the state's educational system. As such, it is a broad-based program that provides young adolescents with a positive environment during their transition years. It emphasizes the development of the student in the academic, physical, social and emotional realms within a community of learning and caring.~~

~~The State Board of Education also recognizes that those who administer effective middle level programs and those who teach and work in them should be appropriately educated for, and personally committed to, the process of helping each student succeed and become future oriented.~~

##### 2. REQUIREMENTS FOR CERTIFICATION OF MIDDLE LEVEL EDUCATION PROGRAMS

~~By September, 1996, every public school in Delaware with students in consecutive grades within the range of grades 5 through 8 shall organize those students into middle level programs either as separate schools or as a separate school within a school. Additionally, Beginning and newly employed teachers, administrators and counselors who work in middle level programs shall, by September, 1998, hold either a middle level endorsement or certificate. This endorsement and/or certificate will assure that the middle level educator has knowledge of the middle level curriculum and instructional strategies as well as an understanding of the nature and needs of young adolescent students.~~

~~The following are the essential components of a program designed to meet the learning styles and developmental needs of middle level students. These components of effective Middle Level Education shall be implemented by all reorganized middle level schools:~~

~~a. A comprehensive core curriculum for all students with a planned sequence of concepts and skills including, but not limited to: communication skills, multicultural literacy, humanities, social sciences,~~

mathematics, natural sciences, fine and performing arts, critical/creative thinking, family life/parenting education, health and wellness education, technological literacy and the exploration of occupational and personal interests.

b. Grouping of students into smaller heterogeneous learning communities within the larger school.

c. Interdisciplinary teams of teachers who share responsibility for instruction of the same students, integrate subject matter, and collaborate to meet changing developmental and instructional student needs.

d. Counseling, mentoring and career exploration programs designed to assist students with personal and future decision making, particularly decisions related to high school program choices.

e. Co-curricular activities, including opportunities for volunteerism, which are varied and related to the current interests and developmental stages of middle level students.

f. Staff development programs designed specifically for middle level practitioners based upon the unique needs of middle level students and programs.

g. A school climate where positive relationships with adults and other students create an atmosphere conducive to personal and academic growth as well as a sense of security and structure.

h. Cooperative relationships with health and social service agencies which provide students with the health and family support systems.

i. Partnerships emphasizing a supportive role be developed and maintained with families, business and industry, agencies serving youth and their families, elementary and high school staff and students, and higher education institutions, to help assure the success of middle level students.

The Department of Public Instruction shall provide technical assistance to the districts and schools to assure an effective transition and to help schools organize their programs. Program Guidelines for Middle Level Education will serve as the basis for operating, evaluating, and organizing middle level education.

(State Board Approved April 1991, Revised March 1995)

**B. PROGRAMS**

**1. MIDDLE LEVEL PROGRAMS**

- a. English/Language Arts
- b. Math
- c. Science
- d. Social Studies
- e. Visual and Performing Arts
- f. Foreign Language
- g. Gifted and Talented Education
- h. Health and Family Life Education
- i. Physical Education
- j. Pre-Vocational-Technical Education

Orientation/Exploration

k. Home Economics and Family Life/Parenting Education

l. Technology Education

**2. ADDITIONAL MIDDLE SCHOOL REQUIREMENTS**

a. Programs In English Language Arts, Mathematics, Science and Social Studies

(1) Middle level school programs in English language arts, mathematics, science and social studies must be aligned with the state content standards as adopted by the State Board of Education in June, 1995.

b. Visual and Performing Arts (music, visual arts, theatre, dance)

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

c. Gifted and Talented Education

(1) Refer to Programs for Gifted and Talented Students in the State of Delaware, an annual publication for specific district and higher education program offerings. Also, see "Low-Cost Options for Students with Special Gifts & Talents" (Appendix E) and "Program Standards for Gifted and Talented Programs in the State of Delaware" (Appendix F).

d. Comprehensive Health Education and Family Life Education

Based on the Comprehensive Health Education and Family Life Education Policy, Health and Family Life Education must be provided in grades 5 and 6 for thirty-five (35) hours in each grade of which fifteen (15) hours in each grade must address Drug/Alcohol Education. In grades 7 and 8, separate from other subject areas, there must be a minimum of sixty (60) hours of Comprehensive Health Education of which fifteen (15) hours in each grade must address Drug/Alcohol Education. If all of the sixty (60) hours are provided in one year at grade 7 or 8, an additional fifteen (15) hours of Drug and Alcohol Education must be provided in the other grade. (See Page A-55 of the Handbook for this Policy, State Board Approved September 1987, Revised July 1990)}

2. e. Physical Education

Physical education must be offered at least two class periods per week for a year or five days a week for a semester in both grades 7 and 8. (State Board Approved February 1985)

3. f. Home Economics Career Awareness and Pre-Vocational Programs

Program offerings in home economics and

technology education must be available to all students in middle school to insure that they have the exploratory experience and elective studies to develop their special interest skills. It is essential that these programs be staffed by certified home economics and technology education teachers. All middle schools shall provide a program of career awareness and pre-vocational education that will give students the opportunity to explore and understand the skills, aptitudes necessary for successful, adult work experiences.

g. Instruction in the Constitution of the United States

In the area of social studies, Delaware Code requires that --

“The instruction in the Constitution of the United States and the Constitution and government of the State of Delaware shall begin not later than opening of the eighth grade...” (See Page A-39 of the Handbook for 14 Del. C. Section 4103)

This requirement must be met through units included in the social studies curriculum.

h. Metric System

A unit of instruction must be provided on the metric system of measurement. This instruction may be offered as part of the science or mathematics curriculum. (See Page A-39, State Board Approved February 1974)

i. Consumer Education

Fifteen classroom hours of introductory study in consumer education is also required in middle level programs. (See Page A-37 State Board Approved Requirement, May 1975)

j. Minimum Class Periods

Although the maximum number of periods allocated to any subject area is left to the discretion of the individual school, it should be emphasized that minimum and appropriate instructional time be devoted to all subject areas. Educational needs of students based upon appropriate diagnostic techniques should aid in determining the number of class sessions per week as well as class length.

(1) The minimum amount of time a subject shall meet per week must not be less than two periods or the equivalent of 90 minutes per week of class time. Schools should endeavor to provide class instruction beyond the minimum required.

k. Pre-Vocational Courses

State Board approval for funding pre-vocational courses (99.0200) will be contingent upon meeting approved State content standards for pre-vocational education courses and shall be designated as such, independent of any other course, and offered as a self-contained vocational subject as described in b. of this section. (State Board Approved July 1987)

From the Elementary Section of the Handbook for K-12 Education, Pages B-4 to B-5

~~II.D.2. VISUAL AND PERFORMING ARTS (Music, Visual Arts, Theatre and Dance)~~

a. All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the elementary grades, kindergarten through four.

b. Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated they will be adopted in June, 1997.

From the Middle Level Section of the Handbook for K-12 Education, Page C-3

~~III.B.2.b. Visual and Performing Arts (music, visual arts, theatre, dance)~~

(1) All schools must provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of students in each of the middle level grades, five through eight.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are approved by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

From the High School Section of the Handbook for K-12 Education, Page D-3

~~IV.A.3.b. Visual and Performing Arts (Music, Visual Arts, Theatre, and Dance)~~

(1) All high schools should provide a program of study in the visual and performing arts as a part of the curriculum to meet the educational and cultural needs of all students as well as those students wishing to pursue indepth study or a career in the visual and performing arts.

(2) Programs in the visual and performing arts must be aligned with the state content standards when they are adopted by the State Board of Education. It is anticipated that they will be adopted in June, 1997.

Visual and Performing Arts (Music, Visual Arts, Theatre, and Dance)

All schools shall provide a program of study in the visual and performing arts as part of the curriculum necessary to meet the educational and cultural needs of students. This program of study shall be aligned with the state content standards in the visual and performing arts.

**REPEAL OF REGULATION, PROMOTION POLICY**

The Secretary seeks the approval of the State Board of Education to repeal the regulation, Promotion Policy, J.3., page A-27 in the Handbook for K-12 Education. The policy requires each local school district to have a policy on promotion for students K-12 based on student achievement. The regulation also permits the local school district policy to include but not be limited to factors such as emotional stability or instability, physical health and strength and motivational and social skills. The repeal is necessary because 14 Del. C., as amended in June, 1998, now defines the elements of a local district's promotion policy.

**3. PROMOTION POLICY**

Each local school district shall have a promotion policy for kindergarten through grade 12 and such policy must be based on student achievement. The promotion policy may also include other factors to be considered when decisions must be made regarding student promotion. Such factors may include, but not be limited to, emotional stability or instability, physical health and strength variables, motivation and social skills. Promotion policy guidelines should be assessed on a continuing basis and modified as appropriate. (State Board Approved January 1978)

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**REPEAL OF REGULATIONS, STUDENT PROGRESS,  
GRADING AND REPORTING**

The Secretary seeks the approval of the State Board of Education to repeal the regulations, Student Progress, Grading and Reporting, J.1.a.-d. and J.2.a.-c., pages A-25 to A-27 in the Handbook for K-12 Education. These regulations are really technical assistance suggestions for student grading and reporting. The terms are defined and the role and purpose of grading and reporting is explained and the methodology is discussed. Grading and reporting on student progress (as on report cards) has always been a local prerogative. Although the Del. C. requires school profiles, reporting directly to parents/guardians has always been left to each local school district. The Department's guidelines may be helpful but they should not be regulatory.

**J. STUDENT PROGRESS****1. GRADING****a. Definition**

Grading represents that segment of evaluation concerned with the methods and processes by which individual students are assessed to determine the extent to which they have acquired basic concepts, knowledge of facts, skills and processes, fundamental information, and have achieved the instructional objectives of a particular subject or area of study. The assessment is usually distinguished through a numerical

rating or alphabetical symbol.

**b. Role of Grading**

A grade or mark thus reflects the degree to which students have developed and progressed educationally in comparison with other members of a class or in terms of their individual capacity or ability. The grade must be considered as the value resulting from the evaluation process associated with learning and the attainment of objectives. It should never be construed as an end in itself. Such an assumption elevates the product beyond the process of learning.

**e. Variety of Evaluation Methods**

Teachers and administrators should realize that grading is only one aspect of evaluation. It becomes the responsibility of the school administrator to assure that as much appropriate information and knowledge about a student as possible be considered before assigning a grade. The process of evaluating and the criteria for determining the educational achievement of a student must be all-encompassing to be reliable. A grade must be based on a multitude of factors, not test scores alone.

**d. Grading System**

Any grading system used should follow reliable and valid principles of measurement and evaluation. The exact symbols designating the grade are not as important as the processes leading to the designation. It is important, however, that all persons developing or revising a grading system be able to understand the relationship of one grade to another on a percentage scale or numerical scale.

**2. REPORTING****a. Definition**

Reporting relates to the methods of communication existing between the school, the students, and their families. The purpose or objectives of reporting are as follows:

(1) to inform the students and their families of educational progress and achievement which may reflect both the quantity and quality of class achievement;

(2) to provide information to the students and their families about the purpose and objectives of education;

(3) to assist the teachers in assessing the instructional program and bringing about improvement; and

(4) to provide information necessary for maintaining accurate and appropriate student records for present and future reference.

**b. Purpose**

Reporting to students and their families the results of an evaluation of the individual student may be in many forms: oral reporting, written reporting, and conferences. Oral reporting may involve an informal or formal conference. The report card is the main instrument for communicating student progress.

**e. Achievement and Attitude Reporting**

Written reporting constitutes the basis for communicating the grades the students have earned in the various subjects in the school. These grades usually reflect

academic achievement, but may relate to attitudinal aspects as well as character traits. It is recommended, however, that a grade should not reflect a composite of achievement and attitude. Separate symbols or ratings should be designated for each of these categories:

It is most important that reporting convey to all concerned the fundamental intentions for which a reporting system was devised.]

## REPEAL OF REGULATIONS, SUMMER SCHOOL PROGRAMS

The Secretary seeks the approval of the State Board of Education to repeal the regulations Summer School Programs, E.3.a. and b., pages A-13 to A-14 in the Handbook for K-12 Education. The regulations, as they are written, are in the form of technical assistance and do not use the terms must or shall. The regulations list the types of summer school experiences that may be offered for students and present guidelines for districts to use when establishing summer school courses for credit. Since it is the local school districts who operate summer school programs, they should establish the policies with the exception of the extended year program which is defined in Del. C.

### 3. ~~SUMMER SCHOOL PROGRAMS~~

a. ~~The organization and administration of the summer school instructional programs should be in accordance with acceptable educational procedures. Summer school programs, conducted under the auspices of the local school district or combined districts, may be established to provide the following experiences:~~

~~(1) remedial or make-up courses for credit for those students who have failed the course or else who have received a low grade;~~

~~(2) programs designed for completing specific performance requirements;~~

~~(3) exploratory courses where the students acquire basic information and skills;~~

~~(4) occupational/vocational courses where students acquire personal or specialized skills and/or participate in cooperative work experience programs where appropriate credit is granted;~~

~~(5) personal or academic enrichment courses for the acquisition of information and skills;~~

~~(6) original or advanced courses for credit for students who want to complete their program of studies early; and~~

~~(7) recreational programs which do not grant credit but provide activities of a physical nature.~~

b. ~~In order to establish educational programs during the summer where credit for satisfactory completion of the scheduled courses is granted, these following guidelines~~

~~should be considered:~~

~~(1) Establish courses of study and student performance expectations prior to attendance. This will permit objective assessment of the content to determine equivalency.~~

~~(2) Establish procedures for the admittance and registration of students, and the employment of staff.~~

~~(3) Establish a minimum grade of 60 or the letter grade equivalent and/or the approval of the principal as the criteria for acceptance into a remedial or make-up course which was previously failed.~~

~~(4) Establish that: make-up or remedial courses for those who have failed should be at least 90 continuous minutes in duration or its equivalent in performance expectations and accomplishments for a six-week period.~~

~~(5) Students participating in approved summer school programs should receive the grade achieved. It is the responsibility of the home school administrator to record the grade received and average the grade or enter appropriate notation on the students' records as to make-up or remedial study.~~

~~(6) Courses granting full credit of one unit must meet the equivalent of 120 hours.~~

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

### SCHOOL ATTENDANCE

#### A. TYPE OF REGULATORY ACTION REQUESTED Amendment to Existing Regulation

#### B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Secretary seeks the approval of the State Board of Education to amend the regulation School Attendance found on page A-8, 4.a.,b.,c., and d. in the Handbook for K-12 Education. The content of the regulation is found in the Del. C., Chapter 27 and was included in the Handbook for technical assistance purposes. The amendment would remove the present language and substitute the following new language. "Every school district shall have an attendance policy which defines and describes the district's rules concerning attendance for students K-12 and the district shall distribute and explain these policies to every student at the beginning of each school year.

#### C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards?

The amended regulation concerns policy adoption and does not specifically address student achievement issues.

2. Will the amended regulation help ensure that all



students receive an equitable education?

The amended regulation does not address equity issues.

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

The amended regulation does not address health and safety issues.

4. Will the amended regulation help to ensure that all students' legal rights are respected?

The amended regulation does not address legal rights issues but it does support the student's right to information concerning district policies.

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

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

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels?

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

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

The decision making 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.

9. Is there a less burdensome method for addressing the purpose of the amended regulation?

The amended regulation is necessary in order to assure that local district attendance policies are in place and are well publicized.

10. What is the cost to the state and to the local school boards of compliance with the amended regulation?

There is no additional cost to the local school boards.

This policy can be distributed with the student rights and responsibilities materials.

AS AMENDED

**4. SCHOOL ATTENDANCE**

~~Additional information concerning school attendance-- laws, regulations, reasons for necessary and legal absences, the role of the visiting teacher, and recommended forms are found in the publication, Resource Materials for Developing Procedures of Administering School Attendance, Revised January 1990. (See Appendix A)~~

a. ~~Every parent, guardian or other person in the State having legal control of a child between the ages of 5 and 16 is required to, and shall, send such child to a free public school each day of the minimum school term of 180 days.~~

(1) ~~Students in special education who attain age 21 after September 30 (except July 1 for Complex or Rare), may continue their school placement until the end of that fiscal year.~~

b. ~~After a child has once been enrolled in school, the school shall require an excuse from the parent or guardian for every absence, and such excuse shall contain the reason for the absence.~~

c. ~~The school principal is responsible for recommending to the local board of education guidelines relating to classroom attendance and the establishment of acceptable standards of performance in the subject areas required for graduation or promoting along with acceptable attendance standards for all subject areas.~~

d. ~~The chief school officer is the attendance officer of the district. A visiting teacher is assigned to each school district or a combination of districts to investigate attendance problems. It is always the first goal of attendance personnel to ascertain the reason for absence and then seek a way to return the child to school. The visiting teacher should be an enforcement officer only as a last resort. However, if the investigation warrants, a school attendance violation notice may be sent to the parents by the chief school officer.~~

SCHOOL ATTENDANCE

1. Every school district shall have an attendance policy which defines and describes the district's rules concerning attendance for students K-12 and the district shall distribute and explain these policies to every student at the beginning of each school year.

## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

#### Food Stamp Program

The Delaware Health and Social Services, Division of Social Services, is proposing to implement a policy change to the Division of Social Services' Manual Section 9068, regarding certification periods during which a household is eligible to receive food stamp benefits.

#### SUMMARY OF PROPOSED REVISIONS:

Establishes circumstances under which different households will be assigned certification periods of varying lengths.

#### COMMENT PERIOD

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by August 30, 1998.

#### NATURE OF PROPOSED REVISIONS:

##### 9068 Certification Periods [273.10(f)]

Certification periods means the period of time within which a household shall be eligible to receive benefits. At the expiration of each certification period, entitlement to food stamp benefits ends. Further eligibility will be established only upon a recertification based upon a newly completed application, an interview and verification. Under no circumstances will benefits be continued beyond the end of a certification period without a new determination of eligibility.

The certification periods for all households shall not exceed 12 months.

~~Households eligible for the child support deduction shall have the following certification periods:~~

- ~~• Households with no record of regular child support payments or payments of arrearages shall be certified for no more than 3 months.~~
- ~~• Households with a record of regular child support payments or payments of arrearages shall be certified for no more than six months.~~

12-month certification periods are assigned to households when:

- Households consist entirely of elderly or unemployable persons with stable income like Social Security, SSI, pension and/or disability benefits; and
- Households receive their primary source of income from self-employment or regular farm employment with the same employer.

6-month certification periods are assigned to households when:

- Households have stable income and there is little likelihood of major changes in income, deductions and household composition;
- Households consist of ABAWD individuals because the system will close the case after three months of not meeting the work rules;
- Household have a record of regular child support and arrearage payments; and,
- Households have been closed due to the New Hire Match and they come in verifying that they are now working.

3-month certification periods are assigned to households when:

- Household have no record of regular child support or child support arrearage payments;
- Homeless households receive their benefits at a P. O. Box;
- Households receive their benefits at the local office;
- Households have been closed due to the New Hire Match and they come in verifying they are no longer working; and
- Households have unstable circumstances.

#### Simplified Food Stamp Program

The Delaware Health and Social Services, Division of Social Services, is proposing to implement on a permanent basis a policy change to the Division of Social Services' Manual Section 9000 that was implemented previously by emergency order. The change arises from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January, 1995, as part of the original *A Better Chance (ABC)* waiver design. These changes were previously published for public comment in the June 1, 1998 Delaware Register of Regulations. However, due to subsequent staff analysis and substantial modification of the proposal, it is being re-proposed for public comment.

## SUMMARY OF PROPOSED REVISIONS:

Replaces food stamp work exemptions with ABC exemptions, lowering to under 13 weeks the age at which a child exempts a parent/caretaker for ABC clients in Workfare.

Allows the agency to use the food stamp allotment along with the ABC benefit in determining the number of hours a household is required to participate in Workfare, which is a work experience program in which participants work to earn their benefits.

## COMMENT PERIOD

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by August 30, 1998.

## NATURE OF PROPOSED REVISIONS:

### 9092 Simplified Food Stamp Program

DSS was approved by Food and Nutrition Service, under the United States Department of Agriculture, to operate a Simplified Food Stamp Program (SFSP). The SFSP permits a state to substitute certain TANF rules and procedures for food stamp rules. Delaware's SFSP component is the work for your welfare (Workfare) program rules.

Households in which all members, or one or more members, receive ABC may participate in the SFSP. Non-Public Assistance (NPA) households will not participate in the SFSP.

The SFSP will follow all the regular food stamp rules for determining eligibility and certifying households. Under the SFSP, the changes in the food stamps rules that will affect Workfare ABC households who receive food stamps are:

- replacing food stamp Workfare penalties with the ABC Workfare program requirements and penalties, and
- replacing food stamp work exemptions with ABC exemptions.

The two ABC work exemptions are:

- a) A parent caring for a child under 13 weeks of age;
- or
- b) An individual determined unemployable by a health care professional.

The SFSP allows Delaware to require individuals who are receiving ABC and caring for children age 13 weeks and older to participate in Workfare. The SFSP also allows Delaware to use the food stamp allotment along with the ABC grant to determine the number of hours of Workfare participation.

## DELAWARE'S WORKFARE PROGRAM

### Work For Your Welfare (Workfare) program

Work for Your Welfare (Workfare) is defined as a work experience program in which participants work to earn their benefits. Those in Workfare must participate for a predetermined number of hours each week and complete 10 hours of job search activities per week.

### Required Hours of Workfare Participation

One-parent households will be required to work the maximum participation hours of 25 hours per week. The maximum required work hours for one-parent families will increase to 30 hours per week for FFY 1999.

Two-parent households will be required to work the maximum participation hours of 35 hours per week.

### Determine the Workfare required hours of participation:

1. The pre-sanctioned ABC grant is divided by minimum wage of \$5.15, and the result is rounded down.

- The result is subtracted from the appropriate required monthly maximum participate hours (for example, 25 hours per week would be  $25 \times 4.33 = 108$ ).

- The remainder is multiplied by \$5.15 to determine the portion of the food stamp allotment which can be used when imposing a Workfare reduction.

2. The food stamp allotment is divided by minimum wage of \$5.15, and the result is rounded down.

3. The two results (#1 and #2), added together, are the monthly number of hours for which the family/household is required to participate.

4. The monthly number of hours (#3) is divided by 4.33 to get a weekly number of hours, rounded down.

5. Compare the weekly number of hours (#4) to the maximum required for a one or two-parent household. Use the lesser number for the weekly number of hours.

6. The weekly number of hours (#5) is divided by 5 to get the daily participation requirement, rounded down. (This step is needed to give the Contractor and Client an idea of how to schedule the work on a daily basis to assure that the Client is able to meet the required Workfare hours of participation.)

7. Consult the yearly table for the number of days the participant is required to do Workfare. Multiply that number by the daily participation rate (#6) to determine the monthly required participation rate.

### Workfare Reduction

For every hour that a participant fails to work, the ABC check

## PROPOSED REGULATIONS

will first be reduced by \$5.15. If the ABC grant reduces to zero, any remaining Workfare reduction amount will be used to reduce the food stamp allotment up to the portion used to meet the required hours of participation.

Determination of the Workfare reduction amount:

1. Subtract the actual hours of participation for a month from the required hours for the same month.
2. Any amount greater than zero is multiplied by \$5.15, resulting in the Workfare reduction amount.
3. Subtract the exact Workfare reduction amount (#2) from the ABC grant amount and round down.
4. Subtract any 1/3 E& T/school attendance sanctions from amount in #3 before subtracting any \$68 or \$50 sanctions.
5. If the subtraction of the Workfare reduction amount reduces the ABC benefit to zero and there is a remaining Workfare reduction amount, this amount will be subtracted from the food stamp allotment. Only the portion of the food stamp allotment used to determine the participation hours can be subtracted from the food stamp allotment. (If there is a \$100 Workfare reduction amount left over after the grant reduced to zero, but only \$75 of the allotment was used to determine the hours of participation, only \$75 can be subtracted from the allotment.)

Job Search Activities/Failure to Complete

Individuals in Workfare must complete 10 hours of job search activities each week. The failure to complete job search activities will result in a progressive 1/3 grant reduction sanction. For food stamps, if the individual who fails to complete job search activities is caring for a child under the age of six, no sanction will be applied to the household. The pre-sanctioned grant amount will be used in the food stamp calculation to prevent an increase in the food stamps. (Riverside Rule.)

If the individual who fails to complete job search activities is not caring for a child under six years of age, DSS will apply the appropriate food stamp sanction.

The appropriate food stamp sanctions are:

- If the individual who failed to complete job search activities is the head of household, the whole food stamp household is sanctioned for the appropriate 1 month, 3 months, or six months period, or until compliance whichever is later.

If the individual is not the head of household, the individual is removed from the food stamp case for the appropriate 1 month, 3 months, or six months period, or until compliance whichever is later.

SUMMARY OF THE SIMPLIFIED FOOD STAMP

PROGRAM:

- The simplified food stamp program lowers the age at which a child exempts a parent from work requirements in Workfare to under 13 weeks.
- Household will work a pre-determined number of hours in order to receive their ABC benefit.
- Hours not worked will result in a reduction in the potential benefits they could have received.
- Failure to complete job search activities will result in a food stamp sanction for those households where the youngest child is 6 years of age or older.
- Food stamps are calculated using the pre-sanctioned grant amount before applying any Workfare reduction amount or appropriate sanction. (Riverside rule)
- Workfare reductions are applied before reductions for any sanctions.
- When the ABC grant reduces to zero and a Workfare reduction amount remains, the remainder, or a portion of the remainder, is subtracted from the food stamp allotment. Only the portion of the food stamp allotment that was needed to meet the required hours of participation can be subtracted.

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### DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL DIVISION OF WATER RESOURCES WATER SUPPLY SECTION

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

TITLE OF THE REGULATIONS:

**Regulations for Licensing Water Well Contractors, Pump  
Installer Contractors, Well Drillers, Well Drivers and Pump  
Installers.**

BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND  
ISSUES:

The proposed changes and additions add a continuing education requirement as a prerequisite for renewing licenses to practice well drilling, well driving and pump installation. Revisions are proposed to section 6 and a new section 7 has been added. Sections 7 through 15 of the current regulations will be renumbered and section references located throughout the current regulations will be corrected as needed.

# PROPOSED REGULATIONS

**POSSIBLE TERMS OF THE AGENCY ACTION:**

N/A

**STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:**

Title 7, Del. C., Chapter 60

**OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:**

None

**NOTICE OF PUBLIC COMMENT:**

The public hearing will be held on August 27, 1998 at 7:00 p.m. in the auditorium of the DNREC office building located at 89 Kings Highway in Dover. Written comments must be received by 4:30 p.m. on August 31, 1998. Comments may be mailed to the attention of Carol W. Apgar, Water Supply Section, 89 Kings Highway, Dover, DE 19901 or E-Mailed to capgar@dnrec.state.de.us.

**PREPARED BY:**

Carol W. Apgar (capgar@dnrec.state.de.us) 302-739-3665 June 22, 1998

**PROPOSED REVISIONS TO THE REGULATIONS FOR LICENSING WATER WELL CONTRACTORS, PUMP INSTALLER CONTRACTORS, WELL DRILLERS, WELL DRIVERS AND PUMP INSTALLERS**

JUNE 22, 1998

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**\* PLEASE NOTE: THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER.**

**SECTION 1 – PURPOSE**

1.01 It is the purpose of this regulation to protect the public health and to conserve and protect the water resources of the state; to examine and license those persons engaged in the contracting for and the drilling, boring, coring, driving, digging, construction, installation, removal, or repair of water wells and water test wells or the installation or removal of pumping equipment in and for a water well or water test well; and for the Secretary to appoint a Water Well Licensing Board to advise and assist the Secretary in the administration of the licensing program.

**SECTION 2 – DEFINITIONS**

- 2.01 Application Fee – means the fee set forth by the Secretary to apply for a license in one of the categories of this regulation.
- 2.02 Board – means the Water Well Licensing Board.
- 2.03 Certificate of Insurance – means Contractors Liability Insurance.
- 2.04 Construction of Water Wells – means all acts

necessary to obtain ground water by wells, including the location and excavation of the well, installation of casing, grout, screens, and developing and testing.

2.05 Department – means the Department of Natural Resources and Environmental Control

2.06 Dewatering – means the temporary lowering of the ground water level for the construction of sewer lines, water lines, elevator shafts and foundations.

2.07 Installation – means the actual installation of pumps, and/or pumping equipment for water wells, and the removal for repairs or service and the reinforcement thereof.

2.08 License Fees – means the fee set forth by the Secretary for the licensing of Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers, and Pump Installers.

2.09 Person – means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or duly established legal entity.

2.10 Pumps and/or Pumping Equipment – means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water from water wells.

2.11 Pump Installer Contractor – means any person engaged in the business of contracting for the installation, modification, and repair of water well pumps and related equipment.

2.12 Pump Installer – means any person in responsible charge of all on-site work in the installation, modification, and repair of water well pumps and related equipment.

2.13 Repair of Water Wells – means work on any well involving re-drilling, deepening, changing casing and screen depths, re-screening, cleaning by use of chemicals, re-development, the removal and re-installation of pumps, pumping equipment, and all related equipment to draw water from a water well.

2.14 Secretary – means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

2.15 Test Boring and Coring – means the removal and collection of soil samples from the earth by means of augers, core-barrels, spoons, wash casing and bailers for the purpose of obtaining geologic and hydrologic information.

2.16 Water Well – means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed when the intended use of such excavation is for the location testing, acquisition or artificial recharge of underground water and where the depth is greater than the diameter or width.

2.17 Water Well Contractor – means any person engaged in the business of contracting for the construction of water wells, and/or the installation of pumping equipment in or for wells.

2.18 Water Well Driller – means any person in responsible charge of all on-site work relating to the drilling, construction, developing and testing of water wells, water well alteration and repair, test boring and coring, and the installation, modification, and repair of water well pumps and related equipment.

2.19 Water Well Driver – means any person in responsible charge for all on-site work relating to the driving, construction, developing and testing of driven wells, dewatering, alteration and repair of driven wells, test boring, coring and the installation, modification and repair of water well pumps and related equipment ordinarily used in driven wells.

### SECTION 3 – WATER WELL LICENSING BOARD

3.01 The Secretary shall appoint, with the power of removal, a Water Well Licensing Board (hereafter referred to as the “Board”) to advise and assist the Secretary in the administration of the licensing program. The Board shall consist of six members, four members who are currently licensed by the Department to engage in the construction of water wells or the installation of water well pumping equipment, one member from the office of the State Geologist who shall serve at the pleasure of the Secretary and one member from the Department who shall serve at the pleasure of the Secretary. The member from the Department shall act as secretary of the Board, and be responsible for the keeping of records, the collection of fees, and any other duties delegated either by the Secretary or the Board. All persons appointed to the Board shall be citizens of the United States and residents of the State of Delaware. Initially, the four Board members from the water well industry shall be appointed to staggered terms so that no more than two members’ terms shall expire the same year, two being appointed to one year terms, one appointed for a two year term and one appointed for three years. Thereafter, Board members shall be appointed to terms of three years.

3.02 The Water Well Contractor Licensing Board, with the consent of the Secretary shall establish and administer such procedures and guidelines as may be necessary for the

regulation of those involved in water well construction and pump installation, and shall include at least the following provisions:

- a. Examination of candidates, the granting and renewal of licenses, and
- b. Suspension and revocation of licenses.

#### SECTION 4 – WHO MUST BE LICENSED

4.01 All persons who engage in the business of contracting for water wells, test boring and coring, dewatering, the installation, modification and repair of water well pumps and related equipment within the State of Delaware.

4.02 All persons who engage in the business of water well drilling, water well driving, test boring and coring, dewatering and the installation, modification, and repair of water well pumps and related equipment within the State of Delaware.

4.03 All persons engaged in the business of contracting for the installation, modification, and repair of water well pumps and related equipment within the State of Delaware.

4.04 All persons engaged in installation, modification, and repair of water well pumps and related equipment within the State of Delaware.

#### SECTION 5 – PROCEDURES FOR LICENSING

5.01 Application fee: An application for any type of license issued by the Board shall be made on forms furnished by the Board and be accompanied by a non-refundable application fee of \$10.00.

5.02 Minimum Requirements for Licensing:

- a. The applicant must be at least eighteen years of age;
- b. Has had at least two years experience in the work for which he is applying for a license (one year in the case of a pump installer);
- c. Furnishes the Board with references from two persons actively engaged in the well drilling and/or pump installation business; and
- d. Demonstrates professional competence by passing a written and/or oral examination prescribed by the Board
- e. Eligibility for Examination

The Board shall determine by (a) through (c) of the above criteria whether an applicant meets the necessary requirements to be eligible for examination. After determining that an applicant is eligible for examination, the Board shall notify the applicant of his eligibility for examination. Applicants who are determined ineligible for examination shall be so notified by the Board and may re-apply after 90 days from the date of notification.

5.03 Notification for Examination

The Board shall, not less than thirty days prior to the examination, notify each eligible applicant of the time and place of the examination. The examination shall be given at least annually, and at such other times as in the opinion of the Board, the number of applicants warrants. The Board may, if the applicant meets all other requirements issue a temporary license, not to exceed 90 days, until the next examination is given by the Board.

5.04 Examination

The examination shall consist of a written and/or oral examination, and shall fairly test the applicant's knowledge and application thereof in the following subjects: Basics of drilling methods and basics of construction; state and local laws and ordinances concerning the construction of water wells and/or installation of pumps and pumping equipment, and rules and regulations promulgated in connection therein.

5.05 Reapplication after Failure of Examination

In the event an applicant fails to receive a passing grade on the examination, he shall be so notified by the Board within 30 days and may re-apply for a subsequent examination with payment of the application fee, no less than 90 days after date of said notification. The examination may be taken no more than twice a year.

5.06 Reciprocity

The Secretary may license, without examination, upon payment of the required application and license fees, and evidence of required insurance where applicable, applicants who are duly licensed under the laws of any other state having requirements deemed by the Board at least equivalent to those of the State of Delaware.

5.07 Persons Previously Licensed – Exemptions from Examination and Proof of Experience

Any person who has been licensed in the business of Water Well Contractor, Pump Installer Contractor, Well Driller, Well Driver or Pump Installer by the Department for the calendar year 1981, accompanied by satisfactory proof to the Board that he was so licensed, and accompanied by payment of the required fee and the furnishing of the required insurance where applicable, be granted a license in the category of which he was licensed without fulfilling the requirements that he pass the examination prescribed in the Minimum Requirements for Licensing.

5.08 Upon Notification of Being Qualified for Licensing, the Applicant shall where applicable, submit to the Board the following:

- a. Certificate of Insurance indicating Contractors Liability Insurance in the minimum amounts required where

# PROPOSED REGULATIONS

applicable and specified herein, and

- b. Payment of License fee (payable to the “State of Delaware”),
- c. License Fees

		<u>EFF. 7/1/91</u>
Water Well Contractor	<del>\$100.00</del>	<u>\$150.00</u>
Pump Installer Contractor	<del>75.00</del>	<u>115.00</u>
Well Driller	<del>20.00</del>	<u>30.00</u>
Well Driver	15.00	
Pump Installer	<del>10.00</del>	<u>15.00</u>

## SECTION 6 – LICENSE RENEWAL OF LICENSE

Every license issued by the Secretary, unless otherwise suspended or revoked, shall expire on December 31<sup>st</sup> of each year, and shall be renewed provided that:

- a. On or before December 31<sup>st</sup>, each licensee shall submit to the Board a renewal fee (payable to the State of Delaware) as specified in Section 5.09(e).
- b. Evidence of Contractor’s Liability Insurance where applicable.

### 6.01 License Term

All licenses shall expire on December 31<sup>st</sup> of the year issued unless otherwise indicated on the license.

### 6.02 Application for Renewal

- a. A license may be renewed prior to its expiration date providing the licensee submits the following:
  - 1. A renewal application on forms provided by the Department.
  - 2. Satisfactory evidence that the liability insurance requirements of Section 8 of these regulations have been satisfied.
  - 3. Satisfactory evidence of compliance with the continuing education requirements of figure 1 and sections 6.04 and 7 of these regulations, except as exempted by Section 6.04(d)(2).
  - 4. Any applicable renewal fee.
- b. An expired license may be renewed within one (1) year following its expiration by submitting the information required in Section 6.02(a)(1-4) of these regulations and any applicable late fee.
- c. Licensees who apply for renewal of their licenses under Section 6.02(a) and (b) of these regulations shall not be required to take an examination as a condition of license renewal.

### 6.03 Reinstatement of Expired Licenses

Applicants for the reinstatement of licenses that have been expired for more than one (1) year or more shall be subject to all requirements of Section 5 of these regulations.

### 6.04 Continuing Education Credits

- a. All licensees shall comply with the continuing

education requirements of Section 7.03(b) of these regulations as a condition for the renewal of their license.

b. A licensee holding two (2) or more licenses issued under these regulations may fulfill the continuing education requirements for renewal of all licenses by obtaining the larger of the minimum hours of continuing education subject to the requirements of Section 6.04(d) and (e).

c. The Secretary may consider a request for a temporary extension of a license for a period not to exceed three (3) months, providing sufficient cause can be proven subject to the Secretary’s discretion. In order to be considered for such an extension, the applicant must submit a written request containing a statement containing the reason(s) why he or she was or is not able to obtain the necessary credits within the required time frame.

d. Persons holding valid Well Driller or Well Driver licenses shall complete a minimum of ten (10) hours of continuing education credits prior to being granted a license renewal, with the following exceptions:

1. Persons holding Well Driller or Well Driver licenses that are restricted to the installation of dewatering wells and pumping equipment shall complete a minimum of three (3) hours of continuing education credits prior to being granted a license renewal.

2. The requirements of Section 6.04 shall not apply to Well Driller licenses that are restricted to the construction of geotechnical wells using hand-operated tools.

e. Persons holding valid Pump Installer licenses shall complete a minimum of five (5) hours of continuing education credits prior to being granted a license renewal.

f. The licensee shall be responsible for all costs of obtaining the required number of continuing education credit hours.

g. A maximum of one-half (½) of the required annual continuing education credits earned in excess of the minimum required to renew a license may be transferred to the next year.

h. Continuing education credits for renewal of a license held for less than one year by a person who did not hold a license during the previous twelve months shall be required as noted in figure 1.

## CONTINUING EDUCATION CREDITS REQUIRED FOR LICENSE RENEWAL

Months Licensed	Well Driller/ Driver (WD)	WD Dewatering	Pump Installer
Less than 1	0	0	0
Between 1 and 3	0	0	0
Between 3 and 6	5	1	2
Between 6 and 8	5	1	3
Between 8 and 9	7	2	3
Between 9 and 10	7	3	5
Between 10 and 12	10	3	5

*(Figure 1)*



**SECTION 7 – CONTINUING EDUCATION PROGRAMS****7.01 Continuing Education Program Approval**

a. Continuing education programs shall be designed to improve, advance, or extend the licensee’s professional skill and knowledge relating to the practice of well construction or repair and pump installation or repair. Acceptance of continuing education programs shall be based upon the curriculum or program content and the qualifications of the instructor.

b. Prospective continuing education programs shall be submitted for the Secretary’s approval on form(s) provided by the Department and:

1. Shall be instructed by persons knowledgeable in well drilling or pump installation and repair, or
2. Shall be conducted by an accredited educational facility.

c. Applications for the approval of curriculums, programs, seminars, etc. shall include the following:

1. Description of subject matter.
2. Length of course or courses in hours.
3. Name and qualifications of instructor(s).
4. Proposed time.
5. Proposed Date(s).
6. Proposed Location.

d. Approval of a program shall remain in effect for as long as it and the instructor remain unchanged, the program content remains unchanged and the program is not outdated.

e. A change in subject matter, length, or instructor(s) shall require resubmission and approval.

f. Credits shall not be accepted for any program attended prior to its approval.

g. Approval shall not be granted for any course, seminar, workshop, etc. dealing with the requirements of the 1999 revisions to the “Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers and Pump Installers” or the 1997 “Regulations Governing the Construction and Use of Wells” except as noted in Section 7.01(h).

h. Approval of programs dealing with proposed revisions or additions to the regulations noted in section 7.01(g) and any other state or local requirements regarding well construction or repair, pump installation or repair may be considered providing the program(s) are held within the first six (6) months of implementation of the requirements.

i. Subject to approval by the Secretary, continuing education credit in the practice of well construction and repair and pump installation and repair may be obtained by, but are not limited to the following:

1. Course work, seminars, workshops, lectures, etc. given by accredited educational facilities.
2. Courses, seminars, workshops, or lectures given by national, state, and local trade associations, product

vendors, manufacturers, etc.

3. Extension studies and correspondence courses.
4. Papers written by a licensee and published in a professional journal or scientific media requiring peer review.
5. Instruction of continuing education courses.
6. Attendance at conferences and conventions sponsored by regional, national and local trade associations.

**7.02 Assignment of Credit**

a. Continuing education credits shall be awarded on an hour-for-hour basis for attendance at an approved continuing education program unless otherwise indicated in section 6.02 of these regulations unless otherwise indicated in section 7.02(b) through (g).

b. Credits shall be awarded in not less than one-half (½) hour increments.

c. For programs where continuing education units have been assigned, one unit is equivalent to ten (10) clock hours or one credit hour of approved training.

d. Credits are awarded on a two (2) for one (1) hour of continuing education credit for the instructor of an approved training program.

e. Five (5) credit hours are approved for each day of attendance at a national, regional or local trade association conference or convention.

f. One-half (½) credit hour is approved for attendance at a local trade association meeting or seminar.

g. Three (3) credit hours shall be awarded for each paper written by a licensee and published in a scientific media or professional journal requiring peer review.

**7.03 Recording Credits**

a. Approved continuing education credits obtained within the appropriate license renewal period shall be credited as provided in section 7.02 of these regulations.

b. The licensee is responsible for submission of proof of attendance at all approved continuing education programs. Documentation of credits received shall consist of any one of the following, unless otherwise approved by the Secretary:

1. A record of attendance for each course on forms provided by the Department or,

2. An official student transcript issued by the educational facility, or

3. A certificate or other documentation signed by the instructor or sponsor of the program providing the name of the individual who attended, the date the program was held, the name of the program, the number of training hours, and attesting to the satisfactory completion of the program.

c. Inability to substantiate credit hours earned is grounds for disallowance of the credits in question.

**SECTION 7 8 – ACCEPTANCE OF INSURANCE**

7- 8.01 The Board may accept a Certificate of Insurance in

lieu of a policy providing that the Certificate of Insurance is endorsed to include said license holder by name. Said insurance is a condition of licensing and must remain in effect during period when license is valid.

**SECTION 8 ~~9~~ – SUSPENSION OR REVOCATION OF LICENSE**

~~8.01~~ 9.01 The Board shall recommend to the Secretary the revocation of the license of any licensee who, upon hearing by the Board, has been found guilty of fraud or deceit in obtaining his license.

~~8.02~~ 9.02 The Board shall recommend to the Secretary the suspension or revocation of the license of any licensee who, upon investigation and hearing by the Board, is:

a. Found to be guilty of gross negligence, incompetence, or misconduct in the business of well drilling or pump installation and repair in the State of Delaware, including flagrant violations of the laws, regulations or conditions of permits; or

b. Is no longer able to perform his duties properly.

~~8.03~~ 9.03 Procedures for Hearings

Whenever the Board finds that the licensee under this regulation may be or may have been engaging in practices which are in violation of any provision of these or other regulations applicable to water well construction and abandonment, the Board shall give written notice to the licensee describing the alleged violation and requesting that the alleged offender appear before the Board for a hearing to show cause why his license should not be suspended or revoked.

a. The Board shall advise the Secretary to notify the alleged violator of his right to a hearing before the Board to show cause why his license should not be suspended or revoked. The notification shall be in the form of a registered or certified letter, return receipt requested, setting forth the alleged violation or violations, and making known to the alleged violator the time and place of the hearing. This notice must be given at least twenty (20) days prior to the hearing.

b. The alleged violator may appear with counsel at the hearing.

c. The Secretary shall appoint one of the members of the Board to act as the hearing officer.

d. A record shall be made of any hearing concerning revocation or suspension of licenses.

e. At the conclusion of the hearing the Board, by a majority of those present vote, shall recommend to the Secretary suspension, revocation or affirmation of the license of the accused based upon evidence and testimony given at the hearing.

f. The Board shall advise the Secretary of its decision within three (3) days of the hearing.

g. The Secretary shall provide the accused with notice by registered or certified mail, return receipt requested, as to his decision within twenty (20) days of the conclusion of the hearing.

h. Any appeal of the Secretary's decision will be subject to the provisions in 7 Del. C., Section 6008.

**SECTION 9 ~~10~~ – SUSPENSION**

~~9.01~~ 10.01 Suspension – Upon expiration of the term of suspension, the license of the suspended person, company or corporation, shall be deemed in good standing the first calendar day after the term of suspension has expired provided that the cause of the suspension has been corrected to the satisfaction of the Board.

~~9.02~~ 10.02 Revocation – Upon expiration of the term of revocation, that person, company or corporation may apply for a license in the same manner as a new license is obtained.

**SECTION ~~10~~ 11 – IDENTIFICATION OF LICENSE HOLDER**

~~10.01~~ 11.01 Any person licensed by the Water Well Licensing Board shall possess, while he is working, a valid and current identification card furnished by the Board showing his identity, type of license, and license number and shall exhibit it on demand. Only a person licensed by the Board shall be authorized to operate equipment used in the business of well drilling and/or pump installation, or if an unlicensed person is employed for the operation of the equipment, he shall perform all work under the immediate and continuous supervision of a person licensed by the Board present at the work site.

**SECTION ~~11~~ 12 – MARKING OF VEHICLES AND EQUIPMENT**

~~11.01~~ 12.01 Any Contractor licensed by the Water Well Licensing Board shall mark each well drilling rig, well driving rig, water tank truck, well and pump service rig used by the Contractor or his employees with legible and plainly visible identification markings.

~~11.02~~ 12.02 The identification markings used shall be the name of the Company, Corporation, or Contractor, and the Contractor's License Number.

~~11.03~~ 12.03 The identification marking shall be printed upon each side of the well drilling rig, well driving rig, water tank truck, and well and pump service rig in letters and numerals at least 1 ½ inches high, and the letters and numerals shall be in a color sufficiently different from the color of the vehicle or equipment so that identification markings are plainly

legible.

~~11.04~~ 12.04 Weatherproof decals or magnetic signs meeting the requirements above are acceptable.

SECTION ~~12~~ 13 – INSURANCE REQUIREMENTS

~~12.0~~ 13.01 The Board shall require, as a condition of licensing, that all Water Well Contractors and Pump Installer Contractors shall carry and maintain the following Contractor’s Liability Insurance:

- a. Contractor’s Liability Insurance:
  - Bodily Injury \$100 each person
  - \$300 each occurrence
  - Property Damage \$50,000 each occurrence
  - \$50,000 each aggregate

SECTION ~~13~~ 14 – REPEALER

~~13.01~~ 14.01 The provisions of this regulation are intended to supercede existing regulations of this state insofar as they relate to the matters included in this regulation.

SECTION ~~14~~ 15 – SEVERABILITY

~~14.01~~ 15.01 If any part of this regulation or the application of any part thereof, is held invalid or unconstitutional, the application of such part to the other persons, or circumstances and the remainder of this regulation shall not be affected thereby and shall be deemed valid and effective.

SECTION ~~15~~ 16 – RESPONSIBILITIES OF WATER WELL CONTRACTORS, PUMP INSTALLER CONTRACTORS, WELL DRILLERS, WELL DRIVERS AND PUMP INSTALLERS

~~15.01~~ 16.01 Pursuant to these regulations, licensed Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers and Pump Installers shall be responsible for the following:

- a. Initiating work only on wells for which the proper approval has been granted;
- b. Compliance with all applicable regulations and requirements;
- c. The conduct of work carried out by himself and any employee; and
- d. The proper submission of completion reports for all work done, signed by the licensed Water Well Driller or Driver.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF WATER RESOURCES**  
**WATERSHED ASSESSMENT SECTION**

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

**Total Maximum Daily Loads (TMDLs) for Indian River,  
Indian River Bay, and Rehoboth Bay, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Load (TMDL) Regulations for nitrogen and for phosphorous for the Indian River, Indian River Bay, and Rehoboth Bay. 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).

**Possible Terms of the Agency Action**

Following adoption of the proposed Total Maximum Daily Load for the Indian River, Indian River Bay, and Rehoboth Bay, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with the Department’s ongoing Whole Basin Management Program and the affected 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 Comment**

A public workshop will be held on Wednesday, September 2, 1998, 1:00 to 4:00 p.m., at the Virden Center, University of Delaware College of Marine Studies, Lewes, Delaware.

A public hearing will be held on Wednesday, September 2, 1998, at 6:00 p.m. at the Virden Center, University of Delaware College of Marine Studies, Lewes, Delaware. The hearing record will remain open until 4:30 p.m., September 11, 1998. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739-6242. All written comments must be received by 4:30 p.m., September 11, 1998. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Betty Turner, (302-739-4590; facsimile: (302) 739-6140; email: bturner@state.de.us) by 4:30 p.m., September 1, 1998.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 29 South State Street, Dover, DE 19901, (302) 739-4590, facsimile: (302) 739-6140.

## Prepared By:

John Schneider, Watershed Assessment Section, 739-4590

## Total Maximum Daily Loads (TMDLs) for Indian River, Indian River Bay, and Rehoboth Bay, Delaware

### A. INTRODUCTION and BACKGROUND

Intensive water quality monitoring performed by the State of Delaware, the federal government, various university and private researchers, and citizen monitoring groups has shown that the Indian River, Indian River Bay, and Rehoboth Bay are highly enriched with the nutrients nitrogen and phosphorous. Although nutrients are essential elements for both plants and animals, their presence in excessive amounts cause undesirable conditions. Symptoms of nutrient enrichment in the Inland Bays have included excessive macroalgae growth (sea lettuce and other species), phytoplankton blooms (some potentially toxic), large daily swings in dissolved oxygen levels, loss of Submerged Aquatic Vegetation (SAV), and fish kills. These symptoms threaten the future of the Inland Bays - very significant natural, ecological, and recreational resources of the State - and may result in adverse impacts to the local and State economies through reduced tourism, a decline in property values, and lost revenues. Hence, excessive nutrients pose a significant threat to the health and well being of people, other animals, and plants living within the watershed.

A reduction in the amount of nitrogen and phosphorous reaching the Inland Bays is necessary to reverse the undesirable effects. These nutrients enter the Bays from

several sources including point sources, nonpoint sources, and from the atmosphere. Point sources of nutrients are end-of-pipe discharges coming from municipal and industrial wastewater treatment plants and other industrial uses. Nonpoint sources of nutrients include runoff from agricultural and urban areas, seepage from septic tanks, and ground water discharges. Atmospheric deposition comes from both local and regional sources, such as motor vehicle exhausts and emissions from power plants that burn fossil fuels.

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 standards and to develop Total Maximum Daily Loads (TMDLs) for pollutants or stressors causing the impacts. 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).

The Delaware Department of Natural Resources and Environmental Control (DNREC) listed the Indian River, Indian River Bay, and Rehoboth Bay on the State's 1996 and 1998 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen and phosphorous.

### B. Total Maximum Daily Loads (TMDLs) Regulation for Indian River, Indian River Bay, and Rehoboth Bay, Delaware

Article 1. All point sources which are currently discharging into the Indian River, Indian River Bay, and Rehoboth Bay and their tributaries shall be eliminated systematically.

Article 2. The nonpoint source nitrogen loads from tributaries in the upper Indian River shall be reduced by 85 percent (from the base-line period of 1988 through 1990). These tributaries include Swan Creek, Iron Branch, Pepper Creek, Vines Creek, and Millsboro Pond. This shall result in reducing nitrogen loads from these tributaries during a normal rainfall year from 1285 kilograms per day (2833 pounds per day) to 193 kilograms per day (425 pounds per day).

Article 3. The nonpoint source phosphorous loads from tributaries in the upper Indian River shall be reduced by 65 percent (from the base-line period of 1988 through 1990). These tributaries include Swan Creek, Iron Branch, Pepper Creek, Vines Creek, and Millsboro Pond. This shall result in reducing phosphorous loads from these

tributaries during a normal rainfall year from 38 kilograms per day ( 84 pounds per day) to 13 kilograms per day (29 pounds per day).

Article 4. The nonpoint source nitrogen loads from all remaining tributaries to the Indian River, Indian River Bay, and Rehoboth Bay shall be reduced by 40 percent (from the base-line period of 1988 through 1990). This shall result in reducing nitrogen loads from these tributaries during a normal rainfall year from 732 kilograms per day (1614 pounds per day) to 439 kilograms per day (968 pounds per day).

Article 5. The nonpoint source phosphorous loads from all remaining tributaries to the Indian River, Indian River Bay, and Rehoboth Bay shall be reduced by 40 percent (from the base-line period of 1988 through 1990). This shall result in reducing phosphorous loads from these tributaries during a normal rainfall year from 36 kilograms per day ( 79 pounds per day) to 22 kilograms per day (49 pounds per day).

Article 6. The atmospheric nitrogen deposition rate shall be reduced by 20 percent (from the base-line period of 1988 through 1990). This shall result in reducing the atmospheric nitrogen deposition rate from 765 kilograms per day (1687 pounds per day) to 612 kilograms per day (1349 pounds per day).

Article 7. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water quality standards will be met.

Article 8. 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 Department's ongoing Whole Basin Management Program and the affected **public**.

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### **Total Maximum Daily Loads (TMDLs) for Nanticoke River and Broad Creek, Delaware**

#### **Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Load (TMDL) Regulations for nitrogen and for phosphorous for the Nanticoke River and Broad Creek. 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).

#### **Possible Terms of the Agency Action**

Following adoption of the proposed Total Maximum Daily Loads for the Nanticoke River and Broad Creek, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with the Department's ongoing Whole Basin Management Program and the affected 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 Comment**

A public workshop will be held on Wednesday, September 9, 1998, 1:00 to 4:00 p.m., at the Kiwanis Room, the Boys & Girls Club of Delaware Western Sussex County, 310 Virginia Ave., Seaford, Delaware.

A public hearing will be held on Wednesday, September 9, 1998, at 6:00 p.m., at the Kiwanis Room, the Boys & Girls Club of Delaware Western Sussex County, 310 Virginia Ave., Seaford, Delaware. The hearing record will remain open until 4:30 p.m., September 18, 1998. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242. All written comments must be received by 4:30 p.m., September 18, 1998. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Betty Turner, (302-739-4590; facsimile: (302) 739-6140; email:

bturner@state.de.us) by 4:30 p.m., September 8, 1998.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 29 South State Street, Dover, DE 19901, (302) 739-4590, facsimile: (302) 739-6140.

## Prepared By:

John Schneider, Watershed Assessment Section, 739-4590

## Total Maximum Daily Load (TMDL) for Nanticoke River and Broad Creek, Delaware

### A. INTRODUCTION and BACKGROUND

Intensive water quality monitoring performed by the Department of Natural Resources and Environmental Control (DNREC) and studies performed by others have shown that the Nanticoke River and Broad Creek are highly enriched with the nutrients nitrogen and phosphorus. Although nutrients are essential elements for both plants and animals, their presence in excessive amounts cause undesirable conditions. Symptoms of nutrient enrichment in the Nanticoke River and Broad Creek have included frequent phytoplankton blooms and large daily swings in dissolved oxygen levels. These symptoms threaten the future of the Nanticoke River Subbasin - very significant natural, ecological, and recreational resources of the State.

A reduction in the amount of nitrogen and phosphorous reaching the Nanticoke River and Broad Creek is necessary to reverse the undesirable effects. These nutrients enter the rivers from point sources and nonpoint sources. Point sources of nutrients are end-of-pipe discharges coming from municipal and industrial wastewater treatment plants and other industrial uses. Nonpoint sources of nutrients include runoff from agricultural and urban areas, seepage from septic tanks, and ground water discharges.

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 of concern. 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 the Nanticoke River and Broad Creek on

the State's 1996 and 1998 303(d) Lists and proposes the following Total Maximum Daily Load regulation for nitrogen and phosphorous.

### B. Total Maximum Daily Loads (TMDLs) Regulation for the Nanticoke River and Broad Creek, Delaware

Article 1. Biological Nutrient Removal (BNR), or equivalent, processes shall be employed in three large municipal wastewater treatment plants in the Nanticoke River and Broad Creek Sub-basin. These three facilities include Seaford Sewage Treatment Plant, Bridgeville Sewage Treatment Plant, and Laurel Sewage Treatment Plant. This shall result in reducing nitrogen load from these three facilities from the current permitted load of 199 kilograms per day (439 pounds per day) to 100 kilograms per day (221 pounds per day). Reduction of phosphorous loads from these three facilities will be from the current permitted load of 33 kilograms per day (73 pounds per day) to 25 kilograms per day (55 pounds per day).

Article 2. For the remaining wastewater treatment plants in the watershed, discharge of nitrogen and phosphorous loads shall be capped at their current permitted loads. These loads are 568 kilograms per day (1252 pounds per day) of nitrogen and 1.0 kilograms per day (2.2 pounds per day) of phosphorous.

Article 3. The nonpoint source nitrogen load to the Nanticoke River and Broad Creek shall be reduced by 30 percent (from the 1992 base-line). This shall result in reduction of nitrogen loads during a normal rainfall year from 2274 kilograms per day (5013 pounds per day) to 1723 kilograms per day (3799 pounds per day).

Article 4. The nonpoint source phosphorus load to the Nanticoke River and Broad Creek shall be reduced by 50 percent (from the 1992 base-line). This shall result in reduction of phosphorous loads during a normal rainfall year from 54 kilograms per day (119 pounds per day) to 36 kilograms per day (79 pounds per day).

Article 5. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 4, DNREC has determined that, with an adequate margin of safety, water quality standards will be met in the Nanticoke River and Broad Creek.

Article 6. 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 Department's ongoing Whole basin management Program and the affected public.

Commissioners' Long Term Care Model Regulation.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, August 14, 1998 and should be addressed to Fred A. Townsend, 111, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 157 or 800.282.8611 no later than Friday, August 14, 1998.

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**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 7107 (18 Del.C. 7107)

REGULATION 63

INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS hereby gives notice that a PUBLIC HEARING will be held on Friday, August 21, 1998 at 10:00 a.m. in the 2nd Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

LONG-TERM CARE INSURANCE REGULATION

Adopted: July 30, 1990  
Amended: December 23, 1996  
Amended:

The purpose of the Hearing is to solicit comments from the industry, the agent community, and the general public on the agent community's request to strike the cap on agent commissions from **Insurance Department Regulation 63**, Section 24 relating to long term care insurance policies, which reads as follows:

Table of Contents:

“Section 24. Permitted compensation arrangements

- A. An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a longterm care insurance policy or certificate which shall not exceed twentyfive percent (25%) of the total premium paid for that policy year.
- B. No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than twenty-five percent (25%) of the total premium paid for that policy year for the sale of a replacement long-term care insurance policy or certificate.
- C. For purposes of this section, “compensation” includes pecuniary or non-pecuniary remuneration or any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.”

- 1. Purpose
- 2. Authority
- 3. Applicability and scope
- 4. Definitions
- 5. Policy definitions
- 6. Policy practices and provisions
- 7. Required disclosure provisions
- 8. Unintentional Lapse
- 8 9. Prohibition against post-claims underwriting
- 9 10. Minimum standards for home health and community care benefits in long-term care insurance policies
- +0 11. Requirement to offer inflation protection
- +1 12. Requirements for replacement
- +2 13. Reporting requirements and report of lapsed policies
- +3 14. Licensing
- +4 15. Discretionary powers of Commissioner
- +5 16. Reserve standards
- +6 17. Loss ratio standards
- +7 18. Filing requirement
- +8 19. Standard format outline of coverage
- +9 20. Filing requirements for advertising
- 20 21. Standards for marketing
- 21 22. Suitability
- 22 23. Standards for benefit triggers
- 23 24. Prohibition against pre-existing conditions and probationary waiting periods in replacement policies or certificates
- 22 25. Requirement to deliver shopper's guide

and to consider numerous consumer protection provisions contained in the National Association of Insurance

23 26. Requirement to offer nonforfeiture benefit

24 27. Permitted compensation arrangements

25 28. Penalties

26 29. Separability

27 30. Effective Date

Appendix A. Rescission reporting form

Appendix B. Long-Term Care Insurance Personal Worksheet

Appendix C. "Things You Should Know Before You Buy Long-Term Care Insurance"

Appendix D. Long-Term Care Insurance Suitability Letter

## Section 1. Purpose

The purpose of this regulation is to implement 18 Del. C., Chapter 71, to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

## Section 2. Authority

This regulation is issued pursuant to the authority vested in the Commissioner under 18 Del. C. Sec. 314.

## Section 3. Applicability and scope

Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies and certificates delivered or issued for delivery in this state on or after the effective date hereof, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

## Section 4. Definitions

For the purpose of this regulation, the terms "Department," "long-term care insurance," "Commissioner," "applicant," "policy" and "certificate" shall have the meanings set forth in 18 Del. C. Sections 102 and 7103.

## Section 5. Policy definitions

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, or terms of like or similar meaning, unless the terms are defined in the policy and the definitions satisfy the following requirements:

A. "Activities of daily living" means at least bathing, continence, dressing, eating, toileting and transferring.

A B. "Acute Condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain their health status.

B C. "Adult day care" means a program for six (6) or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

D. "Chronically ill" means any individual who has been certified by a Licensed Health Care Practitioner as being unable to perform, without assistance from another individual, at least two activities of daily living for a period of at least ninety (90) days; or who requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

E. "Cognitive impairment" means a deficiency in a person's short-term or long-term memory, orientation as to person, place, and time, deductive reasoning, or judgment.

E F. "Home health care services" means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.

Ð G. "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

E H. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

F I. "Personal care" means the provision of hands-on services to assist an individual with activities of daily living (such as bathing, eating, dressing, transferring and toileting).

G J. "Preexisting Conditions" shall be defined in accordance with 18 Del. C. Sec. 7105 (C).

K. "Qualified Long-Term Care Insurance Policy" means a policy that provides coverage for qualified long-term care services that is intended to meet the requirements of § 7702B(b) of the Internal Revenue Code of 1986, as amended.



L. “Qualified Long-Term Care Services” means necessary diagnostic, preventive therapeutic, curing, treating, mitigating and rehabilitative services and Maintenance or Personal Care Services which are required by a Chronically Ill Individual and are provided pursuant to a Plan of Care prescribed by a Licensed Health Care Practitioner.

H.M. “Skilled nursing care,” “intermediate care,” “personal care,” “home care,” and other services shall be defined in relation to the level of skill required, nature of the care and the setting in which care must be delivered.

F.N. All providers of services, including but not limited to “skilled nursing facility,” “extended care facility,” “intermediate care facility,” “convalescent nursing home,” “personal care facility,” and “home care agency” shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Section 6. Policy practices and provisions

A. Renewability. The terms “guaranteed renewable” and “noncancellable” shall not be used in any individual long-term care insurance policy without providing further explanatory language in accordance with the disclosure requirements of Section 7 of this regulation.

(1) No such policy issued to an individual shall contain renewal provisions less favorable to the insured than “guaranteed renewable.” However, the Commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the Commissioner, to best protect the interests of the insureds, if the insurer demonstrates: That renewal will jeopardize the insurer’s solvency.

(2) The term “guaranteed renewable” may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, during which period the insurer has no unilateral right to make any change in any provision of the policy or rider, and cannot decline to renew and cannot revise rates except on a class basis in accordance with subsection 4 below. This cost disclosure must be approved by the Commissioner and included in any solicitation and also prominently displayed on the initial policy.

(3) Every long-term care insurance policy or certificate issued or delivered in this State must be “guaranteed renewable” as defined in subsection 2 above, and contain a cost disclosure section as defined subsection 4 below.

(4)(a) The following cost disclosure information shall appear in bold print on the cover page of every individual policy and Outline of Coverage issued or delivered in this state: “This policy provides only the following price protection, and no more. Your premiums may not increase

by more than X% during any given calendar year and your benefits may not decrease. Any representations that these increases will not take place are unauthorized and shall not be relied upon.”

(b) The following cost disclosure information shall appear in bold print on the cover page of every certificate and Outline of Coverage issued or delivered in this state: “This policy provides only the following price protection, and no more. Your premiums are guaranteed to remain the same for the first three(3) years this policy is in force. Your premiums may not increase by more than X% during any three year rating period. Insurers will be allowed a carry forward of the initially disclosed maximum premium increase, but said carry forward is lost within twenty-four (24) months if not utilized.” Any additional language that appears under the cost disclosure section must be approved in advance by the Delaware Insurance Department. The purpose of this cost disclosure section is twofold: first, to make crystal clear to the purchaser what the maximum cost will be from year to year, and second, to prohibit the practice of low pricing during the early years of a policy followed by dramatic increases designed to produce a high ratio of cancellations when the group insured reaches that age at which its members are more likely to file claims. Therefore, this section does not permit annual increases to be accumulated and applied all at once. For example, if the price is \$100 in the initial year of the policy and 10% is the represented annual maximum increase, then during the second year of the policy, the maximum allowable price is \$110, the third year of the policy the maximum allowable price is not more than 110% of the price actually charges during year two of the policy. It is not permissible to charge \$121 during the third year of the policy unless \$110 had actually been charged during year two of the policy. In other words, any permitted annual price increase not implemented during a calendar year is thereafter waived and may not be considered in calculating future prices.

B. Limitations and Exclusions. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

- (1) Preexisting conditions;
- (2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer’s Disease;
- (3) Alcoholism and drug addiction;
- (4) Illness, treatment or medical condition arising out of:
  - (a) War or act of war (whether declared or undeclared);
  - (b) Participation in a felony, riot or insurrection;
  - (c) Service in the armed forces or units auxiliary thereto;
  - (d) Suicide (sane or insane), attempted suicide or

intentionally self-inflicted injury; or

(e) Aviation (this exclusion applies only to non-fare-paying passengers).

(5) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

(6) No territorial limitations will be permitted, except that nothing herein shall preclude limiting benefits for specific services to a specific dollar amount, or to that dollar amount which is reasonable and prevailing in a particular geographic area which is defined and clearly delineated in the original offering or solicitation and the initial policy or certificate, or to specific providers within a particular geographic area. Moreover, nothing herein shall prohibit the limitation of services to a particular geographic area when the insured elects to receive services within that specific geographical area. For purposes of this clause, the location of receipt of services must be within 50 miles of the domicile of the insured at the time of entry therein or that area, including the nearest three nursing homes, whichever distance is greater.

C. Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization which began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or Conversion.

(1) Group long-term care insurance issued in this state on or after the effective date of this section shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits under the existing policy. The Commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-

managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(4) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made.

Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the Commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity. When the policyholder or certificate holder is no longer in the geographical area of the provider system or available services, the insurer must calculate the financial worth of the group policy and make a cash contribution toward the purchase of any health insurance policy the policyholder may select.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer no later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) The terminating coverage is replaced no later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:

(i) Providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) The premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this section.

(8) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(10) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this section: a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

#### E. Discontinuance and Replacement.

If a group long-term care insurance policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and the premiums charged under the new group policy:

(1) Shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced; and

(2) Shall not vary or otherwise depend on the individual's health or disability status, claim experience or use of long-term care services.

F. The premiums charged to an insured for long-term care insurance shall not increase due to either: (1) The increasing age of the insured at ages beyond sixty-five (65); or (2) The duration the insured has been covered under the policy.

#### G. Electronic Enrollment for Group Policies

(1) In the case of a group defined in 18 Del. C. § 7103(4) a. any requirement that a signature of an insured be obtained by an agent or insurer shall be deemed satisfied if:

(a) The consent is obtained by telephonic or electronic enrollment by the group policyholder or insurer. A verification of enrollment information shall be provided to the enrollee;

(b) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure the accuracy, retention and prompt retrieval of records; and

(c) The telephonic or electronic enrollment provides necessary and reasonable safeguards to assure that the confidentiality of individually identifiable information is maintained.

(2) The insurer shall make available, upon request of the Commissioner, records that will demonstrate the insurer's ability to confirm enrollment and coverage amounts.

#### Section 7. Required disclosure provisions

A. **Renewability.** Individual long-term care insurance policies shall contain a renewability provision consistent herewith. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed, subject to Section 6., paragraph A.(1) hereof. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

B. **Riders and Endorsements.** Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or cover-age with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by

law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.

C. **Payment of Benefits.** A long-term care insurance policy which provides for the payment of benefits based on standards described as “usual and customary”, “reasonable and customary”, “reasonable and prevailing”, or words of similar import shall include a definition of such terms and an explanation of such terms in its outline of coverage.

D. **Limitations.** If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as “Preexisting Condition Limitations.”

E. **Other Limitations or Conditions on Eligibility for Benefits.** A long-term care insurance policy or certificate containing any limitations or conditions for eligibility, except in accordance with 18 Del. C. Section 7105, shall set forth a description of such limitations or conditions, including any required number of days or confinement, in a separate paragraph of the policy or certificate and shall label such paragraph “Limitations or Conditions of Eligibility for Benefits.”

F. **Disclosure of Tax Consequences.**

(1) With regard to life insurance policies which provide an accelerated benefit for long-term care, a disclosure statement is required at the time of application for the policy or rider and at the time the accelerated benefit payment request is submitted that receipt of these accelerated benefits may be taxable, and that assistance should be sought from a personal tax advisor. The disclosure statement shall be prominently displayed on the first page of the policy or rider and any other related documents.

(2) With regard to qualified long-term care insurance policies a disclosure statement shall appear in bold print on the face of the policy and outline of coverage indicating the policy is intended to be a qualified long-term care policy under Section 7702B(b) of the Internal Revenue Code of 1996.

G. **Benefit Triggers.** Activities of daily living and cognitive impairment shall be used to measure an insured’s need for long term care and shall be described in the policy or certificate in a separate paragraph and shall be labeled “Eligibility for the Payment of Benefits.” Any additional benefit triggers shall also be explained in this section. If these triggers differ for different benefits, explanation of the trigger shall accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this

too shall be specified.

## Section 8. Unintentional Lapse

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following:

(1)a. Notice before lapse or termination. No individual long-term care policy or certificate shall be issued until the insurer has received from the applicant either a written designation of at least one person, in addition to the applicant, who is to receive notice of lapse or termination of the policy or certificate for nonpayment of premium, or a written waiver dated and signed by the applicant electing not to designate additional persons to receive notice. The applicant has the right to designate at least one person who is to receive the notice of termination, in addition to the insured. Designation shall not constitute acceptance of any liability on the third party for services provided to the insured. The form used for the written designation must provide space clearly designated for listing at least one person. The designation shall include each person’s full name and home address. In the case of an applicant who elects not to designate an additional person, the waiver shall state: “Protection against unintended lapse. I understand that I have the right to designate at least one person other than myself to receive notice of lapse or termination of this long-term care insurance policy for nonpayment of premium. I understand that notice will not be given until thirty (30) days after a premium is due and unpaid. I elect NOT to designate a person to receive this notice.”

The insurer shall notify the insured of the right to change this written designation, no less often than once every two (2) years.

b. When the policyholder or certificateholder pays premium for a long-term care insurance policy or certificate through a payroll or pension deduction plan, the requirements contained in Subsection (1)a. need not be met until sixty (60) days after the policyholder or certificateholder is no longer on such a payment plan. The application or enrollment form for such policies or certificates shall clearly indicate the payment plan selected by the applicant.

c. Lapse or termination for nonpayment of premium. No individual long-term care policy or certificate shall lapse or be terminated for nonpayment of premium unless the insurer, at least thirty (30) days before the effective date of the lapse or termination, has given notice to the insured and to those persons designated pursuant to Subsection (1)a., at the address provided by the insured for purposes of receiving notice of lapse or termination. Notice shall be given by first class United States mail, postage prepaid; and notice may not be given until thirty (30) days after a premium is due and unpaid. Notice shall be deemed to have been given as of five (5) days after the date of mailing.

2. Reinstatement. In addition to the requirement in

Subsection (1), a long-term care insurance policy or certificate shall include a provision that provides for reinstatement of coverage, in the event of lapse if the insurer is provided proof that the policyholder or certificateholder was cognitively impaired or had a loss of functional capacity before the grace period contained in the policy expired. This option shall be available to the insured if requested within five (5) months after termination and shall allow for the collection of past due premium, where appropriate. The standard of proof of cognitive impairment or loss of functional capacity shall not be more stringent than the benefit eligibility criteria on cognitive impairment or the loss of functional capacity contained in the policy and certificate.]

Section 8 9. Prohibition against post-claims underwriting

A. All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

B.(1) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(2) If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

(1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate: Caution: If your answers on this application are incorrect or untrue [company] has the right to deny benefits or rescind your policy.

(2) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery: Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

(3) Prior to issuance of a long-term care insurance policy or certificate to an applicant age eighty (80) or older, the

insurer shall obtain one of the following:

- (a) A report of a physical examination,
- (b) An assessment of functional capacity,
- (c) An attending physician's statement, or
- (d) Copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish this information to the Insurance Commissioner in the form prescribed by the National Association of Insurance Commissioners.

Section 9 10. Minimum standards for home health and community care benefits in long-term care insurance policies

A. A long-term care insurance policy or certificate shall not, if it provides benefits for home health or community care services, limit or exclude benefits;

(1) By requiring that the insured/claimant would need skilled care in a skilled nursing facility if home health care services were not provided.

(2) By requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home, community or institutional setting before home health care services are covered.

(3) By limiting eligible services to services provided by registered nurses or licensed practical nurses.

(4) By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification.

(5) By excluding coverage for personal care services provided by a home health aide;

(6) By requiring that the provision of home health care services be at a level of certification or licensure greater than that required by the eligible service;

(7) By requiring that the insured/claimant have an acute condition before home health care services are covered.

(8) By limiting benefits to services provided by Medicare-certified agencies or providers;

(9) By excluding coverage for adult day care services.

B. A long-term care insurance policy or certificate, if it provides for home health or community care services, shall provide total home health or community care coverage that is a dollar amount equivalent to at least one-half of one year's

coverage available for nursing home benefits under the policy or certificate. This requirement shall not apply to policies or certificates issued to residents of continuing care retirement communities.

C. Home health care coverage may be applied to non-home health care benefits provided in the policy or certificate when determining the maximum coverage under the terms of the policy or certificate.

#### Section ~~10~~ 11. Requirement to offer inflation protection

A. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

(1) Increases benefit levels annually in a manner so that the increases are compounded annually at a rate not less than five percent (5%);

(2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined. The amount of additional benefit shall be no less than the difference between the existing policy benefit and that benefit compounded annually at a rate of at least five percent (5%) for the period beginning with the purchase of the existing benefit and extended until the year in which the offer is made; or

(3) Covers a specific percentage of actual or reasonable charges and does not include a maximum specified indemnity amount of limit.

B. Where the policy is issued to a group, the required offer in Subsection A above shall be made to the group policyholder; except, if the policy is issued to a group defined in 18 Del. C., Section 7103.(4), other than to a continuing care retirement community, the offering shall be made to each proposed certificate holder.

C. The offer in Subsection A above shall not be required of life insurance policies or riders containing accelerated long-term care benefits.

D. Insurers shall include the following information in or with the outline of coverage:

(1) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period.

(2) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

E. Inflation protection benefit increases under a policy which contains such benefits shall continue without regard to an insured's age, claim status or claim history, or the length of time the person has been insured under the policy.

F. An offer of inflation protection which provides for automatic benefit increases shall include an offer of a premium which the insurer expects to remain constant. Such offer shall disclose in a conspicuous manner that the premium may change in the future unless the premium is guaranteed to remain constant.

G.(1) Inflation protection as provided in subsection A(1) of this section shall be included in a long-term care insurance policy unless an insurer obtains a rejection of inflation protection signed by the policyholder as required in this subsection.

(2) The rejection shall be considered part of the application and shall state:

I have reviewed the outline of coverage and the graphs that compare the benefits and premiums of this policy with and without inflation protection. Specifically, I have reviewed Plans ----- and I reject inflation protection.

#### Section ~~11~~ 12. Requirements for replacement

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and the agent, except where the coverage is sold without an agent, containing such questions may be used. With regard to a replacement policy issued to a group defined in 18 Del. C., 7103 (4), the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement.

(1) Do you have another long-term care insurance policy or certificate in force (including health care services contract, health maintenance organization contract)?

(2) Did you have another long-term care insurance policy or certificate in force during the last twelve (12) months?

(a) If so, with which company?

(b) If that policy lapsed, when did it lapse?

(3) Are you covered by Medicaid?

(4) Do you intend to replace any of your medical or health insurance with this policy {certificate}?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the last five (5) years which are no longer in force.

C. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care insurance is a wise decision.

**STATEMENT TO APPLICANT BY AGENT [BROKER OR OTHER REPRESENTATIVE]:**

(Use additional sheets, as necessary).

I have reviewed your current medical or health insurance coverage. I believe the replacement of insurance involved in this transaction materially improves your position. My conclusion has taken into account the following considerations, which I call to your attention:

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny and future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Agent's Signature)

The above "Notice to the Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

D. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide,

without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

You should review this new coverage carefully, comparing it with all accident and sickness or long-term care insurance coverage you now have, and terminate your present policy only if, after due consideration, you find that purchase of this long-term care coverage is a wise decision.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new pre-existing conditions or probationary periods.

3. If you are replacing existing long-term care insurance coverage, you may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.

4. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within (30) thirty days if any information is not correct and complete, or if any past medical history has been left out of the application.

-----  
(Company Name)

E. Where replacement is intended, the replacing insurer shall notify, in writing, the existing insurer of the proposed replacement. The existing policy shall be identified by the name of the insurer, name of the insured and policy number or address including zip code. Such notice shall be made within five (5) working days from the date the application is received by the insurer or the date the policy is issued, whichever is sooner.

Section ~~12~~ 13. Replacement requirements

A. Every insurer shall maintain records for each Delaware-licensed agent of that agent's amount of replacement sales as a percentage of the agent's total annual sales and the amount

of lapses of long-term care insurance policies sold by the agent as a percent of the agent's total annual sales.

B. Each insurer shall report annually by June 30 the ten precedent (10%) of its Delaware-licensed agents with the greatest percentages of lapses and replacements as measured by subsection A. above.

C. Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely agent activities regarding the sale of long-term care insurance.

D. Every entity providing long-term care insurance in this state shall file annually as an attachment to its annual statement an exhibit that discloses the total number of long-term care insurance policies, by form number, in force in this state and the total number of policies, by form number, that have lapsed over the previous five years. Companies must provide in-force policy and lapsed policy information in the following manner:

POLICY FORM # \_\_\_\_\_

SOLD	LAPSED	LAPSED	LAPSED	LAPSED	LAPSED	TOTAL
1985	1985	1986	1987	1988	1989	
100	6	21	11	32	14	84
1986		1986	1987	1988	1989	
100		6	11	21	32	70
1987			1987	1988	1989	
100			6	21	28	50
1988				1988	1989	
100				6	14	20
1989					1989	
100					6	6

E. Every insurer shall report, annually by June 30 the number of replacement policies sold as a percentage of its total annual sales and as a percentage of its total number of policies in force as of the preceding calendar year.

F. For purposes of this section, "policy" shall mean only long-term care insurance and "report" shall mean on a statewide basis.

Section ~~13~~ 14. Licensing

No agent is authorized to market, sell, solicit or otherwise contact any person for the purpose of marketing long-term care insurance unless the agent has demonstrated his or her knowledge of long-term care insurance and the appropriateness of such insurance by passing a test required by this state and maintaining appropriate licenses. ~~For purposes of this section:~~



A. ~~The examination for licensure as a health insurance agent or broker shall be expanded to include a minimum of at least ten (10) questions in the area of long-term care insurance. Agents shall comply with the licensing provisions contained in 18 Del. C. §§ 1716(a)(4) and 1725(a) relating to lines of authority and examinations, respectively.~~

B. ~~To continue to sell long-term care insurance policies or certificates, agents and broker shall be required -- in addition to current annual Continuing Education Unit requirements -- to successfully complete an additional three (3) hours of long-term care insurance-specific Continuing Education coursework, to be administered by the Delaware Insurance Department.~~

€ B. Insurers shall submit to the Delaware Insurance Department, no later than May 1 of each year, a complete list of every Delaware-licensed agent or broker who sold a long-term care insurance policy or certificate during the previous calendar year.

#### Section ~~14~~ 15. Discretionary powers of Commissioner

The Commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

A. The modification or suspension would be in the best interest of the insureds; and

B. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and

C. (1) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or

(2) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonable related to the special needs or nature of such a community; or

(3) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

#### Section ~~15~~ 16. Reserve standards

A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with 18 Del. C. Sec. 1113.

Claim reserves must also be established in the case when such policy or rider is in claim status. Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term benefit. In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

- (1) Definition of insured events;
- (2) Covered long-term care facilities;
- (3) Existence of home convalescence coverage;
- (4) Definition of facilities;
- (5) Existence or absence of barriers to eligibility;
- (6) Premium waiver provision;
- (7) Renewability;
- (8) Ability to raise premiums;
- (9) Marketing method;
- (10) Underwriting procedures;
- (11) Claims adjustment procedures;
- (12) Waiting period;
- (13) Maximum benefit;
- (14) Availability of eligible facilities;
- (15) Margins in claim costs;
- (16) Optional nature of benefit;
- (17) Delay in eligibility for benefit;
- (18) Inflation protection provisions; and
- (19) Guaranteed insurability options.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

B. When long-term care benefits are provided other than as in Subsection A above, reserves shall be determined in accordance with 18 Del. C. Sec. 1108.

#### Section ~~16~~ 17. Loss ratio

A. Benefits under individual long-term care insurance policies and group policies with fewer than 250 insureds shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. Long-term care benefits provided

through the acceleration of the death benefit under a life insurance policy or annuity, where the charge or the premium for the acceleration benefit is identifiable and where the payment of such long-term care benefits cannot result in the decrease of the total amount of benefits payable under the policy (i.e., long-term care benefits plus balance payable upon death), shall be exempt from this section. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- A. Statistical credibility of incurred claims experience and earned premiums;
- B. The period for which rates are computed to provide coverage;
- C. Experienced and projected trends;
- D. Concentration of experience within early policy duration;
- E. Expected claim fluctuation;
- F. Experience refunds, adjustments or dividends;
- G. Renewability features;
- H. All appropriate expense factors;
- I. Interest;
- J. Experimental nature of this coverage;
- K. Policy reserves;
- L. Mix of business by risk classification; and
- M. Product features such as long elimination periods, high deductibles and high maximum limits.

B. Every entity providing long-term care insurance in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by number of years of policy duration demonstrating that it is in compliance with the foregoing applicable loss ratio standards and that the period for which the policy is rated is reasonable in accordance with accepted actuarial principles and experience.

For purposes of this section, policy forms shall be deemed to comply the loss ratio standards if:

- (i) for the most recent year, the ratio of the incurred losses to earned premiums for policies or certificates which have been in force for three years or more is greater than or equal to the applicable percentages contained in this section; and
- (ii) the expected losses in relation to premiums over the entire period for which the policy is rated comply with the requirements of this section. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years.

#### Section 47 18. Filing requirement

Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to 18

Del. C. Section 7104 it shall file with the Commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

#### Section 48 19. Standard format outline of coverage

This section of the regulation implements, interprets and makes specific, the provisions of 18 Del. C. Section 7105, in prescribing a standard format and the content of an outline of coverage.

- A. The outline of coverage shall be a free-standing document, using no smaller than ten point type.
- B. The outline of coverage shall contain no material of an advertising nature.
- C. Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.
- D. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
- E. Format for outline of coverage;

[COMPANY NAME]  
 [ADDRESS - CITY & STATE]  
 [TELEPHONE NUMBER]  
 LONG-TERM CARE INSURANCE  
 OUTLINE OF COVERAGE  
 [Policy Number or Group Master Policy and Certificate Number]

[Except for polices or certificates which are guaranteed issue, the following cautionary statement, or language substantially similar, must appear on the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when your applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address].

- 1. This policy is [an individual policy of insurance] ([a group policy] which was issued in the [indicate jurisdiction in which

group policy was issued]).

2. **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you.

This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you **READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!**

3. **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.**

(a) [Provide a brief description of the right to return--"free look" provision of the policy.]

(b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

4. **THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide provided by the insurance company.

(a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.

(b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.

5. **LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance]

requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. **BENEFITS PROVIDED BY THIS POLICY.**

(a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]

(b) [Institutional benefits, by skill level.]

(c) [Non-institutional benefits, by skill level.]

[Any benefit ~~screens~~ triggers must be explained in this section. If these ~~screens~~ triggers differ for different benefits, explanation of the ~~screen~~ trigger should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities -of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or ~~screens~~ triggers must be explained.]

(d) Activities of daily living and cognitive impairment shall be used to measure an insured's need for long-term care and must be defined and described as part of the outline of coverage.

7. **LIMITATIONS AND EXCLUSIONS.**

[Describe:

(a) Preexisting conditions;

(b) Non-eligible facilities/provider;

(c) Non-eligible levels of care (e.g., unlicensed providers, care of treatment provided by a family member, etc.);

(d) Exclusions/exceptions;

(e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

**THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.**

8. **RELATIONSHIP OF COST OF CARE AND BENEFITS.** Because the costs of long-term care services will likely increase over time, you should consider whether

and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not only by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

## 9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

- (a) Describe the policy renewability provisions;
- (b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;
- (c) Describe waiver of premium provisions or state that there are not such provisions;
- (d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.

## 10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]

## 11. PREMIUM.

- [(a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which

corresponds to each benefit option.]

## 12. ADDITIONAL FEATURES.

- [(a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

## Section ~~19~~ 20. Filing requirements for advertising

Prior to use, every insurer, health care service plan or other entity providing long-term care insurance in this State shall provide a copy of any long-term care insurance advertisement intended for use in this State whether through written, radio or television medium to the Insurance Commissioner of the State Delaware for review and approval by the Commissioner.

## Section ~~20~~ 21. Standards for marketing

A. Every insurer, health care service plan or other entity marketing long-term care insurance coverage in this state, directly or through its producers, shall:

- (1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.
- (2) Establish marketing procedures to assure excessive insurance is not sold or issued.
- (3) Display prominently by type, stamp or other appropriate means, on the first page of the outline of coverage and policy, the following: "Notice to Buyer: This policy may not cover all of the costs associated with long-term care incurred by the buyer during the period of coverage. The buyer is advised to review carefully all policy limitations."
- (4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for long-term care insurance already has accident and sickness or long-term care insurance and the types and amounts of any such insurance.
- (5) Every insurer or entity marketing long-term care insurance shall establish auditable procedures for verifying compliance with this subsection~A.
- (6) If the state of Delaware is the state in which the policy or certificate is delivered or issued for delivery, the insurer shall, at solicitation, provide written notice to the prospective policyholder or certificate holder that the ~~Senior Outreach Advisory Resource Program (SOAR) Elderinfo Program~~, a senior counseling program approved by the Commissioner, is available and the name, address and telephone number of the ~~SOAR Elderinfo~~ Program.

B. In addition to the practices prohibited in 18 Del. C., Chapter 23, Unfair Trade Practices, the following acts and practices are prohibited:

- (1) Twisting. Knowingly making any misleading

representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High Pressure Tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

#### Section 22. Suitability

A. This section shall not apply to life insurance policies that accelerate benefits for long-term care.

B. Every insurer, health care service plan or other entity marketing long-term care insurance ("insurer") shall:

(1) Develop and use suitability standards to determine whether the purchase or replacement of long-term care insurance is appropriate for the needs of the applicant;

(2) Train its agents in the use of its suitability standards; and

(3) Maintain a copy of its suitability standards and make them available for inspection upon request by the Commissioner.

C. (1) To determine whether the applicant meets the standards developed by the insurer, the agent and insurer shall develop procedures that take the following into consideration:

(a) The ability to pay for the proposed coverage and other pertinent financial information related to the purchase of the coverage;

(b) The applicant's goals or needs with respect to long-term care and the advantages and disadvantages of insurance to meet these goals or needs; and

(c) The values, benefits and costs of the applicant's existing insurance, if any, when compared to the values, benefits and costs of the recommended purchase or replacement.

(2) The insurer, and where an agent is involved, the agent shall make reasonable efforts to obtain the information set out in Paragraph (1) above. The efforts shall include presentation to the applicant, at or prior to application, the "Long-Term Care Insurance Personal Worksheet." The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than twelve (12) point type. The

insurer may request the applicant to provide additional information to comply with its suitability standards. A copy of the insurer's personal worksheet shall be filed with the Commissioner.

(3) A completed personal worksheet shall be returned to the insurer prior to the insurer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

(4) The sale or dissemination outside the company or agency by the issuer or agent of information obtained through the personal worksheet in Appendix B is prohibited.

D. The insurer shall use the suitability standards it has developed pursuant to this section in determining whether issuing long-term care insurance coverage to an applicant is appropriate.

E. Agents shall use the suitability standards developed by the insurer in marketing long-term care insurance.

F. At the same time as the personal worksheet is provided to the applicant, the disclosure form entitled "Things You Should Know Before You Buy Long-Term Care Insurance" shall be provided. The form shall be in the format contained in Appendix C, in not less than twelve (12) point type.

G. If the issuer determines that the applicant does not meet its financial suitability standards, or if the applicant has declined to provide the information, the issuer may reject the application. In the alternative, the issuer shall send the applicant a letter similar to Appendix D. However, if the applicant has declined to provide financial information, the issuer may use some other method to verify the applicant's intent. Either the applicant's returned letter or a record of the alternative method of verification shall be made part of the applicant's file.

H. The insurer shall report annually to the Commissioner the total number of applications received from residents of this state, the number of those who declined to provide information on the personal worksheet, the number of applicants who did not meet the suitability standards, and the number of those who chose to confirm after receiving a suitability letter.

#### Section 23. Standards for Benefit Triggers

A. A long-term care insurance policy shall condition the payment of benefits on a determination of the insured's ability to perform activities of daily living and on cognitive impairment. Eligibility for the payment of benefits shall not be more restrictive than requiring either a deficiency in the ability to perform not more than three (3) of the activities of daily living or the presence of cognitive impairment.

B. (1) Activities of daily living shall include at least the following as defined in Section 5 and in the policy:

- (a) Bathing;
- (b) Continence;
- (c) Dressing;
- (d) Eating;
- (e) Toileting; and
- (f) Transferring;

(2) Insurers may use activities of daily living to trigger covered benefits in addition to those contained in Paragraph (1) as long as they are defined in the policy.

C. An insurer may use additional provisions for the determination of when benefits are payable under a policy or certificate; however the provisions shall not restrict, and are not in lieu of, the requirements contained in Subsections A and B.

D. For purposes of this section the determination of a deficiency shall not be more restrictive than:

- (1) Requiring the hands-on assistance of another person to perform the prescribed activities of daily living; or
- (2) If the deficiency is due to the presence of a cognitive impairment, supervision or verbal cueing by another person is needed in order to protect the insured or others.

E. Assessments of activities of daily living and cognitive impairment shall be performed by licensed or certified professionals, such as physicians, nurses or social workers.

F. Long term care insurance policies shall include a clear description of the process for appealing and resolving benefit determinations.

G. The requirements set forth in this section shall be effective (12 months after adoption of this provision) and shall apply as follows:

- (1) Except as provided in Paragraph (2), the provisions of this section apply to a long-term care policy issued in this state on or after the effective date of the amended regulation.
- (2) For certificates issued on or after the effective date of this section, under a group long-term care insurance policy as defined in 18 Del. C. § 7103(4)a. effective, the provisions of this section shall not apply.

~~Section 24~~ 24. Prohibition against pre-existing conditions and probationary periods in replacement policies or certificates

If a long-term care insurance policy or certificate replaces another long-term care insurance policy or certificate, the replacing insurer shall waive any time periods applicable to pre-existing conditions and probationary periods in the new long-term care insurance policy or certificate to the extent that similar exclusions have been satisfied under the original

policy.

~~Section 25~~ 25. Requirement to deliver shopper's guide

A. A long-term care insurance shopper's guide in the format developed by the National Association of Insurance Commissioners, or one developed or approved by the Commissioner, shall be provided to all prospective applicants of a long-term care insurance policy or certificate.

(1) In the case of agent solicitations, an agent must deliver the shopper's guide prior to the presentation of an application or enrollment form.

(2) In the case of direct response solicitations, the shopper's guide must be presented in conjunction with any application or enrollment form.

B. Life insurance policies or riders containing accelerated long-term care benefits are not required to furnish the above-referenced guide, but shall furnish the policy summary required under 18 Del. C., Section 7105 (j).

~~Section 26~~ 26. Requirement to offer nonforfeiture benefit

A. No policy or certificate may be delivered or issued for delivery in this state unless the insurer also offers to the policyholder or certificateholder the option to purchase a policy that provides for nonforfeiture benefits to the defaulting or lapsing policyholder or certificateholder.

This section does not apply to life insurance policies or riders containing accelerated long-term care benefits.

(1) For purpose of this section, attained age rating is defined as a schedule of premiums starting from the issue date which increases with increasing age at least one percent per year to age fifty (50), and at least three percent (3%) per year beyond age fifty (50).

(2) For purposes of this section, the nonforfeiture benefit shall be a shortened benefit period providing paid-up long-term care insurance coverage after lapse. The same benefits (amounts and frequency in effect at the time of lapse but not increased thereafter) will be payable for a qualifying claim, but the lifetime maximum dollars or days of benefit shall be determined as specified in Paragraph (3).

(3) The standard nonforfeiture credit will be equal to 100 percent of the sum of all premiums paid, including the premiums paid prior to any changes in benefits. The insurer may offer additional shortened benefit period options, as long as the benefits for each duration equal or exceed the standard nonforfeiture credit for that duration. However, the minimum nonforfeiture credit shall not be less than thirty (30) times the daily nursing home benefit at the time of lapse. In either event, the calculation of the nonforfeiture credit is subject to the limitation of Subsection B.

(4) No policy or certificate shall begin a nonforfeiture benefit later than the end of the third year following the policy

or certificate issue date except that for a policy or certificate with attained age rating, the nonforfeiture benefit shall begin on the earlier of:

(a) The end of the tenth year following the policy or certificate issue date; or

(b) The end of the second year following the date the policy or certificate is no longer subject to attained age rating.

(5) Nonforfeiture credits may be used for all care and services qualifying for benefits under the terms of the policy or certificate, up to the limits specified in the policy or certificate.

B. All benefits paid by the insurer while the policy or certificate is in premium paying status and in the paid up status will not exceed the maximum benefits which would have been payable if the policy or certificate had remained in premium paying status.

C. There shall be no difference in the minimum nonforfeiture benefit as required under this section for group and individual policies.

D. The requirements set forth in this section shall become effective on May 1, 1997, except for certificates issued on or after the effective date of this section under a group long-term care insurance policy as defined in 18 Del. C., Section 7103, which policy was in force at the time this amended regulation became effective.

E. Premiums charged for a policy or certificate containing nonforfeiture benefits shall be subject to the loss ratio requirements of Section 16 treating the policy as a whole.

F. (1) A nonforfeiture benefit as provided in subsection A.(2) and (3) of this section shall be included in a long-term care insurance policy or certificate unless an insurer obtains a rejection of a nonforfeiture benefit signed by the policyholder or certificateholder as required in this section.

(2) The rejection shall be considered part of the application and shall state: I have reviewed the outline of coverage and the nonforfeiture benefit as described therein. Specifically, I have reviewed Plan \_\_\_\_\_ and I reject the nonforfeiture benefit.

Section ~~24~~ 27. Permitted compensation arrangements

~~A. An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate which shall not exceed twenty-five percent (25%) of the total premium paid for that policy year.~~

~~B. No entity shall provide compensation to its agents or other~~

~~producers and no agent or producer shall receive compensation greater than twenty-five percent (25%) of the total premium paid for that policy year for the sale of a replacement long-term care insurance policy or certificate.~~

~~C. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration or any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.~~

~~A. An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a long-term care insurance policy or certificate only if the first year commission or other first year compensation is no more than 200 percent of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.~~

~~B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for a reasonable number of renewal years.~~

~~C. No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing insurer on renewal policies.~~

~~D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.]~~

Section ~~25~~ 28. Penalties

In addition to any other penalties provided by the laws of this state, any insurer and any agent found to violate any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three (3) times the amount of any commissions paid for each policy involved in the violation or up to \$10,000, whichever is greater.

Section ~~26~~ 29. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section ~~27~~ 30. Effective Date

This regulation became effective July 30, 1990, except Section

# PROPOSED REGULATIONS

13 became effective July 1, 1993. Amendment #1 adopted nonforfeiture benefits (Section~23) on December 23, 1996, to become effective on May 1, 1997. Subsequent amended provisions of this Regulation shall become effective 45 days from the Commissioner's order amending this regulation.

Donna Lee H. Williams  
Insurance Commissioner

## Appendix B

### Long Term Care Insurance Personal Worksheet

People buy long-term care insurance for a variety of reasons. These reasons include to avoid spending assets for long-term care, to make sure there are choices regarding the type of care received, to protect family members from having to pay for care, or to decrease the chances of going on Medicaid. However, long term care insurance can be expensive, and is not appropriate for everyone. State law requires the insurance company to ask you to complete this worksheet to help you and the insurance company determine whether you should buy this policy.

#### Premium

The premium for the coverage you are considering will be [\$ \_\_\_\_\_ per month, or \$ \_\_\_\_\_ per year.] [a one-time single premium of \$ \_\_\_\_\_.]

[The company cannot raise your rates on this policy.] [The company has a right to increase premiums in the future.] The company has sold long-term care insurance since [year] and has sold this policy since [year]. [The last rate increase for this policy in this state was in [year], when premiums went up by an average of \_\_\_\_\_ %]. [The company has not raised its rates for this policy.]

Drafting Note: The issuer shall use the bracketed sentence or sentences applicable to the product offered. If a company includes a statement regarding not having raised rates, it must disclose the company's rate increases under prior policies providing essentially similar coverage.

[ Have you considered whether you could afford to keep this policy if the premiums were raised, for example, by 20%?]

Drafting Note: The issuer shall use the bracketed sentence unless the policy is fully paid up or is a noncancellable policy.

#### Income

Where will you get the money to pay each year's premiums?

Income                      Savings                      Family members

What is your annual income? (check one)

Under \$10,000    \$[10-20,000]                      \$[20-30,000]  
\$[30-50,000]                      Over \$50,000

Drafting Note: The issuer may choose the numbers to put in the brackets to fit its suitability standards.

How do you expect your income to change over the next 10 years? (check one)

No change                      Increase                      Decrease

If you will be paying premiums with money received only from your own income, a rule of thumb is that you may not be able to afford this policy if the premiums will be more than 7% of your income.

#### Savings and Investments

Not counting your home, what is the approximate value of all of your assets (savings and investments)? (check one)

Under \$20,000    \$20,000-\$30,000    \$30,000-\$50,000  
Over \$50,000

How do you expect your assets to change over the next ten years? (check one)

Stay about the same    Increase                      Decrease

If you are buying this policy to protect your assets and your assets are less than \$30,000, you may wish to consider other options for financing your long-term care.

#### Disclosure Statement

The information provided above accurately describes my financial situation

I choose not to complete this information.

Signed:

(Applicant) (Date)

[ I explained to the applicant the importance of completing this information.

Signed:

(Agent) (Date)

Agent's Printed Name:    ]

[Note: In order for us to process your application, please return this signed statement to [name of company], along with your application.]



[My agent has advised me that this policy does not appear to be suitable for me. However, I still want the company to consider my application.]

Signed:            ] ]  
          (Applicant) (Date)

Drafting Note: Choose the appropriate sentences depending on whether this is a direct mail or agent sale.

The company may contact you to verify your answers.

Drafting Note: When the Long-Term Care Insurance Personal Worksheet is furnished to employees and their spouses under employer group policies, the text from the heading "Disclosure Statement" to the end of the page may be removed.

Appendix C

Things You Should Know Before You Buy Long-Term Care Insurance

- Long-Term Care Insurance
- A long-term care insurance policy may pay most of the costs for your care in a nursing home. Many policies also pay for care at home or other community settings. Since policies can vary in coverage, you should read this policy and make sure you understand what it covers before you buy it.
  - [You should **not** buy this insurance policy unless you can afford to pay the premiums every year.] [Remember that the company can increase premiums in the future.]

Drafting Note: For single premium policies, delete this bullet; for noncancellable policies, delete the second sentence only.

- Medicare
- The personal worksheet includes questions designed to help you and the company determine whether this policy is suitable for your needs.
  - Medicare does **not** pay for most long-term care.
- Medicaid
- Medicaid will generally pay for long-term care if you have very little income and few assets. You probably should not buy this policy if you are now eligible for Medicaid.
  - Many people become eligible for Medicaid after they have used up their own financial resources by paying for long-term care services.
  - When Medicaid pays your spouse's nursing home bills, you are allowed to keep your house

and furniture, a living allowance, and some of your joint assets.

- Your choice of long-term care services may be limited if you are receiving Medicaid. To learn more about Medicaid, contact your local or state Medicaid agency.
- Make sure the insurance company or agent gives you a copy of a book called the National Association of Insurance Commissioners' "Shopper's Guide to Long-Term Care Insurance." Read it carefully. If you have decided to apply for long-term care insurance, you have the right to return the policy within 30 days and get back any premium you have paid if you are dissatisfied for any reason or choose not to purchase the policy.
- Free counseling and additional information about long-term care insurance are available through your state's insurance counseling program. Contact your state insurance department or department on aging for more information about the senior health insurance counseling program in your state.

Shopper's Guide

Counseling

Appendix D

Long-Term Care Insurance Suitability Letter

Dear [Applicant]:

Your recent application for long-term care insurance included a "personal worksheet," which asked questions about your finances and your reasons for buying long-term care insurance. For your protection, state law requires us to consider this information when we review your application, to avoid selling a policy to those who may not need coverage.

[Your answers indicate that long-term care insurance may not meet your financial needs. We suggest that you review the information provided along with your application, including the booklet "Shopper's Guide to Long-Term Care Insurance" and the page titled "Things You Should Know Before Buying Long-Term Care Insurance." Your state insurance department also has information about long-term care insurance and may be able to refer you to a counselor free of charge who can help you decide whether to buy this policy.]

[You chose not to provide any financial information for us to review.]

Drafting Note: Choose the paragraph that applies.

We have suspended our final review of your application. If, after careful consideration, you still believe this policy is what you want, check the appropriate box below and return this letter to us within the next 60 days. We will then continue reviewing your application and issue a policy if you meet our medical standards.

If we do not hear from you within the next 60 days, we will close your file and not issue you a policy. You should understand that you will not have any coverage until we hear back from you, approve your application and issue you a policy.

Please check one box and return in the enclosed envelope.

Yes, [although my worksheet indicates that long-term care insurance may not be a suitable purchase,] I wish to purchase this coverage. Please resume review of my application.

Drafting Note: Delete the phrase in brackets if the applicant did not answer the questions about income.

No. I have decided not to buy a policy at this time.

APPLICANT'S SIGNATURE      DATE

Please return to [issuer] at [address] by [date].]

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**Symbol Key**

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed-stricken through~~] indicates language deleted at the time the final order was issued.

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**Final Regulations**

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

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

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

Statutory Authority: 24 Delaware Code, Section 3105(a)(1)  
(24 Del. C. 2105(a)(1))

Before the Board of Funeral Services

In re: Rules and Regulation of the Board of Funeral Services

Order Adopting the Rules and Regulations Of the Board of  
Funeral Services

**Summary of the Evidence and Information Submitted**

1. The Honorable Stephanie A. Ulbrich, chair, Joint Sunset Committee, addressed the Board in a letter dated April 30, 1998 and indicated language in proposed Rules 1.6 and 1.8 was inconsistent with the enabling act. The letter is attached as Exhibit A.

2. No other written or verbal information was received.

**Finding of Fact**

1. Reviewing and updating the rules satisfies the legislative purpose of developing standards to assure competence and providing a mechanism of handling complaints.

2. Proposed Rules 1.6 and 1.8 should be changed to be consistent with the law. No further notice is necessary. 29 Del. C. Sections 10 1 13 (b) and 10 1 18 (c).

3. If the proposed legislation is enacted, further changes to bring these rules into compliance with the new law with respect to the educational requirements can be accomplished without the formality of Register of Regulation publication pursuant to the sections supra.

**Text and Citation**

The exact text and citation of each rule is attached hereto as Exhibit B and incorporated herein.

**Decision**

Pursuant to the authority in 24 Del. C. Section 3105(a)(1) and after due notice as required under the Administrative

procedures Act, the Board of Funeral Services by the undersigned members hereby promulgates and adopts the Rules in Exhibit B to be effective ten days following publication in the Delaware Register of Regulation.

SO ORDERED THIS 20th day of May, 1998.

Richard W. Harra, President  
 Gary J. Wallick, Secretary  
 Barbara R. Robbins  
 Charles P. Arcaro  
 J. Thomas Sturgis, Jr., Ph.D.  
 Dorothy J. Sapp  
 Edward G. Minus, Sr.

April 30, 1998

Ms. Barbara R. Robbins, immediate past president  
 Board of Funeral Services  
 861 Silver Lake Blvd., Ste. 203  
 Dover, DE 19904-2467

Dear Ms. Robbins:

Thank you for your letter of March 19, 1998, regarding the requirements for licensure for persons providing funeral services. The Sunset Committee will discuss its 1997 recommendation regarding requirements for licensure for funeral directors during an upcoming meeting.

I understand the Board has scheduled a public hearing for proposed rules and regulations. Proposed Rule 1.6 appears to violate statutory language and a Sunset Committee recommendation. The proposal states that the Division "shall administer a State examination based solely upon the laws and regulations of Delaware and other jurisdictions which impact on, relate to and govern its profession." Current 3107, 24 Del. C., requires that the examination shall be "based solely upon the laws of Delaware governing the profession."

The Sunset Committee in 1997 recommended that 3107, 24 Del. C., be rewritten to "clarify that the Division of Professional Regulation has sole authority to contract for the validated examination on state law and that the examination be strictly on state law governing the practice of funeral services." The Sunset recommendation did not change the current statutory mandate, but rather clarifies the Division's authority and reinforces that the examination is to cover strictly state law. These same comments apply to proposed Rule 1.8 regarding the content of the state examination.

Please ask the Board to consider these comments on the proposed Rule changes.

It is evident that your Board has worked to comply with the Sunset Committee recommendations. I look forward to continuing to work with you and your new Board President, Richard Harra, to implement the Sunset recommendations. The legislation has been prepared and will be ready for introduction as soon as the Committee discusses the education requirements.

Please do not hesitate to contact me if you have any questions.

Representative Stephanie A. Ulbrich, chair  
 Joint Sunset Committee

#### RULES AND REGULATIONS OF THE DELAWARE BOARD OF FUNERAL SERVICES

A revision of the Rules and Regulations governing the State Board of Funeral Services of the State of Delaware, adopted and promulgated this 20th day of May, 1998 at Dover, Delaware. These Rules and Regulations are hereby adopted pursuant to 24 Del. C. Section 3105 (a)(1) and the Administrative Procedures Act, 29 Del. C. Section 10115. These regulations supersede and replace any previous adopted rules, regulations or bylaws by the State Board of Funeral Services.

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#### Duties of the Officers

1. The President shall preside at all meetings, call meetings, sign certificates with other Board members or other forms that may be required by him or her by law.
2. In the absence of the President, the Secretary shall preside at the meetings and call meetings when the President is absent. However, the signatory duties of the President may not be transferred to the Secretary.
3. In accordance with 29 Del. C. Section 8807, the Division of Professional Regulation shall maintain and keep all records of licensed funeral directors in the State of Delaware issuing a number and date to each license.
4. The Division shall also cause to be collected all fees including license application fees, renewal fees or any other fee required to be filed for paid in accordance with the provisions of 24 Del. C. ch. 31, et seq.
5. In accordance with the Freedom of Information Act, 29 Del. C. Section 10004 (c) the Division of Professional Regulation shall publish an agenda of all meetings which shall include the time, dates and places of said meetings and an agenda. The Board shall also give public notice of the regular meetings and its intent to hold an executive session closed to the public at least seven days in advance. However, the agenda

may be subject to change to include additional items not on the agenda including executive sessions closed to the public which arise at the time of the Board's meeting.

6. The Division of Professional Regulation shall insure that accurate and detailed minutes of all business to come before the Board at all Board meetings be transcribed in accordance with 29 Del. C. Section 8807 and 24 Del. C. Section 3104 (d).

#### RULES AND REGULATIONS - LICENSURE REQUIREMENTS

##### Rule 1.0

Requirements for licensing of those applying for a Funeral Director's License in the State of Delaware. The qualifications of applicants for licensure as funeral director are contained in 24 Del. C. Section 3106 (a) (1-5) and 24 Del. C. Section 3108.

##### Rule 1.2

A year of academic training shall consist of at least thirty (30) semester hours successfully completed by the applicant at an accredited college or university. Two years of academic training shall consist of at least sixty (60) semester hours successfully completed by the applicant at an accredited college or university. The applicant shall request that a copy of an official transcript be sent to the Board.

##### Rule 1.3

If an applicant has attended a school or college fully accredited by the American Board of Funeral Service Education or its successor, and has received a certificate of satisfactory completion in a one year program, the applicant shall be required to complete an additional (60) semester credit hours at an accredited college or university.

##### Rule 1.4

An applicant who has attended a school or college fully accredited by the American Board of Funeral Service Education "ABFSE" or its successor and who, after attending such ABFSE accredited school or college, has received an Associate degree in Funeral Services, wherein such "degree" required the successful completion of at least sixty (60) semester credit hours, shall in addition thereto to such ABFSE accredited Associate's Degree, receive and complete academic training at an accredited college or university and successfully completed at least thirty (30) additional semester credit hours to be eligible for licensure as a funeral director in accordance with the requirements contained within 24 Del. C. Section 3106.

##### Rule 1.5

In order for an applicant to apply for internship of one year's duration under the auspices of a licensed Delaware Funeral Services practitioner pursuant to 24 Del. C. Section 3106 (a)(3), the applicant shall have certified that he or she has graduated from an accredited high school or its equivalent, and completed at least two years of academic training from an accredited college or university. In addition, the applicant shall certify that he or she has completed one year of academic training in funeral services from a school or college fully accredited by the American Board of Funeral Service Education or its successor.

##### Rule 1.6

As required by 24 Del. C. Section 3107, the Division, upon request of an eligible applicant, shall administer a State examination based solely upon the laws and regulations of Delaware ~~and other jurisdictions which impact on, relate to and govern its profession.~~ An applicant for full licensure whether via initial or reciprocal licensure; prior to applying for the Division's test based upon the law and regulations of Delaware ~~and other jurisdictions which impact on Delaware licensees~~ ("State" examination) shall first sit for and successfully complete the national examination required by 24 Del. C. Section 3105 (a)(3), the written examination prepared by a national professional organization recognized by the American Board of Funeral Services Education by a passing score determined by the organization preparing the test recognized by the American Board of Funeral Services Education. The national examination may be taken before or during the internship.

##### Rule 1.7

As required by 24 Del. C. Section 3106 (a)(3), an applicant other than one seeking licensure via reciprocity shall satisfactorily complete an internship of one year's duration in a licensed Delaware funeral establishment under the auspices of a licensed Delaware funeral service practitioner. An applicant must successfully complete the required total of ninety (90) semester hours of academic training (as required by Rules 1.2 through 1.4) prior to beginning the internship. An application to sit for the State examination as required by 24 Del. C. Section 3107 shall be accompanied by a notarized statement from the Funeral Service Practitioner under whom the applicant "intern" as defined by 24 Del. C. Section 3103 (8) served his internship. The notarized statement shall attest that the applicant has concluded his/her internship and submitted to the Board satisfactory evidence of the completion of twenty-five (25) embalming reports and four (4) completed quarterly work reports.

Rule 1.8

The State examination required by 24 Del. C. Section 3107 shall consist of questions pertaining to the law and regulations of the State of Delaware ~~[and other jurisdictions]~~ which may govern, impact on, and relate to the profession including preneed funeral services contracts, consumer protection law and regulations, and laws and regulations governing crematories and cemeteries. An applicant shall be deemed to have successfully passed the "state examination" with a minimum grade of 70%.

## Federal Trade Commission Regulations

Rule 2.0

A licensed funeral director in the State of Delaware shall comply with all Federal Trade Commission Regulations governing the pricing of funeral services and merchandise and the method of payment for funeral services as defined under 24 Del. C. Section 3101 (4). Upon the issuance of a funeral director's license, a licensed funeral director represents that he/she is familiar with all Federal Trade Commission rules and regulations and shall abide by the same. A licensee may be subject to discipline pursuant to 24 Del. C. Ch.31, et seq. if these rules or regulations have been violated by the licensee.

## Establishment Permits

Rule 3.0

The requirements for the issuance, continuance, and proper maintenance of a funeral establishment permit are contained in 24 Del. C. Section 3121. In accordance with 24 Del. C. Section 3121 (1) the funeral establishment shall be conducting funeral services from a building that is appropriate as defined in 24 Del. C. Section 3101 (5). All establishments, both newly issued and those grandfathered by Section 3121 (a)(2) shall in said building have preparation rooms which shall be locked. Licensed funeral directors shall exercise full control over preparation rooms and supplies.

Rule 3.1

All funeral establishments provided a permit in accordance with the requirements of 24 Del. C. Section 3121 shall, in addition to conforming with all safety requirements of the State Department of Health and Social Services, provide the following:

- 1.(a.) A room for the preparation and embalming of human remains;
- 1.(b.) Said preparation room shall contain embalming

equipment and supplies.

Rule 3.2

Funeral Establishment Permit: Circumstances for termination and continuation.

The statutory requirements for the issuance of a funeral establishment permit are contained in 24 Del. C. Section 3121.

To be exempt from the provisions of 24 Del. C. Section 3121 (a)(2), the funeral establishment shall have been maintained, operated and conducted on a continuous basis prior to September 6, 1972 until the present date. Further, only the record owner of the funeral establishment shall be entitled to obtain said exemption. No assignment of the exemption rights contained in 24 Del. C. Section 3121 (a)(2) is permitted and no other licensed funeral director may apply for or be assigned said rights.

Rule 3.3

If a licensed funeral director relocates or otherwise moves a funeral establishment that has been granted an exemption pursuant to the provision of 24 Del. C. Section 3121 (a)(2) from its original location, the exemption allowed under Section 3121 (a)(2) shall immediately become null and void. For purposes of this section the terms "move" or "relocate" is defined as to place such establishment outside the original building's location at its exact address of record unless the building where the funeral establishment permit is contained is renovated.

## Duplicate Certificate

Rule 4.0

Any licensed funeral director may obtain a duplicate funeral director's certificate upon proof of satisfactory evidence to the Board that the original has been lost or destroyed and a payment of a fee as set by the Division of Professional Regulation.

## Suspension, Revocation, or Lapse of Funeral Director's License

Rule 5.0

During any period a licensed funeral director's license has lapsed, been revoked or suspended by the Board in accordance with 24 Del. C. Section 3110 or Section 3115, no other licensed funeral director in the State of Delaware may register death certificates or secure burial permits for the licensee whose license has been revoked, suspended or has lapsed. Nor shall the licensee whose license has lapsed, been

revoked or suspended by the Board, be able to register death certificates or secure burial permits. The Board may notify the Division of Public Health, the Department of Health and Social Services, the Medical Examiner's Office or other appropriate state or federal agency that said funeral director is prohibited from practicing funeral services as defined by Chapter 31 of Title 24.

#### Cash Advance

##### Rule 6.0

A licensed funeral director in the State of Delaware is prohibited from billing or causing to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item is for funeral services in the same amount as is billed by the funeral director. A cash advance item is payment made by the funeral director for the consumer to a third party including but not limited to cemetery fees, crematory fees, death certificates and florists.

(The effective date of these regulations is the 6th day of December, 1989 in accordance with 29 Del. C. Section 10118 (b).)

The following rules are adopted by the board as a supplement to the Rules and Regulations governing the State Board of Funeral Services, previously adopted and promulgated on the 6th day of December, 1989 pursuant to Del. C. Section 3105 (a)(1) and the Administrative Procedures Act, 29 Del. C. Section 10115.

#### Code of Ethics

##### Rule 7.0

The following is adopted as the code of ethics for all funeral service licensees in the State of Delaware.

1. As funeral directors, we herewith fully acknowledge our individual and collective obligation to the public, especially to those we serve, our mutual responsibilities for the proper welfare of the funeral services profession.
2. To the public we pledge; vigilant support of public health laws; proper legal regulations for the members of our profession; devotion to high moral and service standards; conduct befitting good citizens, honesty in all offerings of service and merchandise to the public and all business transactions.
3. To those we serve we pledge; confidential business and professional relationships; cooperation with the customs, laws, religions and creeds; observance of all respect due to the deceased; high standards of confidence and dignity in conduct

of all services; truthful representation of all services and merchandise.

4. To our profession we pledge; support of high educational standards and proper licensing law; encouragement of scientific research; adherence to sound business practices; adoption of improved technique; observance of all the rules of fair competition and maintenance of favorable personnel relations.

##### Effective Date:

The effective date of these regulations is the 11th day of August 1998 in accordance with 29 Del. C. Section 10118 (b).

#### Continuing Education Regulations

##### Rule 8.0

###### 1. Board Authority

This rule is promulgated under the authority of 24 Del. C. Section 3105 which grants the Board of Funeral Services (hereinafter "the Board") authority to provide for rules for continuing funeral services education as a prerequisite for license renewal.

###### 2. Requirements

1. Every licensed funeral director in active practice shall complete at least 10 hours/credits of approved continuing education (hereinafter "CE") during the two year licensure period prior to the time of license renewal. Licensees who earn more than the required amount of CE credit hours during a given licensure period may carry over no more than 50% of the total CE credit hours required for the next licensure period.

2. When a Delaware licensee on inactive status files a written application to return to active practice with the Board, the licensee shall submit proof of having completed the required CE credit hours for the period just prior to the request to return to active practice.

3. Upon application for renewal of a license, a funeral director licensee shall submit to the Board proof of completing the required number of CE credit hours.

###### 3. Waiver of the CE Requirement

1. The Board has the power to waive any part of the entire CE requirement for good cause if the licensee files a written request with the Board. For example, exemptions to the CE requirement may be granted due to health or military service. Application for exemption shall be made in writing to the Board by the applicant for renewal. The Board shall decide the merits of each individual case at a regularly scheduled meeting.

2. Other exemptions include the following:

a. Newly licensed funeral directors, including those newly licensed by reciprocity, are exempt during the time from initial licensure until the commencement of the first full licensure period.

#### 4. Continuing Education Program Approval

1. Each contact hour (at least fifty minutes) is equivalent to 1.0 CE credit hour. One college credit hour is equivalent to 5 CE credit hours.

2. Eligible program providers or sponsors include but are not limited to, educational institutions, government agencies, professional or trade associations and foundations and private firms.

Sources of CE credits include but are not limited to the following:

- a. Programs sponsored by national funeral service organizations.
- b. Programs sponsored by state associations.
- c. Program provided by local associations.
- d. Programs provided by suppliers.
- e. Independent study courses for which there is an assessment of knowledge.
- f. College courses.

3. The recommended areas include but are not limited to the following:

- a. Grief counseling
- b. Professional conduct, business ethics or legal aspects relating to practice in the profession.
- c. Business management concepts relating to delivery of goods and services.
- d. Technical aspects of the profession.
- e. Public relations.
- f. After care counseling.

4. Application for CE program approval shall include the following:

- a. Date and location.
- b. Description of program subject, material and content.
- c. Program schedule to time segments in subject content areas for which approval of, and determination of credit is required.
- d. Name of instructor(s), background, expertise.
- e. Name and position of person making request for program approval.

5. Requests for CE program approval shall be submitted to the Board on the application provided by the Board. Application for approval may be made after the program; however, if the program is not approved, the applicant will be notified and no credit given.

6. Approval of CE credits and program formats by the Committee shall be valid for a period of two years from the date of approval. Changes in any aspect of the approved program shall render the approval invalid and the presenter

will be responsible for making reapplication to the Committee.

7. Upon request, the Board shall mail a current list of all previously approved programs.

#### 6. Certification of Continuing Education - Verification and Reporting

1. The program provider/sponsor has sole responsibility for the accurate monitoring of program attendance. Certificates of attendance shall be supplied by the program provider/sponsor and be distributed only at the completion of the program.

2. Verification of completion of a independent study program will be made with a student transcript.

3. The funeral director licensee shall maintain all original certificates of attendance for CE programs for the entire licensure period. Proof shall consist of completed CE form provided by the Board and shall be filed with the Board on or before thirty (30) days prior to the expiration date of the biennial renewal period.

4. Applications for renewal may be audited by the Board to determine whether or not the recommended requirements of continuing education have been met by the licensee.

5. If a licensee is found to be non-compliant in continuing education, the licensee's license shall lapse at the expiration of the present licensing period. The Board shall reinstate such license within twelve (12) months of such lapse upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due.

6. Programs approved for continuing education credit by another state funeral board other than Delaware shall be automatically approved for all Delaware licensees upon written application and verification of CE credits by the applicable state board.

#### 7. Continuing Education Committee

1. The Board of Funeral Services shall appoint a committee known as the Continuing Education Committee. The Committee shall consist of the following who shall elect a chairperson:

- a. One (1) Board member (non-licensed).
- b. One (1) non-Board member who shall be a licensed funeral director who is owner/operator of a funeral establishment.
- c. One (1) non-Board member who shall be a licensed funeral director who does not own or operate a funeral establishment.

2. Membership on this Committee shall be on a rotating basis, with each member serving a three year term and may be eligible for reappointment. The Committee members shall continue to serve until a new member is appointed.

3. The Continuing Education Committee shall oversee matters pertaining to continuing education and make



recommendations to the Board with regard to approval of submitted programs for CE by licensees and with regard to the Board's review of audited licensees. The Board shall have final approval on all matters.

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**DEPARTMENT OF EDUCATION**

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

BEFORE THE DEPARTMENT OF EDUCATION OF THE  
STATE OF DELAWARE

REGULATORY IMPLEMENTING ORDER

**POLICY FOR SCHOOL DISTRICTS ON THE POSSESSION,  
USE AND DISTRIBUTION OF DRUGS AND ALCOHOL**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The regulation Policy for School Districts on the Possession, Use and Distribution of Drugs and Alcohol found on pages 130 to 133 in The School Nurse, A Guide to Responsibilities, and pages A-55 - A-60 in the Handbook for K-12 Education must be amended. This regulation defines key terms, identifies the minimum number of elements that each local district must have in their local drug and alcohol policies and defines the position of the Department of Education. The amendment is necessary to change the wording of the first paragraph of section III to read as follows, "Each school district shall have a policy on file and update it periodically. The policy shall contain at a minimum the following". The other change is to substitute the Department of Education for the Department of Public Instruction in the last paragraph following section III.K. Following concerns expressed by the State Board of Education at the first hearing on the regulation in March, items 1.B. and 1.E. have been deleted because they are technical assistance information and not regulation.

Notice of the proposed amendment of the regulation was published in the News Journal and the Delaware State News on March 16, 1998, in the form hereto attached as Exhibit A. There were no comments received concerning the amendment from the newspaper advertisements.

II. FINDINGS OF FACT

The Secretary and the State Board of Education find that it is necessary to amend the regulation in order to update the language of the regulation and to delete two items which are

technical assistance and not regulation.

III. DECISION TO AMEND THE REGULATION

For the foregoing reason the Secretary and the State Board of Education conclude that it is necessary to amend the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said amended regulation shall be cited in The School Nurse, A Guide to Responsibilities and in the document entitled Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions herein above referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the State Board's regularly scheduled meeting on July 16, 1998. The effective date of this Order shall be ten days from the date this order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of July, 1998.

Dr. Iris T. Metts  
Secretary of Education

Consented to this 16<sup>th</sup> day of July, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Jean W. Allen, Vice President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

EXHIBIT B

~~Policy for School Districts on the Possession, Use or  
Distribution of Drugs and Alcohol~~

I. The following policy on the possession, use, or distribution of drugs and alcohol shall apply to all public school

districts.

A. The possession, use and/or distribution of alcohol, a drug, a drug-like substance, a look-alike substance and/or drug paraphernalia are wrong and harmful to students and are prohibited within the school environment.

~~B. Communications devices, such as, but not limited to, mobile phones and electronic beepers, ordinarily have no place in the school environment. These devices may be allowed in school, according to individual school and/or district codes of conduct.~~

**B. Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.]**

~~D. C.]~~ Student motor vehicle use to and in the school environment is a privilege which may be extended by school districts to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of alcohol, a drug, a drug-like substance, a look-alike substance or drug paraphernalia, or of a student's possession of an unauthorized electronic beeper or other communication device in the school environment, may result in the student being asked to open an automobile in the school environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search, and will result in loss of the privilege to bring the vehicle on campus.

~~E. Students of majority age, i.e. age 18 or older, are responsible for their own actions. All such students will be treated as adults for the purposes of reporting violations of this policy and of the law to the police. Such students shall also be on notice that their parents and/or guardians will be notified (if their address and/or telephone number is known to the school) of the students actions in accordance with this policy.]~~

~~F. D.]~~ All alcohol, drugs, drug-like substances, look-alike substances and/or drug paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 *Del. C.*, ch 47, turned over to police as potential evidence.

II. The following definitions shall apply to this policy and will be used in all district policies.

A. "Alcohol" shall mean alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in Section 101 of Title 4 of the *Delaware Code*, including alcohol, spirits, wine and beer.

B. "Drug" shall mean any controlled substance or counterfeit substance as defined in Section 4701 of Title 16 of the *Delaware Code*, including, for example, narcotic drugs such as heroin or cocaine, amphetamines, anabolic steroids,

and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

C. "Drug paraphernalia" shall mean all equipment, products and materials as defined in Section 4701 of Title 16 of the *Delaware Code*, including, for example, roach clips, miniature cocaine spoons and containers for packaging drugs.

D. "Prescription drugs" shall mean any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 *Del. C.*, Sec. 4701 (24), while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

E. "Drug-like substance" shall mean any noncontrolled and/or nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over-the-counter cough medicines, certain types of glue, caffeine pills.

F. "Nonprescription medication" shall mean any over-the-counter medication; some of these medications may be a "drug-like substance."

G. "Look-alike substance" shall mean any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling. See *Del. C.*, Sec. 4752A.

H. "Possess," "possessing," or "possession" shall mean that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, alcohol, a drug, a look-alike substance, a drug-like substance or drug paraphernalia.

I. "Use" shall mean that a student is reasonably known to have ingested, smoked or otherwise assimilated alcohol, a drug or a drug-like substance, or is reasonably found to be under the influence of such a substance.

J. "Distribute," "distributing" or "distribution" shall mean the transfer or attempted transfer of alcohol, a drug, a look-alike substance, a drug-like substance, or drug paraphernalia to any other person with or without the exchange of money or other valuable consideration.

K. "School environment" shall mean within or on school property, and/or at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra-curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

L. "Expulsion" shall mean exclusion from school for a period determined by the local district not to exceed 180 school days. The process for readmission shall be determined by the local district. (State Board Approved January 1991, Revised August 1991)

III. ~~Each school district shall develop and submit to the Department of Public Instruction by September 1, 1991, for the review and approval, policies and/or regulations which shall include, as a minimum, the following:~~

Each school district shall have a policy on file and update it periodically. The policy shall include, as a minimum the following:

A. A system of notification of each student and of his/her parent at the beginning of the school year, and whenever a student enters or re-enters the school during the school year, of the state and district policies and regulations.

B. A statement that it is anticipated that the state and district policies shall apply to all students, except that with respect to handicapped students, the federal law will be followed, and a determination of whether the violation of the alcohol and drug policy was due to the student's handicapping condition will be made prior to any discipline or change or placement in connection with the policy.

C. A written policy which sets out procedures for reporting incidents, how authorities and/or parents are to be contacted, and how confidentiality is to be maintained.

D. A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

E. A written policy on search and seizure.

F. A program of intervention and assistance, which includes:

1. Having in each school building at least one person to whom staff can refer students to receive initial counseling and to obtain information on counseling/treatment services available to the student, on the student's rights, if any, to those services, and on the confidentiality which the student can expect.

2. A written statement, available to be given to students or their parents, on what resources are available in the school environment and in the community for counseling and for drug and/or alcohol treatment.

3. A system which ensures that all staff members are aware of resources in and referral procedures within the school environment, and encourage students to seek support and assistance.

4. A system which encourages or requires that a student with alcohol or drug problems be assessed to determine the extent of alcohol or drug involvement and that the student receive the appropriate level of counseling or treatment needed.

5. A policy of notification of the conditions under which the district will provide or pay for alcohol and/or drug counseling/treatment and/or testing, and the extent to which the cost of such services must be borne by the student.

G. A discipline policy which contains, at a minimum, the following penalties for infractions of state and district drug policies.

1. Use/Impairment: For a first offense, if a student is found to be only impaired and not in violation of any other policies, he/she will be suspended for up to 10 days, or placed in an alternative school setting for up to 10 days, depending upon the degree of impairment, the nature of the substance used, and other aggravating or mitigating factors. For a second or subsequent offense, a student may be expelled or placed in an alternative school setting for the rest of the school year.

2. Possession of alcohol, a drug, a drug-like substance, and/or a look-alike substance, in an amount typical for personal use, and/or drug paraphernalia: For a first offense, the student will be suspended for 5-10 days, or placed in an alternative school setting for 5-10 days. For a second or subsequent offense, a student may be expelled for the rest of the school year.

3. Possession of a quantity of alcohol, a drug, a drug-like substance, a look-alike substance and/or drug paraphernalia in an amount which exceeds an amount typical for personal use, and/or distribution of the above named substances or paraphernalia: the student will be suspended for 10 days, or placed in an alternative school setting for 10 days. Depending on the nature of the substance, the quantity of the substance and/or other aggravating or mitigating factors, the student also may be expelled.

H. A policy in cases involving a drug-like substance or a look-alike substance for establishing that the student intended to use, possess or distribute the substance as a drug.

I. A policy which establishes how prescription and non-prescription drugs shall be handled in the school environment and when they will be considered unauthorized and subject to these state and local policies.

J. A policy which sets penalties for the unauthorized possession of communication devices.

K. A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.

The policy shall include the designation of a district committee composed of teachers, parents, school nurses, and community leaders. Any revisions in the local school district policy will be submitted to the Department of ~~Public Instruction~~ Education for review and approval.

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BEFORE THE DEPARTMENT OF EDUCATION OF THE  
STATE OF DELAWARE

REGULATORY IMPLEMENTING ORDER

**SAFETY**

I. SUMMARY OF THE EVIDENCE AND INFORMATION  
SUBMITTED

The Secretary seeks the approval of the State Board of Education to repeal the regulation on Safety, pages A-46 and A-47, section I.M.2. a., b., and d. in the Handbook for K-12 Education. This section includes references to safety issues all addressed to the school principal. This section, with the exception of item c., should be repealed because it is mainly there for technical assistance purposes and where a regulation was adopted as directed by Delaware Code, Title 14, Chapter 2, Section 204, the Code has been repealed. Part a. states that the principal is responsible for a safe school environment and should become responsible for the laws relating to such a responsibility. This does not need to be made into a regulation. Part b. refers to the use of eye protection devices for students and refers to the Delaware Code, Title 14, Section 8302, Requirements for Eye Protection in Educational Institutions in the State of Delaware. This requirement is in the Code and does not need to be regulated by the Department of Education. Part c. will be amended later as a separate regulation as recommended by the State Board at their April meeting. Part d. says that the principal will properly supervise the arrival and departure of school buses and will hold exit drills twice each year. The Delaware School Transportation Manual addresses the responsibilities of principals concerning the arrival and departure of school buses. Part d. should not be regulated because it is already covered in school transportation regulations. Parts e. and f. address the issues of playground equipment and playground safety. The 14 Del. C., Section 204, Kindergartens and Playgrounds and other Schools law has been repealed and the existence of the law was the reason for the regulatory language of parts e. and f. in the Handbook for K-12 Education. Title 14, Section 1056, of the Del. C., gives the local school boards the responsibility for the use, control and management of their playground equipment, hence the Department of Education does not need to make regulations on playground equipment and safety.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on April 17, 1998, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

## II. FINDINGS OF FACT

The Secretary finds that it is necessary to repeal this regulation because the information contained in the regulation is either technical assistance, a repeat of existing Del. C. language or Department of Education Regulations, or it is the prerogative of the local school board to make regulations governing the issue.

## III. DECISION TO REPEAL THE REGULATION

For the foregoing reasons, the Secretary concludes that it is

necessary to repeal the regulation. Therefore, pursuant to 14 Del. C., Section 122, the regulation attached hereto as Exhibit B is hereby repealed.

## IV. TEXT AND CITATION

The text of the regulation repealed hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be removed from the Handbook for K-12 Education.

## V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Section 122, in open session at the said Board's regularly scheduled meeting on July 16, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of July, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 16th day of July, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

Nancy A. Doorey

John W. Jardine, Jr.

Dr. Joseph A. Pika

Dennis J. Savage

Dr. Claibourne D. Smith

Repeal of Regulation for Safety

The Secretary seeks the approval of the State Board of Education to repeal the regulation on Safety, pages A-46 and A-47, section I.M.2. a., b., and d. in the Handbook for K-12 Education. This section includes references to safety issues all addressed to the school principal. This section, with the exception of item c., should be repealed because it is mainly there for technical assistance purposes and where a regulation was adopted as directed by Delaware Code, Title 14, Chapter 2, Section 204, the Code has been repealed. Part a. states that the principal is responsible for a safe school environment and should become responsible for the laws relating to such a responsibility. This does not need to be made into a regulation. Part b. refers to the use of eye protection devices for students and refers to the Delaware Code, Title 14, Section 8302, Requirements for Eye Protection in Educational Institutions in the State of Delaware. This requirement is in the Code and does not need to be regulated by the Department of Education. Part c. will be amended later as a separate regulation as

recommended by the State Board at their April meeting. Part d. says that the principal will properly supervise the arrival and departure of school buses and will hold exit drills twice each year. The Delaware School Transportation Manual addresses the responsibilities of principals concerning the arrival and departure of school buses. Part d. should not be regulated because it is already covered in school transportation regulations. Parts e. and f. address the issues of playground equipment and playground safety. The 14 Del. C., Section 204, Kindergartens and Playgrounds and other Schools law has been repealed and the existence of the law was the reason for the regulatory language of parts e. and f. in the Handbook for K-12 Education. Title 14, Section 1056, of the Del. C., gives the local school boards the responsibility for the use, control and management of their playground equipment, hence the Department of Education does not need to make regulations on playground equipment and safety.

**I.M.2. SAFETY**

a. ~~The principal is responsible for the provision of a safe environment for students and should become familiar with the laws which relate to such responsibility.~~

b. ~~14 Del. C., §8302 requires the use of eye protection devices for students and staff while participating in hazardous activities. (For further information see Requirements for Eye Protection in Educational Institutions in the State of Delaware, [February 1975].)~~

c. Pupils being released from school for other than medical purposes shall be released only to their parents or to persons authorized by their parents. The school superintendent, principal, or others delegated by the superintendent or principal, shall check carefully to make certain that the person claiming to represent the parent is so authorized. Written authority is preferable; however, a check may be made by telephoning the parent for confirmation.

d. ~~The principal will see that all buses are properly supervised on arrival and departure. Exit drills shall be carried out at least twice each year. The principal as well as teachers and drivers should be familiar with the State of Delaware School Transportation Manual, (April 1976).~~

e. ~~Each district shall adopt a policy statement that shall address the installation, maintenance, operation, periodic self-inspection and use of playgrounds and playground equipment with emphasis on safe use by students and public.~~

f. ~~The building principal is responsible for forming an ad-hoc advisory committee to assist in implementing and monitoring established district policy concerning playground safety. Awareness of the Playground Safety Policy should be provided to students, staff, parents and community through safety instruction programs and widespread dissemination.~~

BEFORE THE DEPARTMENT OF EDUCATION OF THE STATE OF DELAWARE

REGULATORY IMPLEMENTING ORDER

**TITLE I COMPLAINT PROCESS**

**I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary seeks the approval of the State Board of Education to amend a section of the Handbook for K-12 Education entitled Title I Complaint Process, Section I.F.2., pages A-15 and A-16. This regulation needs to be amended to reflect the requirements of the Elementary Secondary Education Act (ESEA) of 1965 as amended by the Improving America's Schools Act (IASA) of 1994. The amendment to the federal act requires the State to adopt written procedures for receiving and resolving any complaint from an organization or individual that the State or an agency or consortium of agencies is violating a Federal Statute or regulation that apply to a covered program as listed in the Federal Statute. The amendments to the Delaware Department of Education Regulation change the Department of Public Instruction to the Delaware Department of Education, change the name of the regulation to Federal Programs General Complaint Procedures, list all of the programs covered by the complaint process as defined in the Federal Statute and add the Goals 2000: Educate America Act of 1994 to the list of covered programs. Section 3 (formerly 2.b.) of the DOE regulation also has been changed to encourage individuals to file a complaint with the local school district prior to filing a complaint with the Delaware Department of Education, but does not preclude filing first with the state agency.

Notice of the proposed amendment was published in the News Journal and Delaware State News on June 16, 1998, and no comments were received from the newspaper advertisements.

**II. FINDINGS OF FACT**

The Secretary finds that it is necessary to amend this regulation because the Federal statute requires that the State adopt written procedures for receiving and resolving any complaints from an organization or individual that the State or an agency or consortium of agencies is violating a Federal statute or regulation that apply to a covered program listed in the statute.

**III. DECISION TO AMEND THE REGULATION**

For the foregoing reasons, the Secretary concludes that it is necessary to amend the proposed regulation. Therefore, pursuant to 14 Del. C., Sec. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 Delaware Code, Section 122(e), the amended

regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulations shall be cited in the document entitled Regulations of the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board's regularly scheduled meeting on July 16, 1998. The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware Register of Regulations.

IT IS SO ORDERED this 16th day of July, 1998.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education

Approved this 16th day of July, 1998.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President

Jean W. Allen, Vice President

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Dr. Claibourne D. Smith

#### EXHIBIT B

#### FROM THE HANDBOOK FOR K-12 EDUCATION

#### I.F.2. TITLE I COMPLAINT PROCEDURES

a. An organization or an individual may file a written, signed complaint with the Title I Office of the Delaware Department of Public Instruction (Title I Office) concerning an alleged violation by a Local Education Agency (LEA) or the State Education Agency (SEA) of a Federal statute or regulations that apply to the Title I LEA Program, in accordance with 200.73-75 of the Title I regulations and the following procedures:

(1) The complaint must include (a) a statement that the SEA or an LEA has violated a requirement of a Federal statute or regulations that apply to the Title I LEA Program; and (b) the facts on which the statement is based.

(2) The Title I Office shall resolve the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty calendar days of the receipt of the complaint. An extension of the time limit may be made by the Title I Office only if exceptional circumstances exist with respect to a particular complaint.

(3) The Title I Office may conduct an independent on-site investigation of a complaint, if it determines that an on-site investigation is necessary.

b. An organization or an individual may file a written, signed complaint with the LEA, in lieu of the Title I Office, concerning an alleged violation by the LEA of a Federal statute or regulations that apply to the Title I LEA Program:

(1) The complaint must include (a) a statement that the LEA has violated a requirement of a Federal statute or regulations that apply to the Title I LEA Program and (b) the facts on which the statement is based.

(2) The superintendent or the agency head of the LEA shall resolve the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within thirty calendar days of the receipt of the complaint.

(3) An appeal of the LEA decision may be made by the complainant to the Title I Office of the Department of Public Instruction. The appeal shall be in writing and signed by the individual making the appeal. The Title I Office shall resolve the appeal in the same manner as a complaint, as indicated in A.1. through 3.

c. Any party to the complaint has the right to request the Secretary, U. S. Department of Education, to review the final decision of the Title I Office. The request for an appeal of the decision to the Secretary shall be made in writing to the Title I Office within sixty days of the receipt of the decision.

d. Complaints and appeals to the Title I Office shall be mailed to the following address:

Title I Office  
Department of Public Instruction  
P.O. Box 1402  
Dover, Delaware 19903

(State Board Approved February 1990)

AS AMENDED

#### FEDERAL PROGRAMS GENERAL COMPLAINT PROCEDURES\*

1. Programs that are covered by this complaint process include: Part A of Title I, Improving Basic Programs Operated by the Local Education Agency; Part B of Title I, Even Start Family Literacy Program; Part C of Title I, Migrant Education; Part D of Title I, Children and Youth who are Neglected, Delinquent, or at Risk of Dropping Out; Title II Eisenhower

Professional Development Program; Subpart 2 of Part A Title III, State and Local Programs for School Technology Resources; Part A of Title IV, Safe and Drug Free Schools and Communities; and Title VI, Innovative Education Program Strategies, as required under the Elementary Secondary Education Act (ESEA) of 1965, as amended by the Improving America's Schools Act (IASA) of 1994. In addition the Delaware Department of Education is extending the complaint procedures to include programs under the Goals 2000: Educate America Act of 1994.

2. An organization or an individual may file a written, signed complaint regarding an alleged violation of Federal Program Statutes or regulations. The complaint shall be filed with the Department of Education and may involve either a Local Education Agency or the State Education Agency.

a. The complaint shall include (a) a statement that the State Education Agency or a Local Education Agency has violated a requirement of a Federal statute or regulation that applies to these Local Education Agency programs. And (b) the facts on which the statement is based.

b. The Delaware Department of Education shall resolve the complaint and issue a written report including findings of fact and a decision to the parties included in the complaint within sixty calendar days of the receipt of the complaint. An extension of the time limit may be made by the Department of Education only if exceptional circumstances exist with respect to a particular complaint.

c. The Delaware Department of Education may conduct an independent on-site investigation of the complaint, if it determines that an on-site investigation is necessary.

3. An organization or an individual is encouraged to file a written, signed complaint with the Local Education Agency, prior to submission of the complaint to the Delaware Department of Education, concerning an alleged violation by the Local Education Agency of a Federal statute or regulation that applies to the Local Education Agency's program.

a. The complaint shall include (a) a statement that the Local Education Agency has violated a requirement of a Federal statute or regulation that applies to the Local Education Agency's programs and (b) the facts on which the statement is based.

b. The superintendent or the agency head of the Local Education Agency shall resolve the complaint and issue a written report including findings of fact and a decision to the parties involved in the complaint within thirty calendar days of the receipt of the complaint.

c. An appeal of the Local Education Agency decision may be made by the complainant to the Department of Education. The appeal shall be in writing and signed by the individual making the appeal. The Department of Education shall resolve the appeal in the same manner as a complaint, as indicated in 2. a, b and c.

4. Any party to the complaint has the right to request

the Secretary, U. S. Department of Education, to review the final decision of the Delaware Department of Education. The request for an appeal of the decision to the Secretary shall be made in writing to the Delaware Department of Education within sixty days of the receipt of the decision.

5. Complaints and appeals to the Delaware Department of Education shall be mailed to the following address:

Director of Unified Planning and Quality Assurance  
Department of Education  
P. O. Box 1402  
Dover, Delaware 19903

\* IDEA Part B, as amended, has other specific remedies and procedural safeguards specified under Section 615 of the Act to protect disabled students. See the State's Administrative Manual: Programs for Exceptional Children.

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

### **DIVISION OF SOCIAL SERVICES**

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

BEFORE THE DELAWARE DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES

**IN THE MATTER OF:**

**REVISION OF THE REGULATIONS  
OF THE MEDICAID/MEDICAL  
ASSISTANCE PROGRAM  
DMAP 301.25**

**NATURE OF THE PROCEEDINGS:**

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to Medicaid eligibility. 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 Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by May 1, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the April Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective August 10, 1998.

June 1, 1998  
Date of Signature

Gregg C. Sylvester, M.D.  
Secretary

Delaware Medical Assistance Program Eligibility Manual

#### REVISION:

#### DMAP 301.25 Composition of Budget Unit

The budget unit is composed of various adults who are legally/financially responsible for each other and various children (related or unrelated) for whom the adults have legal responsibility or for whom the adults have accepted parental-like responsibility.

One family and/or household may be composed of one or more budget units and an individual may belong to more than one budget unit. ~~However, the budget unit must exclude any individual who is receiving Medicaid under another program (such as SSI, AFDC, GA, Disabled Children, Waiver, Deemer). Any individual who is receiving assistance under the QMB or SLMB programs may be included or excluded from the budget unit. The eligibility worker will first include the QMB or SLMB individual in the budget unit. If the income of the QMB or SLMB individual makes another individual ineligible, we will exclude the QMB or SLMB individual and his or her income from the budget unit. The budget unit must exclude any individual who is receiving SSI. Any individual who is receiving assistance under ABC, GA, Disabled Children, HCBS, QMB, SLMB, or other Medicaid only group may be included or excluded from the budget unit. If the income of the individual who is receiving medical assistance under another eligibility group makes another individual ineligible, we will exclude the individual who is receiving assistance under another eligibility group.~~

The budget unit may be modified to exclude related individuals with income except:

- a parent is always financially responsible for the minor (under age 18)\_ natural/adopted, non-emancipated child, or unborn child,
- a spouse is always financially responsible for a spouse,
- ~~an unmarried partner is always financially responsible for his child or unborn child and the child's or unborn child's mother. Unmarried partners who do not have children for whom they are responsible will be placed in separate budget units.~~
- unmarried partners with a mutual child (child in common) are always financially responsible for the child or unborn child. Neither partner is responsible for the other, even though both parents are responsible for their mutual child.

NOTE: The parent, spouse, or partner may be excluded from the poverty level budget unit if he or she is receiving assistance under another Medicaid group.

#### Individuals to Include in the Budget Unit:

- Pregnant woman and unborn child(ren)
- The spouse
- [NOTE: If the income of the stepfather makes some of the stepchildren ineligible, put them in another budget unit with their natural mother.]

If the income of the stepparent makes some of the stepchildren ineligible, do not count the stepparent income. The stepparent and his or her own children remain in the budget unit.

~~Unmarried partners if the couple have a child for whom they are responsible. An unmarried partner (who is not the parent of the child) may be excluded when his or her income makes the child or the other unmarried partner ineligible.~~

- Unmarried partners if the couple have a child for whom they have assumed parental-like responsibility. The child and the unmarried partners will first be included in the budget unit. An unmarried partner (who is not the parent of the child) must be excluded when his or her income makes the child or the other unmarried partner ineligible.
- Include both unmarried partners when determining the eligibility of a mutual child or a mutual unborn child. The pregnant woman will count as two (or more).
- Other natural or adopted children under age 18 that both parents have in common. Families have the choice of



including or excluding siblings. ~~If a sibling has income that would make the budget unit ineligible, the sibling with income is excluded. The exclusion of a sibling with income reduces the budget unit size and the income standard used to determine eligibility. The sibling with the income is ineligible and cannot be put in a separate budget unit. If a child has income, include the child with income in the budget unit, but do not count that child's income when determining the eligibility of the siblings, the parents, or other individuals in the budget unit. The child's income is counted when determining his or her own eligibility. Please note that the income of a child who is a minor parent is counted when determining the eligibility of his or her own child.~~

- Other related or unrelated children under age 18 (such as a niece, cousin, friend's child, minor sibling of adult). This is permissible because there is no technical requirement that the child be living in the home of a specified relative. If the children are ineligible in the big budget unit, place them in a separate budget unit. ~~If the income of an adult sibling renders the minor sibling ineligible, place the minor in a separate budget unit. Include the adult sibling who has assumed parental-like responsibility for a minor sibling in the budget unit. If the income of the adult sibling renders the minor ineligible, place the minor in a separate budget unit.~~

- The parents of a pregnant minor living together in the same home. Do not include her parents if the pregnant minor is considered emancipated. See technical eligibility for an explanation of emancipation.

#### Individuals to Exclude From the Budget Unit:

- ~~Individuals who are recipients of SSI, AFDC, AFDC/AU, GA or any Medicaid program. A QMB or SLMB may be included or excluded in the budget unit.~~

- Individuals who are recipients of SSI are excluded. Individuals who are recipients of ABC, GA, Medicaid only, QMB, SLMB, may be included or excluded in the budget unit.

- Parents of the father of a baby or unborn when the pregnant minor is living there with his parents. We will include the parents of the father if he is under age 18 and is applying for Medicaid.

- ~~A stepparent, if the income of the stepparent makes the stepchildren ineligible.~~

- A sibling, if the income of the sibling makes the budget unit ineligible. The sibling with income may not be placed in a separate budget unit.

NOTE: If an individual is not included in the budget unit, do not include his or her income.

#### Individuals in Separate Budget Units:

- ~~Siblings age 18 or over. For example, two sisters age 18 or over who live together will be in separate budget units. Related adults age 18 or over. For example, two sisters age 18 or over who live together will be in a separate budget unit.~~

- Unrelated adults age 18 or over. ~~Single adults will not be budgeted together unless they have children. If an unmarried couple is living together and they have a child for whom they are responsible, they may be placed in the same budget unit. Single adults and unmarried partners will not be budgeted together unless they have children. If an unmarried couple is living together and they have a child for whom they have assumed parental-like responsibility, the child and the unmarried partners may be placed in the same budget unit.~~

NOTE: An unmarried partner (who is not the parent of the child) must be excluded when his or her income makes the child or the other unmarried partner ineligible.

- ~~Foster parents are not budgeted with the foster child. Needy foster parents are placed in a separate budget unit.~~

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## DEPARTMENT OF HEALTH AND SOCIAL SERVICES

### DIVISION OF SOCIAL SERVICES

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

BEFORE THE DELAWARE DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES

IN THE MATTER OF:

REVISION OF THE REGULATIONS  
OF THE MEDICAID/MEDICAL  
ASSISTANCE PROGRAM

NATURE OF THE PROCEEDINGS:

The Delaware Department of Health and Social Services ("Department") initiated proceedings to update policies related to durable medical equipment, EPSDT, and practitioner services. 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 May Register of Regulations, requiring written

materials and suggestions from the public concerning the proposed regulations to be produced by June, at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

No written or verbal comments were received relating to this proposed rule.

#### FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the May Register of Regulations should be adopted as written.

THEREFORE, IT IS ORDERED, that the proposed regulations of the Medicaid/Medical Assistance Program are adopted and shall be final effective August 10, 1998.

June 5, 1998

Gregg C. Sylvester, M.D.  
Secretary

Delaware Medical Assistance Program Provider Manuals

#### REVISIONS:

Durable Medical Equipment Provider Specific Policy Manual

#### I. ~~DEFINITION AND OVERVIEW~~

#### III. CRITERIA FOR COVERAGE

~~Powered Air Flotation Fluidized Bed/Mattress~~

Incontinence Products

Coverage for Recipients age 4 Years and Over

Incontinence products for recipients age four years and older may be covered by the DMAP when prescribed by a physician as medically necessary for the treatment of incontinence related to a diagnosed condition. Treatment of incontinence aims to control the condition through bladder or bowel retaining, or other behavior management techniques, diet modification, drug therapy, and possibly surgery. All reasonable attempts at control treatment are expected to be made.

The DMAP may cover disposable incontinence products for recipients age four years and over. The DME supplier must maintain the physician's prescription for an incontinent product in their client files and the prescription must be renewed every six months.

The physician must prescribe the most appropriate type of incontinence products for the recipient and the DME supplier must dispense the least costly appropriate product of that type. Physicians are expected to prescribe an accurate daily allowance, and DME suppliers are cautioned not to routinely dispense the Medicaid maximum allowance of eight units per day unless medically necessary.

The DMAP considers the following types on incontinent products suitable for recipients who have incontinence: diapers/briefs, incontinent undergarments, guards, pads or liners. Medicaid recognizes that some patients may require two types of incontinent products to meet their needs, but the daily combined usage of both is not to exceed the expected daily allowance of eight units per day.

The DME supplier must use the locally assigned procedure code WW798 - Disposable Incontinence Products - Medically Necessary - For Ages Over 4 Years. Billing must include a description of the product dispensed, manufacturer's name, and product number. The supplier must use locally assigned procedure code WW800 or WW801, depending on the age of the recipient, when reusable incontinent products are prescribed for the treatment of incontinence.

The DMAP does not cover menstruation sanitary supplies, nor additional incontinent supplies for menstruation. Further, Medicaid will not cover Pull-up disposable training pants as they are not viewed as an appropriate treatment for incontinence and do not represent the least costly appropriate alternative health service available. Disposable incontinent supplies are not to be dispensed under HCPCS procedure code A5149 (incontinence/ostomy supply, miscellaneous).

Coverage of Diapers for Children Under 4 Years of Age

Individual consideration may be given for the coverage of disposable diapers for those children under four years of age when the use is outside the normal range (the DMAP considers eight diapers per day to be normal usage). A letter from the attending practitioner must be submitted to the Medical Review Team detailing medical necessity. The letter must address the child's diagnosis, the effects of the condition, the duration of the condition, the functional level of the child, the number of diapers used per day, why the excessive number is medically necessary, and if attempted, the results of toilet training. Authorization is required for the coverage of diapers for children under four years of age. If the service is approved, the DME provider will be required to submit a CMN using the locally assigned procedure code WW799.

Exceeded Units

The DMAP has established an upper limit on medically

necessary incontinence products for recipients age four years and over. This limit (8 per day) represents the maximum usage and will be waived only in extraordinary circumstances. If the recipient's need exceeds the limit, the DME supplier is required to submit a letter from the attending practitioner documenting the recipient's diagnosis, why the excessive number is medically necessary, the total number of incontinence products needed, and the period of time for which the approval is being requested. The letter will be returned to the DME provider if these requirements are not met.

VI. EPSDT PROGRAM SPECIFIC POLICY

Non-Covered Services

Diapers

Diapers routinely used for children under 4 years of age are not covered. Refer to Equipment Specific Coverage Criteria for Diapers Section III, Criteria for Coverage, Incontinence Products, for a description of requirements for coverage of diapers under age four (4): specific coverage exceptions.

Pull-Up Disposable Training Pants

Pull-Up disposable training pants are not an appropriate treatment for incontinence and do not represent the least costly appropriate alternative health service available. Therefore, they are considered to be a non-covered service. ~~If incontinence products are required during a lengthy training period we will continue our policy of covering diapers during toilet training when it is medically necessary.~~

The DMAP does not generally cover incontinence liners, diaper doublers, sanitary pads, etc.

Diapers

The DMAP may reimburse DME suppliers for disposable diapers for eligible recipients four years of age and older. Disposable diapers for children age four and above are covered when prescribed by a physician as medically necessary for the treatment of incontinence related to a diagnosed condition.

Individual consideration will be given for the coverage of disposable diapers for those children under four years of age when the use is outside the normal range (the DMAP considers 8 diapers per day to be normal usage). A letter from the attending practitioner must be submitted to the EPSDT Medical Review Team detailing medical necessity. The letter must address the child's diagnosis, the effects of the condition, the duration of the condition, the functional level of the child, the number of diapers used per day, why the excessive number is medically necessary, and if attempted, the results of toilet

training. Prior authorization is required for the coverage of diapers for children under four years of age. If the service is approved, the DME provider will be required to submit a CMN using the local HCPCS code WW799.

The DMAP has established an upper limit on medically necessary disposable diapers for children over four years of age. This limit (8 per day) represents the maximum usage and will be waived only in extraordinary circumstances. If the patient's need exceeds the limit, the DME supplier is required to submit a letter from the attending practitioner documenting the patient's diagnosis, why the excessive number is medically necessary, the total number of diapers needed, and the period of time for which the approval is being requested. The letter will be returned to the DME provider if these requirements are not met.

Equipment Specific Coverage Criteria

Biliblanket- Phototherapy Blanket

The DMAP will cover biliblankets phototherapy blankets to treat abnormal bilirubin levels in newborns. The DME provider should use code ~~WW802~~ WW839 when requesting authorization for the biliblanket.phototherapy blanket. The EPSDT Medical Review Team may authorize the rental of a biliblanket Rental may be authorized for up to, but not to exceed, 9 7 days. ~~The DME provider must attach a letter of medical necessity from the attending practitioner to the CMN. The letter must include all bilirubin laboratory data. The DME provider may only bill for days the unit was in use and must attach all bilirubin laboratory data to the CMN. A separate physician's letter of medical necessity will be required when use exceeds the 7 day limit.~~

Augmentative Communication Devices

The DMAP may cover augmentative communication devices that are medically necessary for individuals under the age of 21 through the EPSDT program. The DME provider is required to attach a letter of medical necessity from the attending practitioner to the CMN. In addition, supportive documentation, as appropriate, must address the following areas:

- Full evaluation by an expert examiner (such as a Speech-Language Pathologist).
- Full school speech-language evaluation.
- School IEP.
- Trial assessment with the requested device.
- Comparison to other devices not selected.

The DME provider is further required to attach the catalog literature or manufacturer's invoice for the requested device to the CMN. This literature must document the cost to the

provider for the device.

#### Orthotics/Prosthetics

The DMAP may cover orthotics/prosthetics for children under the age of 21 through the EPSDT program. Requests for these items require prior authorization with a CMN, and a practitioner's letter of medical necessity. ~~It is important that the supplier include ICD-9 CM diagnosis(es) that are relevant to the procedure codes being authorized on the CMN.~~

The DME provider must request prior authorization by using HCPCS procedure codes that begin with "L" followed by four (4) digits. The DME provider must not re-define the procedure and must use a code that describes the exact item dispensed. If the use of a miscellaneous code is necessary, the provider must include a description of the device and itemized explanation of all charges.

~~The replacement of an orthotic or prosthetic, due to growth, requires documentation of the previous and current measurements and a full explanation that all possible adjustments have been made. The supplier may be requested to submit documentation of measurements and/or adjustments for replacement of an orthotic or prosthetic due to growth.~~

#### Enuresis Alarm

~~The DMAP will cover enuresis alarms for children over age four years. This bed-wetting alarm requires prior authorization and a letter of medical necessity from the attending practitioner with the CMN. The supplier must include the appropriate ICD-9 CM diagnosis code(s) on the CMN. When requesting authorization for the enuresis alarm the supplier is required to use the locally assigned code WW838. The following information must be documented in the practitioner's letter of medical necessity:~~

- Physical findings in relation to nocturnal enuresis.
- Effects of any behavior modification programs.
- Effects of any medication therapy, if applicable.

#### Mic-Key Skin Level Gastrostomy Kit

~~This kit must be prior authorized with a CMN, and a letter of medical necessity is required from the attending practitioner. When requesting prior authorization for this kit the provider must use code WW800 848 on the CMN. Code WW 800 849 may also be used when additional supplies, such as the Secur-Lok extension set (12" length), is needed, must be used when requesting adapters for skin level gastrostomy kits (the request is limited to 5 adapters per month). If approved, the DMAP will cover up to, but not exceed, 5 adapters per month. When requesting other additional supplies needed with the skin level gastrostomy kit code WW800 must be used. Approval for additional supplies will not be given prior to the dates of service.~~

~~The CMN submitted to the DMAP for an authorization number must be signed by the attending practitioner.~~

## VII AUGMENTATIVE & ALTERNATIVE COMMUNICATION DEVICES & SERVICES

### A. SCOPE OF COVERAGE

Augmentative and alternative communication (AAC) devices are defined as electronic or non-electronic aids, devices, or systems that assist a Medicaid beneficiary to overcome or ameliorate (reduce to the maximum degree possible) the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities. Meaningful participation means effective and efficient communication of messages which takes into account the beneficiary's preferences. Examples of AAC devices include:

- : communication boards or books;
- : electrolarynxes;
- : speech amplifiers; and
- : electronic devices that produce speech and/or written output.

AAC devices include devices that are constructed for use as communication devices as well as systems that may include a computer, when an important use of the computer will be as the beneficiary's communication device. AAC devices also include related components and accessories, including software programs, symbol sets, overlays, mounting devices, switches, cables and connectors, auditory, visual, and tactile output devices, and necessary supplies, such as rechargeable batteries.

AAC services are treatment to assist Medicaid beneficiaries in meeting the full range of their communication needs. AAC services are within the scope of practice of speech-language pathologists. The goal of AAC services will be accomplished by:

- : developing and improving expressive communication and/or language comprehension skills and abilities that may be adversely affected by e.g., congenital or developmental disabilities;
- : maintaining and protecting beneficiaries' existing expressive communication and/or language comprehension skills and abilities from loss or deterioration due to e.g., progressive impairments and disabilities; and
- : restoring beneficiaries' expressive communication and/or language comprehension skills and abilities damaged or lost due to e.g., diseases, disability, or traumatic injury.

The scope of AAC services includes diagnostic, screening, preventive, and corrective service provided by or under the direction of a speech-language pathologist. Specific activities

include evaluation for, recommendation of, design, set-up-customization and training related to the use of AAC devices.

## Settings in Which AAC Services May be Provided

AAC services are covered under multiple Medicaid categories, including, but not limited to:

- : an individual's home as part of home health services, which includes supplies, equipment, and appliances suitable for use in the home;
- : inpatient hospital services;
- : out-patient hospital services;
- : nursing facility services; and
- : intermediate care facilities for persons with mental retardation, developmental disabilities and related condition.

Because all AAC devices are customized to overcome or ameliorate each beneficiary's communication limitations, and are for the sole and exclusive use of a single beneficiary, the cost of AAC devices for residents of nursing facilities and/or ICF/MR-DD facilities is not included in the facility's "per diem" or daily rate for that beneficiary.

## Treatment Plan & Physician Endorsement of Medical Necessity Required

Assessment is necessary prior to the development of the treatment plan and physician endorsement. For detailed information refer to Section B, Assessment, Data Reporting and Procedural Requirements.

A speech-language pathology treatment plan is required for all requests for DMAP funding for AAC devices and AAC services. Other health professionals, as appropriate, may participate in the development of the treatment plan. The treatment plan must be prepared by a speech by a speech-language pathologist who:

- : has a certificate of clinical competence from the American Speech-Language-Association;
- : has completed the equivalent educational requirements and work experience necessary for the certificate; or
- : has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

A physician must document endorsement of such plan through either completion of a DMAP approved form or letter of medical necessity. For individuals enrolled in a managed care plan, the endorsing physician must be the primary care physician.

The AAC devices and AAC services must be an integral part of the treatment plan. The treatment plan must address each beneficiary's unique communication abilities and the expressive communication or receptive (language

comprehension) limitations that preclude or interfere with meaningful participation in current and projected daily activities. It must:

- : conform to the scope of coverage stated in this policy;
- : be based on the evaluation criteria and data reporting requirements stated in this policy;
- : satisfy the medical need criteria stated in the policy; and
- : indicate that the beneficiary has demonstrated potential to benefit from AAC devices and/or services at a basic and reasonable level.

## Eligible Individuals

AAC services will be provided to beneficiaries with significant expressive communication or receptive (language comprehension) impairments: beneficiaries who currently lack adequate functional communication skills and abilities through gestures, speech and/or writing. These impairments include but are not limited to: apraxia of speech, dysarthria, and cognitive communication disabilities.

## Trial Use Periods for AAC Devices

A trial use period for AAC devices is not required but may be recommended by the speech-language pathologist who conducts the AAC evaluation as described in Section C, Review Criteria of this policy. The results of trial use periods are often instructive in determining the most appropriate AAC intervention, and thus are preferred. If the results of the assessment are clinically inconclusive, Medicaid may require a trial use period.

Medicaid authorization for rental of AAC device(s) will be approved for trial use periods when the speech-language pathologist prepares a request consistent with the requirements as described in the Trial Use Period Request section of this policy. The reasons for a trial use period request include, but are not limited to: the characteristics of the beneficiary's communication limitations; lack of familiarity with a specific AAC device; and concern that the beneficiary has not had sufficient experience with the requested device to permit determination of the device's appropriateness.

## Trial Use Period Request

If a speech-language pathologist or Medicaid seeks a trial use period, a plan for this period must be developed by the speech-language pathologist that includes:

- : the duration of the trial period;
- : description of the speech-language pathologist's qualifications that satisfy Medicaid's provider participation requirements;

: description of the speech-language pathologist's AAC services training and experience (and the AAC services experience of all other professionals, as appropriate) involved in the assessments of the beneficiary's functioning and communication limitations;

: beneficiary identifying information, such as name, Medical Assistance ID#, date of the assessment, medical diagnosis (primary, secondary, tertiary), and significant medical history;

: the AAC device(s) to be examined during the trial period, including all the necessary components (e.g., mounting device, software, switches or access control mechanism);

: description of the AAC devices assessment components, such as vocabulary requirements, representational system(s), display organization and features, rate enhancement techniques, message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output, access techniques and strategies, and portability and durability concerns, if any.

: the identification of the service provider(s), e.g., speech-language pathologists, educators, residential providers, etc. who will assist the beneficiary in learning and using the AAC device(s) during the trial period;

: the identification of the AAC service provider(s) who will assess the trial period; and

: the data collection schedule and the evaluation criteria, specific to the beneficiary, that will be used to determine the success or failure of the trial period.

Trial use period proposals must request Medicaid funding for rental of, or otherwise state the source of all necessary components of the AAC devices, including AAC services provider(s) who will assist the beneficiary during the trial use period.

Trial periods may be extended and/or different AAC devices provided, when requested by the speech-language pathologist responsible for evaluating the trial use period.

#### Trial Use Period Results

Results of trial use periods must be submitted with a prior approval request. The results must include the following:

: identification of the requested AAC devices including all required components, accessories, peripheral devices, supplies, and the device vendor;

: identification of the beneficiary's and communications partner's AAC devices preference, if any;

: justification stating why the recommended AAC device (including description of the significant characteristics and features) is better able to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in

current and projected daily activities, as compared to the other AAC devices considered; and

: justification stating why the recommended AAC device (including description of the significant characteristics and features) is the least costly, equally effective alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

#### Purchase or Rental

The speech-language pathologist is required to estimate whether it is more cost effective to rent or purchase the requested AAC device. In addition to price, material factors in determining cost effectiveness include availability, expected useful life, upgradability, and warranty availability, and terms. The determination to rent or purchase will be based upon cost effectiveness and must also take into account the comparative delay in providing the device to the beneficiary. No AAC device will be denied approval solely because it is not available for rental.

AAC devices purchased by the Medicaid program become the property of the beneficiary.

#### Repair and Replacement

##### AAC Device(s) Repair

Medicaid will pay for repair to keep AAC device(s), accessories and other system components ("devices") in working condition. Repair will be covered for the anticipated useful lifetime of the device(s), and for as long thereafter as the device(s) continue to be the appropriate treatment for the beneficiary. Medicaid payment for repair will include diagnostic testing of the device, parts, labor and shipping, when not otherwise available without charge pursuant to a manufacturer's warranty.

Medicaid AAC device repair will be subject to the following procedure:

: When a device ceases to function properly, the beneficiary, a person acting on behalf of a beneficiary, or Medicaid staff will notify the device manufacturer or the manufacturer's designee for the purpose of repair, and follow the manufacturer's or designee's instructions to send the device for assessment.

: When a device is received by the manufacturer or manufacturer's designee for the purpose of repair, the manufacturer or designee will conduct an assessment of the device to determine whether it can be repaired, and if so, prepare a written estimate of the diagnostics, parts, labor, shipping, and total cost of the repair, as well as the effectiveness (i.e., estimated durability) of the repair.

If Medicaid was the original payment source for the device, the manufacturer or manufacturer's designee for the purpose of repair will:

- : repair the device if the total cost of the repair is less than or equal to \$300.00; or
- : notify the beneficiary or the person acting on the beneficiary's behalf that the total cost of the (non-battery) repair, including shipping, will be greater than \$300.00, and that prior approval must first be obtained before the repair can proceed. When the repair is completed, the manufacturer or representative for the purpose of repair will return the repair device to the beneficiary.

If Medicaid was not the original payment source for the device, the manufacturer or manufacturer's designee for the purpose of repair will notify the beneficiary or the person acting on the beneficiary's behalf of the repair cost and that prior approval must first be obtained before the repair can proceed.

If the manufacturer or manufacturer's designee for repair concludes the device is not able to be repaired, written notice will be provided to the beneficiary or person acting on the beneficiary's behalf that prior approval must be sought to replace the device.

#### Procedure for Repair or Replacement of AAC Device Batteries

If the assessment conducted by the manufacturer or manufacturer's designee for repair identifies the device battery as the malfunctioning or non-functioning part, the following procedure will be followed;

- : repair of the battery will occur independent of the \$300.00 period approval threshold; and
- : independent of whether Medicaid was the original payment source for the device, or replacement of the battery will occur without the need of prior approval.

Repair or replacement of an AAC device battery will be performed, and the device returned to the beneficiary, or person acting on the beneficiary's behalf, as soon as possible.

#### Rental of AAC Device During Assessment, Repair and/or Replacement Period

When the manufacturer or manufacturer's designee receives notification from the beneficiary or a person acting on the beneficiary's behalf that an AAC device is malfunctioning or non-functioning, and is being returned for assessment, the manufacturer is authorized to provide the beneficiary, on a rental basis, an AAC device during the assessment, repair and/or replacement period. The rental period is authorized to continue without regard to the need for prior approval for the repair and/or replacement of the beneficiary's AAC device. Rental of an AAC device during the assessment, repair and/or

replacement period is not limited to devices for which Medicaid was the original payment source.

#### AAC Device Repairs Greater Than \$300.00 and AAC Device Replacement

Requests for prior approval for AAC device repairs greater than \$300.00 and for AAC device replacements must be accompanied by the following information:

- : description of the speech-language pathologist's AAC services training and experience (and the AAC services experience of all other professionals, as appropriate) involved in the assessments of the beneficiary's functioning and communication limitations; and
- : beneficiary identifying information, such as name, Medical Assistance ID#, date of the assessment, medical diagnosis (primary, secondary, tertiary), and significant medical history.

The speech-language pathologist also must report whether there have been any significant changes in any of the subject areas identified in the Required Assessment & Data Reporting section of this policy. The information must include the items specifically listed in the Sensory Status, Postural, Mobility & Motor Status, Current Speed, Language & Expressive Communication Status, Communication Needs Inventory, Summary of Communication Limitations, AAC Devices Assessment Components, and the Treatment Plan and Follow-Up sections and whether the device remains the speech - language pathologist's recommendation for beneficiary's use.

#### AAC Devices Replacement or Modification

Modification or replacement of AC devices will be covered by Medicaid subject to the following limitations:

- : All modification or replacement requests will require prior approval;
- : Prior approval request for replacement AAC devices may be submitted for identical or different devices;
- : Requests for prior approval for replacement of identical AAC devices must explain how replacement is more cost-effective than repair of current device(s). Data must be provided about age, repair history (frequency, duration and cost), and repair projections (estimated durability of repairs).
- : Requests for prior approval for modification or replacement of AAC devices with different devices due to changed circumstances may be submitted at any time and must include the following additional information:
  1. a significant change has occurred in the beneficiary's expressive communication impairments and/or receptive communication limitations. Modification or replacement requests due to changed individual circumstance must be supported by a new assessment of communication limitations; or

2. although there has been no significant change in the beneficiary's communication limitations, there has been a significant change in the characteristics, features or abilities of available AAC devices (i.e., a technological change) that will overcome or permit a significant further amelioration of the beneficiary's communication limitations as compared to the current AAC device. A detailed description of all AAC device changes and the purpose of the changes must be provided. In assessing such requests, Medicaid will place particular emphasis on whether the existing device reasonably achieves its purpose.

: requests for prior approval for replacement of AAC devices due to loss or damage (either for identical devices or different devices) must include additional information including a complete explanation of the cause of the loss or damage, and a plan to prevent the recurrence of the loss or damage.

#### B. ASSESSMENT, DATA REPORTING AND PROCEDURAL REQUIREMENTS

##### Role Of The Speech-Language Pathologist

An assessment of individual functioning and communication limitations that preclude or interfere with meaningful participation in current and projected daily activities is required for Medicaid funding for AAC devices and AAC services. The assessment must provide the information detailed in the Required Assessment & Data Reporting section of this chapter. It must be completed by a speech-language pathologist (with input from other health professionals, e.g., occupational therapists and rehabilitation engineers).

##### Prior Approval

All requests for AAC device(s):

- : require prior approval;
- : require physician endorsement consistent with the definition of AAC as discussed in section A, Scope of Coverage;
- : must include a sign-off by the beneficiary, guardian or similar representative as well as the vendor; and
- : repairs that are greater than \$300.00, and requests for modification or replacement of AAC devices require prior approval.

##### Required Assessment & Data Reporting

The following data are required to be submitted in support of a prior approval request for AAC devices:

##### Speech-Language Pathologist Identifying Information

: Description of the speech-language pathologist's qualifications that satisfy the requirements in this policy.

: Description of the speech-language pathologist's AAC services training and experience (and the AAC services experience of all other professionals, as appropriate) involved in the assessments of the beneficiary's functioning and communication limitations.

##### Beneficiary Information

###### 1) Identifying Information:

: Name  
 : Medical Assistance ID number  
 : Date of the Assessment  
 : Medical diagnosis (primary, secondary, tertiary)  
 : Significant medical history

###### 2) Sensory Status:

: Vision  
 : Hearing  
 : Description of how vision, hearing, tactile and/or receptive communication impairments or disabilities affect expressive communication

###### 3) Postural, Mobility & Motor Status:

: Motor status  
 : Optimal positioning  
 : Integration of mobility with AAC devices  
 : Beneficiary's access methods (and options) for AAC devices

###### 4) Current Speech, Language & Expressive Communication Status

: Identification and description of the beneficiary's expressive or receptive (language comprehension) communication impairment diagnosis  
 : Speech skills and prognosis  
 : Language skills and prognosis  
 : Communication behaviors and interaction skills (i.e., styles and patterns)  
 : Indication of past treatment, if any  
 : Description of current communication strategies, including use of an AAC device, if any

###### 5) Communication Needs Inventory

: Description of beneficiary's current and projected (e.g., within 2 years) communication needs  
 : Communication partners and tasks, including partners' communication abilities limitations, if any  
 : Communication environments and constraints which affect AAC device selection and/or features (e.g., verbal and/or visual output and/or feedback; distance communication needs)

###### 6) Summary of Communication Limitations

: Description of the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities (i.e., why the beneficiary's current communication skills and behaviors prevent meaningful participation in the beneficiary's current and projected daily activities)

###### 7) AAC Devices Assessment Components



- : Vocabulary requirements
- : Representational system(s)
- : Display organization and features
- : Rate enhancement techniques
- : Message characteristics, speech synthesis, printed output, display characteristics, feedback, auditory and visual output

8) Identification of AAC Devices Considered for Beneficiary

- : Identification of the significant characteristics and features of the AAC devices considered for the beneficiary
- : Identification of the cost of the AAC devices considered for the beneficiary (including all required components, accessories, peripherals, and supplies, as appropriate)

9) AAC Device Recommendation

- : Identification of the requested AAC devices including all required components, accessories, peripheral devices, supplies, and the device vendor
- : Identification of the beneficiary's and communication partner's AAC devices preference, if any
- : Justification stating why the recommended AAC device (including description of the significant characteristics and features) is better able to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities, as compared to the other AAC devices considered
- : Justification stating why the recommended AAC device (including description of the significant characteristics and features) is the least costly, equally effective alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities

10) Treatment Plan & Follow Up

- : Description of short term communication goals
- : Description of long term communication goals
- : Assessment criteria to measure beneficiary's progress toward achieving short and long term communication goals
- : Description of amount, duration and scope of the AAC services required for the beneficiary to achieve short and long term communication goals
- : Schedule of data collection
- : Identification and experience of AAC services provider responsible for training (these services providers may include, e.g.: occupational therapists, rehabilitation engineers, the beneficiary's parents, teachers and other services providers)

C. REVIEW CRITERIA

Medicaid funding for AAC devices will be approved when the devices are established to be medically necessary and the least costly, equally effective, alternative form of treatment to overcome or ameliorate the communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

Medical Necessity

The medical need for AAC devices and services must be established by a speech-language pathologist (and other health professionals, as appropriate) according to the evaluation and data reporting criteria stated in section B, Required Assessment and Data Reporting, and be supported by a physician's completion of a DSS-approved form or letter of medical necessity.

In general, medical necessity is established when the requested device or service meets the criteria of the DSS-approved medical necessity standard. See Appendix H in the General Policy for the DSS-approved medical necessity standard.

Subject to these criteria, assessment of "medical necessity" for AAC devices and services will be guided by the following specific standards:

Medical Need Criteria for AAC Devices

Medical need will be established for beneficiaries:

- : who have a diagnosis of a significant expressive or receptive (language comprehension) communication impairment or disability;
- : whose impairment or disability either temporarily or permanently causes communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities;
- : who have had a speech-language pathologist (and other health professionals, as appropriate) who:
  - 1) abperform an assessment and submit a report pursuant to the criteria set forth in section B, Required Assessment and Data Reporting;
  - 2) abrecommend speech-language pathology treatment in the form of AAC devices and AAC services; and
  - 3) abprepare a speech-language pathology treatment plan that describes the specific components of the AAC devices and the required amount, duration and scope of the AAC services that will overcome or ameliorate communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.
- : whose requested AAC devices and AAC services constitute the least costly, equally effective form of treatment

that will overcome or ameliorate communication limitations that preclude or interfere with the beneficiary's meaningful participation in current and projected daily activities.

#### General Principles Governing Medical Need Determination

: The cause of the beneficiary's impairment or disability (e.g., congenital, developmental, or acquired) or the beneficiary's age at the onset of the impairment or disability may be relevant considerations in the determination of medical need.

: Whether a beneficiary's daily activities, communication partners and communication environments are related to or intersect with other benefits and/or services programs (e.g., school, early intervention services, adult services programs, employment) does not preclude a determination that the beneficiary has a medical need for AAC devices and AAC services.

: No cognitive, language, literacy, prior treatment, or other similar pre-requisites must be satisfied by a beneficiary in advance of a request for AAC devices and AAC services.

: The unavailability of an AAC device, component or accessory for rental will not serve as the basis for denying a prior approval request for that device, component or accessory. The prior approval request must document the manner in which a comparable device may be substituted for assessment purposes in the event that a trial period is required.

: The unavailability of a warranty for an AAC device or other component or accessory will not serve as the basis for denying a prior approval request for that device, component or accessory, although Medicaid encourages providers to consider the availability of a reasonable warranty as a factor within the device selection process.

#### Additional Information Needed - Request for Peer Review

: When the medical need for an AAC device cannot be established pursuant to the criteria stated in the Medical Need Criteria for AAC Devices in this section, based on the information submitted in support of a prior approval request, Medicaid will determine and take the following steps:

1) if information required by the Medical Need Criteria for AAC Devices in this section is not included in the prior approval request, then Medicaid will make contact directly with the speech-language pathologist who conducted the assessment for the beneficiary, identify the specific additional information that is needed, and request that the additional information be submitted; and/or

2) if an interpretation is required of information in the prior approval request, then Medicaid will seek the advice of speech-language pathologist(s) with extensive AAC experience recommend to Medicaid by the American Speech-Language & Hearing Association (ASHA), the United States Society for Augmentative & Alternative Communication (USSAAC) and/or RESNA, who will provide the required

information

: Requested additional information and/or interpretations must be produced as soon as practicable but in no event more than 21 working days from the date of the request.

: Requests for additional information and/or requests for interpretations of information submitted will be made prior to issuance of any denial of a prior approval request.

#### Time Limits and Notice for Decision Making

: Review of prior approval request required by the Medical Need Criteria for AAC Devices in this section will be completed within a reasonable amount of time (in most cases no longer than 60 days). If review has not been completed within 45 days, the beneficiary, guardian, or similar representative will be notified of the status of the pending application.

: Requests for additional information and/or request for interpretations will be made as soon as the need is identified.

: Decisions on prior approval requests that are not timely issued may entitle the beneficiary to pursue an appeal.

: Written notice of decisions to deny prior approval or to approve a funding request with or without modifications will be provided directly to the beneficiary and vendor. Written notice will be provided to other persons, as appropriate.

#### D. GLOSSARY

##### Augmentative and Alternative Communication (AAC)

AAC approaches support, enhance, or augment the communication of individuals who are not independent communicators in all situations. An individual's AAC system should not be a single technique, device, or strategy, but rather an array of techniques, devices and strategies from which the individual chooses in order to effectively address the demands of a given communication opportunity.

##### AAC Devices

Electronic or non-electronic aids, devices or systems that assist a beneficiary to overcome or ameliorate (to the maximum degree possible) the communication limitations that preclude or interfere with meaningful participation in current and projected daily activities. Examples of AAC devices include: communication boards or books, electrolarynxes, speech amplifiers, and electronic devices that produce speech and/or written output. AAC devices include devices that are constructed for use as communication devices as well as systems that may include a computer, when an important use of the computer will be as the beneficiary's communication device. AAC devices also include related components and accessories, including software program, symbol sets, overlays, mounting devices,

switches, cables and connectors, auditory, visual, and tactile output devices, and necessary supplies, such as rechargeable batteries.

#### AAC Services

Treatment to assist beneficiaries in meeting the full range of their communication needs. The scope of AAC services includes diagnostic, screening, preventive, and corrective services provided by or under the direction of a speech-language pathologist. Specific activities include evaluation for, recommendation of, design, sup-up, customization, programming, and training related to the use of AAC devices.

#### Beneficiary's Preferences

The means and mode of message transmission a beneficiary prefers to use in a given communication interaction.

#### Current and Projected Daily Activities

The activities of daily living in which the individual now participates and in which it is anticipated the individual will participate when the individual's communication limitations have been overcome or ameliorated via the application of AAC approaches.

#### Expressive Communication Limitations

Difficulties in language production via any expressive communication modality (speech, writing, sign language, gesture, facial expression, graphic symbol selection).

#### Meaningful Participation

Effective and efficient communication of messages, taking into account the beneficiary's preferences regarding means and mode of transmission.

#### Receptive Communication Limitations

Difficulties in language understanding via any communication modality (speech, writing, sign language, gesture, facial expression, graphic symbol selection).

### EPSDT Provider Specific Policy Manual

## II. QUALIFIED PROVIDERS

Providers of EPSDT services could include the State's health department, pediatricians, family practitioners and other private practicing physicians, therapy service providers, providers of specialized supplies and equipment, health maintenance organizations, prepaid health plans, community/migrant health centers, private dentists, and other agencies that are routinely involved with a child's physical and mental health needs.

## IV. CONTENTS/DESCRIPTION OF SERVICES

EPSDT Special Needs Dental Program include dental services

provided by private dentists who are enrolled with the DMAP and are paid directly for dental services when provided to "special needs" children who meet the following eligibility criteria:

#### Special Needs Eligibility Criteria

Medicaid eligible children who have been diagnosed by their primary care provider with one or more of the following medical conditions may be treated by a dentist who is enrolled with the DMAP without prior approval by the DPH Dental Clinic:

- Autism
- Bleeding Disorders
- Craniofacial Anomalies
- Oral/Maxillofacial Trauma (requiring immediate service)
- Serious Emotional/Behavioral Disorders\*
- Severe Chronic Illness (respiratory, cardiac, renal, gastrointestinal)
- Severe Orthopedic Disorders/Wheelchair-bound
- Spinal Bifida
- Baby Bottle Syndrome
- Cancer
- HIV Infection
- Mental Retardation
- Seizure Disorders

\*When the diagnosed condition requires general anesthesia sedation, restraints, or other similar measures which preclude treatment in a DPH clinic setting.

All other Medicaid eligible children must first be evaluated by the DPH Dental Clinic before referral and treatment by a private dentist can be approved (except for orthodontics; see "Orthodontics" entry). This means that otherwise healthy children who need services which cannot be provided by DPH must still be referred to a private dentist by DPH.

#### Covered Services

For eligible children meeting the criteria, or for otherwise healthy children who need services which cannot be provided in the DPH Dental Clinic (and for whom a referral has been made by DPH), the DMAP will cover medically necessary dental services for the relief of pain and infections, restoration of teeth, and maintenance of dental health. Covered services include:

- Examinations
- Prophylactics
- Fluoride treatments
- Permanent and temporary fillings
- Extractions
- Pulpotomies
- Endodontics

- In-office sedation
- Stainless steel crowns
- Oral surgery
- Periodontics
- Prosthodontics
- Emergency services
- Adjunctive services

### Orthodontics

Orthodontics is a covered services under the DMAP's EPSDT Program for children under age twenty-one (21) years who have been diagnosed with a "handicapping" or "crippling" malocclusion. However, all orthodontic care must still be referred by and approved by the DPH dental clinic. Payment of orthodontic services will continue to be managed by the DPH through its Special Dental Program.

### Provider Enrollment

To be eligible for payment by the DMAP under the Special Needs Dental Program, dental providers must enroll and contract with the State of Delaware Department of Health and Social Services.

### Billing and Reimbursement

All dental services must be billed on a HCFA-1500 claim form and must be submitted directly to EDS, the Medicaid fiscal agent. Claims must be submitted within one year of the date of service to be considered for payment.

See Appendix A for the local HCPCS procedure code used by the DMAP for billing Special Needs Dental service.

When billing for Special Needs Dental service the place of service "3" (doctor's office) and the type of service "9" (other medical service) must be entered in the appropriate block on the claim form.

All services provided during a dental visit should be totaled and charged on one claim line corresponding to the dental procedure code given in Appendix A. Do not itemize each individual charge for a client's service. Dental services will be reimbursed at a negotiated rate.

### Third Party Liability

Medicaid is the payer of last resort. When a Medicaid client carries dental insurance coverage, that plan must be billed before Medicaid. A copy of the insurance voucher, explanation of benefits, or denial statement must be attached to the dental claim and any third party payment must be indicated in the appropriate field on the claim.

### EPSDT Dental Program

Dental services are covered by the DMAP for children under age 21 through the EPSDT program. While dental services continue to be provided through the DPH dental clinics, private dentists may enroll with the DMAP to help create broader access to dental care.

Under this dental policy there are minimal program requirements. An enrolled dental provider may treat any Medicaid eligible child and will be paid directly by the DMAP. The EPSDT dental program does not require prior authorization for services and does not require prior approval by DPH.

This EPSDT Dental Program incorporates the previous "Special Needs Dental Program" and provides general guidelines for the treatment of all Medicaid eligible children whether or not they have special needs. For those Medicaid clients who are "special needs" children, these guidelines dictate the requirements for the provision of dental care.

### Eligibility Criteria

Children under age 21 who are currently covered by the DMAP (Medicaid), are eligible to receive medically necessary dental services. Eligible children need not have been evaluated and referred by the DPH Dental Clinics to be treated by dental providers enrolled in the DMAP. Clients aged 21 or older are not eligible for dental services under Medicaid; billings for clients 21 and older will be denied as non-covered services.

### Covered Services

Medicaid covers medically necessary dental services in appropriate care settings for the relief of pain and infections, restoration of teeth, and maintenance of dental health. Covered services include:

<u>Examinations</u>	<u>Prosthodontics</u>
<u>Endodontics</u>	<u>Sealants</u>
<u>Prophylactics</u>	<u>In-office Sedation</u>
<u>Oral Surgery</u>	<u>Permanent and temporary fillings</u>
<u>Radiographs</u>	<u>Periodontics</u>
<u>Extractions</u>	<u>Fluoride Treatments</u>
<u>Pulpotomies</u>	<u>Adjunctive Services (treatment of dental pain, anesthesia, drug management, etc.)</u>

### Orthodontics

Orthodontics is a covered service under Medicaid's EPSDT Dental Program for children under age 21 who have been

diagnosed with a “handicapping” or “crippling” malocclusion. However, all orthodontic care must still be referred by and prior approved by the DPH dental clinics. Payment of orthodontic services will continue to be managed by the DPH through its Special Dental Program.

## Billing and Reimbursement

A locally assigned HCPCS procedure code is required for billing dental services provided to Medicaid eligible children. The locally assigned HCPCS procedure code, definition, unit of service definition, service limitations, prior authorization requirement, rate, place and type of service codes, and diagnosis codes are found in Appendix A.

When billing for EPSDT dental services the type of service “9” (Other Medical Service) and the appropriate place of service (as listed below) must be entered in the proper block on the claim form.

### Place of Service:

<u>1 - Inpatient Hospital</u>	<u>C - Residential Treatment Center</u>
<u>2 - Outpatient Hospital</u>	<u>D - Specialized Treatment Facility</u>
<u>3 - Doctor’s Office</u>	<u>G - Emergency Room</u>
<u>4 - Patient’s Home</u>	<u>J - Clinic</u>
<u>7 - Nursing Home</u>	

When billing for EPSDT dental services the diagnosis code “521” (Disorder of Tooth Development and Eruption) must be entered in the proper block on the claim form.

All services provided during a dental visit should be totaled and charged on one claim line corresponding to the dental HCPCS procedure code from Appendix A. One unit of service covers all charges incurred during the visit. Do not itemize each individual charge for a client’s service on the claim form. However, you should maintain office records or files showing each individual service and charge for review purposes.

Dental services will be reimbursed at a pre-determined rate set by the State.

## Third Party Liability

Medicaid is the payer of last resort. When a Medicaid client carries dental insurance coverage, that plan must be billed before Medicaid. A copy of the insurance voucher, explanation of benefits, or denial statement must be attached to the dental claim, and any third party payment must be indicated in the appropriate field on the claim. Medicaid will coordinate benefits and pay any balance due up to its fee.

The managed care organizations contracted by the State to

provide medical care to Medicaid clients do not provide dental coverage under the Diamond State Health Plan.

## Medicaid Card

The provider should check the recipient’s Medicaid card for current eligibility before every service (cards are generally good for the whole month). Dental care is not a covered benefit for all Medicaid clients even if they have a Medicaid card. Clients aged 21 and older are not covered.

## Freedom of Choice of Provider

Clients are permitted free choice of providers. If a dental provider decides not to bill Medicaid for a service, the provider must advise the client prior to the delivery of service that the client will be responsible for the bill. The client then retains the right to decide to be treated and to pay for the service personally or to seek another dental provider who will accept the Medicaid payment.

## Medicaid Payment

Medicaid payment is considered payment in full. Therefore, dental providers may not charge clients for balances not covered by Medicaid, and may not charge clients for services and reimburse them once Medicaid pays the claim. However, providers may bill a client when Medicaid denies a claim because the client is not eligible on the date of service, when the service is a non-covered benefit in the Medicaid Program (example, age 21 or older, cosmetic care, etc.), or when missed appointments are usually charged to patients and the Medicaid client was informed prior to the appointment that missed appointments are considered “not covered” by Medicaid.

## Confidentiality

Client information may only be used for purposes directly related to the administration of the Medicaid Program. Client information may not be made public and lists of Medicaid clients may not be made and distributed to others. See the Medicaid Provider Contract for further details.

Specialized Supplies and Equipment Further information on coverage of equipment for children under age 21 is available in the EPSDT and Augmentative and Alternative Communication Devices and Services sections of the Durable Medical Equipment Provider Manual.

Practitioner Provider Specific Policy Manual

## IX. SPECIFIC CRITERIA FOR ORAL SURGEONS

Dental services, including the extraction of teeth, are restricted

to recipients under twenty-one 21 (through age 20) years of age and are generally must be provided by the Division of Public Health (DPH) Dental Clinics Referrals to private dentists are made by DPH when the scope of work required cannot be provided by the clinic. Dental services which cannot be provided by DPH may only be rendered by a private dentist/oral surgeon following an evaluation and referral by DPH.

Dental services are also provided by private dentist through the EPSDT Dental Program. Eligible children do not need to be evaluated or referred by the DPH dental clinic to be treated by dental providers enrolled with the DMAP in the EPSDT Dental Program.

Services that are authorized by DPH must be billed directly to DPH not the DMAP.

Dental procedures for recipients age 21 and over are not covered in any setting.

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code,  
Section 122(3)(t)(1) (16 Del.C.122(3)(t)(1))

**SUMMARY OF EVIDENCE**

**STATE OF DELAWARE REGULATIONS GOVERNING  
LEAD-BASED PAINT HAZARDS**

The Public Hearing was held on June 24, 1998, at the Jesse Cooper Building, Dover, DE before John J. Beaman, Hearing Officer, to discuss the proposed Delaware Health and Social Services Lead-Based Paint Hazards regulations. The announcements regarding the hearings were advertised on June 1, 1998, in the Delaware State News, the News Journal and the Delaware Registry of Regulations in accordance with Delaware Law. Mr. Thomas V. May made the agency's presentation. Attendees were allowed and encouraged to discuss and ask questions regarding all sections of the proposed regulations. They offered no negative opinions and most questions regarded clarification of the sections. The public comment period was open from June 1 to July 2, 1998. One written comment was received and supported the regulations. No negative comments were received. Verifying documents are attached to the Hearing Officer's record. The regulations have been approved by the Delaware Attorney General's Office.

STATE OF DELAWARE  
REGULATIONS GOVERNING LEAD-BASED PAINT  
HAZARDS

ADOPTED JULY 15, 1998, BY THE SECRETARY OF  
DELAWARE HEALTH AND SOCIAL SERVICES UNDER  
AUTHORITY OF 16 DEL. C. CHAPTER 1, §122(3)(t)  
EFFECTIVE DATE: AUGUST 11, 1998

**\* Please note: There were no changes to this regulation from the proposed regulation to the final regulation. Due to space limitations the full text of the regulation is not reproduced here, the full-text of the regulations was published in the June 1, 1998 Register of Regulations page 1906 (1:12 Del.R. 1906) or from the Department of Health and Social Services.**

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF AIR & WASTE MANAGEMENT  
AIR QUALITY MANAGEMENT SECTION**

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

1. Title of The Regulations:

**Delaware's Low Enhanced Inspection and Maintenance (LEIM) Program.**

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

Adoption of Regulation No. 31 - LOW ENHANCED INSPECTION AND MAINTENANCE PROGRAM in Kent and New Castle Counties (severe ground-level ozone nonattainment areas of the State), with appendices, covering both exhaust emission testing and pressure testing portions; Plan for Implementation of Regulation No. 31 (with appendices); Amend Regulation No. 26 - MOTOR VEHICLE EMISSIONS AND INSPECTION PROGRAM which is now reflective of the Sussex County I/M Program.

3. Possible Terms of the Agency Action:

N/A

4. Statutory Basis or Legal Authority to Act:

Title 7, Del. C., Chapter 60

Clean Air Act Amendments of 1990

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

Elimination of Regulation No. 33 - MOTOR VEHICLE PRESSURE TEST AND EMISSION CONTROL DEVICE INSPECTION PROGRAM which is now contained in Regulation No. 31.

6. Notice of Public Comment:

The public hearing was held on May 21, 1998 at 6:00 p.m. in the auditorium of the DNREC office building located at 89 Kings Highway in Dover. Secretary's Order signed Jun 16, 1998 and notice placed in Delaware State News, News Journal, Sunday News Journal.

7. Prepared By:

Philip A. Wheeler (pwheeler@dnrec.state.de.us)  
302-739-4791 June 22, 1998

REGULATION NO. 26

MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM  
08/13/98

Section 1 - Applicability and General Provisions

1.1 Except as provided in Section 4 of this regulation, the standards, requirements and procedures set forth in this regulation are applicable to all motor vehicles titled and registered within Sussex County and as specified by the Department, including any motor vehicles owned or operated by the federal, state and local governments and their agencies.

08/13/98

Section 2 - Definitions

**DIVISION:** The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

**WAIVER:** An exemption issued to a motor vehicle that cannot comply with the applicable emissions standard and cannot be repaired for reasonable cost.

**DEPARTMENT:** The Department of Natural Resources and Environmental Control of the State of Delaware.

**EMISSIONS:** Products of combustion discharged into the atmosphere from the tailpipe of a motor vehicle engine.

**EMISSIONS INSPECTION AREA:** The emissions inspection area will constitute the entire State effective April 1, 1990.

**EMISSIONS STANDARD(S):** The maximum concentration of either hydrocarbon (HC) or carbon monoxide (CO), or both, allowed in the emissions from the tailpipe of a motor vehicle as established by the Secretary of the Department of Natural Resources and Environmental Control or his designee in Technical Memorandum #2 entitled "Motor Vehicle Inspection and Maintenance Program - Emission Limit Determination" dated 12/29/87.

**FAILED MOTOR VEHICLE:** Any motor vehicle which does not comply with applicable emission standards during the initial test or any retest.

**FLEET INSPECTION STATION:** A facility approved by the Department to conduct emissions inspections of the motor vehicles of a qualified fleet as determined by the Department.

**MODEL YEAR:** The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

**MOTOR VEHICLE:** Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors and off-highway vehicles.

**MOTOR VEHICLE OFFICER:** A person who has completed an approved emissions inspection equipment training program and is employed by an official inspection station.

**NEW MOTOR VEHICLE:** A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin.

**OFFICIAL INSPECTION STATION:** The Motor Vehicle Safety Inspection Stations in Wilmington, New Castle, Dover and Georgetown, Delaware, operated by the Division.

**REASONABLE COST:** The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes toward compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

**REGISTERED GROSS VEHICLE WEIGHT (G.V.W.):** The vehicle gross weight designated by the Division on the vehicle registration card which is the total weight of the vehicle and its maximum allowable load.

**VEHICLE:** Means every device in, upon or by which any person or property is or may be transported or drawn upon a

public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks and excepting off-highway vehicles.

05/09/85

#### Section 3 - Registration Requirement

3.1 Effective January 1, 1983, no motor vehicle that is subject to this regulation may be granted registration in the State of Delaware unless the motor vehicle is in compliance with the applicable emissions standards, regardless of its pass/fail status of other tests normally performed at the official inspection station.

02/08/95

#### Section 4 - Exemptions

4.1 The following motor vehicles are exempt from the provisions of this regulation:

- A. All farm vehicles not required by law to be registered
- B. All historic vehicles, kit cars or antique vehicles displaying antique vehicle registration plates.
- C. All motor vehicles with a registered G.V.W. over 8,500 pounds.
- D. All motorcycles.
- E. All vehicles that are registered in Delaware, but are not operated in Delaware consistent with established procedures of the Division.
- F. All vehicles that obtain power by a means other than gasoline internal combustion. (Example: diesel, electric, propane, etc.)

4.2 Any exemption issued to a vehicle under this Section will not have an expiration date and will expire only upon a change in the vehicle status for which exemption was initially granted.

07/06/82

#### Section 5 - Enforcement

5.1 Enforcement shall be in accordance with the provisions of 7 Del. C., Chapter 67.

6/18/98

#### Section 6 - Compliance, Waivers and Extensions of Time

6.1 Compliance with applicable emissions standards shall be determined at an official inspection station or at a fleet inspection station. The idle test procedure prescribed by the Department in Technical Memorandum #1 entitled "Motor Vehicle Inspection and Maintenance Program - Vehicle Test Procedure and Machine Calibration", dated 6/9/82, shall be the official test procedure. A pass/fail printout from the emission testing equipment given to the driver will serve as the driver's record of the test results.

A. Any motor vehicle shall be deemed to be in compliance with Section 3.1 if the test results are equal to or less than the emissions standards applicable to the motor vehicle.

B. Except as provided in Section 6.1 C, any motor vehicle shall be deemed to be in noncompliance with Section 3.1 if the test results are greater than the emissions standards applicable to the motor vehicle.

C. Any motor vehicle which fails its initial emissions test shall be deemed to be in compliance with Section 3.1 if not later than the registration expiration date, the motor vehicle either (1) is repaired at reasonable cost and is in compliance with applicable emissions standards as determined by an emissions retest at an Official Inspection Station, or (2) is granted a waiver pursuant to Section 6.2, or (3) is granted an extension of time not to exceed one month.

D. Whenever the owner of a failed motor vehicle determines to the satisfaction of the Division that it cannot be repaired at reasonable cost, the owner may be granted a waiver provided the owner makes application to the Division prior to the registration expiration date or by such other time as may be specified by the Division.

#### 6.2 - Waiver issuance criteria

A. Waivers shall be issued only after a vehicle has failed a retest performed after all qualifying repairs have been completed, and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs.

B. Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in Section 6.2 E of this regulation. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

C. Waivers shall not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in Section 6.2 F of this regulation. An exemption for tampering-related repairs may be issued if it can be verified that the part in question or one similar to it is no longer available for sale. Repairs shall be appropriate to the cause of the test failure, and a visual check shall be made to determine if repairs were actually made if, given the nature of the repair, it can be visually confirmed. Receipts shall be submitted for review to further verify that qualifying repairs were performed.

D. A minimum of \$75 for pre-81 vehicles and \$200 for 1981 and later vehicles shall be spent on related repairs in order to qualify for a waiver. This minimum cost should not be construed as an amount which must be spent as a condition of compliance after an initial failure. This cost relates only to the minimum cost which must be incurred when determining



the eligibility of granting a waiver. In addition, this regulation does not prevent the vehicle owner from performing self-repairs.

6.3 The Division shall be responsible for specifying any forms or procedures to be followed in making applications pursuant to Section 6.2.

6.4 Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

6.5 Quality control of waiver issuance.

A. The program shall include methods of informing vehicle owners or lessors of potential warranty coverage, and ways to obtain warranty repairs.

B. The program shall insure that repair receipts are authentic and cannot be revised or reused.

C. The program shall insure that waivers are only valid for one test cycle.

07/06/82

Section 7 - Inspection Facility Requirements

7.1 Motor Vehicle Officers employed by the Division shall meet the requirements specified in this regulation.

7.2 Test equipment used by the Division shall be a type approved by the Department and testing procedures shall be conducted in accordance with the provisions of this regulation.

7.3 No person employed by the Division to test motor vehicle emissions shall engage in or have an interest in the operation of repair facilities located in this State; perform emission related repairs for compensation; or recommend repair facilities to owners or operators of vehicles being tested.

07/06/82

Section 8 - Certification of Motor Vehicle Officers

8.1 A person may not perform the duties of a motor vehicle officer for testing motor vehicle emissions or operating emission testing equipment to determine the compliance or noncompliance of a motor vehicle as required by this regulation at an official inspection station unless that person has applied for and has received certification in accordance with the provisions of this Section.

8.2 To become certified, a person shall successfully complete a training course for this purpose approved by the Division.

08/13/98

Section 9 - Calibration and Test Procedures and Approved Equipment

9.1 All emissions testing for the purpose of determining compliance with emissions standards shall be performed using equipment approved by the Department and calibration and test procedures as provided in this regulation.

9.2 Calibration and test procedures: Reserved.

TECHNICAL MEMORANDUM #1

Reserved

(Revised 12/29/87)

TECHNICAL MEMORANDUM #2

MOTOR VEHICLE INSPECTION AND MAINTENANCE PROGRAM EMISSION LIMIT DETERMINATION

The five vehicle age groups have different allowable emission rates in the idle mode due to the sophistication of the emission control equipment installed by the manufacturer. The only exception being the pre-1968 age group which had no pollution control apparatus, save for a few vehicles with positive crankcase ventilation (PCV) valves. Installation of PCV valves was virtually a voluntary measure by auto manufacturers.

During the time period March 1 through June 30, 1982, data was being gathered by a mandatory emission inspection with voluntary repair, at the two vehicle safety inspection lanes in New Castle County. The Sun Model CEA-3023 Computer Emission Analyzer (hereafter called the analyzer) has the ability to store, on conventional data cassettes, all of the input required and the results of a test on every vehicle tested. This is to include date, time, vehicle age group, vehicle registration number, hydrocarbon (HC) and carbon monoxide (CO) emission limits for the particular vehicle age group and the actual HC and CO emissions from the tested vehicle. A paper printout of this information is given to the driver upon being tested. Test procedures were consistent with those described in Appendix B to Technical Memorandum #1.

During the voluntary emission program, the HC and CO emission limits programmed into the analyzer were, with one exception, the same as those used by the State of New Jersey in its I & M program. Using these limits or "cut points" for each vehicle type gave a very good frame of reference to analyze the limits applicable to Delaware.

In general, about 25% of the vehicles tested during that voluntary program failed to pass the New Jersey standards.

Emission limits for each age group and the failure rate as a percent are shown in Table 1.

Table 1

HC <sup>(1)</sup>			
pre 1968	1400	18%	
1968-1970	700	22%	
1971-1974	500	20%	

1975-1979	300	29%
1980 +	100	15%

Notes (1) Hydrocarbon (HC) emissions expressed as parts per million (ppm) of non-methane HC

(2) The New Jersey standards for 1980 and later models are 300 ppm of HC

The rate of emission reduction required by the I & M program adoption must be at least 35% reduction of total HC emissions from tailpipe at the end of 1987. The 35% is defined as the difference in emissions of HC between the vehicle fleet not having I & M and that having I & M, in the urbanized portion of the ozone non-attainment area. Since the mechanics of testing only those vehicles registered to an address within the "urbanized"<sup>(1)</sup> area would be difficult at best, the entire county was included in the calculations for reductions.<sup>(2)</sup> The types of vehicles to be tested for emissions were broadened to include the two classes of light duty trucks, those under 6,000 pounds G. V. W. and those in the 6,000 to 8,500 pound G.V.W. class. These two measures reduced the estimated failure rate from the 20% of the urbanized auto and station wagon fleet, which is the target rate to accomplish the 35% reduction in the emissions, down to 15%.

Attached as Appendix A to this Technical Memorandum is an April 16, 1982, letter from the I & M staff at EPA's Ann Arbor office. This letter details their evaluation of a 10% stringency factor on the three LD classes of vehicles in NCC to provide at least 35% reduction in tailpipe emissions. Following up the EPA analysis is a similar analysis for the Delaware-specific data. With a 15% stringency factor the results show that a 39.7% reduction in HC will be realized when the same 1,083 factor for "entire county inspection" is applied. This is obviously a reduction in tailpipe HC emissions adequate to meet the EPA requirements.

The selection of cut points for each vehicle class was accomplished by computer storage and retrieval of the data. For each vehicle age group, the frequency of each emission reading was determined and the appropriate percentile selected as the cut point for that particular age group. For simplicity and reduced computer storage requirements each individual reading was grouped in sets of 5 ppm, in the case of HC, and in sets of 0.05%, in the case of CO.

Light duty trucks (pickups and vans) have different levels of emission controls than those of autos. Age groups of the two light duty gasoline truck classes LDGT1<sup>(3)</sup> and LDGT2<sup>(4)</sup> had to be fit into one of the auto age group levels of emission control. This determination was made by utilizing Table 7 of the January, 1981, EPA document entitled "Recommendations Regarding the Selection of Idle Emission Inspection Cutpoints for Inspection and Maintenance Programs". The final result of this exercise is shown in Table 2, and this table represents the cutpoints adopted in the 1982 S.I.P. revision. Since the County of New Castle is non-attainment for ozone which is affected by HC, the rates shown for CO will be recorded, but

failure of CO limits will not affect registration of the vehicle.

(1) The urbanized area as defined by the U.S. Bureau of the Census.

(2) This expanded the potential vehicle fleet by a factor of 1.083 which is the ratio of total NCC population to the urbanized area population.

(3) Truck with GVW less than 6,000 pounds

(4) Truck with GVW greater than 6,000 but less than 8,500 pounds

Table 2

<u>LDGV</u>	<u>LDGT1</u>	<u>LDGT2</u>	<u>HC</u>
pre 1968	pre 1968	pre 1970	1600 ppm
1968-1971	1968-1970	1970-1972	1100 ppm
1972-1974	1971-1974	1973-1978	800 ppm
1975-1979	1975 & later	1979 & later	600 ppm
1980 & later			235 ppm*

\*The emission limit of 235 ppm for 1980+ vehicles is the "warranty" emission limit of 220 ppm plus the accuracy of the testing equipment (+/- 15 ppm)

#### REVISION NUMBER 1 - 5/9/85

The following changes are made effective July 1, 1985, and consist of revisions to existing Table 2 of the approved 1982 Ozone SIP Revision

Table 2 (As Revised)

<u>LDGV</u>	<u>LDGT</u>	<u>HC</u>
1968-1970	1970-1972	1100 ppm
1971-1974	1973-1978	800 ppm
1975-1979	1979-1983	500 ppm
1980		275 ppm
1981 & later	1984 & later	220 ppm

Whenever the Department determines that the cutpoints used during 1985 or any subsequent year do not provide the minimal required hydrocarbon reduction, the following cutpoints will become effective on the first day of a new calendar year.

Table 2

<u>LDGV</u>	<u>LDGT</u>	<u>HC</u>
1968-1970	1970-1982	1000 ppm
1971-1974	1973-1978	700 ppm
1975-1979	1979-1983	450 ppm
1980		275 ppm
1981 & later	1984 & later	220 ppm

This determination shall be based on vehicle test data from

the first ten months of the past year. Public notice prominently placed in the Wilmington newspapers will announce details of the changes and the circumstances which caused the adjustments to be made.

**REVISION NUMBER 2 - 12/29/87**

The following changes are made effective January 1, 1988, and consist of revisions to existing Table 2 of the approved 1982 Ozone SIP Revision.

Table 2  
(As Revised)

LDGV	LDGT	HC
1968-1970	1970-1972	900 ppm
1971-1974	1973-1978	600 ppm
1975-1979	1979-1983	400 ppm
1980		220 ppm
1981 & later	1981 & later	220 ppm

Whenever the Department determines that the cutpoints used during 1988 or any subsequent year do not provide the minimal required hydrocarbon reduction, the following cutpoints will become effective on the first day of a new calendar year.

Table 2  
(As Revised)

LDGV	LDGT	HC
1968-1970	1970-1972	800 ppm
1971-1974	1973-1978	500 ppm
1975-1979	1979-1983	350 ppm
1980		220 ppm
1981 & later	1981 & later	220 ppm

This determination shall be based on vehicle test data from the first ten months of the past year. Public notice prominently placed in the Wilmington newspapers will announce details of the changes and the circumstances which caused the adjustments to be made.

A. The following changes are made effective January 31, 1990, and will be retained indefinitely unless circumstances occur which will be described in Part B.

TABLE 2

GROUP	AUTO/ STA. WAG.	PICKUP/VAN UNDER 8501#	HYDROCARBON LIMIT	CARBON DIOXIDE LIMIT
1	'68-'70	'70-'72	900 ppm	9.00
2	'71-'74	'73-'78	600 ppm	6.00

3	'75-'79	'79-'83	400 ppm	4.00
4	'80	(NONE)	220 ppm	2.00
5	'81 +	'84 +	220 ppm	1.20

B. Whenever the Department determines that the cutpoints proposed in Part A do not provide the minimal required hydrocarbon reduction, the following cutpoints will become effective on the first day of calendar quarter (i.e. January, April, July or October).

TABLE 2

GROUP	AUTO/ STA. WAG.	PICKUP/VAN UNDER 8501#	HYDROCARBON LIMIT	CARBON DIOXIDE LIMIT(%)
1	'68-'70	'70-'72	800 ppm	8.00
2	'71-'74	'73-'78	500 ppm	5.00
3	'75-'79	'79-'83	350 ppm	3.50
4	'80	(NONE)	220 ppm	2.00
5	'81 PLUS	'84 PLUS	220 ppm	1.20

Low enhanced Inspection and Maintenance Program  
Regulation No. 31

08/13/98

Section 1 - Applicability.

(a) This program shall be known as the "Low enhanced Inspection and Maintenance Program" or "LEIM Program", and shall be identified as such in the balance of this regulation.

(b) This regulation shall apply to New Castle and Kent Counties.

(c) This regulation shall apply to all vehicles registered in the following postal ZIP codes:

19701	19702	19703	19706	19707	19708	19709	19710	19711
19712	19713	19714	19715	19716	19717	19718	19720	19730
19731	19732	19733	19734	19735	19936	19703	19938	19800
19801	19802	19803	19804	19805	19806	19807	19808	19809
19810	19850	19890	19894	19896	19897	19898	19899	19901
19902	19903	19904	19934	19936	19938	19942	19943	19946
19952	19953	19954	19955	19960	19961	19962	19963*	19964
19977	19979	19980						

\* Note: If vehicles registered in Sussex County and with this ZIP code, this regulation is not applicable.

(d) The legal authority for implementation of the LEIM Program is contained in 7 Del.C. Chapter 60, §6010(a). Appendix 1 (d) contains the letter from the State of Delaware,

Secretary of the Department to EPA Regional Administrator, W. Michael McCabe committing to continue the I/M program through the enforcement of this regulation out to the attainment year and remain in effect until the applicable area is redesignated to attainment status and a Maintenance Plan is approved by the EPA. 7 Del. C. Chapter 60, §6010(a) does not have a sunset date.

(e) Requirements after attainment.

This LEIM program shall remain in effect if the area is redesignated to attainment status, until approval of a Maintenance Plan, under Section 175A of the Clean Air Act, which demonstrates that the area can maintain the relevant standard for the maintenance period (10 years) without benefit of the emission reductions attributable to the continuation of the LEIM program.

(f) Definitions

**Alternative Fuel Vehicle:** Any vehicle capable of operating on one or more fuels, none of which are gasoline, and which is subject to emission testing to the same stringency as a similar gasoline fueled vehicle.

**Certified Repair Technician:** Automotive repair technician certified jointly by the College (or other training agencies or training companies approved by the Department) and the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles as having passed a recognized course in emission repair. (See Appendix 7 (a))

**Certified Manufacturer Repair Technician:** Automotive repair technician certified by the Department of Natural Resources and Environmental Control and the Division of Motor Vehicles, as trained in doing emission repairs on vehicles of a specific manufacturer. (See Appendix 7 (a))

**College:** The Delaware Technical and Community College

**Compliance Rate:** The percentage of vehicles out of the total number required to be inspected in any given year that have completed the inspection process to the point of receiving a final certificate of compliance or a waiver.

**Director:** The Director of the Division of Motor Vehicles in the Department of Public Safety.

**Division:** The Division of Motor Vehicles in the Department of Public Safety of the State of Delaware.

**Department:** The Department of Natural Resources and Environmental Control of the State of Delaware.

**Emissions:** Products of combustion and fuel evaporation discharged into the atmosphere from the tailpipe, fuel system

or any emission control component of a motor vehicle.

**Emissions Inspection Area:** The emissions inspection area shall constitute the entire counties of New Castle and Kent.

**Emissions Standard(s):** The maximum concentration of hydrocarbons (HC), carbon monoxide (CO) or oxides of nitrogen (NO<sub>x</sub>), or any combination thereof, allowed in the emissions from a motor vehicle as established by the Secretary, as described in this regulation.

**Failed Motor Vehicle:** Any motor vehicle which does not comply with applicable exhaust emission standards, evaporative system function check requirements and emission control device inspection requirements during the initial test or any retest.

**Flexible Fuel Vehicle:** Any vehicle capable of operating on more than one fuel type, one of which includes gasoline, which must be tested to program standards for gasoline. This is in contrast to alternative fuel vehicles.

**Going Concern:** An individual or business with a primary, full time interest in the repair of motor vehicles.

**GPM:** Grams per mile (grams of emissions per mile of travel).

**Manufacturer's Gross Vehicle Weight:** The vehicle gross weight as designated by the manufacturer as the total weight of the vehicle and its maximum allowable load.

**Model Year:** The year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

**Motor Vehicle:** Includes every vehicle, as defined in 21 Del. Code, Section 101, which is self-propelled, except farm tractors, off-highway vehicles, motorcycles and mopeds.

**Motor Vehicle Technician:** A person who has completed an approved emissions inspection equipment training program and is employed or under contract with the State of Delaware.

**New Motor Vehicle:** A motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin, unregistered vehicle title.

**Official Inspection Station:** All official Motor Vehicle Inspection Stations located in New Castle and Kent counties, operated by, or under the auspices of, the Division.

**Operator:** An employee or contractor of the State of Delaware performing any function related to motor vehicle inspections in the State.

**Performance Standard:** The complete matrix of emission factors derived from the analysis of the model program as defined in 40 CFR Part 51 Subpart S, by using EPA's computerized Mobile5a emission factor model. This matrix of emission factors is dependent upon various speeds, pollutants and evaluation years.

**PFI:** The Plan for Implementation of Regulation No. 31, which can be also considered to be the technical support document for that regulation.

**Reasonable Cost:** The actual cost of parts and labor which is necessary to cause the failed motor vehicle to comply with applicable emissions standards or which contributes towards compliance. It shall not include the cost of those repairs determined by the Division to be necessary due to the alteration or removal of any part of the emission control system of the motor vehicle, or due to any damage resulting from the use of improper fuel in the failed motor vehicle.

**Registration Fraud:** Any attempt by a vehicle owner or operator to circumvent the requirements to properly and legally register any motor vehicle in the State of Delaware.

**Secretary:** The Secretary of the Department of Natural Resources and Environmental Control.

**Stringency Rate:** The tailpipe emission test failure rate expected in an I/M program among pre-1981 model year passenger cars or pre-1984 light-duty trucks.

**Vehicle Type:** EPA classification of motor vehicles by weight class which includes the terms light duty and heavy duty vehicle.

**Waiver:** An exemption issued to a motor vehicle that cannot comply with the applicable exhaust emissions standard and cannot be repaired for a reasonable cost.

**Waiver Rate:** The number of vehicles receiving waivers expressed as a percentage of vehicles failing the initial exhaust emission test.

08/13/98

Section 2 -Low Enhanced I/M performance standard.

(a) On-road testing:

The performance standard shall include on-road testing of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic

inspection required in paragraph (a) of Section 3. The requirements are contained in Section 12 of this regulation.

(b) On-board diagnostics (OBD):

[Reserved]

08/13/98

Section 3 - Network type and program evaluation.

(a) The LEIM Program shall be a test-only, centralized system operated in New Castle and Kent Counties by the State of Delaware's Division of Motor Vehicles.

(1) Network type:  
Centralized testing.

(2) Start date:  
January 1, 1995

(3) Test frequency:  
Biennial testing.

(4) Model year coverage:

Idle test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks.

(5) Vehicle type coverage:

Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type:

Idle test of all covered vehicles according to the requirements found in Appendix 6 (a).

(7) Emission standards:

(Emissions limits according to model year may be found in Appendix 3 (a) (7) )

Maximum exhaust dilution measured at no less than 6% CO plus carbon dioxide (CO<sub>2</sub>) on all tested vehicles (as described in Appendix B of the EPA Rule).

(8) Emission control device inspections:

Visual inspection of the catalyst on all 1975 and later model year vehicles with the exception of new motor vehicles registered in Delaware.

(9) Evaporative system function checks:

Evaporative system integrity (pressure) test on 1975 and later model year vehicles with the exception of the five most recent model years.

(10) Stringency:

A 20% emission test failure rate among pre-1981 model year vehicles.

(11) Waiver rate:

A 3% rate, as a percentage of failed vehicles.

(12) Compliance rate:

A 96% compliance rate.

(13) Evaluation date:

Low enhanced I/M program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme

ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO<sub>x</sub> shall be the same as for ozone.

(b) On-board diagnostics (OBD):  
[Reserved]

(c) Program Evaluation

(1) Program evaluation shall be used in determining actual emission reductions achieved from the LEIM program for the purposes of satisfying the requirements of sections 182(g)(1) and 182(g)(2) of the Clean Air Act, relating to reductions in emissions and compliance demonstration.

(2) Transient mass emission test procedure [Reserved].

08/13/98

Section 4 - Test frequency and convenience.

(a) The LEIM Program shall be operated on a biennial frequency, which requires an inspection of each subject vehicle at least once every two years, regardless of any change in vehicle status, at an official inspection station. New vehicles must be presented for LEIM program testing not more than 36 months after initial titling.

(b) This system of inspections and registration renewals allows the additional benefit of coupling both enforcement systems together. Local, County and State police shall continue to enforce registration requirements, which shall require inspection in order to come into compliance. Requirements of inspection of motor vehicles before receiving a vehicle registration is found in the Delaware Criminal and Traffic manual Title 21 Chapter 21. Violations of registration provisions and the resulting penalties are found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. One 60 day extension shall be available to allow testing and repair. (See Appendix 4 (a) for the citations)

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours shall equal a minimum of 42 hours per week. Stations shall remain open continuously through the designated hours, and every vehicle presented for inspection during these hours shall receive a test prior to the daily closing of the station. Testing hours shall be Monday and Tuesday: 8:00 am to 4:30 pm, Wednesday: 12 noon to 8 pm, Thursday and Friday 8:00 am to 4:30 pm. These hours may be subject to change by the State. Official inspection stations shall adhere to regular, extended testing hours and shall test any subject vehicle presented for a test during its test period.

08/13/98

Section 5 - Vehicle coverage.

(a) Subject Vehicles

The LEIM program is based on coverage of all 1968 and later model year, gasoline powered, light duty vehicles and 1970 and later model year light duty trucks up to 8,500 pounds GVWR. The following is the complete description of the LEIM program:

Vehicles registered or required to be registered within the emission inspection area, and fleets primarily operated within the emissions inspection area boundaries and belonging to the covered model years and vehicle classes comprise the subject vehicles, which are as follows: (See Appendix 5 (a) for DMV Out of State Renewals)

(1) All vehicles titled/registered in Delaware from model year 1968 light duty vehicles and 1970 and later model year light duty trucks and whose vehicle type are subject to the applicable test schedule.

(2) All subject fleet vehicles shall be inspected at an official inspection station.

(3) Subject vehicles which are registered in the program area but are primarily operated in another LEIM area shall be tested, either in the area of primary operation, or in the area of registration. Alternate schedules may be established to permit convenient testing of these vehicles (e.g., vehicles belonging to students away at college should be rescheduled for testing during a visit home).

(4) Vehicles which are operated on Federal installations located within an emission inspection shall be tested, regardless of whether the vehicles are registered in the emission inspection jurisdiction. This requirement applies to all employee-owned or leased vehicles (including vehicles owned, leased, or operated by civilian and military personnel on Federal installations) as well as agency-owned or operated vehicles, except tactical military vehicles, operated on the installation. This requirement shall not apply to visiting agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year. In areas without test fees collected in the lane, arrangements shall be made by the installation with the LEIM program for reimbursement of the costs of tests provided for agency vehicles, at the discretion of the Director. The installation manager shall provide documentation of proof of compliance to the Director. The documentation shall include a list of subject vehicles and shall be updated periodically, as determined by the Director, but no less frequently than each inspection cycle. The installation shall use one of the following methods to establish proof of compliance:

(i) Presentation of a valid certificate of compliance from the LEIM program, from any other LEIM program at least as stringent as the LEIM program described herein, or from any program deemed acceptable by the Director.

(ii) Presentation of proof of vehicle registration within the geographic area covered by the LEIM program, except for any Inspection and Maintenance program whose

enforcement is not through registration denial.

(iii) Another method approved by the Director.

(5) Vehicles powered solely by a "clean fuel" such as compressed natural gas, propane, alcohol and similar non-gasoline fuels shall be required to report for inspection to the same emission levels as gasoline powered cars until standards for clean fuel vehicles become available and are adopted by the State.

(6) Vehicles able to be powered by more than one fuel, such as compressed natural gas and/or gasoline, must be tested and pass emissions standards for all fuels when such standards have become adopted by the Department..

(b) Exemptions

The following motor vehicles are exempt from the provisions of this regulation:

(1) Vehicles manufactured and registered as Kit Cars

(2) Tactical military vehicles used exclusively for military field operations.

(3) All motor vehicles with a manufacturer's gross vehicle weight over 8,500 pounds.

(4) All motorcycles and mopeds

(5) All vehicles powered solely by electricity generated from solar cells and/or stored in batteries.

(6) Non-road sources, or vehicles not operated on public roads

(7) Vehicles powered solely by Diesel fuel.

(c) Any exemption from inspection requirements issued to a vehicle under this Section shall not have an expiration date and shall expire only upon a change in the vehicle status for which the exemption was initially granted.

(d) Fleet owners are required to have all non-exempted vehicles under their control inspected at an official inspection station during regular station hours.

(e) Vehicles shall be pre-inspected prior to the emission inspection, and shall be prohibited from testing should any unsafe conditions be found. These unsafe conditions include, but are not limited to significant exhaust leaks, and significant fluid leaks. The Division and the Department shall not be responsible for major vehicle component failures during the test, of parts which were deficient or excessively worn prior to the start of the test.

08/13/98

Section 6 -Test procedures and standards.

(a) Test procedure requirements. (The test procedure use to perform this test shall conform to the requirements shown in Appendix 6 (a) ).

(1) Initial tests (i.e., those occurring for the first time in a test cycle) shall be performed without repair or adjustment at

the inspection facility, prior to the test.

(2) An official test, once initiated, shall be performed in its entirety regardless of intermediate outcomes except in the case of invalid test condition or unsafe conditions.

(3) Tests involving measurements shall be performed with equipment that has been calibrated according to the quality control procedures established by the Department

(4) Vehicles shall be rejected from testing, as covered in this section, if the exhaust system is missing or leaking, or if the vehicle is in an unsafe condition for testing.

(5) After an initial failure of any portion of any emission test in the LEIM program, all vehicles shall be retested without repairs being performed. This retest shall be indicated on the records as the second chance test. After failure of the second chance test, prior to any subsequent retests, proof of appropriate repairs must be submitted indicating the type of repairs and parts installed (if any). This shall be done by completing the "Vehicle Emissions Repair Report Form" (Appendix 6 (a) (5) which will be distributed to anyone failing the emissions test.)

(6) Idle testing using BAR 90 emission analyzers (analyzers that have been certified by the California Bureau of Automotive Repair) shall be performed on all 1968 through current (minus three years) model year vehicles in New Castle and Kent Counties.

(7) Emission control device inspection.

Visual emission control device checks shall be performed through direct observation or through indirect observation using a mirror. These inspections shall include a determination as to whether each subject device is present.

(8) Evaporative System Integrity Test. Vehicles shall fail the evaporative system integrity test(s) if the system(s) cannot maintain the equivalent pressure of eight inches of water using USEPA approved fast pass methodology. Additionally, vehicles shall fail evaporative system integrity testing if the canister is missing or obviously disconnected, the hoses are crimped off, or the fuel cap is missing. Evaporative system integrity test procedure is found in See Appendix 6 (a) (8) .

(9) On-board diagnostic checks.

[Reserved]

(b) Test standards

(1) Emissions standards.

HC, CO, CO+CO<sub>2</sub> (or CO<sub>2</sub> alone), emission standards shall be applicable to all vehicles subject to the LEIM program and repairs shall be required for failure of any standard regardless of the attainment status of the area.

(i) Steady-state short tests.

Appropriate model program standards shall be used in idle testing of vehicles from model years 1968 light duty vehicles and model years 1970 light duty trucks and newer.

(2) Visual equipment inspection standards performed by the Motor Vehicle Technician.

(i) Vehicles shall fail visual inspections of subject

emission control devices if such devices are part of the original certified configuration and are found to be missing, modified, disconnected, or improperly connected.

- (3) On-board diagnostics test standards.  
[Reserved].

(c) Applicability.

In general, section 203(a)(3)(A) of the Clean Air Act prohibits altering a vehicle's configuration such that it changes from a certified to a non-certified configuration. In the inspection process, vehicles that have been altered from their original certified configuration are to be tested by the Motor Vehicle Technician in the same manner as other subject vehicles.

(1) Vehicles with engines of a model year older than the chassis model year shall be required to pass the standards commensurate with the chassis model year.

(2) Vehicles that have been switched from an engine of one fuel type to another fuel type that is subject to the LEIM program (e.g., from a diesel engine to a gasoline engine) shall be subject to the test procedures and standards for the current fuel type, and to the requirements of paragraph (c)(1) of this section.

(3) Vehicles that are switched to a fuel type for which there is no certified configuration shall be tested according to the most stringent emission standards established for that vehicle type and model year. Emission control device requirements may be waived if the Division determines that the alternatively fueled vehicle configuration would meet the new vehicle standards for that model year without such devices.

(4) Vehicles converted to run on alternate fuels, frequently called a dual-fuel vehicle, shall be tested and required to pass the most stringent standard for each fuel type.

(5) Mixing vehicle classes (e.g., light-duty with heavy-duty) and certification types (e.g., California with Federal) within a single vehicle configuration shall be considered tampering.

08/13/98

Section 7 - Waivers and compliance via diagnostic inspection.

(a) Waiver issuance criteria.

(1) Motorists shall expend a reasonable cost, as defined in Section 1 of this Regulation in order to qualify for a waiver. Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation, and must have been appropriate to correct the emission failure. Repairs of primary emission control components may be performed by non-technicians (e.g., owners) to apply toward the waiver limit. The waiver

would apply to the cost of parts for the repair or replacement of the following list of emission control component systems: Air induction system (air filter, oxygen sensor), catalytic converter system (converter, preheat catalyst), thermal reactor, EGR system (valve, passage/hose, sensor) PCV System, air injection system (air pump, check valve), ignition system (distributor, ignition wires, coil, spark plugs). The cost of any hoses, gaskets, belts, clamps, brackets or other emission accessories directly associated with these components may also be applied to the waiver limit.

(2) Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in paragraph (a)(4) of this section. The operator of a vehicle within the statutory age and mileage coverage under section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived for approved tests applicable to the vehicle.

(3) Receipts shall be submitted for review to further verify that qualifying repairs were performed.

(4) A minimum expenditure for repairs of \$75 for pre-81 model year vehicles or a minimum expenditure of \$200 for 1981 model year and newer vehicles shall be spent in order to qualify for a waiver. The minimum repair cost for 1981 and newer vehicles shall increase to \$450 starting January 1, 2000. For each subsequent year, the \$450 minimum expenditure shall be adjusted in January of that year by the percentage, if any, by which the Consumer Price Index for the preceding calendar year differs from the Consumer Price Index for 1989.

(5) The issuance of a waiver applies only to those vehicles failing an exhaust emission tests. No waivers are granted to vehicles failing the evaporative emission integrity test.

(6) Waivers shall be issued by the Division Director only after:

(i) a vehicle has failed a retest for only the exhaust emissions portions of the program, performed after all qualifying repairs have been completed;

(iii) and a minimum of 10% improvement (reduction) in hydrocarbons (HC) and carbon monoxide (CO) has resulted from those repairs. This requirement [Section 7 (a) (6) (ii)] will cease to be in effect starting January 1, 2000.

(7) Qualifying repairs include repairs of primary emission control components performed within 90 days of the test date.

(8) Waivers issued pursuant to this regulation are valid until the date of current registration expiration.

(9) Waivers will not be issued to vehicles for tampering-related repairs. The cost of tampering-related repairs shall not be applicable to the minimum expenditure in paragraph (a)(4) of this section. The Director will issue exemptions for tampering-related repairs if it can be verified that the part in question or one similar to it is no longer available for sale



(b) Compliance via diagnostic inspection.

Vehicles subject to an emission test at the cutpoints shown in Appendix 3 (a)(7) of Regulation 31 may be issued a certificate of compliance without meeting the prescribed emission cutpoints, if, after failing a retest on emissions, a complete, documented physical and functional diagnosis and inspection performed by a Delaware Certified Emission Repair Technician shows that no additional emission-related repairs are needed.

(c) (1) In order to meet the requirements of the EPA Rule, the State commits to maintaining a waiver rate equal to or less than 3% of the failed vehicles.

(2) The Secretary shall take corrective action to lower the waiver rate should the actual rate reported to EPA be above 3%.

(3) Actions to achieve the 3% waiver rate, if required, shall include measures such as not issuing waivers on vehicles less than 6 years old, raising minimum expenditure rates, and limiting waivers to once every four years. If the waiver rate cannot be lowered to levels committed to in the SIP, or if the State chooses not to implement measures to do so, then the Secretary shall revise the I/M emission reduction projections in the SIP and shall implement other LEIM program changes needed to ensure the performance standard is met.

08/13/98

Section 8 - Motorist compliance enforcement.

(a) Registration denial.

Registration denial enforcement (See Appendix 8 (a), the Systems Requirement Definition for the Registration Denial process) is defined as rejecting an application for initial registration or re-registration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the LEIM program requirement prior to granting the application. This enforcement is the express responsibility of the Division with the assistance of police agencies for on road inspection and verification. The law governing the registration of motor vehicles is found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. Pursuant to section 207(g)(3) of the Act, nothing in this section shall be construed to require that new vehicles shall receive emission testing prior to initial retail sale. In designing its enforcement program, the Director shall:

(1) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the LEIM program. This shall be in the form of a window sticker and tag sticker which clearly indicate the vehicles compliance status and next inspection date;

(2) Adopt a schedule of biennial testing that clearly determines when a vehicle shall have to be inspected to comply

prior to (re)registration;

(3) Design a registration denial system which features the electronic transfer of information from the inspection lanes to the Division's Data Base, and monitors the following information:

- (i) Expiration date of the registration;
- (ii) Unambiguous vehicle identification information;

and

(iii) Whether the vehicle received either a waiver or a certificate of compliance, and;

(iv) The Division's unique windshield certificate identification number to verify authenticity; and

(v) The Division shall finally check the inspection data base to ensure all program requirements have been met before issuing a vehicle registration.

(4) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal.

(5) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers do not re-start the clock on the inspection cycle.

(6) Limit and track the use of time extensions of the registration requirement to only one 60 day extension per vehicle to prevent repeated extensions.

(b) (1) (i) Owners of subject vehicles must provide valid proof of having received a passing test or a waiver to the Director's representative in order to receive registration from the Division.

(ii) State and local enforcement branches, such as police agencies, as part of this program, shall cite motorist who do not visibly display evidence of compliance with the registration and inspection requirements.

(iii) Fleet and all other registered applicable vehicle compliance shall be assured through the regular enforcement mechanisms concurrent with registration renewal, on-road testing and parking lot observation. Fleets shall be inspected at official inspection stations.

(iv) Federal fleet compliance shall be assured through the cooperation of the federal fleet managers as well as also being subject to regular enforcement operations of the Division.

08/13/98

Section 9 - Enforcement against operators and motor vehicle technicians.

(a) Imposition of penalties

The State of Delaware shall continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of program requirements, the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State,

County and Municipal Employees, Section 8, Disciplinary Action, and, the State of Delaware Merit Rules, shall be adhered to in all matters. Applicable provisions of these documents are found in Appendix 9 (a).

(b) Legal authority.

(1) The Director shall have the authority to temporarily suspend station Motor Vehicle Technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8 Disciplinary Action.

(2) The Director shall have the authority to impose disciplinary action against the station manager or the Motor Vehicle Technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, and the State of Delaware Merit Rules. The lane manager shall be held fully responsible for performance of the motor vehicle technician in the course of duty.

08/13/98

Section 10 - Improving repair effectiveness.

A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed. (See Section 6 (a) (5) of this Regulation).

08/13/98

Section 11 - Compliance with recall notices.

[Reserved]

08/13/98

Section 12 - On-road testing.

(a) Periodic random Delaware registered vehicle pullovers on Delaware highways will occur without prior notice to the public for on-road vehicle exhaust emission testing.

(b) Vehicles identified by the on-road testing portion of the LEIM program shall be notified of the requirement for an out-of-cycle emission retest, and shall have 30 days from the date of the notice to appear for inspection. Vehicles not appearing for a retest shall be out of compliance, and be liable for penalties under Title 21 of Delaware Criminal and Traffic Law Manual and the Division will take action to suspend the vehicle

registration.

08/13/98

Section 13 - Implementation deadlines.

All requirements related to the LEIM program shall be effective ten days after the Secretary's order has been signed and published in the State Register. This regulation supersedes the existing Regulation Numbers 26 and 33 for Kent and New Castle Counties effective ten days after the Secretary's order has been signed and published in the State Register.

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#### APPENDIX 1 (d)

Commitment to Extend the I/M Program to the Attainment Date Letter from Secretary Tulou to EPA Regional Administrator, W. Michael McCabe

July 8, 1998

Mr. W. Michael McCabe  
Regional Administrator  
EPA, Region III  
841 Chestnut Building  
Philadelphia, PA 19107

Dear Mr. McCabe:

This correspondence is to address one of the cited deficiencies published in the May 19, 1997 EPA rulemaking, concerning Delaware's Inspection and Maintenance regulation. I understand that this letter will address the following deficiency:

Provide a statement from an authorized official that the authority to implement Delaware's I/M program as stated above will continue through the attainment date . . .

The Delaware I/M regulation has no sunset provision and there is nothing in the Delaware statute that requires our regulations to have a sunset date nor to be reauthorized in order to continue beyond a sunset date.

We fully expect, barring the repeal of 7 Del. Chapter 67, the Delaware I/M regulation will be implemented to the full extent of the law through the attainment date and most likely through the maintenance period when that occurs.

Please feel free to contact Darryl Tyler, Program Administrator of the Air Quality Management Section at (302) 739-4791, if you should have any questions.

Sincerely,  
Christophe A. G. Tulou, Secretary

cc: Jeffrey W. Bullock, Governor's Chief of Staff  
 J. Jonathan Jones, Governor's Policy Assistant for Federal Affairs  
 Secretary Karen L. Johnson, Delaware Department of Public Safety  
 Secretary Anne P. Canby, Delaware Department of Transportation

### APPENDIX 3 - (a)(7)

#### EXHAUST EMISSION LIMITS ACCORDING TO MODEL YEAR

Group	Auto/Station Wagons (passenger vehicles)	Pickup/Van under 8501#	HC Limit (ppm)	CO Limit %
1	1968-70	1970-72	900	9.00
2	1971-74	1973-78	600	6.00
3	1975-79	1979-83	400	4.00
4	1980	(none)	220	2.00
5	1981 +	1984 +	220	1.20

### APPENDIX 4 (a)

#### SECTIONS FROM DELAWARE CRIMINAL AND TRAFFIC LAW MANUAL PENALTIES FOR NON-COMPLIANCE OF VEHICLE REGISTRATION

21 Del. C. 21, §§ 2115, 2116

#### § 2115

“No person shall:

(1) Operate or, being the owner of any motor vehicle, trailer or semitrailer, knowingly permit the operation upon a highway of any motor vehicle, trailer or semitrailer which is not registered or which does not have attached thereto and displayed thereon the number plate or plates assigned thereto by the Department and unexpired registration plate or plates, subject to the exemptions allowed in this title, or under temporary or limited permits as otherwise provided by this title;

(2) Display or cause or permit to be displayed or have in possession any registration card, number plate or registration plate, knowing the same to be fictitious or to have been canceled, revoked, suspended or altered;

(3) Lend to, or knowingly permit the use by, one not entitled thereto any registration card, number plate or registration plate issued to the person so lending or permitting the use thereof;

(4) Fail or refuse to surrender to the Department upon demand any registration card, number plate or registration plate which has been suspended, canceled or revoked as provided in this title;

(5) Use a false or fictitious name or address in any application for the registration or inspection of any vehicle,

or for any renewal or duplicate thereof, or for any certificate or transfer of title, or knowingly make a false statement, knowingly conceal a material fact or otherwise commit a fraud in any such application;

(6) Drive or move or, being the owner, cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person or which is equipped in any manner in violation of this title, but the provisions of this title with respect to equipment on vehicles shall not apply to implements of husbandry, road machinery, road rollers or farm tractors except as herein made applicable;

(7) Own or operate any qualified motor vehicle as defined under the International Registration Plan, as authorized in Chapter 4 of this title, not properly displaying an apportioned plate with required registration credentials, or operate a qualified motor vehicle without having in that person's possession a trip permit registration as authorized in § 2103(6) of this title. Any person who violates this subsection shall, for the first offense, be fined not less than \$115 nor more than \$345, and for each subsequent offense not less than \$345 nor more than \$575. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less, which fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the gross weight at the time of the offense or the maximum legal limit for such vehicle.

(8) Do any act forbidden or fail to perform any act required under this chapter. (36 Del. Laws, c. 10, § 25; 40 Del. Laws, c. 38, § 10; Code 1935, § 5563; 43 Del. Laws, c. 244, § 14; 21 Del. C. 1953, § 2115; 49 Del. Laws, c. 220, § 21; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 202, § 2.)

Revisor's note.—Section 3 of 70 Del. Laws, c. 202, effective July 10, 1995, provides: “If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.”

Effect of amendments.—70 Del. Laws, c. 202, effective July 10, 1995, inserted present (7) and redesignated former (7) as (8).”

#### § 2116

“(a) Whoever violates this chapter shall, for the first offense, be fined not less than \$10 nor more than \$100 or be imprisoned not less than 30 days nor more than 90 days or both. For each subsequent like offense, the person shall be fined not less than \$50 nor more than \$200 or imprisoned not less than 90 days nor more than 6 months or both, in addition to which any person, being the operator or owner of

any vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle and any load thereon shall be fined at a rate double that which is set forth in this subsection and be imprisoned as provided herein or both. In addition, such person shall also be fined in an amount which is equal to the cost of registering the vehicle at its gross weight at the time of the offense or at the maximum legal limit, whichever is less; which fine shall be suspended, if within 5 days of the offense the court is presented with a valid registration card for the gross weight at the time of the offense for the maximum legal limit for such vehicle.

(b)(1) Notwithstanding the provisions of subsection (a) of this section, whoever violates § 2115(1)-(5) of this title shall, for the first offense, be fined not less than \$50 nor more than \$200, be imprisoned not less than 30 days nor more than 90 days, or be penalized by both fine and imprisonment. For each subsequent like offense, such person shall be fined not less than \$100 nor more than \$300, be imprisoned not less than 90 days nor more than 6 months, or be penalized by both fine and imprisonment.

(2) Any owner or operator of a vehicle which requires a registration fee which is calculated upon the gross weight of the vehicle, and any load thereon, and who violates § 2115(1)-(5) of this title, shall be fined at a rate double that which is set forth in this subsection, or be imprisoned as provided herein, or be both fined and imprisoned. In addition, such person shall also be fined an amount which is equal to the costs of registering the vehicle either at its gross weight at the time of the offense, or at the maximum legal limit, whichever is less. Such fine shall be suspended if, within 5 days of the offense, the court is presented with a valid registration card for the actual gross weight of the vehicle at the time of the offense.

(c) This section shall not apply to violations for which a specific punishment is set forth elsewhere in this chapter.

(d) For any violation of the registration provisions of § 2102 or § 2115 of this subchapter and in absence of any traffic offenses relating to driver impairment' the violator's copy of the traffic summons shall act as that violator's authority to drive the vehicle involved by the most direct route from the place of arrest to either the violator's residence or the violator's current place of abode. (36 Del. Laws, c. 10, § 32; 37 Del. Laws, c. 10, §§ 10, 11; Code 1935, § 5570; 21 Del. C. 1953, § 2116; 59 Del. Laws, c. 332, §§ 1, 2; 64 Del. Laws, c. 207, § 2; 69 Del. Laws, c. 307, §§ 1, 3, 4.)"

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#### Appendix 5 (a)

#### DIVISION OF MOTOR VEHICLES POLICY ON OUT-OF-STATE RENEWALS

The following is the Division's policy for accomplishing a registration renewal on a vehicle located outside the State

of Delaware when the vehicle owner is unable to return the vehicle for inspection prior to the renewal date. Vehicles located within a 200 mile radius of a Division of Motor Vehicles facility will be inspected at a division inspection station prior to renewal. All other vehicles may be renewed by accomplishing the following procedures:

(1) Refer all inquiries on out-of-state renewal to the Dover Correspondence Office (739-3147). Normally, customers will be provided the out-of-state renewal package by the Dover Administrative Office Correspondence Section. Lane locations may provide the renewal package to walk-in customers, but the completed paperwork must be mailed to Dover for processing.

(2) When all documents are completed and the vehicle has passed inspection, copies of the Application for Out-of-State Registration and the inspection report (MV Form 210(a)) will be provided to Dover Lane (Tom Kersey) and DNREC Air Quality Section (Phil Wheeler).

(3) Tom Kersey or his designated representative will load the inspection information on the MV210(a) form into the computer system. The MV210(a) form will be saved for two years by the Dover lane.

(4) When the inspection information has been loaded, Tom Kersey will send a Vehicle Inspection Report to Dover Correspondence, the renewal can be completed and the registration card and plate sticker can be mailed to the customer.

(5) All documents will be saved by the Registration Correspondence Section for two years.

(6) Random audit procedures: Correspondents prior to renewing selected vehicles will call the inspection station and inspector shown on the MV210(a) form. One out of every ten vehicles will be selected to verify the vehicle was inspected. The verification will be conducted prior to sending copies to DNREC and Dover lane. Indicate on the bottom of Page 2 of the form the date and time of verification and the name of the person performing the verification. Sandy Tracy will be in charge of the verification and selection process.

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#### APPENDIX 6 (a) IDLE TEST PROCEDURE

From 40 CFR 51 Appendix B to Subpart S — Test Procedures

##### (I) Idle Test

(a) General requirements. (1) Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations shall begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations shall be analyzed at a minimum rate of two times per second. The measured value for pass/fail determinations shall be a simple running average of the measurements taken over five seconds.

(2) Pass/fail determination. A pass or fail determination shall be made for each applicable test mode

based on a comparison of the short test standards contained in Appendix C to this subpart, and the measured value for HC and CO as described in paragraph (I)(a)(1) of this appendix. A vehicle shall pass the test mode if any pair of simultaneous measured values for HC and CO are below or equal to the applicable short test standards. A vehicle shall fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

(3) Void test conditions. The test shall immediately end and any exhaust gas measurements shall be voided if the measured concentration of CO plus CO<sub>2</sub> falls below six percent or the vehicle's engine stalls at any time during the test sequence.

(4) Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with multiple exhaust pipes shall be sampled simultaneously.

(5) The test shall be immediately terminated upon reaching the overall maximum test time.

(b) Test sequence. (1) The test sequence shall consist of a first-chance test and a second-chance test as follows:

(i) The first-chance test, as described under paragraph (c) of this section, shall consist of an idle mode.

(ii) The second-chance test as described under paragraph (I)(d) of this appendix shall be performed only if the vehicle fails the first-chance test.

(2) The test sequence shall begin only after the following requirements are met:

(i) The vehicle shall be tested in as-received condition with the transmission in neutral or park and all accessories turned off. The engine shall be at normal operating temperature (as indicated by a temperature gauge, temperature lamp, touch test on the radiator hose, or other visual observation for overheating).

(ii) The tachometer shall be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe shall be inserted into the vehicle's tailpipe to a minimum depth of 10 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension shall be used.

(iv) The measured concentration of CO plus CO<sub>2</sub> shall be greater than or equal to six percent.

(c) First-chance test. The test timer shall start (tt=0) when the conditions specified in paragraph (I)(b)(2) of this appendix are met. The first-chance test shall have an overall maximum test time of 145 seconds (tt=145). The first-chance test shall consist of an idle mode only.

(1) The mode timer shall start (mt=0) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum mode length shall be determined as described under paragraph (I)(c)(2) of this appendix. The maximum mode length shall

be 90 seconds elapsed time (mt=90).

(2) The pass/fail analysis shall begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

(i) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(ii) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds (mt=30), if prior to that time the criteria of paragraph (I)(c)(2)(i) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iii) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds (mt=30) and 90 seconds (mt=90), the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(iv) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(c)(2)(i), (ii) and (iii) of this appendix is satisfied by an elapsed time of 90 seconds (mt=90). Alternatively, the vehicle may be failed if the provisions of paragraphs (I)(c)(2)(i) and (ii) of this appendix are not met within an elapsed time of 30 seconds.

(v) Optional. The vehicle may fail the first-chance test and the second-chance test shall be omitted if no exhaust gas concentration lower than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(d) Second-chance test. If the vehicle fails the first-chance test, the test timer shall reset to zero (tt=0) and a second-chance test shall be performed. The second-chance test shall have an overall maximum test time of 425 seconds (tt=425). The test shall consist of a preconditioning mode followed immediately by an idle mode.

(1) Preconditioning mode. The mode timer shall start (mt=0) when the engine speed is between 2200 and 2800 rpm. The mode shall continue for an elapsed time of 180 seconds (mt=180). If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than five seconds in any one excursion, or 15 seconds over all excursions, the mode timer shall reset to zero and resume timing.

(2) Idle mode. (i) Ford Motor Company and Honda vehicles. The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes shall be shut off for not more than 10 seconds and restarted. This procedure may also be used for 1988-1989 Ford Motor Company vehicles but should not be used for other vehicles. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart

procedure.

(ii) The mode timer shall start ( $mt=0$ ) when the vehicle engine speed is between 350 and 1100 rpm. If engine speed exceeds 1100 rpm or falls below 350 rpm, the mode timer shall reset to zero and resume timing. The minimum idle mode length shall be determined as described in paragraph (I)(d)(2)(iii) of this appendix. The maximum idle mode length shall be 90 seconds elapsed time ( $mt=90$ ).

(iii) The pass/fail analysis shall begin after an elapsed time of 10 seconds ( $mt=10$ ). A pass or fail determination shall be made for the vehicle and the idle mode shall be terminated as follows:

(A) The vehicle shall pass the idle mode and the test shall be immediately terminated if, prior to an elapsed time of 30 seconds ( $mt=30$ ), measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle shall pass the idle mode and the test shall be terminated at the end of an elapsed time of 30 seconds ( $mt=30$ ), if prior to that time the criteria of paragraph (I)(d)(2)(iii)(A) of this appendix are not satisfied and the measured values are less than or equal to the applicable short test standards as described in paragraph (I)(a)(2) of this appendix.

(C) The vehicle shall pass the idle mode and the test shall be immediately terminated if, at any point between an elapsed time of 30 seconds ( $mt=30$ ) and 90 seconds ( $mt=90$ ), measured values are less than or equal to the applicable short test standards described in paragraph (I)(a)(2) of this appendix.

(D) The vehicle shall fail the idle mode and the test shall be terminated if none of the provisions of paragraphs (I)(d)(2)(iii)(A), (d)(2)(iii)(B), and (d)(2)(iii)(C) of this appendix.

(E) Are satisfied by an elapsed time of 90 seconds ( $mt=90$ ).

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#### APPENDIX 6 (a) (5)

#### Vehicle Emission Repair Report Form

**\* FOR INFORMATION ABOUT THE FORM PLEASE CONTACT THE DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL.**

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#### APPENDIX 6 (a)(8)

#### EVAPORATIVE SYSTEM INTEGRITY (PRESSURE) TEST

##### ESP Alternative Pressure Test

The EPA has defined an evaporative pressure test that involves removing hoses from the charcoal canister. An alternative, less intrusive test technique has been developed by ESP. The EPA pressure test is performed by removing the gas tank fuel

vapor vent line from the charcoal canister and pressurizing the gas tank through this line with nitrogen gas. The pressure in the gas tank is then monitored for two minutes and if the pressure drops below a specified level, the vehicle is failed. The canister is often difficult to access and the vent hoses difficult to remove and replace. The alternative test consists of pressurizing the gas tank from the gas tank filler neck instead of the canister. The gas cap is removed and replaced by a gas cap adapter through which the fuel tank is filled with nitrogen gas. The vent hose is clamped at the canister, the gas tank is pressurized and the pressure in the tank monitored for two minutes. Clamping the hose rather than removing it is less likely to lead to breakage or hoses left disconnected, reducing the liability arising from the test procedure. The gas cap is tested on a test rig where the gas cap can be pressurized on its own. Removing the gas cap and pressurizing the tank from the filler neck has the following advantages:

Half of the leaks in the gas tank occur in the gas cap. On those vehicles where the canister and vent lines are inaccessible, 50% of the emissions reduction available from the evaporative system integrity check can be achieved by just testing the gas cap.

Testing the gas cap separately allows leaking gas caps to be identified. The customer can be recommended to replace the gas cap rather than pay to have a repair station isolate the cause of the leak.

The test is less intrusive as the vapor line to the charcoal canister is clamped off rather than removed. On some vehicles the vapor line can be reached even when the canister, itself is inaccessible. The gas tank can be more rapidly pressurized through the large filler neck opening than from the canister as the vapor line to the tank typically has a narrow orifice in the line. This is particularly important when pressurizing the large vapor space in nearly empty gas tanks. The more rapid pressure test potentially increases the throughput of the lane. The ESP method will result in a 50% time saving in the fill time or approximately 30 seconds. The 30 second time saving in the multi-position lane will result in a lane throughput increase of one to two vehicles per hour.

The ESP Alternative Pressure Test is a more accurate test because it compensates for the volume of vapor space. During the development of this technique, ESP discovered that differences in fuel level in the gas tank can result in an order of magnitude change in test results. ESP's alternative approach is designed to compensate for the pressure drop change of the vapor space condition. Without the ESP method of testing, it is expected that errors of omission and commission will result. The variability of the test results derived from the EPA prescribed method will result in problems such as, customer complaints for "Ping-Pong" effects and general public

dissatisfaction with the program. To further reduce the problem of ping-ponging, ESP has developed a pressure drop table for repair stations, that will enable the repair technicians to perform the pressure test with a much higher degree of correlation to the centralized test.

APPENDIX 7 (a)  
EMISSION REPAIR TECHNICIAN CERTIFICATION  
PROCESS

Effective January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County, in order to qualify for waiver repairs on any 1981 or later model year vehicle shall be performed by a certified repair technician or a certified manufacturer repair technician, as defined in Section 1 of this regulation. The cost of such repairs must total no less than \$200. Under the policy developed by the Department, a Certified Emission Repair Technician may be certified as trained to do repairs on all makes of vehicles or vehicles of a specific manufacturer. Auto repair technicians seeking to become certified under Regulation 31 have the following options in attaining the certification:

1. All those applying for certification can “test out” and gain certification without further emission repair training as provided by the College or Auto Manufacturer or other training organization. The “test out” process is administered by the College as follows:

- Applicants without L1 ASE (Automobile Service Excellence) certification must first take the “Fundamental Inspection Repair System Training” final exam. Those achieving a score of 75% or better are eligible to take the “Delaware Emission Education Program” certification exam.
- Applicants achieving a score of 75% or better on the certification exam will become certified on all makes of vehicles. Applicants with L1 ASE certification can test out by taking the “Delaware Emission Education Program” certification exam ONLY.

2. The testing procedure discussed above will determined what, if any, training is needed for applicants seeking certification.

- Technicians scoring below 75% on the “Fundamental Inspection Repair System Training” final exam must take a 60 hour fundamental emission repair training course provided by the College.
- Those completing the 60 hour program and scoring 75% or better on the final exam can advance into a 40 hour class which is the next level of training, or attempt to test out and take the certification exam, scoring 75% or better to become certified.
- Technicians scoring below 75% on the “Delaware

Emission Education Program” certification exam must take a 40 hour emission repair training course provided by the College and then score 75% or better on the final exam to become certified.

3. Technicians who are L1 ASE certified and who have approved manufacturer’s emission repair training will be certified for each make of vehicle of each manufacturer that the technician was trained to do emission repairs. The procedure for certification is as follows:

- The Department will evaluate each of the manufacturer’s “OEM Emissions Path” to determine if it meets a reasonable minimum standard. This evaluation must contain proof that the manufacturer’s course work clearly covers the Delaware I/M regulation (e.g. waiver process, etc.)
- Candidate manufacturer technician submits:
  - His/her transcript from the manufacturer on courses taken and passed and; Proof of ASE L1 certification to the Department.
  - Candidate manufacturer technician takes and passes a Delaware-specific short test which is intended to test the candidate on the Delaware regulation, any specifics on waivers that should be known, and general questions on vehicle repair.
  - The Department and the Division issues manufacturing-specific certification with clearly marked authority on the certificate.

APPENDIX 8 (a)  
Registration Denial  
System Requirements Definition

April 30, 1997

Prepared by: Barry W. Pugh and  
Edited by: Cheryl Roe - DMV  
July 8, 1988  
Version 1.1

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· Lane Inspector history
· Waiver history
· Override history
· Repair Facility and Repair Technical history
· Registration Notices
· External Agency history
· Audit request history

**\* PLEASE NOTE THE ABOVE PAGE NUMBERS REFER TO THE ORIGINAL DOCUMENT AND NOT TO THE REGISTER OF REGULATIONS**

## Section I , Management Summary Goals and Objectives

### Improved Customer Service, Convenience and Control:

1. Implement Bar Coding interface to the Title and Registration function.
2. Design an interface between Registration Renewal and Titles to the Registration Denial system that will enable the State of Delaware to obtain an improved rating though Cleaner Air.
3. Design a Temporary tag tracking system.
4. Design an automated Waiver/Override system.
5. Design a Repair Facility and Repair Technician tracking system.
6. Design improved data inquiry capabilities and distribute to necessary customers.

### Improved Personnel Training and System On-Line Help:

1. On-Line Help Training within each of the applications.
2. On-Line Training through specialized system testing.
3. Improved Operating Procedures.

### Improved System Security and Flexibility:

1. System Security
  - Override system parameter changes based on functionality.
  - Override system parameter changes based on specific fields.
  - Improved tracking of transactions, personnel and dates.
  - Improved reporting to DMV management.
2. Provide additional facilities for trouble shooting and problem investigation capabilities.

### Flexibility and Responsiveness to External Requirements:

1. Ability to create and maintain the registration denial tables.
2. Maintain tracking history information for the following functions:
  - Temporary and Window Sticker inventory
  - Temporary Tag history
  - Window Sticker history
  - Vehicle Inspection history

### Improved Business Control Over the System:

1. Operators:
  - Tighter control over the issuance of registration notices, vehicle inspections, registration renewal, title and registration denial, temporary tags and waivers.
  - Improved controls over the issuance of window stickers.
  - Better customer service through the offering of inspection overrides and the tracking of external agency vehicle inspections.
  - Provide for the tracking of Certification of all Lane Inspectors and the Re-Certification.
2. Transactions:
  - Add on-line Waiver, Override, Vehicle Inspections, Temporary tags and Window Stickers.
3. Auditing:
  - Reduction of the number of vehicles being renewed without an inspection.
  - Reduction of the number of multiple temporary tags being issued to the same vehicle owners.
  - Identification of missing temporary tags and window stickers from DMV inventory.
  - Decrease the number of false inspection readings.
  - Decrease the number of external agency vehicles traveling the Delaware highways without receiving vehicle inspections.
  - Increase inspection accountability through more accurate vehicle inspection testing.
  - Increase reporting accuracy to the Environmental Protection Agency.

### Improved System Functionality:

1. Title and Registration Denial:
  - Improved editing on title and registration application.
  - Design interface between vehicle inspections, temporary tags and waivers.
2. Linkage to mainframe MVALS database:
  - Information transfer from vehicle inspection database.
  - Information transfer from temporary tags, window stickers and the title and registration database.
  - Information transfer of registration denial data to DNREC and EPA.



- Control the issuance of temporary tags through lot range controls.
- Control the temporary tag inventory through the delivery and distribution of temporary tags.
- 3. Bar Code interface on title and registration cards.
- 4. Automation and change to reports:
  - Provide on-line tracking of inspectors by location, date and time.
  - Provide an inventory control system enabling the Division to review temporary tags and window stickers.
  - Provide Title and Registration clerks the ability to review active and historical inspection results on-line.
  - Provide an interface to the Title and Registration application to effectively associate a vehicle inspection with a specific registration and deny access until the vehicle has been successfully approved.
  - Provide inspector information of a specific registration in association with a vehicle inspection.
  - Provide on-line reporting activity by specific testing, location, time and inspector on a weekly, monthly and fiscal basis.
  - Provide the ability to track vehicle repairs and associate them with the proper vehicle registration.
  - Track overrides that are associated with a vehicle inspection.
  - Provide on-line access to inspection results data to the Department of Natural Resources and Environmental Control.
  - Provide the ability to select specific inspection information and print specific analysis reports.
  - Provide the ability to create on-line reports to EPA on a weekly, monthly and fiscal basis.
  - Provide customers with notification of inspection 90 days prior to the expiration date.
- 5. External Agency Vehicle Identification
  - Provide the ability to identify/track external agency vehicles being operated in Delaware.
  - Provide the ability to ensure the external agency vehicles have complied with the Federal standards.
  - Provide the ability to automatically send and receive vehicle inspection information.
  - Provide the ability to report inspection result to the Environmental Protection Agency.

#### Project Scope

This document does not include portions of the project already in progress or being addressed by other selected DMV vendors such as Environmental Systems Products, Inc. (ESP). It centers on the mainframe application development and maintenance that must be completed to support the requirements of the project. It assumes the vehicle inspection information to be correct and residing in the databases already established for the Registration Denial project and that ESP

has provided OIS with complete and detailed technical documentation of the database content, data manipulation, calculations and report specifications. The State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal Environmental Protection Agency (EPA) in January 1997 for review and approval. This scope most certainly will be subject to change based upon the EPA review and their findings.

#### Background:

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile source air pollution. Of all highway vehicles it appears that, passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency is attempting to achieve major emission reductions from these transportation sources. Until the development and commercialization of cleaner burning engines and fuels are successful, the main source of air pollution reduction will come from the proper maintenance of the vehicles during customer use.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle drive ability, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV system without change. Failing vehicles will require repair and re-testing until they pass or receive a vehicle waiver from DMV management.

#### Project Scope:

DMV has suggested that the project be designed and implemented in phases. Phasing the project installation makes a great deal of sense since many of the components of the entire project are still not totally defined. DMV's recommendation is:

#### Phase I:

- Create database images to store the ESP

information.

- Test ESP system and database content.
- Analyze database content and verify accuracy.
- Install Phase I into production and begin accumulating EPA information.

Phase II:

- Design, code and test Registration Renewal Denial.
- Design, code and test a new (summary) Vehicle Waiver system.
- Design, code and test a new Inspection Results Override system.
- Design, code and test new rules for Registration and Title Denial.
- Design, code and test a new temporary tag extension tracking system.
- Design, code and test preliminary DMV management reports.
- Test on-line access to MVALS by DNREC personnel at their site locations.
- Add bar coding to the registration card print.
- Implement Phase II into production.

Phase III:

- Design, code and test Title Denial.
- Design, code and test inspection results database "time remaining" routines for:
  - Registration Renewal Denial.
  - Registration Renewal Notices.
  - Title Denial.
  - Add bar coding to the Title form.
  - Implement Phase III into production.

Phase IV:

- Design, code and test reporting for DNREC and EPA auditing.
- Test on-line access to MVALS reports by DNREC personnel at their site locations.
- Design, code and test a new inventory control system for window stickers.
- Implement Phase IV into production.

Phase V:

- Design, code and test DAFB vehicle tracking system.
- Design, code and test Federal vehicle tracking system. (PV, PO, etc.)
- Implement Phase V into production.

Phase VI:

- Design, code and test a new Certified Repair Technicians system.
- Design, code and test a new Certified Lane

Technicians system.

- Design, code and test a new (detail) Waiver system.
- Create special files and/or downloads and reports to assist the DAFB in their conversion efforts.
- Design, code and test the identification and reporting of covert vehicles.

Phase I:

The Registration Denial project centers around an automated vehicle inspection system (installed by ESP) and subsequent customer permission to title or renew a registration in the State of Delaware. The new ESP system will replace the need to issue inspection cards and the associated manual inspection card tracking systems currently in place. Instead, the new system will record the information results and data of a physical vehicle inspection in databases locally on the lane PC server and remotely at OIS on the IBM mainframe. The mainframe databases will be the final residence of the data and those databases will be used for all system decisions and reporting. That database information will be used by the MVALS programs to determine if the vehicle is in compliance with Federal and Delaware codes and laws governing legal vehicle registration. If the vehicle passes all of the inspection tests, it becomes eligible to legally travel Delaware roadways. Inspection results are related to the vehicle and applicable for 2 years.

The inspection results database and supporting databases must be mapped back to the reporting requirements of DMV management, DNREC and EPA in this phase to be absolutely positive all of the informational contents are present. Inconsistencies in the mapping may require modifications to the ESP data capture.

Phase II:

The vehicle will be rejected by MVALS if it does not pass all the inspection criteria. In this case, a temporary (60 day) tag may be issued to give the customer time to correct the detected problems with the vehicle. The design will incorporate tracking and reporting on the temporary tags after the time of issuance. When a vehicle is rejected, the customer may elect to repair the deficiency and attempt to pass the inspection again. Vehicle repairs may be made by a Certified Technician or by the customer. If the vehicle continues to fail the inspection but does not decrease measured emissions by set percentage guidelines, DMV may elect to issue an inspection waiver based upon established rules, limitations and customer expenditure amounts. A vehicle summary of waiver expenditure information for this inspection period must be recorded and tracked in a new database by vehicle. This new database must be read during the registration renewal process, for all failing vehicles, to be sure a current record exists prior to allowing the vehicle to be legally registered. A vehicle waiver overrides the most recent inspection result. It is related to a vehicle and effective

for 2 years. The waiver and inspection results databases must be accessible to DNREC personnel for inquires using MVALS.

At times DMV management may elect to override the results of an inspection and permit the vehicle legal registration without further inspections by the lane technicians. The system must permit management to override the vehicle inspection result record with a passing grade. When an override is granted, the system must record the new (overridden) information and track who, when and why the override was given. The new record will be stored in the inspection results database along with information about the operator, date and time. An override reason must be supplied before the record is written to the database. Override capability and permissible override categories must be controlled by an external means to permit DMV management to modify who can override inspection results and what can be modified.

Upon a successful inspection or if the results were overridden or a waiver is issued, a registration renewal card containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

#### Phase III:

When a vehicle is titled in the State of Delaware, it must also comply with safety and emission tests prior to becoming registered. The titling system must be modified to access the new inspection results database to make the appropriate decisions. Vehicle titling must be modified to parallel the upgrades installed into the registration renewal system. It must apply all of the same rules, waiver conditions and override capabilities. A title containing a PDF417 bar code and a new window sticker will be issued (when implemented) upon payment of fees by the customer.

After a vehicle has been renewed or titled and successfully passed inspection, or granted a waiver, the customer has the option to choose a renewal period of 6 months, 1 year or 2 years. Since inspection results and waivers are valid for 2 years, the system must determine the amount of time remaining on the inspection based upon the renewal period chosen by the customer. This algorithm must be incorporated in the registration renewal, registration renewal notification and title systems.

#### Phase IV:

DMV management, DNREC and the Federal EPA require reports to be generated from the data captured on the inspection results database. DMV management requires specific counts of vehicles, the types of tests that are performed and the results and percentages of the testing. They will also require management reports and online inquires to monitor the inspection system performance, database contents and results. DNREC and the Federal EPA reporting requirements are normally completed on an annual arrangement and require reports concerning; the numbers and types of

tests, vehicle breakdowns by make and year, first test and re-test results, information about the testing facilities and the results of both covert and overt audits.

DNREC must be permitted access to the inspection results and waiver databases through an on-line function that will be created within the MVALS application. This function will allow DNREC to review the inspection results and (summary) waiver information on all vehicles. To insure DMV is in compliance with the Federal regulations, DNREC will be given the capability to order printed reports on-line from MVALS concerning the inspection results and waiver information.

Tracking and re-calling certified lane technicians is definitely going to be another new responsibility of the Division. DMV must track all State inspectors requiring testing and re-certification in order to comply with the new Federal EPA regulations. Reports on this activity must be submitted to the Federal EPA on an annual basis.

#### Phase V:

In addition to the normal vehicle registration activity occurring for Delaware citizens, with the new EPA requirements, DMV must inspect approximately 10,000 additional vehicles owned by; the (non-military) Federal Government, the military and military personnel from the Dover Air Force base (DAFB). The majority of these vehicle inspections will be on personally owned vehicles (POV) from the DAFB. The DAFB presents a unique opportunity to DMV because POV's are normally not registered in Delaware. Delaware does not require out of state vehicles to be inspected. However, with the new federal regulations, DMV is required to ensure that vehicles residing within the jurisdiction are in compliance with the state-regulated inspection program. This now includes all non-military Federally owned vehicles and vehicles stationed at federal military sites throughout the state even if they are not registered in Delaware. Notifying, tracking and re-calling (test failures) POV's will require cooperation and coordination with DAFB motor pool and security personnel. Additional software and databases may be required to assist in a successful implementation.

#### Phase VI:

As stated previously, the State Implementation Plan (SIP) for the Enhanced Inspection and Maintenance Program prepared by the Delaware Department of Natural Resources and Environmental Control (DNREC) is the basis of this scope. The SIP is scheduled to be submitted to the Federal EPA in January 1997 for review and approval. This phase is subject to change based upon the EPA review and their findings. The following tasks are not definite requirements but may become so after the EPA has made their final decision.

Certified repair technician information is currently being gathered and retained by the Delaware Technical Community College. DMV would like access to the

information to enable them to incorporate the data into the motor vehicle inspection reports that will be produced on failed inspections. Tracking reports will include the number of vehicles passing and failing by Certified Technician and the repairs performed by the technician on each vehicle. DMV may require the information to be downloaded from DTCC or if that is not possible, they may have need to maintain the information in duplicity.

When a vehicle is titled or renewed in the State of Delaware, the Division must comply with the security requirements established by the EPA. It requires the Division to track and report all stickers issued to vehicles that have passed the inspection program. It will be necessary to track a history of these documents when being issued, re-issued and/or replaced.

In Phase II, summary waiver information is going to be stored in a new database to assist in tracking vehicle waivers that are issued. It is planned that DNREC will retain the detail backup paperwork and copies necessary to comply with the Federal regulations. If DNREC requires DMV to record the details of a waiver, the system must be modified to comply. Waiver details would include recording the place of purchase, the line items purchased for repair and the individual amounts of each.

If additional programming or design support is required to assist the DAFB or other Federal agencies in meeting their schedules and requirements, DMV may supply resources to assist in the effort. The agencies requiring assistance may require reports, file downloads and programming expertise to expeditiously complete their commitment.

DNREC is currently handling all assignments and identification of covert vehicles. If they require assistance in this effort or require DMV to specially track them in the MVALS system, additional design and programming will be required. Reports on the activity of the covert vehicles would also be required.

#### Exclusions:

Not included in the scope of this project are:

- Data capture, recording, tracking and reporting of repair facilities.
- Special demarcation of Kent and Sussex county boundaries.
- Design or software programming to handle identification of covert and overt vehicles.
- Purchase of software for bar code printing.
- Covert vehicle identification and reporting issues.
- Vehicle manufacture notification requirements.

I accept this Project Scope as written and agree on the contents within.

Approved by: Michael Shahan  
Director of Motor Vehicles

Approved by: Jack Eanes  
DMV Chief of Vehicle Service

Approved by: Cheryal Roe  
DMV Systems Administrator

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OIS Consultant, MicroTek Software

#### Management Overview

#### Background

Motor vehicle inspection and maintenance programs are an integral part of the effort to reduce mobile--source air pollution. Of all highway vehicles, it appears that passenger cars and light trucks emit most of the vehicle-related pollutants. Although progress has been made in the reduction of -these pollutants, the continuous increase in vehicle miles traveled on the highways has offset much of the technological progress thus far. Under the Clear Air Act, the Federal Environmental Protection Agency (EPA) is attempting to achieve major emission reductions from these transportation sources. Until the automotive manufacturers develop and commercialize cleaner burning engines and fuels, the main source of air pollution reduction will derive from the proper maintenance of the vehicles during customer use. The contents of this System Requirement Definition are subject to change based upon EPA review of the Delaware State Implementation Plan (SIP) and their findings.

To put the inspection program in perspective, it is important to understand that today's motor vehicles are totally dependent upon properly functioning emission controls to keep pollution levels low. Minor malfunctions in the emission control system can increase emissions significantly. Since these emissions may not be noticeable and the subsequent malfunctions do not necessarily affect vehicle drive-ability performance, it is difficult to detect which vehicles fall into this category. The new inspection equipment and programming provided by Environmental System Products (ESP) will capture that important inspection data and record it on the mainframe for access by the registration renewal and vehicle titling programs. Those systems will verify the results and permit vehicles passing the inspection tests to proceed through the DMV titling and registration systems without change. Failing vehicles will require repair and re-testing until they pass inspection or receive a vehicle waiver from DMV management. All subsequent action, beginning with the initial inspection

test – such as re-test inspection results, waivers, and overrides – will be recorded by the system.

The Project Scope document refers to six implementation phases within the development process of this project. Those six ~~implementation~~ phases translate into six high-level requirement specifications categories. It is important to understand that the six requirement categories do not all directly relate to the six installation phases. Part or all of each requirement category will be implemented to establish the six-phase approach for implementation. The categories defined in the System Requirements Definition document are:

1. System Control - This section of the requirements document encompasses system rule file maintenance, new temporary tag and window sticker inventory file maintenance, and certified lane technician maintenance. All of the functions within this design category must be implemented before the system can become operational.

2. Vehicle Inspection - This corresponds to is Phase I of the Project Scope and must be implemented in ~~its~~ its entirety before other components may be installed that depend on the Inspection Result data produced. The requirements document refers to, but does not detail, the client/-server system developed by ESP. Since this document was developed after the ESP design, it only addresses utilization of the data produced. Additional information regarding the design of the system can be located in the ESP design document.

3. Vehicle Registration - The requirements described under this section cover ~~vehicle titling~~, registration renewal, vehicle titling, temporary tag distribution, window sticker distribution, inspection result verification/handling, and vehicle repair tracking. All of the components in this section must be implemented before the system can go ~~on-line~~: online. Registration renewal will be the first section to be implemented, with the title section to follow. To support either section, temporary tag distribution, window sticker distribution, and inspection result overrides and waivers must be installed. The certified repair facility and technician tracking components may be installed after the system becomes operational.

4. External Agency - External agencies are vehicles that are not registered with the State of Delaware. Examples of these ~~vehicles~~ are:; Dover Air Force Base motor pools and civilian vehicles; ~~the~~ Postal Service vehicles;; Reserved Armed Forces vehicles; ; etc. Identification of ~~these~~ those vehicles will not be as straight forward straightforward as the vehicles registered in Delaware because ~~since~~ DMV does not keep records for them today. The Clean Air Act requires those vehicles to comply with the EPA emission standards as long as they continue to operate in Delaware. This section addresses the requirements and how to accomplish them. As each agency is introduced to the system, new program components may be required. Each agency may

be processed differently than the previous, based upon their technical capabilities. DMV will strive to develop a standardized approach and demand adherence from all external agencies. The components described in this section are required before introducing the first external agency to the system.

5. Audit Reporting - Requirements for three auditing techniques have been identified:; standard auditing reports and functions; ; special auditing functions; and auditing as required by DNREC. Auditing the system on a periodic basis ; daily, weekly, etc. is considered a standard procedure. Reports and screens will be programmed to run automatically for all of the standard auditing procedures. Special audits and DNREC (overt and covert) audits will be ~~are~~ discussed and will permit flexibility in selection and formatting of the information. Registration Denial data transfer to local PC's will also be an option.

6. Information Inquiry - The components in this section represent additional inquiry functions required to view the new information. Three separate areas have been defined as requiring access to the information:; DMV, the State Police, and DNREC. Each will share many of the same inquiry -components with "information blocks" applied when information is required by one agency and not the other. System rules will be developed to control the information selection and screen displays. Portions of this section will be required as the initial system is installed. Advanced inquiry facilities will be identified and included as the detail system specifications are developed.

The following paragraphs supply additional detail in reference to the above system requirement categories. If more detail is required, please refer to ~~the~~ Section II - Data Requirements and Section III - Process Requirements located later in this document.

System Control

The requirements described in this section are designed to keep the inventory files and system rules updated and in control of the system. Currently there are five separate processes defined:

1. The Registration Denial Rule Maintenance process will permit DMV management to maintain all of the associated rules concerning the Registration Denial system. Rules pertain to system variables that actually "drive" the system decision-making process. Externalizing the rules permits more flexibility and better overall control of the system by DMV.

2. A Temporary Tag Inventory maintenance system will be developed to control the acquisition and distribution of all temporary tags. The maintenance system will allow control [of] and accounting [for] ~~[of]~~ each temporary tag distributed by DMV. Control begins when new inventory is received. It will be tracked until the vehicle to which the tag was assigned is purged from the DMV files. The inventory

and temporary tag history files will be closely related.

3. A Window Sticker inventory control system will permit similar ~~(as temporary tags)~~ control (as in the case of temporary tags) over the window stickers issued by DMV. The maintenance system will allow control of and accounting for ~~of~~ each window sticker distributed by DMV. A vehicle window sticker history file will be incorporated with the present DMV title file.

4. The Certified Lane Technician maintenance system will allow DMV to track and record information about their lane technician employees. Information such as certification test results, re-certification results, and demographic data will be retained and reported.

5. The last new maintenance system planned will track Certified Repair Facilities and associated Certified Repair Technicians. The system will permit maintenance and reporting of repair facilities employing certified repair technicians and their certification test results.

#### Vehicle Inspection

This section describes the physical vehicle inspection that normally occurs for every registered vehicle in Delaware. The process is completed prior to a vehicle being titled, and then (normally) every 2 years after for registration renewals. The entire process occurs at the inspection lane(s) and is conducted at various checkpoints within. The ESP system controls the events that occur during the inspection process and helps ensure that each station checkpoint records the appropriate results. The results of each checkpoint test will be recorded and stored in the ESP station manager computer and then transmitted to the OIS mainframe in Dover, Delaware E., for permanent storage and retention. ESP handles all pass and fail parameters, anti-tampering verification and recording, permissible limits of the test, and calculating the 10% reduction in emission gases from the initial inspection for waiver processing. ESP also issues the final pass or fail grade for the vehicle.

#### Vehicle Registration

The normal DMV administrative "life cycle ~~life cycle~~" of a vehicle is described in this section. It begins when the vehicle is purchased and titled in the State of Delaware. Under normal circumstances, a vehicle will undergo an inspection to initiate this process. ~~However~~ ~~Although~~, most new vehicles purchased in the state are exempt from an initial inspection. During the vehicle "life cycle, ~~life cycle~~" it may be issued a temporary tag, window sticker, or a waiver for emissions;; or the inspection test results may be overridden by DMV management. As the next ~~(next cycle)~~ vehicle--registration renewal period nears, a registration renewal notice is printed and sent to the customer. That notice prompts the owner to bring the vehicle to DMV for an inspection and registration renewal. The process (Notice, Inspection, Renewal) continues as long as the vehicle ownership does not change

and the vehicle remains in Delaware. The major new portions ~~components~~ of the Vehicle Registration component for Registration Denial are:

#### Temporary Tags

Once a vehicle is issued a temporary tag, the paperwork flows into DMV for record-keeping. A clerk will enter the temporary tag information into the computer using a new temporary tag data-entry program. The program will complete a stolen vehicle check as [is] currently done while adding a title. A record will be added to the Temporary Tag History file for that (X) tag number. That record will then be available for inquiry by DMV and law enforcement. It can be found by entering the VIN or the (X) temporary tag number. The record will remain linked to the vehicle by VIN until the vehicle is purged from the DMV files. As the record is being recorded in the Temporary Tag History file, the temporary tag number will be consumed from the Temporary Tag Inventory file. Temporary tags are not tracked by today's ~~today's~~ system and will be valuable new information for DMV and law enforcement agencies. The introduction of this system will be completely new to DMV.

#### Window Stickers

After a vehicle is titled or renewed, it will be assigned a new window sticker. The current processes will be modified to assign the next available window sticker to the vehicle from the clerk's [s] inventory. As a safety precaution the clerk must enter the window sticker number, and the program will verify the number against the available window stickers in the clerk's inventory. If the number is not found, a window sticker override will be permitted. A reason for the override must be supplied by the clerk. The program will consume the window sticker from the clerk's inventory and add the information to the Window Sticker History file. The Window Sticker History will remain on the DMV files for a minimum of one inspection cycle. Replacement window sticker issuance and fee collection will be made available on the Cash Collection miscellaneous menu. Window sticker inventories, distribution, and tracking are new processes to DMV.

#### Title Vehicle

Vehicle titling is required by law, and all vehicles owned by Delaware residents traveling the highways must be titled. The title function encompasses several functions today, such as; adding, correcting, and transferring titles. All of the functions used by the title section will be a effected by the changes being made for the Registration Denial project. Titling can only occur after the vehicle has passed all of the inspection tests required of the particular vehicle class. There are a few exceptions, such as the fact that a vehicle may be permitted an override (and pass) of a failed test by DMV management. Or, a vehicle may receive a waiver if it meets the vehicle repair

expense limits and obtains a ten percent emission reduction measured from the initial test. A window sticker must also be issued to the vehicle.

The Correct Title function permits the title clerk to correct information on the Title file that may have been entered incorrectly during the title Add function. New features must be included in the program to calculate the remaining time left on an inspection and restrict expiration date modification to the last day of that inspection. Additionally, extensions beyond that inspection date will not be permitted by the program without another inspection. The program will require the capability to assign a new window sticker without regard to inspection dates, ~~although~~; the Correct Title function for a tag change will not issue a new window sticker. The window sticker stays with the vehicle in all cases.

The Transfer Title function permits the title clerk to transfer vehicle title and associated information from one owner to another. Transfers occur anytime vehicle ownership changes for any reason. Expiration dates cannot be transferred to another vehicle. In all cases, a vehicle expiration date remains with the vehicle, not the tag.

The introduction of inspection result verification and handling, window sticker inventories and distribution, waivers, and overrides are new concepts that will be introduced to DMV with the installation of this system.

#### Waiver Process

This process allows a clerk, or DMV management, to store vehicle waiver repair information into the system for a specific vehicle. The system will record the waiver information and retain links to the Inspection Results, Title, and Certified Technician files. Those linked files will be used for tracking and reporting the effectiveness of repair technicians and the waiver information permitted by DMV. The waiver information will be validated by the Title and Registration Renewal systems. When present and within the confines of the rules set by DMV, the vehicle will be permitted to proceed through the system without a passing inspection record. Waivers may be entered directly from the Titles and Registration Renewal screens or through an administrative function. The repair facility and repair technician information completing the vehicle repairs must be present in their respective files before a waiver can be entered. The repair facility and technician information may only be modified by DMV supervisors and above. Recording and verifying this information via computer is a completely new function to DMV.

#### Override Function

This function will be used by DMV management (and selected supervisors) and permit them to perform four major functions against the Inspection Result file. It will allow:

1. Adding an Inspection Result record to the

file. This will only be permitted when the ESP system is down and vehicle inspections revert back to the Bar 84 technique. This function will be extremely secure and verified each time a new entry is attempted.

2. Modification of the Inspection Result content. This is the function normally known as an override. The function will be restricted to particular DMV personnel, and even those permitted will have data-level restrictions. Overrides will be permitted on a case-by-case level and normally restricted to only safety item failures.

3. Transferring Inspection Results from one registration to another. This option will be used when the lane technician makes a mistake while entering the vehicle identification information. When a mistake has been made, the inspection results will be logged under the wrong registration. The customer will not be permitted to continue through the process unless the mistake is rectified. The system will track the transfer (from and to) information and create another record for the proper vehicle. The original inspection record will not be included in any statistical reporting.

4. Deleting individual Inspection Result records from the file. This is a very rarely used, but required, function to delete an inspection result record from the file. This option will be used when an inspection result record was created (Option #1 above) under the wrong registration. The record will be marked for deletion, but it will not be physically deleted from the file until the proper authorization is given by DMV management. This function will be highly secured and available only to those that absolutely require the function.

Daily auditing reports will be produced by the system and distributed to DMV management for all of the above functions. All of the functions listed above are completely new to DMV.

#### Renewal Notice

This process will be modified to produce additional customer notices for one-year renewal and State Police inspection requests. It will examine the Titles and Inspection Results files to identify the vehicles whose registrations are about to expire. It will determine if the vehicle requires an inspection or just a registration renewal. It will also find vehicles that have been requested to report to DMV for a special inspection by the State Police. While processing the selected records, it will determine if a vehicle must receive an inspection or if the current inspection is valid for the vehicle registration renewal. Vehicles that have been inspected within the last year may renew their registration for one additional year without another inspection. All the requirements of the owner to obtain a registration renewal will be printed on the renewal notice. The two-year inspection rule applies in all cases and will be printed on the notice. The reporting changes are modifications

to the current process. Adding a maintenance program to update vehicles stopped by the State Police is a new requirement of DMV.

#### Registration Renewal

The registration renewal process will be modified to verify the inspection results file before permitting a renewal. ~~As in like~~ the title process, a renewal will only occur after the vehicle has passed all of the inspection tests required for a particular vehicle class, or it was permitted an override (and pass) of a failed inspection, or a waiver was issued. A waiver requires proof of repair expenses and a ten percent emission reduction from the initial inspection before a renewal may be issued. The renewal process updates the current title record in the Title file. Once the title record is updated, the system prints a 2-D bar code on the updated registration card and issues the next available window sticker from the clerk's inventory. If the vehicle does not pass the inspection, a temporary tag will be issued, without a window sticker, by the registration clerk. Temporary tag issuance will be accessible through the renewal screen. As with the title functions, inspection result verification and handling, window sticker and temporary tag inventories, waivers, and overrides are new concepts to the registration clerks.

#### Management Overview

##### External Agency (Unregistered Vehicles)

This process is designed to permit DMV to identify and test vehicles stationed in Delaware that are owned by external agencies and not registered in Delaware (such as those owned by the DAFB, the postal service, and other federal motor pools). Those vehicles must be identified and tested to be sure they are in compliance with the federal emission standards. It is the responsibility of the individual agency to perform the follow-up to ensure that all vehicles are, and remain, in compliance. The system design for this function will incorporate:

- automatically receiving and loading the vehicle and owner information into a database that will be used by ESP;
- using the information to inspect and test the vehicle (ESP);
- recording the test results and subsequent re-test results;
- providing the Inspection Results data to the external agency in either a report or an online on-line inquiry so that notices may be forwarded by the agency;
- and reporting vehicles inspected and statistical information.

The introduction of this system will be completely new to DMV.

##### Audit Reporting

This process will match the Title, Inspection Result, and

at times the Vehicle Audit Information files and create reports about the information. Specific calculations and formats will be determined as the design process continues. External rules will be used to control the processing. All of the following components are new to DMV:-

**Standard Audit Reports** - The reports will be standard reports that will run unattended periodically and produce the necessary reporting and audit information. The reports will be designed in conjunction with DMV management to support the information required by DNREC and the EPA. Some of the reports will be written as part of the Phase II installation since EPA will require reports before the system will be fully installed.

**Specialized Audit Reports** - The reports will be specialized (by data selection, not report format or content) processes that will run to produce the necessary reporting and audit information. Special reports may be produced from the Inspection Result, Repair Facility, Technician, Waiver, and inventory files. All reports will be designed with DMV management to support any special requirements of DNREC and the EPA.

**Covert Audit Reports** - These reports, like the specialized reports, will be specific processes (by data selection, not report format or content) that will run to produce the necessary reporting and audit information. An automated process will be created to allow DNREC the ability to access and report the contents of the Title and Inspection Result files. The audit function is a direct responsibility of DNREC. Additional functionality will be created as DNREC defines the requirements. All reports will be designed with DNREC management in support of the information they require.

##### Information Inquiry

There will be a great deal of new information created by the Registration Denial ~~Registration Denial~~ system. That new information will be accessible by DMV, the State Police, and DNREC, and they will require new systems to permit online on-line inquiries into the data. Modifications will also be required to current systems to provide access to the data without writing new inquiry systems. Access to allow specific personnel permission to view the information will be granted based upon security levels and new rules set up in the system. Changes include modification to the current Delaware State Police (CICS) processes to permit inquiry and viewing of the new data captured by DMV. The current DMV inquiry systems will be modified to access the new data and display the information for ~~back to~~ the requester.

#### APPENDIX 9 (a)

#### ENFORCEMENT AGAINST OPERATORS AND



**INSPECTORS**

Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action. (Subject to change as the result of future union negotiations)

**ARTICLE 8 - DISCIPLINARY ACTION**

8.1 The Employer agrees that any disciplinary action up to and including dismissal shall be taken only for just cause.

8.2 Employee suspensions shall not exceed 30 calendar days except under the following circumstances: a court action is pending in the matter which led to the suspension; as a result of an arbitration award; or as a result of a grievance settlement involving a dismissal action where arbitration is pending.

8.3 Monetary fines shall not be imposed as a disciplinary measure.

8.4 Prior to the implementation of a dismissal action, employees shall be notified in writing that such action is being considered and provided the reasons for the proposed action.

8.41 Employees shall be entitled to a pre-termination hearing, provided they submit a written request for such hearing to the Division Director and State Deputy Director for Labor Relations within 5 work days of receiving the above referenced notification. The employee may be suspended without pay during this period.

8.42 The pre-termination hearing shall be held within a reasonable time after the employee has requested such hearing in compliance with 8.41.

8.43 Pre-termination hearings shall be informal meetings for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why dismissal may not be justified or too severe a penalty.

8.44 Prior to implementing a suspension without pay, the Employer shall follow the notification requirements set forth in 8.4.

8.5 Employees shall be entitled to a pre-suspension meeting with the Employer prior to the implementation of the suspension, provided they make a written request for such meeting to the Division Director within 5 working days after receiving the notice.

8.51 The pre-suspension meeting shall be held within a reasonable time after the employee has requested such

meeting in compliance with 8.5.

8.52 The pre-suspension meeting shall be an informal meeting for the purpose of providing employees an opportunity to respond to the proposed action, and offer any reasons why the proposed suspension may not be justified or too severe a penalty.

8.6 Employees may be accompanied by a Union representative at any meeting/hearing held under this Article.

8.7 Any employee failure to comply with the requirements set forth in 9.41 and 9.5 shall be treated as a waiver of any rights set forth in this Article.

8.8 Disciplinary documentation shall not be cited by the Employer in any action involving a similar subsequent offense after 2 years, except if employees raise their past work record as a defense or mitigating factor.

State of Delaware Merit Rules

**CHAPTER 15 EMPLOYEE ACCOUNTABILITY**

15.1 Employees shall be held accountable for their conduct. Measures up to and including dismissal shall be taken only for just cause. "Just cause." means that management has sufficient reasons for imposing accountability. Just cause requires:

- showing that the employee has committed the charged offense;
- offering specified due process rights specified in this chapter; and
- imposing a penalty appropriate to the circumstances.

15.2 Employees shall receive a written reprimand where appropriate based on specified misconduct, or where a verbal reprimand has not produced the desired improvement.

15.3 Prior to finalizing a dismissal, suspension, fine or demotion action, the employee shall be notified in writing that such action is being proposed and provided the reasons for the proposed action.

15.4 Employees shall receive written notice of their entitlement to a pre-decision meeting in dismissal, demotion for just cause, fines and suspension cases. If employees desire such a meeting, they shall submit a written request for a meeting to their Agency's designated personnel representative within 15 calendar days from the date of notice. employees may be suspended without pay during this period provided that a management representative has first reviewed with the employee the basis for the action and provides an

opportunity for response. Where employees' continued presence in the workplace would jeopardize others' safety, security, or the public confidence, they may be removed immediately from the workplace without loss of pay.

15.5 The pre-decision meeting shall be held within a reasonable time not to exceed 15 calendar days after the employee has requested the meeting in compliance with 15.4.

15.6 Pre-decision meetings shall be informal meetings to provide employees an opportunity to respond to the proposed action, and offer any reasons why the proposed penalty may not be justified or is too severe.

15.7 Fines of not more than 10 days pay may be imposed, provided they do not cause employees to be paid less than the federal minimum wage as set forth in the Fair Labor Standards Act.

Low Enhanced Inspection and Maintenance Program  
Plan for Implementation (PFI)

08/13/98

Section 1 - Applicability.

This program shall be known as the "Low Enhanced Inspection and Maintenance Program" or the "LEIM Program", and shall be identified as such in the balance of this document.

Enhanced programs are required in serious or worse ozone nonattainment areas, depending upon population and nonattainment classification or design value. The determination of whether an area has a Low Enhanced or a High Enhanced program depends on the emission reductions required for the area. If minimal reductions are needed to meet the Rate of Progress Plan/Attainment requirements, the A Low Enhanced program is acceptable, otherwise the a High Enhanced program must be adopted and implemented.

The following analysis first portrays the tests of the EPA Rule, first for classification and population criteria and then for extent of area of coverage. For both analyses, various criteria are used to determine applicability. Following each criteria is an analysis which identifies the areas of Delaware where each criteria may or may not apply. The rule language is shown in italics.

(a) Nonattainment area classification and population criteria.

(1) States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of

the area's attainment classification. In the case of a multi-state MSA, enhanced I/M shall be implemented in all ozone transport region portions if the sum of these portions has a population of 100,000 or more, irrespective of the population of the portion in the individual ozone transport region state or area.

Applicability: This criteria includes New Castle and Kent Counties. This criteria excludes Sussex County due to no 1990 MSA.

(2) Apart from those areas described in paragraph (a)(1) of this section, any area classified as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more, shall implement enhanced I/M in the 1990 Census-defined urbanized area.

Applicability: This criteria includes New Castle and Kent Counties. This criteria excludes Sussex County, with a classification of Marginal.

(3) Any area classified, as of November 5, 1992, as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating I/M programs that were part of an approved State Implementation Plan (SIP) as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements of this subpart. Any such area required by the Clean Air Act, as in effect prior to November 15, 1990, as interpreted in EPA guidance, to have an I/M program shall also implement a basic I/M program. Serious, severe and extreme ozone areas and CO areas over 12.7 ppm shall also continue operating existing I/M programs and shall upgrade such programs, as appropriate, pursuant to this subpart.

Applicability: This criteria does not apply to New Castle or Kent Counties since they are required to adopt enhanced I/M. This criteria does not apply to Sussex since the SIP Revision to include that county in the statewide basic I/M program was not adopted by EPA by November 15, 1990.

(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area.

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

(5) Any area outside an ozone transport region classified as serious or worse ozone nonattainment, or moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1990 Census-defined urbanized area population of less than 200,000 shall

implement basic I/M in the 1990 Census-defined urbanized area.

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

(6) If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(ii) of the Clean Air Act, such that the area includes additional urbanized areas, then a basic I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

(7) If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more. If such a newly included area has a 1980 Census-defined population of less than 200,000, then a basic I/M program shall be implemented in the 1990 Census-defined urbanized area.

Applicability: This criteria applies to no Delaware counties since no counties (other than Kent) have urbanized areas.

(8) If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

Applicability: This criteria could only apply to Sussex, however data does not demonstrate that Sussex should be reclassified to Moderate nonattainment.

(9) If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. In the case of ozone areas reclassified as serious or worse, if the 1980 Census-defined population of the urbanized area is less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.

Applicability: This criteria applies to no Delaware counties since no counties are classified as Moderate.

(b) Extent of area coverage.

(1) In an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded provided that at least 50% of the MSA population is included in the program. This provision does not preclude the voluntary inclusion of portions of an excluded rural county. Non-urbanized islands not connected to the mainland by roads, bridges, or tunnels may be excluded without regard to population.

Applicability: This criteria does not apply to New Castle or Kent Counties since they are already classified as Severe. This criteria does not apply to Sussex since there are no MSAs in Sussex.

(2) Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed as long as an equal number of non-urban residents of the MSA containing the subject urbanized area are included to compensate for the exclusion.

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport region.

(3) Emission reduction benefits from expanding coverage beyond the minimum required urban area boundaries can be applied toward the reasonable further progress requirements or can be used for offsets, provided the covered vehicles are operated in the nonattainment area, but not toward the enhanced I/M performance standard requirement.

Applicability: Delaware does not plan to include credits from vehicles registered in Sussex and operated in Kent or New Castle due to the tentative nature of this analysis.

(4) In multi-state urbanized areas outside of ozone transport regions, I/M is required in those states in the subject multi-state area that have an urban area population of 50,000 or more, as defined by the Bureau of Census in 1990. In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement enhanced I/M, any state with a portion of the urbanized area having a 1990 Census-defined population of 50,000 or more shall implement an enhanced program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

Applicability: This criteria applies to no Delaware counties since no counties are outside the ozone transport

region.

The conclusion of this analysis is that New Castle and Kent Counties are subject to the LEIM program requirements.

(c) Requirements after attainment.

[This requirement is included in Regulation 31, Section 1 (e)]

(d) Definitions: (Note: Definitions are found in Regulation 31).

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Section 2 - Low Enhanced I/M performance standard.

(a) The LEIM programs will be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the LEIM program. The performance standard was established using the following LEIM program inputs and local characteristics, such as vehicle mix and local fuel controls. The Delaware LEIM program inputs can be found in Appendix 2 (b).

(1) Network type:

Centralized testing.

(2) Start date:

January 1, 1995

(3) Test frequency:

Annual testing.

(4) Model year coverage:

Testing of 1968 and newer vehicles.

(5) Vehicle type coverage:

Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

(6) Exhaust emission test type:

Idle test of all covered vehicles. (As described in appendix B of Subpart S of 40 CFR 51.

(7) Emission standards:

Those specified in 40 CFR Part 85, Subpart W. Emission standards for 1981 and newer vehicles of 1.2% CO, and 220 ppm HC for the idle test (as described in Appendix B of the EPA Rule); and

Maximum exhaust dilution measured as no less than 6% CO plus carbon dioxide (CO<sub>2</sub>) on all tested vehicles (as described in Appendix B of the EPA Rule).

(8) Emission control device inspections:

Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.

(9) Evaporative system function checks: none

(10) Stringency:

A 20% emission test failure rate among pre-1981 model year vehicles.

(11) Waiver rate:

A 3% waiver rate, as a percentage of failed vehicles.

(12) Compliance rate:

A 96% compliance rate.

(13) Evaluation date:

Enhanced LEIM program areas subject to the provisions of this paragraph shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2000 for ozone nonattainment areas and 2001 for CO nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO<sub>x</sub> shall be the same as for ozone.

(b) The emission factors determined from the application of the above inputs to Mobile5a are shown in the document submitted to EPA, in November, 1995, entitled State of Delaware Demonstration of Meeting the Environmental Protection Agency Performance Standard for the Low-Enhanced Motor Vehicle Inspection and Maintenance Program. This document has been provided in Appendix 2 (b).

(c) On-board diagnostics (OBD):

[Reserved]

(d) Modeling requirements:

[Modeling requirements may be found in the document cited in paragraph (b) above]

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Section 3 - Network type and program evaluation.

(a) Program evaluation.

The LEIM program includes an ongoing evaluation by the Department to quantify the emission reduction benefits of the program, and to determine if the LEIM program is meeting the requirements of the Clean Air Act and Regulation 31.

(1) LEIM program evaluation reports will be prepared by the Department on a biennial basis, starting two years after the initial start date of mandatory testing as required in Section 24 of this PFI. The first report will be due to EPA by July 1, 1998, and every two years thereafter.

(2) The LEIM program evaluation test data will be submitted to EPA and used by the State to calculate local fleet emission factors, to assess the effectiveness of the program, and to determine if the performance standard is being met. The most recent version of EPA's mobile source emission factor model, will be used to reflect the appropriate emission reduction effectiveness of LEIM program elements within Section 2 of this PFI based on actual performance.

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## Section 4 - Adequate tools and resources.

## (a) Administrative resources.

The LEIM program will maintain the administrative resources necessary to perform all of the LEIM program functions including quality assurance, data analysis and reporting, and the holding of hearings and adjudication of cases.

Based on the passage of HB 360 which was signed by the Governor on November 9, 1993, on an annual schedule \$2.8 million is dedicated from fines derived from the Justice of the Peace Courts for the purpose of ongoing operation of the LEIM program. This signed legislation amends ' 6102 of Title 29 of the Delaware Code which is found in Appendix 4 (a). In addition, the yearly expected expenditures which Delaware is committed to for the LEIM program is detailed in Appendix 4 (a).

## (b) Personnel.

The LEIM program shall employ sufficient personnel to effectively carry out the duties related to the program, including but not limited to administrative audits, inspector audits, data analysis, LEIM program oversight, LEIM program evaluation, public education and assistance, and enforcement against motorists who are out of compliance with LEIM program regulations and requirements. The category of personnel, the numbers of each category, the duties and responsibilities of each category and the location of each category within the structure of Delaware government is shown in Appendix 4 (b). When required, enforcement actions taken involving Division and Department personnel shall be conducted in accordance with the Agreement between the State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules.

## (c) Equipment.

The LEIM program shall possess equipment necessary to achieve the objectives of the program and meet LEIM program requirements, including but not limited to a steady supply of vehicles for covert auditing, test equipment and facilities for LEIM program evaluation, and computers capable of data processing, analysis, and reporting. Vehicles used for covert auditing will be derived from the State owned fleet of vehicles.

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## Section 5 - Test frequency and convenience.

(a) The biennial LEIM program test frequency is consistent with Delaware Code requirements of 7 Del. Chapter 21 " 2109 and 2110 and found in Appendix 5(a). The test frequency shall be automatically integrated with the enforcement process since the date of registration renewal

is the same date as that of the emission testing requirement. Vehicles are assigned inspection cycles in Delaware. The inspection cycle normally remains with the vehicle when sold or transferred within the State. New vehicles, or used vehicles newly tagged in Delaware, enter the "cycle" on the date of registration, and remain on that cycle until removed from service or transferred to another state. [See Section 11 for a detailed explanation of the registration denial process]

(b) In LEIM programs, test systems are to be designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The location of official inspection stations are located in Wilmington, New Castle and Dover and are essentially the same locations as before the requirement for the LEIM program. These locations have been found to be adequate and publicly accepted convenient locations since 1983.

The network of stations are to provide test services that are sufficient to insure short waiting times to get a test. In preparing the estimates for the number of lanes required, the State based all assumptions on the peak hours of operation, based on local experience. Additional relief will be realized with the inception of the change of expiration dates to daily, avoiding end of period delays. Short-term wait times will be addressed by opening only enough lanes to provide a convenient wait of no more than a monthly average of 20 minutes.

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## Section 6 - Vehicle coverage.

The legal authority for this section is contained in 7 Del. C. 6707, as included in Appendix 11 (b).

The requirements of this section and the corresponding section in Regulation 31, shall apply to all of the subject vehicles registered in Delaware as described in the PFI. For the start up of the program on January 1, 1996, this number is an historical growth data projection of 478,000 vehicles. Delaware has confidence in this estimation based on a lengthy record of 3 percent per annum growth in the vehicle population.

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## Section 7 -Test procedures and standards.

[ Requirements may be found in Section 6 of Regulation No. 31 ]

(a) Test procedure requirements: As a Division policy, a vehicle will only be retested for that portion of the LEIM program test (exhaust idle emissions or evaporative emissions) that it initially failed.

(1) On-board diagnostic checks.

[Reserved].

(b) Test standards

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## Section 8 -Test equipment.

## (a) Performance features of computerized test systems.

Test equipment specifications are attached as Appendix 8 (a). Each test lane will be equipped with the following equipment for the idle test, at a minimum: a tailpipe probe, a flexible sample line, a water removal system, particulate trap, sample pump, flow control components, analyzers for HC, CO and CO<sub>2</sub>, and O<sub>2</sub> displays for exhaust concentrations of HC, CO, O<sub>2</sub> and CO<sub>2</sub>. Materials that are in contact with the gases sampled shall not contaminate or change the character of the gases to be analyzed, including gases from alcohol fueled vehicles. The probe shall be capable of being inserted to a depth of at least eight inches into the tailpipe of the vehicle being tested, or into an extension boot if one is used. A pressure gauge and equipment for flowing compressed air into the fuel tank evaporative control system will be used for the pressure test. The same equipment shall be used to separately test the gas tank cap.

Test equipment for the Idle Test shall comply with the Bureau of Automotive Repair BAR 90 TEST ANALYZER SYSTEM SPECIFICATIONS dated April 1996, and is incorporated here by reference. Public review of this document may requested by contacting the Department at (302) 739-4791.

All test equipment will be fully computerized and all processes will be automated to the highest degree possible. All computerized equipment will have lock-out features to prevent tampering by unauthorized personnel. Station managers, or their supervisors will have authorization to clear lock-outs or access the hardware for any purpose other than to perform an emissions test: and will be required to enter an access code that identifies them personally in order to do so. The date and reason for all lock-outs, as well as the date, and by whom lock-outs are cleared will be kept in a data file.

The test process is completely computerized. The process begins with data entry, which will involve entering the license plate number or the VIN. The Motor Vehicle Technician will obtain the VIN digits from the vehicle itself and will check the tag number as well. The entry will either, call up a pre-existing or, create a new vehicle file based on the registration data base and previous inspections of the vehicle. The Motor Vehicle Technician will compare the data in the file and confirm that the vehicle presented matches the VIN/tag number combination in the file. The test process is completely automatic, including the pass/fail decision and test procedure. Test lanes will be linked on a real-time basis to a central computer; test data will be recorded onto the station server and to the central data base as each test is completed, and multiple initial testing will be prevented. Records will be kept on the central data base for 10 years or the life of the vehicle whichever is less. The central data base will be backed up nightly, and if the vehicle is purged,

data will be recorded on microfiche permanently. System lockouts will be initiated whenever the following quality control checks are failed or not conducted on schedule: periodic calibration or leak checks, and check of the pressure monitoring devices. All electronic calibration and system integrity checks will be performed automatically, i.e., without specific prompting by the Motor Vehicle Technician prior to each test, and quality control will be under computer control to the extent possible.

(1) Emission test equipment shall be capable of testing all subject vehicles and will be updated from time to time to accommodate new technology vehicles as well as changes to the LEIM program.

(2) At a minimum, emission test equipment:

(i) Shall be automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(ii) Shall be secure from tampering and/or abuse;

(iii) Shall be based upon written specifications; and

(iv) Shall be capable of simultaneously sampling dual exhaust vehicles.

(v) Shall be able to determine the RPM of the vehicle.

(3) The vehicle owner or driver will normally be provided with a computer-generated record of test results, including all of the items listed in 40 CFR part 85, subpart W as being required on the test record. The test report will include:

(i) A vehicle description, including license tag number, vehicle identification number, and odometer reading;

(ii) The date and time of test;

(iii) The name or identification number of the individual(s) performing the tests and the location of the test station and lane;

(iv) The type of tests performed, including emission tests, visual checks for the presence of emission control components including catalytic converter, and functional, evaporative system checks including a gas cap test;

(v) The applicable test standards;

(vi) The test results, including exhaust concentrations and pass/fail results for each mode measured, pass/fail results for evaporative system checks, and which emission control devices inspected were passed, failed, or not applicable;

(vii) A handout indicating the availability of warranty coverage as required in Section 207 of the Clean Air Act;

(viii) Certification that tests were performed in accordance with the regulations; and

(ix) For vehicles that fail the tailpipe emission

test, some possible causes of the specific pattern of high emission levels found during the test are given in the Vehicle Inspection Program Brochure distributed at the inspection lane.

(b) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(1) The test system shall automatically:

(i) Make a pass/fail decision for all measurements;

(ii) Record test data to an electronic medium;

(iii) Conduct regular self-testing of recording accuracy;

(iv) Perform electrical calibration and system integrity checks before each test, as applicable, forwarded electronically to the inspection database where it shall be retained for 10 years or the life of the vehicle whichever is less, and;

(v) Initiate system lockouts for:

(A) Tampering with security aspects of the test system;

(B) Failing to conduct or pass periodic calibration or leak checks;

(C) Failing to conduct or pass the pressure monitoring device check (if applicable);

(D) A full data recording medium or one that does not pass a cyclical redundancy check.

(2) The test systems will include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy.

(3) The test system will insure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

(4) On-board diagnostic test equipment requirements. [Reserved].

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Section 9 - Quality control.

Quality control measures will insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained. (Concerning document maintenance see Regulation 31 Appendix 8(a) Systems Requirement Document - Registration Denial)

(a) General provisions.

(1) The practices described in this section and in Appendix 9 (a) (1) to this PFI shall be followed, at a minimum.

(2) Preventive maintenance on all inspection equipment necessary to insure accurate and repeatable

operation will be performed on a periodic basis.

(3) Computerized analyzers shall automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances which should be monitored to insure quality control (e.g., service calls).

(b) Requirements for evaporative system functional test equipment.

Requirements for evaporative system functional test equipment.

Equipment shall be maintained by the operator according to demonstrated good engineering practices to assure test accuracy. Computer control of quality assurance checks and quality control charts shall be used whenever possible. Appendix 9 (b) contains periodic maintenance procedures which shall be performed on all emission testing equipment by the State.

(c) Document security.

Measures shall be taken to ensure that compliance documents and data files cannot be stolen, removed, changed or edited without being damaged or marked for detection. Additional procedures concern document security can be found in Appendix 9 (c).

(d) Covert Audits.

Unmarked state vehicles will be adjusted to fail emission tests and brought into the testing lanes by state employees not related to the LEIM program. Test records for these vehicles be kept by the Department auditing personnel. The number of covert vehicles that passed and failed the tests will be compiled and the Motor Vehicle Technician that performed the tests will be identified. Details of the actual operation of the covert program will remain confidential to the Department personnel doing the audits.

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Section 10 -Waivers and compliance via diagnostic inspection.

The LEIM program allows for the issuance of a waiver, which is a form of compliance with the LEIM program requirements that allows a motorist to comply without meeting the applicable test standards, as long as prescribed criteria are met.

(a) Issuance criteria.

[Requirements may be found in Regulation 31, Section 6 (a)]

(b) Compliance via diagnostic inspection.

[Requirements may be found in Regulation 31, Section 6 (b)]

(c) Quality control of waiver issuance.

(1) The Director shall provide control of waiver issuance and processing by establishing a system of waivers issued by the Division.

(2) Vehicle owners or lessors shall be informed via

a standardized form provided by the Division, of potential warranty coverage, and ways to obtain warranty repairs upon their failure of an emissions inspection.

(3) Division personnel shall insure that repair receipts are authentic and cannot be revised or reused. All qualified receipts shall be permanently marked so they cannot be revised or reused. Department personnel or personnel contracted by the Department, on a periodic schedule shall perform visual inspections of all related repairs done by anyone, except for waiver repairs done by Certified Emission Repair Technicians.

(4) Waivers shall be tracked, managed, and accounted for by the Division with respect to time extensions or exemptions in the Division's database so that owners or lessors cannot receive or retain a waiver improperly. Records shall be maintained in secured, limited access data files and cross checked on a quarterly basis with the main data base to ensure waivers are being properly managed and reinspected biennially by the inspection program.

08/13/98

Section 11 - Motorist compliance enforcement.

Compliance shall be ensured through the denial of motor vehicle registration unless the vehicle has complied with the I/M requirement prior to initial registration or registration renewal.

(a) The following is a description of the Division of Motor Vehicles' registration policy according to Delaware law on the registration of newly titled vehicles and registration renewals:

(1) New motor vehicles that have never been titled/registered in any state are allowed to register for a period of three years without complying with the I/M requirement.

(2) All other vehicles older than 3 model years (and that must comply with Regulation 31) coming into Delaware or being titled/registered for the first time are required to pass I/M inspection prior to titling and registration. Delaware Motor Vehicle Law Title 21, Section 2102, requires new residents to register all vehicles within 60 days after taking up residency in Delaware. Failure to comply subjects the violator to a fine of \$25 or no more than \$100 for the first offense; second offense not less than \$50 nor more than \$200 or imprisonment not less than 10 nor more than 30 days or both.

(3) All vehicles applying for registration renewal must pass an I/M inspection within 90 days of their registration expiration date in order for their registration to be renewed.

(4) Delaware's registration denial system is designed to prevent fraud and registrations without inspection. The system will be fully computerized by the end of 1998 which will allow the Division to use Vehicle Inspection

Reports (VIR's) which are generated when a vehicle is inspected as backup documentation. Currently, the VIR is printed on all inspections. A VIR showing the vehicle has passed inspection must be presented at the time of registration or registration renewal. The computer system when implemented will automate the entire system. The test record will be stored in the vehicle's registration database. A failure in any portion of the test will prevent the vehicle from being registered. The system will lock out the clerks from updating the vehicle record until the vehicle passes inspection. The VIR will only be used as backup documentation in the event a failure occurs in the automated system.

(5) The I/M test record for each vehicle is stored in the Division's mainframe computer database. The I/M test record is matched to the vehicle's Vehicle Identification Number (VIN), and the last ten (10) I/M inspections will be stored with the vehicle's registration record. The test record is a computer-based record with a paper back-up (VIR). The paper record is only kept for one year. The motorist is given the VIR when the inspection is completed.

(6) The Division currently issues a registration card and license plate sticker to show a vehicle is registered. In order to prevent theft of license plates and plate stickers, the Division anticipates issuing a windshield sticker in addition to the plate sticker. The window stickers will have unique serial numbers which will be loaded into the registration database and printed on the vehicle registration card. In addition, each sticker will have a unique bar code. The window sticker will also allow the Division to implement a daily expiration system. Currently, vehicle registrations expire the 15<sup>th</sup> and the last day of each month.

(7) Penalty for non-compliance:

(i) Delaware law prohibits a vehicle owner from operating or knowingly permitting the operation of a vehicle upon the highway that is not registered or which does not have attached thereon the number plate assigned by the Department or a current expiration sticker. The penalty for non-compliance for the first offense is a fine of not less than \$50 nor more than \$200, be imprisoned not less than 30 days nor more than 90 days or be penalized by both fine and imprisonment for each subsequent like offense, fined not less than \$100 nor more than \$300, be imprisoned not less than 90 days nor more than six months, or be penalized by both fine and imprisonment. Delaware law enforcement officers having probable cause to believe that a vehicle is not in compliance with the law or regulations may inspect the vehicle and documents and make arrests for non-compliance.

(ii) At any time and notwithstanding the possession of current registration plates as provided by Delaware Title 21, the Public Safety Secretary, any authorized agent of the Department or any police officer may, upon reasonable cause, require the owner or operator of a vehicle



to stop and submit such vehicle and the equipment to such further inspection and test with reference thereto as may be appropriate. In the event such vehicle is found to be in an unsafe condition or lacking the required equipment or is not in proper repair and adjustment, the officer shall give a written notice to the driver and shall send a copy thereof to the Department. The notice shall require that such vehicle and its equipment be placed in safe condition and in proper repair and adjustment and/or that proper equipment be obtained, and that a certificate of inspection and approval for such vehicle be obtained within five (5) days thereafter.

(iii) Every owner or driver upon receiving the notice prescribed in subsection (a) of Title 21, Section 2144, of the Delaware Code shall comply therewith and shall, within the five (5) day period, secure an endorsement upon such notice by an inspector of the Department that such vehicle is in safe condition and properly equipped and its equipment in proper repair and adjustment and shall then forward the notice to the Department. No person shall operate any such vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or the place of business of the owner or driver if within a distance of 20 miles or to a garage until the vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this title.

(8) Rental agencies are required to register in Delaware the number of vehicles the agency has available for rent in Delaware.

(9) Department personnel will perform periodic parking lot surveys to determine vehicle compliance rates and to ensure I/M program compliance is being adhered to in practice. During the surveys the Department personnel shall match vehicle tag numbers with Division Vehicle Inspection Reports to ensure Delaware registered vehicles have been inspected and complied with Regulation 31. Vehicles with expired tag stickers will be referred to the Division for enforcement action.

(10) In Delaware, the compliance sticker (and vehicle tag) normally remains with any vehicle already in the program, regardless of ownership. Vehicles changing the compliance sticker and vehicle tag with a change in vehicle ownership shall be assigned a new inspection cycle and require a new compliance sticker prior to re-registration. Manipulation of the title or registration shall therefore be ineffective in attempting to avoid inspection.

(b) The following explains how the system currently works and how the computer controlled system will work once implemented:

(1) A registration renewal notice is sent to each vehicle owner approximately 90 days prior to the expiration of the current registration/inspection.

(2) The vehicle is required to be inspected at one of the Division of Motor Vehicles inspection facilities. After

the vehicle is inspected the owner is issued a Vehicle Inspection Report (VIR). The VIR indicates if the vehicle failed or passed inspection. When the vehicle passes inspection, the owner presents the VIR to a registration specialist who verifies the vehicle has passed inspection and issues the registration renewal.

(3) Vehicles failing inspection must have the vehicle repaired and presented back for inspection. The Division allows one retest without proof of repair. After the first retest, documented repairs must be performed prior to another retest. Vehicle owners whose registration have expired or are about to expire can apply for a temporary license plate to allow for operation of the vehicle for 30 days while the vehicle is being repaired. Vehicles failing for safety violations may be provided a temporary permit for 15 days to allow for the vehicle to be driven directly to a repair shop from DMV. The temporary tags and permits are tightly controlled and are shown on the vehicle's registration record. This prevents an owner from obtaining more than one temporary tag or permit. The vehicle cannot obtain registration until a VIR is presented which shows the vehicle has passed I/M and the Division's safety inspection program.

(4) The new automated system that will be operating by the end of 1998 will provide the registration specialist with on-line access to the vehicle inspection record. When an owner comes in to register a vehicle, the computer will indicate if the vehicle failed or passed inspection. When a vehicle fails inspection, the computer will lock the vehicle record and prevent any attempt to register the vehicle. The registration specialist can look at the vehicle test record and inform the customer of the failed items. The customer can then be offered a 30-day temporary tag or temporary permit. Vehicles passing inspection will be allowed to register and will be provided a new registration card and plate sticker. Vehicles being titled for the first time in Delaware are subject to the same restrictions. The system will prevent the vehicle from being registered.

(5) The system will have two methods to override the inspection failure. The first method involves emission waivers issued under Regulation 31, Section 6. The waiver information and receipts will be verified by Delaware's Department of Natural Resources and Environmental Control (DNREC). The second method is by supervisory override. The override authority allows the registration specialists to change a vehicle record from fail to pass for certain safety-related failure items. Example: vehicle fails for license plate being damaged. The customer will be issued a new license plate by a registration specialist, and the failed safety item will be changed to pass. Registration specialists will not have the authority or the ability to change any I/M-related items. The second security level involves DMV supervisory personnel who would have the authority to override a record in the event of a computer failure. Example: vehicle owner takes vehicle through inspection, passes and receives a VIR

showing a pass in all areas. Through a computer glitch, the vehicle record is not updated in the mainframe computer system. The supervisor can verify through the inspection lane station manager computer that the vehicle was inspected and passed. The supervisor would then override the system and allow the renewal. The supervisor would notify the Division's Computer Support of the computer problem and action would be taken to ensure the inspection test record is sent to the mainframe system. The override transaction ability will be strictly controlled. Managers will be provided with reports when the override is used. The override transaction report will contain information to easily identify the individual who performed the transaction override, date, time and the item overridden.

(c) The legal authority is contained in 7 Del. C.60, '6010(a), 7 Del. C. 67, '6702.. These provisions are found in Appendix 11 (b). In Regulation 31, Section 8 and Appendix 4 (a) procedures to be followed by the Division in the specific operation of the enforcement program, as well as a penalty schedule to be followed when violations occur, are included.

(d) (1) In the future, through the examination of data, test records and enforcement actions the Department will be able to assess the compliance rate. In addition, the Department will conduct on-road and parking lot surveys of vehicles with Delaware tags, noting the vehicle inspection sticker located on the tag and indicating the month and year of expiration. In these same surveys, tag numbers will be tracked and verified with the Division's record as to registration compliance. The number of out of compliance vehicles that are identified in the on-road test and the number of vehicles that have expired registration stickers that are identified by the parking lot checks will be compiled and a compliance rate will be determined.

(2) The State commits to a sustained level of LEIM program enforcement which shall ensure a compliance rate of no less than 96% of subject vehicles. This reflects the compliance rate used in LEIM program modeling. In the event that LEIM program evaluation reveals that this compliance rate is not being continuously met, the following contingency measures shall be implemented by the Department:

(i) additional on-road testing and additional parking lot surveillance

(ii) contact fleet and federal fleet managers to ensure full compliance

(3) Should these measures not be sufficient to bring the State's compliance rate to the needed level, a final measure shall be implemented. The Division shall generate a list of all vehicles known to be operating in the State under legal tags. This list shall be compared to a list of all vehicles in compliance with the LEIM program. Any outstanding vehicles shall be investigated by the Department and brought into compliance subject to current laws and regulations.

(e) As described in Section 6 (c) of Regulation No. 31,

certain vehicles shall be exempt from the inspection requirements of the LEIM program. Detailed in Appendix 11 (c)(1), is a 1993 estimation of the percentage of the fleet by vehicle type, and, the percentage of the subject fleet that vehicle type represents. The exempt status of these vehicles shall be confirmed through the registration inspection requirements and through other established enforcement mechanisms. If a violation is found, the exempt status of any individual vehicle may be revoked.

08/13/98

Section 12 - Motorist compliance enforcement program oversight.

The enforcement program shall be audited regularly and shall follow effective program management practices, including adjustments to improve operation when necessary.

(a) Quality assurance and quality control.

A quality assurance program has been implemented to insure effective overall performance of the enforcement system. Quality control procedures are required to instruct individuals in the enforcement process regarding how to properly conduct their activities. Audits of the Quality Assurance and Quality Control procedures shall be performed by Department Auditors and reported to EPA on an annual basis. The quality control and quality assurance program shall include:

(1) Verification of exempt vehicle status by inspecting and confirming such vehicles during registration;

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry performed upon appearance for testing by lane personnel;

(3) Maintenance of an audit trail to allow for the assessment of enforcement effectiveness such that all documentation can be controlled, tracked and reported to EPA by the Department on an annual basis with program evaluations;

(4) Establishment of written procedures for personnel directly engaged in LEIM program enforcement activities, contained in Appendix 12 (a)(4);

(5) Establishment of written procedures for Division personnel engaged in LEIM program document handling and processing, such as registration clerks or personnel involved in sticker dispensing and waiver processing, as well as written procedures for the auditing of their performance, contained in Appendix 12- (a)(5);

(6) A determination of enforcement program effectiveness through annual audits of test records and LEIM program compliance documentation, with the procedures described in Appendix 12 (a)(6). Results shall be provided to EPA with annual program evaluation reports;

(7) Enforcement procedures in accordance with the Agreement Between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules for immediate disciplining, retraining, or removing enforcement personnel who deviate from established requirements;

[Additional requirements may be found in Section 12 of the PFI]

(b) Information management.

The information data base to be used in characterizing, evaluating, and enforcing the LEIM program shall:

(1) Determine the subject vehicle population through analysis of vehicles receiving State of Delaware tags in New Castle and Kent Counties;

(2) Permit EPA audits of the enforcement process;

(3) Assure the accuracy of registration and other program document files and data bases through internal and cross data base comparisons of records;

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party Departmental review; through automated or redundant data entry; and, through automated analysis for valid alpha-numeric sequences of the vehicle identification number (VIN), certificate number, or tag number. Department auditors shall annually review and verify analyses, and assist the Division and Police agencies in enforcement actions;

(5) Compare on a quarterly and annual basis, the testing database to the registration database to determine LEIM program effectiveness and establish compliance rates.

(6) Sample the fleet as a determination of compliance through parking lot surveys, road-side pull-overs, or other in-use vehicle measurements.

(c) The legal authority in Appendix 11 (b), 7 Del. C. '6010(a), includes the authority to develop and implement the enforcement oversight element of the LEIM program. The regulations also include procedures to be followed by the Division in the specific operation of the registration denial system, as well as a penalty schedule to be followed when violations occur. (See Regulation 31, Appendix 8 (a) Systems Requirement Document- Registration Denial)

08/13/98

Section 13 - Quality assurance.

An ongoing quality assurance LEIM program has been implemented to discover, correct and prevent fraud, waste, and abuse and to determine whether procedures are being followed, are adequate, whether equipment is measuring accurately, and whether other problems might exist which would impede LEIM program performance. The quality assurance and quality control procedures shall be evaluated at least annually to assess their effectiveness and relevance

in achieving LEIM program goals.

(a) Performance audits.

Performance audits shall be conducted by the Departments auditors on a minimum of an annual basis to determine whether Motor Vehicle Technicians are correctly performing all tests and other required functions. Performance audits shall be of two types: overt and covert, and shall include:

(1) Performance audits based upon written procedures and results shall be reported using either electronic or written forms to be retained by the Division, with sufficient detail using violations of procedures found, to support a hearing if necessary. This shall include all evidence uncovered of a violation, including the time, date, nature of the violation, and possible effect on vehicles being inspected and the programs overall effectiveness. Preliminary results shall be discussed with the lane manager. Final results shall be transmitted to both the Division Director and the Department Secretary who shall decide if further action is required, and initiate that further action;

(2) Performance audits in addition to regularly programmed audits for Motor Vehicle Technicians suspected of violating regulations as a result of audits, data analysis, or consumer complaints;

(3) Overt performance audits shall be performed once per month and shall include:

(i) A check for the observance of issuing windshield stickers (when implemented);

(ii) A check to see that required record keeping practices are being followed;

(iii) A check for licenses or certificates and other required display information; and

(iv) Observation and written evaluation of each Motor Vehicle Technician's ability to properly perform an inspection;

(4) Covert performance audits shall include:

(i) Remote visual observation of Motor Vehicle Technician performance, which shall include the use of aids such as binoculars or video cameras, at least once per year per Motor Vehicle Technician.

(ii) Site visits at least once per year per number of Motor Vehicle Technicians using covert vehicles set to fail (this requirement sets a minimum level of activity to one covert inspection for each Motor Vehicle Technician at each station, not a requirement that each Motor Vehicle Technician be involved in a covert audit);

(iii) Full documentation of all audit preparation, execution and performance, including verified vehicle condition and preparation, which shall be sufficient for building a legal case and establishing a performance record;

(iv) Covert vehicles covering the range of vehicle technology groups (e.g., carbureted and fuel-injected vehicles) included in the LEIM program, including a full range

of introduced malfunctions covering the emission test, the evaporative system tests, and emission control component checks (as applicable);

(v) Sufficient numbers of covert vehicles and auditors to allow for frequent rotation of both to prevent detection by station personnel during audits conducted once per month; and,

(vi) Access to on-line inspection databases by Department and Division personnel to permit the creation and maintenance of covert vehicle records.

Covert vehicles to be used in this requirement shall be supplied from the pool maintained by the State of Delaware for use throughout the State by various agencies. The records of these vehicles shall be temporarily modified by the Division and fitted with regular tags so that they cannot be identified either visually or through an electronic search of Division records as being anything other than regular vehicles used by an individual for normal transportation. Should re-use of any vehicle be necessary in conducting audits, the Division's System Administrator or designee only, shall reset the test records to avoid detection of the vehicle by lane personnel.

(b) Record audits.

Station and Motor Vehicle Technician records shall be reviewed or screened at least monthly by the Department, to assess station performance and identify problems that may indicate potential fraud or incompetence. Such review shall include:

(1) Software-based, computerized analysis which can be initiated by Division personnel to examine station records and identify statistical inconsistencies, unusual patterns, and other discrepancies;

(2) Visits to inspection stations by Department auditors, to review records not already covered in the electronic analysis (if any); and

(3) Comprehensive accounting for the windshield stickers (when implemented) used to demonstrate compliance with the LEIM program.

(c) Equipment audits.

During overt site visits, auditors shall conduct quality control evaluations of the required test equipment, including (where applicable):

(1) A gas audit using gases of known concentrations at least as accurate as those required for regular equipment quality control and comparing these concentrations to actual readings;

(2) A check for tampering, worn instrumentation, blocked filters, and other conditions that would impede accurate sampling;

(3) A leak check;

(4) A check to determine that station gas bottles used for calibration purposes are properly labeled and within the required tolerances;

(5) A check of the system's ability to accurately

detect background pollutant concentrations;

(6) A check of the pressure monitoring devices used to perform the evaporative canister pressure test; and

(d) Auditor training and proficiency.

(1) Auditors are required to be formally trained and knowledgeable in:

(i) The use of analyzers;

(ii) LEIM program rules and regulations;

(iii) The basics of air pollution control;

(iv) Basic principles of motor vehicle engine repair, related to emission performance;

(v) Emission control systems;

(vi) Evidence gathering;

(vii) State administrative procedures laws;

(viii) Quality assurance practices; and

(ix) Covert audit procedures.

(2) Auditors shall themselves be audited by their supervisor, at least once per annum.

(3) The training and knowledge requirements in paragraph (d)(1) of this section may be waived for temporary auditors engaged solely for the purpose of conducting covert vehicle runs.

08/13/98

Section 14 - Enforcement against operators and motor vehicle technicians.

Enforcement against operators or motor vehicle technicians shall include swift, sure, effective, and consistent penalties for violation of LEIM program requirements in accordance with the Agreement between the State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules..

(a) Imposition of penalties.

[ Requirements may be found in Section 14 of Regulation No. 31 ]

(b) Legal authority.

[ Requirements may be found in Section 14 of Regulation No. 31 ]

(c) Recordkeeping. The Department shall maintain records of all warnings, civil fines, suspensions, revocations, and violations and shall compile statistics on violations and penalties on an annual basis. These records shall be provided to the Division Director and to the EPA on an annual basis beginning July 1, 1998.

08/13/98

Section 15 - Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an LEIM program. The

Director shall gather test data on individual vehicles, as well as quality control data on test equipment.

(a) Test data.

The goal of gathering test data is to unambiguously link specific test results to a specific vehicle, LEIM program registrant, test site, and Motor Vehicle Technician, and to determine whether or not the correct testing parameters were observed for the specific vehicle in question. In turn, these data can be used to distinguish complying and non-complying vehicles as a result of analyzing the data collected and comparing it to the registration database, to screen inspection stations and Motor Vehicle Technicians for investigation as to possible irregularities, and to help establish the overall effectiveness of the LEIM program. At a minimum, the LEIM program shall collect the following with respect to each test conducted:

- (1) Test record number;
- (2) Inspection station and Motor Vehicle Technician numbers;
- (3) Test system number;
- (4) Date of the test;
- (5) Vehicle Identification Number;
- (6) Delaware tag number;
- (7) Manufacturer's Gross Vehicle Weight Rating (GVWR) for vehicles above 8,500 pounds;
- (8) Vehicle model year, make, and body style and EPA vehicle classification;
- (9) Odometer reading;
- (10) Category of test performed (i.e., initial test, first retest, or subsequent retest);
- (11) Fuel type of the vehicle (i.e., gas, diesel, or other fuel);
- (12) Emission test sequence(s) used;
- (13) Hydrocarbon emission scores and standards for each applicable test mode;
- (14) Carbon monoxide emission scores and standards for each applicable test mode;
- (15) Carbon dioxide emission scores (CO+CO<sub>2</sub>) and standards for each applicable test mode;
- (16) Nitrogen oxides emission scores, if available, and standards for each applicable test mode;
- (17) Results (Pass/Fail/Not Applicable) of the applicable visual inspections for the gas cap, catalytic converter, evaporative system, and any other visual inspection for which emission reduction credit is claimed;
- (18) Results of the evaporative system pressure test expressed as a pass or fail; and

(b) Quality control data. At a minimum, the program shall gather and report the results of the quality control checks required under Section 9 of this PFI, identifying each check by station number, system number, date, and start time. The data report shall also contain the concentration values of the calibration gases used to perform the gas characterization

portion of the quality control checks.

08/13/98

Section 16 -Data analysis and reporting.

Data analysis and reporting are required to allow for monitoring and evaluation of the program by program management and EPA, and shall provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. Initial submission of the following annual reports shall commence on July 1, 1996. The biennial report shall commence on July 1, 1998.

(a) Test data report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the testing program for January through December of the previous year, including:

- (1) The number of vehicles tested by model year and vehicle type;
- (2) By model year and vehicle type, the number and percentage of vehicles:
  - (i) Failing the emissions test initially;
  - (ii) Failing each emission control component check initially;
  - (iii) Failing the evaporative system integrity check initially;
  - (iv) Failing the first retest for tailpipe emissions;
  - (v) Passing the first retest for tailpipe emissions;
  - (vi) Initially failed vehicles passing the second or subsequent retest for tailpipe emissions;
  - (vii) Initially failed vehicles passing each emission control component check on the first or subsequent retest by component;
  - (viii) Initially failed vehicles passing the evaporative system integrity check on the first or subsequent retest;
  - (ix) Initially failed vehicles receiving a waiver;
- and
- (x) Vehicles with no known final outcome (regardless of reason);
- (3) The initial test volume by model year and test station;
- (4) The initial test failure rate by model year and test station; and
- (5) The average increase or decrease in tailpipe emission levels for HC, CO, and NO<sub>x</sub> (if applicable) after repairs by model year and vehicle type for vehicles receiving an emission test.

(b) Quality assurance report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the quality assurance program for January through December of the previous year, including:

- (1) The number of inspection stations and lanes operating throughout the year; and
  - (2) The number of inspection stations and lanes operating throughout the year:
    - (i) Receiving overt performance audits in the year;
    - (ii) Not receiving overt performance audits in the year;
    - (iii) Receiving covert performance audits in the year;
    - (iv) Not receiving covert performance audits in the year.
  - (3) The number of covert audits:
    - (i) Conducted with the vehicle set to fail the emission test;
    - (ii) Conducted with the vehicle set to fail the component check;
    - (iii) Conducted with the vehicle set to fail the evaporative system check;
    - (iv) Conducted with the vehicle set to fail any combination of two or more of the above checks;
    - (v) Resulting in a false pass for emissions;
    - (vi) Resulting in a false pass for component checks;
    - (vii) Resulting in a false pass for the evaporative system check; and
    - (viii) Resulting in a false pass for any combination of two or more of the above checks;
  - (4) The number of Motor Vehicle Technicians and stations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules:
    - (i) That were suspended, fired, or otherwise prohibited from testing as a result of overt or covert audits;
    - (ii) That were suspended, fired, or otherwise prohibited from testing for other causes; and
  - (5) The number of Motor Vehicle Technicians certified to conduct testing;
  - (6) The number of hearings:
    - (i) Held to consider adverse actions against Motor Vehicle Technicians and stations; and
    - (ii) Resulting in adverse actions against Motor Vehicle Technicians and stations;
  - (7) The total number of covert vehicles available for undercover audits over the year; and
  - (8) The number of covert auditors available for undercover audits.
- (c) Quality control report.

The Secretary shall submit to EPA by July of each year a report providing basic statistics on the quality control program for January through December of the previous year, including:

- (1) The number of emission testing sites and lanes in use in the LEIM program;
- (2) The number of equipment audits by station and lane;
- (3) The number and percentage of stations that have failed equipment audits; and
- (4) Number and percentage of stations and lanes shut down as a result of equipment audits.
- (d) Enforcement report.
  - (1) The Secretary shall, at a minimum, submit to EPA by July of each year a report providing basic statistics on the enforcement program for January through December of the previous year, including:
    - (i) An estimate of the number of vehicles subject to the inspection program, including the results of an analysis of the registration data base;
    - (ii) The percentage of motorist compliance based upon a comparison of the number of valid final tests with the number of subject vehicles;
    - (iii) The number of compliance surveys conducted, number of vehicles surveyed in each, and the compliance rates found.
  - (2) The Secretary shall provide the following additional information obtained from the Director:
    - (i) A report of the LEIM program's efforts and actions to prevent motorists from falsely registering vehicles out of the LEIM program area or falsely changing fuel type on the vehicle registration, and the results of special studies to investigate the frequency of such activity; and
    - (ii) The number of registration file audits, number of registrations reviewed, and compliance rates found in such audits.
- (e) Additional reporting requirements.
 

In addition to the annual reports in paragraphs (a) through (d) of this section, LEIM programs shall submit to EPA by July of every other year, beginning with July 1, 1998, biennial reports addressing:

  - (1) Any changes made in LEIM program design, personnel levels, procedures, regulations, and legal authority, with detailed discussion and evaluation of the impact on the LEIM program of all such changes; and
  - (2) Any weaknesses or problems identified in the LEIM program within the two-year reporting period, what steps have already been taken to correct those problems, the results of those steps, and any future efforts planned.

08/13/98

Section 17 -Motor Vehicle Technician training and certification.

The Department and the Division shall jointly ensure that

adequate and appropriate training is available within the state. Interested agents may apply to be a state training facility. Upon evaluation of the program and a positive finding, the agent may be certified. The Department and the Division shall monitor and evaluate the training program delivery at least annually to ensure that it continues to meet the requirements of the program and reflects changes occurring in the program over time. (See also Appendix 17)

(a) Training.

(1) Motor vehicle technician training shall impart knowledge of the following:

- (i) The air pollution problem, its causes and effects;
- (ii) The purpose, function, and goal of the inspection LEIM program;
- (iii) State inspection regulations and procedures;
- (iv) Technical details of the test procedures and the rationale for their design;
- (v) Emission control device function, configuration, and inspection;
- (vi) Test equipment operation, calibration, and maintenance;
- (vii) Quality control procedures and their purpose;
- (viii) Public relations; and
- (ix) Safety and health issues related to the inspection process.

(2) [ Requirements for monitoring and evaluating the training program delivery can be found in the PFI, Section 17]

(3) In order to complete the training requirement, a trainee shall pass with a minimum of 80% of correct responses to all questions, a written test administered by the Division. In addition, a hands-on test shall be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures shall constitute failure of the test. The LEIM program shall take appropriate steps to insure the security and integrity of the testing process, and that sufficient training is provided to allow all motor vehicle technicians to complete the training requirements.

(b) Motor Vehicle Technician Certification.

(1) All motor vehicle technicians shall be certified by the Division in order to perform official inspections.

(2) Completion of motor vehicle technician training and passing required tests with a grade of at least 80% shall be a condition of certification.

(3) Motor vehicle technician certificates shall be valid for no more than 2 years, at which point refresher training and testing shall be required prior to renewal. Alternative approaches based on more comprehensive skill

examination and determination of motor vehicle technician competency may be used.

(4) Certificates shall not be considered a legal right but rather a privilege bestowed by the LEIM program conditional upon adherence to LEIM program requirements.

08/13/98

Section 18 -Public information and consumer protection.

(a) Public awareness.

The Department and the Division shall ensure the development of a plan for informing the public on an ongoing basis throughout the life of the LEIM program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an LEIM program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the LEIM program. This information will be provided to motorists whose vehicles fail the emission test in a brochure developed by the Division entitled "Vehicle Inspection Program Brochure. Motorists shall also be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in Section 20 (b)(1) of this PFI.

(b) Consumer protection.

The Department shall institute procedures and mechanisms to protect the public from fraud and abuse by Motor Vehicle Technicians, and others involved in the LEIM program. It shall include mechanisms for protecting whistle blowers and following up on complaints by the public or others involved in the process. It shall include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test. Additional consumer protection policies by the Division is included in Appendix 18-(b).

08/13/98

Section 19 -Improving repair effectiveness.

Effective repairs are the key to achieving LEIM program goals and the state shall take steps to ensure the capability exists in the repair industry to repair vehicles that fail I/M tests.

(a) Technical assistance.

The Department shall provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair.

(1) The Department shall regularly inform repair facilities of changes in the inspection LEIM program, training course schedules, common problems being found with particular engine families, diagnostic tips and the like.

(2) The Department shall provide a telephone

number where the public may call with questions related to the legal requirements of state and Federal law with regard to emission control device tampering, engine switching, or similar issues. Where possible, the Department will assist repair technicians with repair problems and answer technical questions that arise out of the repair process.

(b) Performance monitoring.

(1) The Department shall monitor the performance of individual motor vehicle repair facilities, and provide to the public at the time of initial failure, a summary of the performance of Certified Emission Repair Technicians that have repaired vehicles for retest. The initial stage of the repair technician report card will score certified emission repair technicians only with a 1 each time a repaired vehicle comes in for a retest and passes and a 0 when the repaired vehicle fails after the retest. Motor Vehicle Technicians will enter the Certified Emission Repair Technician's code number into data management system and the vehicle emission report for that retest will then have the technician and the results of the test in the record. The records will then be compiled in a report on a percent of repaired vehicles that passed the retest will be given to each technician. The initial analysis will be to assess the training that the state provides to the technician to acquire certification. After the initial stage of the performance monitoring program is completed, a full performance monitoring shall include statistics on the number of vehicles submitted for a retest after repair by the repair facility, the percentage passing on first retest, the percentage requiring more than one repair/retest trip before passing, and the percentage receiving a waiver. The Department shall issue procedures to weight the averages for repair shops, to avoid causing a shop to carry a poor record from the beginning of the program that does not reflect their current ability to make repairs. The LEIM program may provide motorists with alternative statistics that convey similar information on the relative ability of repair facilities provide effective and convenient repairs, in light of the age and other characteristics of vehicles presented for repair at each facility.

This performance monitoring shall be achieved by requiring waiver applicants to have repairs performed at repair facilities with state certified technicians beginning on January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County. Shops shall be encouraged to participate because market forces dictate the majority of customers will want to seek out State Certified repair technicians due to their implied and State regulated qualifications to perform emission repairs. By "closing the loop", a standard form readable by a scanner can be used to report repair information by shop and technician directly to a data-base, which will readily allow compilation of the required reporting statistics on performance monitoring. Department personnel will review the Vehicle Inspection Report and Vehicle Emission Repair Report Form

for the failures that occurred and the types of repairs done before retest. (See Appendix 6 (a) (5) in Regulation 31 for a copy of the Vehicle Emission Repair Report Form)

(2) The Secretary shall provide feedback, including statistical and qualitative information (repair technician report card) prior to releasing the information to the public, to individual repair facilities on a regular basis (at least annually) regarding their success in repairing failed vehicles. Copies will be sent to the Division.

(c) Repair technician training.

The Secretary shall assess the availability of adequate repair technician training in the emissions inspection area and, if the types of training described in paragraphs (c)(1) through (4) of this section are not currently available, shall insure that training is made available to all interested individuals in the community either through private or public facilities. This shall involve working with the College (or other training agencies or training companies approved by the Department and Division) to add curricula to existing programs or start new programs. The training available shall include:

(1) Diagnosis and repair of malfunctions in computer controlled, closed-loop vehicles;

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the emission test and the evaporative system functional check;

(3) Utilization of diagnostic information on systematic or repeated failures observed in the emission test and the evaporative system functional check; and

(4) General training on the various subsystems related to engine emission control.

(d) The College (or other training agencies or training companies approved by the Department and Division) shall provide, jointly certified by the Department and the Division, adequate training in emission repair to qualified individuals. The program of study shall be consistent with the EPA Rule, and shall qualify the trainees to perform effective repairs on vehicles failing the emission test. The course of study shall be available on ongoing basis. The Department shall cooperate with the College (or other training agencies or training companies approved by the Department) on an ongoing basis to ensure the training program remains current with any changes to the program or its requirements.

08/13/98

Section 20 -Compliance with recall notices.

[RESERVED]

08/13/98

Section 21 -On-road testing.

On-road testing is defined as the measurement of HC,



CO, and/or CO<sub>2</sub> emissions on any road or roadside in any I/M area. On-road testing is required in the emission inspection area as defined in Regulation No. 31.

(a) General requirements.

(1) On-road testing shall be part of the emission testing system, but is to be a complement to testing otherwise required. Using a mobile Bar 90 unit to fulfill this requirement is one alternative under consideration.

(2) On-road testing shall evaluate the emission performance of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, including any vehicles that may be subject to the follow-up inspection provisions of paragraph (a)(4) of this section, each inspection cycle. For Delaware, that means that at least 1,125 valid inspections on vehicles are to be conducted in this manner, adjusting annually for any changes in subject fleet size.

(3) Owners of vehicles that have previously been through the normal periodic inspection and passed the final retest and found to be high emitters shall be notified that the vehicles are required to pass an out-of-cycle follow-up inspection. Notification of the requirement to appear for testing shall be issued by mail.

(4) Number of vehicles failing the on-road emission test or found not in compliance with applicable sections of Regulation 31 will be compiled and used as a measurement of the compliance rate of the LEIM program.

(5) The on-road tests will be done at different locations in the LEIM area and cover different times of the year.

08/13/98

Section 22 -Implementation deadlines.

[Requirements may be found in Regulation 31, Section 13].

**DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code, Sections 311, 2304(16), & 3212 (18 Del.C. 311, 2304(16), 2312)

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF DELAWARE

In the Matter of: |  
THE PROMULGATION OF REGULATION |  
NO. 80. FINAL ORDER. |

ORDER

COMES NOW, the Insurance Commissioner of the State of Delaware and Orders in conformance with the Proposed Order and Recommendation of the Hearing Officer as follows:

WHEREAS, I have considered the Proposed Order and Recommendation submitted by the Hearing Officer, as well as the entire record of this matter; and

WHEREAS, I adopt the Proposed Order and Recommendation and incorporate the summary of evidence, the proposed findings of fact, and the recommendation of the Hearing Officer by this reference.

NOW THEREFORE, I Order that Regulation No.80 be promulgated as referenced herein, effective 45 days from the date hereof.

SO ORDERED this 2nd day of July, 1998.

DONNA LEE WILLIAMS  
Insurance Commissioner  
State of Delaware

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF DELAWARE

In the Matter of: |  
The Proposed Insurance |  
Department Regulation No. 80 |

PROPOSED ORDER AND RECOMMENDATIONS

Proposed Regulation 80 requires health insurance companies to settle claims for health care services within a prescribed period of time. The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. Regulation 80 is intended to establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 Del. C. § 2304(16). On May 1, 1998, the proposed regulation was published in the Register of Regulations in accordance with 29 Del. C. chapters 11 and 101. Also in accordance with 29 Del. C. chapter 101, a hearing was held on May 28, 1998 before the below-signed hearing officer. The record was left open until July 19, 1998 allowing for the submission of additional exhibits by interested parties. The following is my Proposed Order and Recommendation regarding the adoption of Regulation 80.

Present at the May 28 hearing were numerous individuals representing consumers, healthcare providers, the insurance industry, the trial bar and others. A list of attendees is attached hereto as Exhibit "B". Those who testified are so designated.

## I. Summary of the Evidence

The evidence in this matter consists of the oral testimony of 14 individuals, as well as 32 written exhibits submitted by interested parties. Broad support for the notion of setting a bright line standard for the timely settlement of health care claims was expressed by those who testified at the hearing. Criticisms of the Regulation included:

1. a fear that health insurers would base their defense to any action for violation of Regulation 80 on an assertion that bills were not received;
2. a definition of a "clean claim" does not appear in the Regulation;
3. that the general business practice standard of three failures to meet claims during any 36 month period is too strict; and
4. that the Insurance Commissioner lacked the authority to define what constitutes a general business practice.

## II. Findings of Fact and Conclusions of Law

Based upon the evidence received in this matter both oral and written, I find that the failure to timely settle health care claims constitutes a serious problem adversely affecting consumers and health care providers alike. I find that the Insurance Commissioner is authorized to define by regulation what constitutes a general business practice. It is illogical to require the Insurance Commissioner to establish a general business practice in order to enforce the provisions of the Unfair Insurance Practice statute (Chapter 23 of the Insurance Code) without implicitly granting the Commissioner the authority to set that standard. Additionally, I find that the standard set establishes only a rebuttable presumption that general business practice exists and that evidence relating to the high percentage of claims processed in a timely fashion may serve to rebut the presumption.

I recommend numerous technical, non-substantive revisions to the proposed regulation evidenced by footnotes where they appear in the "marked up" version of the Regulation attached hereto as Exhibit "C".

## III. Recommendation

For the above reasons, it is recommended that the Insurance Commissioner adopt Regulation 80 in the form attached as Exhibit "A".

SO RECOMMENDED, this 1<sup>st</sup> day of July 1998.

Fred A. Townsend III  
Hearing Officer

## REGULATION NUMBER 80

STANDARDS FOR PROMPT, FAIR AND EQUITABLE  
SETTLEMENT OF CLAIMS FOR HEALTH CARE  
SERVICES

## Sections

1. Authority
2. Definitions
3. Scope
4. Purpose
5. Prompt payment
6. General business practice
7. Penalty
8. Effective date

## Section 1. Authority

This regulation is adopted by the Commissioner pursuant to 18 *Del. C.* §§ 311, 2304(16), and 2312. It is promulgated in accordance with 29 *Del. C.* Chapter 101.

## Section 2. Definitions

For the purpose of this regulation, the following definitions shall apply:

- a. *Health Insurer* - health insurance companies, health maintenance organizations, health service corporations and any other entity providing a plan of health insurance or benefits subject to state insurance regulation;
- b. *Health Care Provider* - any entity or individual licensed, certified or otherwise permitted by law to provide health care in the ordinary course of business, practice or profession;
- c. *Policyholder* - a person covered under ~~[such]~~ [a **health insurance**] policy or a representative designated by such person and entitled to make claims on his or her behalf.

**[d. "Clean Claim" - a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that substantially prevents timely payments from being made on the claim.<sup>1</sup>]**

## Section 3. Scope

This regulation shall apply to all health insurers as defined in Section 2 above, and shall apply to all ~~[contracts for insurance issued by these entities]~~ [plans or policies of health insurance or benefits delivered or issued for delivery in this State and which cover residents of this State or employees of employers located in this State and their dependents. Exempted from the provisions of this Regulation are policies of automobile and workers compensation insurance, hospital income and disability income insurance, medicare supplement and long-term care insurance.<sup>2</sup>]

## Section 4. Purpose

The purpose of this regulation is to ensure that health insurers pay claims to policyholders and health care providers in a timely manner. This regulation will establish standards for both determining promptness in settling claims and determining the existence of a general business practice for failing to promptly settle such claims under 18 *Del. C.* § 2304(16).

## Section 5. Prompt payment of claims

a. A health insurer shall pay a [clean<sup>3</sup>] claim to a policyholder or covered person, or make payment to a health care provider [within 45] [no later than 45-calendar<sup>4</sup>] days [of] [after] receipt of a claim or bill for services.

b. [Paragraph "a." of this section shall not apply in the following cases:]

**[A claim is not a clean claim as defined in section 2 d. if any of the following circumstances exist: <sup>5</sup>]**

~~[(1) Where the obligation to pay a claim is not reasonably clear based on information available to the health carrier.]~~

**[(1) Where the obligation of a health insurer to pay a claim or make a payment for health care services rendered is not reasonably clear due to a good faith dispute regarding the eligibility of a person for coverage, the liability of another insurer or corporation for all or part of a claim, the amount of the claim, the benefits covered under a contract or agreement, or the manner in which services were accessed or provided.]**

~~[(2) [(1) There] [Where there] exists a reasonable basis supported by specific information, available for review by the Department, that such claim was submitted fraudulently.]~~

**[(3) For claims properly disputed or litigated and subsequently paid.<sup>6</sup>]**

c. In those cases covered by subparagraph b(1) above, a health insurer shall pay [any undisputed] [all] portion[s] of [the] [a] claim [meeting the definition of clean claim found in section 2 d.] in accordance with subsection 5 a. hereof. [Additionally, a health insurer] [-and-<sup>7</sup>] shall notify the policyholder in writing within 30 days of the receipt of the claim:

(1) that such carrier is not obligated to pay the claim or make the medical payment, [in whole or in part,] <sup>8</sup> -stating the specific reasons why it is not liable; or

(2) [to request all] [that] additional information [is] needed [and is being sought<sup>9</sup>] to determine liability to pay the claim or make the healthcare payment.

[d.<sup>10</sup>] Upon receipt of the information provided in subparagraph c(2) above, [or of an appeal of a claim or bill for health care services denied pursuant to subparagraph c(1);] [or upon the administrative resolution of a dispute wherein the health insurer is deemed obligated to pay the claim or make medical payment-<sup>11</sup>], a health insurer shall comply with paragraph "a." of this section.

## Section 6. General business practice

a. Within a 36 month period, three instances of a health insurer's failure to pay a claim or bill for services promptly, as defined in section 5 above, shall give rise to a rebuttable presumption that the insurer is in violation of 18 *Del. C.* § 2304(16)(f). **[In determining whether the presumption is rebutted the Commissioner may consider, among other things, whether the health insurer meets nationally recognized timeliness standards for claims payments such as those applicable to the Medicare, Medicaid or Federal Employees Health Benefit Plan programs.<sup>12</sup>]**

b. The 36 month period established in paragraph "a." above shall be measured based upon the date the [claims or bills became due<sup>13</sup>] [~~complaints are received at the Department~~]. Each claim or bill, or portion of a claim or bill, pertaining to a single medical treatment or procedure provided to an individual policyholder that is processed in violation of this regulation shall constitute an "instance" as described in paragraph "a." above.

## Section 7. Penalties

In addition to the imposition of penalties in accordance with 18 *Del. C.* § 2312(b), [~~any health insurer that fails to adhere to the standards contained in this regulation shall be required~~] [**the Commissioner may order the health insurer<sup>14</sup>**] to pay to the health care provider or claimant, in full settlement of the claim or bill for health care services, the amount of the claim or bill plus interest at the maximum rate allowable to lenders under 6 *Del. C.* 2301(a). Such interest shall be computed from the date the claim or bill for services first became due.

Section 8. Causes of Action [~~and Defenses~~]

This regulation shall not create a cause of action for any person or entity, other than the Delaware Insurance Commissioner, against a health insurer or its representative based upon a violation of 18 *Del. C.* § 2304(16). [~~In the same manner, nothing in this regulation shall establish a defense for any party to any cause of action based upon a violation of 18 Del. C. § 2304(16).<sup>15</sup>]~~

Section 9. [~~Effective date~~] [Separability.]

[This regulation shall become effective 120 days from the date signed by the Commissioner.] [**If any provision of this Regulation or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of such provisions, and the application of such provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.<sup>16</sup>**]

[Section 10 Effective date

**This regulation shall become effective 120 days from the date signed by the Commissioner.]**

1. Definition of clean claim established by HCFA. Clean claim definition called for by both industry and providers representatives.

2. Technical revision that conforms with other such references to Department jurisdiction in the Insurance Code.

3. See endnote 1

4. Technical revision

5. Technical revision clarifying intent.

6. Grants an exception for matters in dispute so as not to create a violation for each dispute that lasts more than 45 days.

7. Technical revision

8. Technical revision

9. Technical revision

10. Technical revision

11. Clarification to conform with endnote 5

12. Clarifies that evidence of high percentage of timely claim handling and satisfaction of national standards for claims processing may serve as evidence to rebut presumption of general business practice.

13. Revises standard that measures when late claims processing can establish a general business practice from the date of the report to date the claim is due.

14. Clarifies that penalties may be imposed by the Insurance Commissioner and are not applicable in any private cause of action. Also revision clarifies Commissioner's discretion in sanctioning offenders.

15. Strikes provisions that health insurer is prohibited from raising defenses based on this regulation in any private cause of action.

16. Technical revision

## PUBLIC SERVICE COMMISSION

**PLEASE NOTE THE FOLLOWING REGULATORY CHANGES WERE MADE PRIOR TO THE EFFECTIVE DATE OF THE CURRENT ADMINISTRATIVE PROCEDURES ACT. THE FOLLOWING IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.**

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF  
THE DEVELOPMENT OF  
REGULATIONS FOR THE  
IMPLEMENTATION  
OF THE TELECOM-  
MUNICATIONS TECHNOLOGY  
INVESTMENT ACT

PSC REGULATION  
DOCKET NO. 41

FINDINGS, OPINION & ORDER NO. 4821

### I. BACKGROUND

By Order No. 3647, dated July 20, 1993, the Delaware Public Service Commission ("the Commission") established this docket "to consider the development and implementation of such regulations as may be necessary to fully and effectively implement the revised regulatory scheme" called for by the Telecommunications Technology Investment Act ("TTIA"), 26 Del. C. Subchapter VII-A. The Commission's Order designated a Hearing Examiner to conduct the proceedings in this docket and to report thereon to the Commission. On January 22, 1998, the Hearing Examiner issued his Report including proposed "Rules and Regulations for Implementing the Telecommunications Technology Investment Act." The Hearing Examiner's Report and proposed Rules are attached hereto as Exhibit "A." The Commission gave the participants to this proceeding the opportunity to file exceptions to the Hearing Examiner's Report. The Public Service Commission Staff ("Staff"), AT&T Communications of Delaware, Inc. ("AT&T"), MCI Telecommunications Corp. ("MCI"), Bell Atlantic-Delaware, Inc. ("BA-Del") and the Division of the Public Advocate ("DPA") all filed timely exceptions.

### II. SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

The record before the Hearing Examiner consisted of 42 exhibits and a 1366 page verbatim transcript of evidentiary hearings and oral argument in addition to competing texts of the proposed rules and written argument in the form of briefs. The Hearing Examiner's Report thoroughly summarizes the evidence and information contained in this record and includes recommended findings and conclusions based thereon. The Commission adopts as its own, and hereby incorporates herein as if fully set forth, the Hearing Examiner's summary of the proceedings, his summary of the evidence and information submitted, and his recommended findings of fact and conclusions of law, except to the extent otherwise noted herein.

### III. DISCUSSION

#### A. Legal and Policy Issues

During the course of the proceedings, the parties pursued certain legal and policy positions which appear no longer to be in issue. Thus, BA-Del took the position that the Commission lacks authority to promulgate rules under the TTIA. The Hearing Examiner thoroughly considered this issue and concluded that BA-Del's position was not sound. BA-Del has not taken an exception to this conclusion. The Commission accordingly concludes, for the reasons set forth

in the Hearing Examiner's report, that promulgation of Rules to implement the TTIA is an appropriate exercise of its rule-making authority.

Earlier in this docket the Commission determined that Section 710 of the TTIA required the adoption of adequate methodologies to ascertain both appropriate cost allocation and reasonable method(s) for determining incremental costs. PSC Order No. 3783, ordering ¶ 5 (May 17, 1994). In his report, the Hearing Examiner recommended that, if (as he recommended) a TS-LRIC pricing standard was adopted for basic services and an imputation standard was applied, then the Commission need not adopt a specific rule embracing a cost allocation methodology since such a rule would be redundant. No party filed any exceptions to this recommendation. Given the lack of any insistence on a cost allocation methodology, and given the duty of a telecommunications provider to file annual reports detailing total costs and revenues for discretionary and competitive services, the Commission will not now adopt a specific rule for allocation of non-direct costs.

#### B. Rules

The Commission adopts the rules proposed by the Hearing Examiner, in their entirety, except as modified by the following determinations set out below. Because the Commission concludes that the modifications it adopts here do not make substantive, significant revisions and because staff's initial proposals and the Hearing Examiner's recommendations were not published in the Delaware Register<sup>1</sup>, the Commission does not believe these rules must be deemed new proposals which must be renoticed under 29 Del. C. § 10118(c).

Thus, the Commission accepts the recommendations of the Hearing Examiner and adopts his proposed Rules with the following modifications. (5-0) The Rules, as adopted, are attached hereto as Exhibit B.

##### Rule 2.1. Basic Service

This Rule provides a definition of basic services. The Rule proposed by the Hearing Examiner tracks the language of § 705(a) of the TTIA; however, BA-Del pointed out that in one section, the Hearing Examiner had omitted the word "local" which appears in the statute. We agree that this is a significant omission. Accordingly, we adopt Rule 2.1 as proposed by the Hearing Examiner except that paragraph (3) of that Rule shall read: "(3) Which are provided for the purpose of completing local telephone calls." (5-0)

MCI proposed deleting criteria (1) and (2) of this Rule. These criteria are set forth in the statute and we believe they are properly replicated in the Rule.

##### Rule 2.2. Discretionary Services

This Rule provides a definition of Discretionary services. The Hearing Examiner's proposed Rule limited

this category to services "furnished exclusively to end-users." BA-Del asserted that because BA-Del statutorily is required to offer all telecommunications services, including discretionary services, for resale, the proposed Rule would, in effect, eliminate the discretionary services category.

We agree that the cited language is unduly limiting and carries results unintended under the TTIA. We therefore adopt the following language for Rule 2.2:

Services provided by a telecommunications services provider that are classified by the Commission neither as basic services nor as competitive services. (5-0)

##### Rule 2.3. Competitive Services

This rule sets forth criteria under which services may be classified as "competitive." The Rule recommended by the Hearing Examiner provided that such classification would be appropriate if a competitor offers the "same" functions and features in the "same" geographic area. Bell Atlantic argued that this test is unnecessarily restrictive and suggested the following language, which we adopt:

Services may be classified as competitive if similar or substitute functions and features are offered and available from suppliers other than the electing telecommunications service provider within the relevant geographic areas in which the electing telecommunications service provider offers such services.

(5-0). No party took exception to the language of the remainder of the Rule which we adopt as proposed by the Hearing Examiner.

##### Rule 2.4. Just and Reasonable Rates

This Rule defines just and reasonable rates for basic and discretionary services. The Hearing Examiner's proposed Rule limited the definition to apply only to "new" basic and discretionary services. AT&T took exception to this limitation as inconsistent with the statute. We agree that the definition should not be limited to apply only to new services. Accordingly, we adopt the following language:

Pursuant to § 706(a)(1) and (2), rates for basic and discretionary services must be just and reasonable. A just and reasonable rate for a basic service: (a) shall be non-discriminatory; (b) shall be based on the direct cost of providing the service; and (c) may include a reasonable profit. A just and reasonable rate for a discretionary service: (a) shall be non-discriminatory; and (b) shall equal or exceed the incremental cost of providing such service.

(5-0)

Rule 2.5. Same or Similar; Substitute

This Rule defines criteria under which a service or product may be found to have the "same or similar" capabilities as another service. Again, Bell Atlantic proposed revising the Hearing Examiner's Rule to eliminate the requirements that services have "the same" capabilities or functions and that alternate services be provided at "substantially equivalent" rates terms and conditions. BA-Del argued that services could function as substitutes in the market place without meeting these criteria. For its part, Staff proposed revising the Rule to clarify that the alternate service or product must be offered in a comparable geographic area.

We agree with BA-Del that the language proposed by the Hearing Examiner is too narrow. We similarly agree with Staff that the Rule should make reference to the geographic area in which the alternate service is provided; however, we believe that in this respect the Rule should track the language of § 705 of the TTIA. Accordingly, we adopt the following language:

A service or product shall not be deemed to have similar or substitute capabilities as service provided by an electing telecommunications service provider, or to be a similar or a substitute service or product, unless: (1) an unaffiliated provider is able to offer the alternative service or product in the relevant geographic area; (2) the service or product is capable of providing comparable functions or benefits as the telecommunications service provider's service to which it is being compared; and (3) customers are likely to perceive the services as similar or a substitute.

(5-0). Since the text of the Rule no longer refers to "same" capabilities, the caption shall be amended as well and shall be "Similar or Substitute."

Rule 2.13. Incremental Cost

The Hearing Examiner's text of this Rule contains a cross reference to "Rule 8" of the proposed Rules. Staff pointed out that this appears to be a typographical error since the reference is to the substance of Rule 7 and the Proposed Rules contain no Rule 8. We agree to make this correction. (5-0)

Rule 2.15. Essential Service

In this section, the Hearing Examiner proposed a definition of "Essential Service." The text of the Proposed Rules do not further employ this term. Accordingly, Staff suggested that it be deleted. We agree. (5-0)

## Section 3.0. Annual Price Index Filings

Section 3.0 deals, generally, with the mechanisms

for adjusting rates under the TTIA. Rules 3.1 through 3.4 address filing requirements and price adjustment mechanisms applicable to basic services. The parties took a variety of exceptions to the Hearing Examiner's proposed Rules in this area. In particular, both Staff and BA-Del suggested substantial modification to the Hearing Examiner's Rule 3.4.3 concerning application of the price index. Both Staff's and BA-Del's proposed revisions are offered to provide the Commission and BA-Del additional flexibility in implementing rate changes indicated by application of the price index. We accepted Staff's version (3 voting in favor, 2 opposed). BA-Del suggested revising Rule 3.1 to give itself the ability, with Commission approval, to implement price adjustments throughout the year, rather than only at the time of its price index filing. We agreed that such increased flexibility is appropriate and accepted BA-Del's language. (5-0)

On further discussion, the Commission recognized that the Commission's goal of allowing a greater degree of flexibility in the implementation and timing of price adjustments indicated under the price index formula would be furthered by allowing the parties an opportunity to jointly propose a single consistent revised version of Section 3.0. We directed the Staff to undertake to submit such a proposed revision to us, after consultation with the other parties (5-0), and further directed Staff that, to the extent our previous votes concerning Rule 3.4.3 and 3.1 might have been inconsistent with the language of a unified revision of this portion of the Rules, it need not defer to those earlier votes. (5-0)

After the first deliberation, Staff submitted revised versions of Rules 3.1 through 3.4 to which the other parties do not object. We are satisfied that this submission accurately reflects our intentions and hereby adopt these revised rules. (5-0)

Rules 3.1 through 3.4 shall read:

3.1. Annual Price Index Report. The telecommunications service provider shall submit to the Commission and interested parties on an annual basis a Price Index Report (the "PI Report"). The filing of the PI Report shall be subject to the following requirements.

3.2. Timing and notice of PI Report. No later than March 31 of each year, the electing telecommunications service provider shall file with the Commission its Annual PI Report which shall identify the beginning and ending values for the GDP-PI as defined in Rule 3.41 and based thereon provide a calculation of the new PI to be applicable for the coming 12-month period. The telecommunications service provider shall give notice of the details of such filings in accordance with Rule 2.10 and newspaper notice in accordance with Rule 2.11. The Commission will, to the extent possible, approve or adjust the PI Report no later than 120 days after such filing.

3.3 Extension for filing a PI Report. The Commission may, for good cause shown, grant an extension to a telecommunications service provider for filing its annual PI Report. The telecommunications service provider shall notify the Commission promptly, file a request for a delay and suggested revised dates. The Commission may set a new date on which the filing will be submitted.

3.4. Rate adjustment mechanism for basic services. Rates for basic services may be adjusted consistent with the new PI throughout the calendar year upon approval by the Commission, but a rate for a basic service may not be changed based on the PI more than once in any calendar year.

3.4.1. Price Index. The Price Index (“PI”) shall initially be set at 100 and shall be computed annually according to the following formula:

$$PI_{new} = PI_{old} \times [1 + DGDP-PI - X \pm Z]$$

where

$$PI_{new} = \text{PI for current year}$$

$$PI_{old} = \text{Calculated PI for previous year}$$

DGDP-PI = Percentage change in Gross Domestic Product fixed weight Price Index (expressed as decimal), for the most recent 12-month period available at the time of filing, as published by the United States Department of Commerce.

X = The productivity offset factor, where the productivity offset shall be 3% applied annually.

Z = The combined positive and negative effects of exogenous changes in the telecommunications service provider’s costs of providing telecommunications services, measured as a percentage of previous years’ revenues that are explicitly the result of unforeseen changes in the telecommunications service provider’s cost as defined in Rule 2.8.

3.4.2. Exogenous cost adjustments. Upon the application of any ratepayer or the telecommunications service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect exogenous costs, as defined in Rule 2.8. Application by a service provider for exogenous cost adjustments, whether increases or decreases, may be filed once per calendar year in conjunction with the annual PI Report, as detailed in Rule 3.1.

3.4.3. Filing Requirements for PI Report. The PI shall be based upon the GDP-PI as defined in Rule 3.4.1 and appropriate exogenous cost adjustments (also referred to as “Z” adjustments), as provided for in Rule 2.8.

The PI Report shall contain supporting documentation and calculations (including documentation and calculations to support Z adjustments), and the telecommunications service provider shall, to the extent possible, respond to any requests for additional information propounded by the Commission’s Staff within ten (10) business days of the receipt of such request by the telecommunications service provider.

3.4.4. Rate Increases for Basic Services. Increases in rates for basic services may not exceed that permitted by the application of the PI set forth in Rule 3.2. At its option, the telecommunications service provider filing the PI Report may seek, simultaneous with the filing of the Report, Commission approval for basic service rate increases permitted by application of the PI. The Commission shall render a decision on such proposed rate increases within 120 days of filing.

In the event that the telecommunications service provider chooses to seek approval of basic service rate increases permitted by application of the PI at any time other than simultaneous with its annual PI Report, the provider shall file the rate change with the Commission and shall give notice in accordance with Rules 2.10 and 2.11. The Commission shall render a decision on such proposed rates within 120 days from such filing.

3.4.5. Rate Decreases for Basic Services. In years when the  $PI_{new}$  is less than  $PI_{old}$ , the telecommunications service provider shall decrease rates by no less than the change in the PI; provided, however, that the Commission may, for good cause shown, permit the requesting service provider to aggregate the resulting negative rate change and (1) apply the amount to less than all basic services; provided, however, that the aggregated amount shall be allocated equitably among residential, business and interexchange classes of customers, or (2) hold it in reserve and apply it in subsequent years, along with an amount representing interest at the rate established in Regulation Docket No. 11 for the period in which the telecommunications service provider reserved the rate decrease. In years when the  $PI_{new}$  is less than the  $PI_{old}$  the telecommunications service provider shall seek, simultaneous with the filing of the Report, Commission approval for basic service rate decreases indicated by the application of PI, or approval for aggregating or reserving such decreases as permitted by subparagraphs (1) and (2) of this Rule 3.4.5. The Commission shall render a decision on such proposal within 120 days from such filing.

Notwithstanding the provisions of this Rule 3.4.5, the telecommunications service provider, consistent with Section 707(c)(2), may elect to decrease rates in circumstances where the PI would permit otherwise and may decrease rates in an amount greater than would be required by the PI.

We note that adoption of these revised Rules also

entails revision, for consistency, of other portions of Section 3. Thus, the Hearing Examiner's proposed Rule 3.7 defining "Z adjustments" under the price index formula is deleted as it is redundant with new Rule 3.4.3. Similarly, the language of Hearing Examiner's Rules 3.10 and 3.11 (now renumbered as Rules 3.9 and 3.10) required minor revisions to their language to make them consistent. We hereby adopt those revisions. (5-0)

Rule 3.6. Rate Adjustments or Other Changes to the Terms and Conditions for Competitive Services

This Rule requires, among other things, that the telecommunications service provider shall provide written notice to the Commission within 72 hours of a change to the prices, terms or conditions for competitive service. BA-Del took exception to this provision but withdrew its exception at the time of the Commission's consideration. We therefore adopt the Hearing Examiner's proposed Rule. (5-0)

Rule 3.8. Prohibition Against Cross-Subsidization

This Rule sets forth the statutory prohibition against cross-subsidization. The Hearing Examiner's proposed Rule additionally addressed other matters. Staff proposed to delete this additional language as it duplicated provisions in other sections of these Rules. We agree. The text of the Rule shall be:

In compliance with Section 710(a) of the Act, cross-subsidization of competitive services with revenue generated from basic services or discretionary services is prohibited.

Rule 3.9 (now Rule 3.8) Exogenous Cost Filing Requirements

This Rule sets out the filing requirements that a telecommunications service provider must make to show the occurrence of an exogenous cost under the price index formula. BA-Del took exception to that portion of the Rule which required a telecommunications service provider to include information concerning the extent to which the claimed exogenous event is a unique and specific event affecting local exchange telecommunications providers and/or Delaware public utilities. Staff explained that this requirement is intended to give the Commission the information it requires to differentiate between cost changes which are reflected in the GDP-PI and those which are not. We agree with Staff that the requirement is appropriate. (5-0)

The DPA suggested specifying that the Rule provide that exogenous cost increases or decreases must be spread equitably between the basic, discretionary and competitive service categories. We decline to make this change as we believe this consideration can be taken into account at the time of the cost change. (5-0)

Rule 3.10 (now 3.9) Filing Requirements for Discretionary Services

The Hearing Examiner's proposed Rule requires, in subparagraph (3), the telecommunications service provider to submit with its annual price filing "a list of basic services used to deliver [Discretionary] services." The Rule further provides as an example of such underlying basic services, "loops, switching functions, etc." While not objecting to the requirement that it submit a list of underlying services, BA-Del argued that it is unnecessary to provide examples of such services in the Rule and that, in particular, "loops" and "switching functions" are arguably not "services" at all. Further, BA-Del proposed clarifying the initial sentence of proposed Rule 3.10. We agree with BA-Del on both points, though we do not reach the issue of whether "loops" and "switching functions" are or are not "services." Accordingly, we adopt the following language:

The telecommunications service provider shall submit, with its annual PI Report, discretionary service data including:

\* \* \*

(3) A list of basic services herein used separately or in combination in order to deliver the services. (5-0)

Rule 3.11 (now 3.10) Filing Requirements for Competitive Services

BA-Del again suggested omitting the parenthetical in subparagraph (3) of this Proposed Rule which lists "loops" and "switching functions" as examples of "basic services" that may be used to deliver a competitive service. For the reasons stated above, we will delete this language from the Rule though, again the Commission does not reach the issue of whether "loops" and "switching functions" are or are not services. (5-0)

Rule 3.12 (now 3.11) Unbundling Requirements For Competitive Services

The Hearing Examiner's proposed Rule requires telecommunications service providers to provide access to "all components of their basic and competitive services on an unbundled basis at any technically feasible point on rates that are just, reasonable and non-discriminatory." BA-Del proposed striking the requirement that access be provided to "components" of basic or discretionary services (rather than to the services themselves) and further proposed striking the requirements that such access be provided at a technically feasible point and on rates that are just, reasonable and non-discriminatory. BA-Del explained that it was concerned that these provisions might ultimately be interpreted in a manner inconsistent with the requirements imposed by the Telecommunications Act of 1996. Staff urged that the Hearing



Examiner's language be adopted as proposed. We agree. Accordingly, we adopt the Hearing Examiner's proposed Rule. (5-0)

Proposed AT&T Rule 3.13

AT&T proposed adding a new Rule to Section 3 allowing "interested persons" to obtain discovery from the telecommunications service provider within ten days of a price index filing. We agree with BA-Del that this Rule is unnecessary. We reserve to the Commission the right to allow discovery in appropriate cases. (5-0)

Rule 4.1.3.1 Competitive Services Test

This Rule defines the criteria by which a service may be judged to be "competitive." The Hearing Examiner adopted standards which track the language of the TTIA. MCI suggested revising these criteria to require a complete absence of barriers to entry and pricing at economic cost. The Commission believes it more appropriate to track the statutory criteria and accordingly adopts the Hearing Examiner's proposed Rule. (5-0)

Rule 5.3. Notice Requirements

The Hearing Examiner's proposed Rule requires a party petitioning for service reclassification to publish notice thereof. AT&T and the Public Advocate suggested that the Rule be revised to reflect the requirement of § 706(a)(4) of the TTIA that notice also be served on interested interexchange telecommunications carriers and the Division of the Public Advocate. The Commission agrees this modification should be made. The Commission directed Staff to propose the necessary language, which it has done. We therefore adopt proposed revisions to Rule 5.3. The Rule shall read:

Any petition for reclassification shall be filed by the petitioning party concurrently with the Commission and the telecommunications service provider, no less than thirty (30) days prior to the proposed implementation date for the reclassified service. The petitioning party shall public newspaper notice pursuant to Rule 2.11. Such notice shall specifically describe the proposed filing and the effect of Commission approval of such filing, and shall state that written comments may be filed with the Commission for its consideration. In addition, the petitioning party shall serve a copy of the petition for reclassification on all interexchange telecommunications carriers and service providers who have submitted a written request for such notice with the petitioning party and the Commission, and on the Division of the Public Advocate.

(5-0)

Rule 5.4. Opportunity for Comment by Interested Parties

The Hearing Examiner's Proposed Rule set forth time periods within which interested parties may file comments concerning petitions for reclassification and within which the Commission is to render a decision. BA-Del suggested revisions to these time periods. The parties conferred prior to the Commission's consideration and submitted a jointly proposed modification to the Rule which the Commission accepts. The language of the Rule shall be:

Interested persons may file comments with the Commission regarding any petition for reclassification and may also request that the Commission hold an evidentiary hearing on such petition. Comments shall be due twenty (20) days following the date of publication of newspaper notice. The Commission may, for good cause shown, extend the comment period and the effective date for a specific petition. However, the Commission shall issue a final order on a petition to reclassify a service within one hundred twenty (120) days after the petition date.

(5-0)

Rule 7.1. Definition of Incremental Costs Used for the Determination of a Service Price Floor and the Determination of a Service Price Floor and the Determination of an Absence of Category Cross-Subsidization

As pointed out by AT&T, the caption of this Rule contains typographical errors. It shall be revised to read "Definition of Incremental Costs to be Used to Determine a Service Price Floor." (5-0)

Rule 7.2. Additional Use of Incremental Costs In the Calculation of a Price Floor For Discretionary and Competitive Services

Rules 7.2.1 and 7.2.2 set forth the imputation test governing rates for discretionary and competitive services. Under the Hearing Examiner's proposed formulation, the revenue resulting from a proposed rate must equal or exceed the revenue resulting from the sum of the rates which another telecommunications provider "must use" in provision of the service, plus additional factors. AT&T suggested replacing the phrase "must use" with the phrase "typically uses" since, in absolute terms, no service provider "must use" any service. AT&T further suggested a definition of the phrase "typically uses" with which the other parties are in agreement. We therefore adopt AT&T's proposed revisions to Rules 7.1 and 7.2. The Rules shall read:

Rule 7.2.1. That the revenue resulting from the proposed rate for a Discretionary Service equals or

exceeds the revenue resulting from the sum of the rate(s) for the Basic Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for the Basic Services that are used to provide the Discretionary Service. In determining when another telecommunications service provider "typically uses" a Basic Service in its provision of a competing Discretionary Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic Services, and such other factors as the Commission deems appropriate.

Rule 7.2.2 That the revenue resulting from the proposed rate for a Competitive Service equals or exceeds the revenue resulting from the rate(s) for Basic and Discretionary Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for such Basic and Discretionary Services that are used to provide the Competitive Service. In determining when another telecommunications service provider "typically uses" a Basic or Discretionary Service in its provision of a competing Competitive Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic and Discretionary Services and such other factors as the Commission deems appropriate.

(5-0)

Rule 7.2.3 applies the imputation test to individual customer contracts. The Hearing Examiner's proposed rule requires each service in an individual customer contract to meet the imputation standard. BA-Del suggested revising the Rule to apply the standard to the contract as an aggregate rather than to the individual services provided therein. Staff agreed with this change and we believe it to be reasonable. Rule 7.2.3 shall read:

Individual customer contracts that include Discretionary or Competitive Services with underlying Basic or Discretionary Services that competitors typically use to compete with BA-Del must satisfy the requirements of Rule 7.2.1 and 7.2.2, as applied to the complete contract price. (5-0)

Rule 7.3. Total Service Long Run Incremental

#### Cost Study Methodology

Rule 7.3.1 establishes the general methodology for performing TSLRIC cost studies. The DPA took exception, arguing that the Commission should adopt the incremental cost rules proposed by the DPA's consultant as the appropriate costing methodology, instead of TSLRIC. The Commissioners conclude that use of TSLRIC as proposed by the Hearing Examiner is appropriate. (5-0)

##### Rule 7.3.1.7. Cost of Money

The Hearing Examiner's proposed Rule required that the telecommunications service provider fully document its assumptions concerning the cost of money. The Commission believes this Rule to be too narrowly phrased. Instead, the telecommunications service provider should be required to fully document all assumptions used, not merely the cost of money. Accordingly, the Commission adopts the following Rule.

Assumptions. The telecommunication service provider shall fully document all assumptions used to compute the proposed TSLRIC prices.

(5-0)

##### Rule 7.3.2. Administrative Requirements.

This Rule imposes certain requirements on the telecommunications service provider to provide cost study and other information. Both Staff and BA-Del propose changes intended to clarify the scope of the Rule. The DPA requested an express requirement that it should receive copies of all materials produced. The Commission adopts Staff's proposed rephrasing together with the DPA's comments. The Rule we adopt is:

The telecommunications service provider shall produce available documentation for all incremental cost studies performed in compliance with this Rule. Such documentation shall be substantively equivalent to that provided by Bell Atlantic-Delaware, Inc. in connection with incremental cost studies at the time of the adoption of these rules. The telecommunications service provider shall provide a copy of all documentation produced to the Division of the Public Advocate.

(5-0)

##### Rule 7.4. The Application of the TSLRIC Price Floor and Imputation Standard.

Rule 7.4.1. requires that, in applying the TSLRIC price

floor and imputation standard, the revenue associated with a particular Basic Service offering must be sufficient to meet its TSLRIC price floor, unless otherwise authorized by the Commission. The DPA proposed elimination of this Rule for the reason that it is inappropriate to authorize the Commission to allow any basic service to be priced below cost. The Commission rejects this position and accepts the Rule as proposed by the Hearing Examiner. (5-0)

Notice to DPA. The DPA requested the Hearing Examiner’s rules 3.0, 5.3 and 7.3.2 be amended to require a telecommunications service provider to serve the DPA with all documentation provided to Staff. The Rules as adopted require such service. (5-0)

NOW, THEREFORE, it is hereby ORDERED this 9th day of June, 1998:

1. The Rules and Regulations for Implementing the Telecommunications Technology Investment Act attached hereto as Exhibit “B” shall be and hereby are adopted.

2. The Secretary of the Commission shall arrange for publication of this Order and the Rules in the Delaware Registrar of Regulations at the earliest possible date.

3. The effective date of this Order shall be ten (10) days from the date of the publication of this Order and the Rules in the Delaware Registrar of Regulations.

4. The Commission reserves jurisdiction to enter such other and further orders in this matter as it may deem appropriate.

BY ORDER OF THE COMMISSION:

Joshua M. Twilley, Vice Chairman,  
Arnetta McRae, Commissioner  
John R. McClelland, Commissioner

ATTEST:

Karen J. Nickerson  
Acting Secretary

EXHIBIT “B”

BEFORE THE PUBLIC SERVICE COMMISSION OF THE  
STATE OF DELAWARE

IN THE MATTER OF |  
THE DEVELOPMENT OF |  
REGULATIONS FOR THE | REGULATION  
IMPLEMENTATION OF THE | DOCKET NO. 41  
TELECOMMUNICATIONS |  
TECHNOLOGY INVESTMENT |  
ACT RULES AND REGULATIONS |  
FOR IMPLEMENTING THE |  
TELECOMMUNICATIONS |  
TECHNOLOGY INVESTMENT ACT |

RULES AND REGULATIONS FOR IMPLEMENTING  
THE TELECOMMUNICATIONS TECHNOLOGY  
INVESTMENT ACT

§ 1.0 Applicability. These rules shall apply only to telecommunications service providers that elect, pursuant to Section 704 of Subchapter VII of Title 26 of the Delaware Code Annotated, hereinafter, the “Act”, to have rates and prices governed by the Telecommunications Technology Investment Act (“TTIA”).

§ 2.0 Definition of Terms.

2.1. Basic service shall mean those local exchange carrier telecommunications services: (1) which are offered in the absence of services or products with the same or similar capabilities offered by another service provider; (2) for which significant barriers exist impeding entry into the market; (3) which are provided for the purpose of completing local telephone calls; (4) which are for the purpose of providing access to the local exchange carrier’s network; or (5) which are purchased as necessary components for other providers of telecommunications services to offer, exclusive of stand-alone resale offerings, their telecommunications services. Unless and until the Commission shall determine otherwise pursuant to § 706 of this title, “basic services” shall include the following:

- (1) Residence, business, public and semipublic “dial tone line” services;
- (2) Residence, business and public “local usage services;”
- (3) “Switched access” services;
- (4) “Exchange access component of centrex” service;
- (5) “White pages listings; whether listed, non-listed or private;”
- (6) “Local directory assistance service;”
- (7) “Telecommunications relay service;”
- (8) “911 enhanced emergency system;”
- (9) “Direct inward dialing” for PBX trunks;
- (10) “Basic service elements;”
- (11) “TouchTone service;”
- (12) “ISDN service” and features;
- (13) “Basic rate interfaces;”
- (14) “Primary rate interfaces;”
- (15) Services categorized as “basic serving arrangements” except for “high capacity special services” (1.544mb and above); and
- (16) “Complementary network services” except as provided by a local exchange carrier to end users or for stand-alone resale.

The Commission may, after notice and hearing, classify other telecommunications services as basic services.

2.2 Discretionary services. Services provided by a telecommunications service provider that are classified by the Commission neither as basic services nor as competitive services.

2.3. Competitive services. Services may be classified as competitive if similar or substitute functions and features are offered and available from suppliers other than the electing telecommunications service provider within the relevant geographic areas in which the electing telecommunications service provider offers such services. The provision of services in this category may require the use of plant and/or other resources of the electing telecommunications service provider which are also used by the telecommunications service provider jointly or in common for purposes of producing and/or furnishing services classified as basic, discretionary, or competitive. For any service provided by a telecommunications service provider to be classified by the Commission as competitive, the Commission shall have determined that all of the market conditions set forth in Section 705 (c) of the TTIA and Rule 4.1.3.1. exist with respect to such service. In addition, the Commission may consider any other factors it deems relevant and in the substantial public interest in making its determination regarding classification of a service as competitive, including, but not limited to, those factors enumerated in Rule 4.1.3.1. All competitive services shall be presumed to receive above-the-line regulatory treatment unless expressly assigned by the Commission to below-the-line treatment upon a finding, made pursuant to these Rules, that all of the criteria required for the transfer of a service or activity from above-the-line to below-the-line regulatory treatment have been satisfied.

2.4. Just and Reasonable Rates. Pursuant to §706 (a) (1) and (2), rates for basic and discretionary services must be just and reasonable. A just and reasonable rate for a basic service: (a) shall be non-discriminatory; (b) shall be based on the direct cost of providing the service; and (c) may include a reasonable profit. A just and reasonable rate for a discretionary service: (a) shall be non-discriminatory; and (b) shall equal or exceed the incremental cost of providing such service.

2.5. Similar or substitute. A service or product shall not be deemed to have similar or substitute capabilities as service provided by an electing telecommunications service provider, or to be a similar or a substitute service or product, unless: (1) an unaffiliated provider is able to offer the alternative service or product in the relevant geographic area; (2) the service or product is capable of providing comparable functions or benefits as the telecommunications service provider's service to which it is being compared; and (3) customers are likely to perceive the services as similar or a substitute.

2.6. Present and viable. The terms "present" and "viable"

may be defined differently depending on the characteristics of the market for the service in question. Therefore, the Commission shall, on a case-by-case basis, determine the definitions of these terms.

2.7. Barriers to market entry. Barriers to market entry may include any significant legal, regulatory, or economic factors that inhibit entry into the market, including, but not limited to, certification or franchise requirements, requirements for easements or rights-of-way, pre-qualification financial requirements, or exceptionally high start-up costs. The Commission shall, on a case-by-case basis, determine the definition of these terms.

2.8. Exogenous costs; unforeseen cost changes. Costs that reflect an unforeseen change in the telecommunications service provider's costs of providing telecommunications services, which change occurs for reasons beyond the control of the electing telecommunications service provider. Such change may include, but not be limited to, legal or regulatory changes which affect such costs, the method of accounting for such costs, or taxes applicable to the service provider.

2.9. Day. Any reference to a certain number of days shall be interpreted to mean calendar days unless otherwise noted.

2.10. Notice. Unless otherwise specified, notice shall, at a minimum, consist of concurrent service of all documents required to be filed with the Commission on: (a) the Public Advocate; and (b) all interested persons that submit a written request to the Commission to provide such notice, pursuant to an appropriate proprietary agreement, to the extent that any such documents contain information claimed to be proprietary. To the extent such proprietary documents are filed, and interested persons have submitted a written request for notice but have not executed an appropriate proprietary agreement, the telecommunications service provider shall provide an expurgated version of the notice to such parties.

2.11. Newspaper notice. Newspaper notice shall consist of publication of the required information, in a format and manner consistent with the provisions of 26 Del. C. §102A.

2.12. Telecommunications Service Provider; Electing Telecommunications Service Provider. A telecommunications service provider, otherwise subject to regulation by the Commission under Chapter I, Subchapter III of Title 26 of the Delaware Code Annotated, who elects in accordance with Section 704 of the TTIA, to be governed by the provisions of the TTIA.

2.13. Incremental cost. Incremental Cost shall be defined as long run, forward-looking, incremental costs calculated in accordance with the principles, guidelines, and requirements set forth in Section 7.

2.14. Service. As used herein, the term “service” shall include any discrete, identifiable telecommunications service, specifically delineated as such in the telecommunications service provider’s tariff and/or price lists, and/or legally classified as a competitive service, or determined by Order of the Commission to be specifically delineated in such tariff and/or price lists, in accordance with the TTIA and these rules.

Product fixed weight Price Index (expressed as decimal), for the most recent 12-month period available at the time of filing, as published by the United States Department of Commerce.

X = The productivity offset factor, where the productivity offset shall be 3% applied annually.

Z = The combined positive and negative effects of exogenous changes in the telecommunications service provider’s costs of providing telecommunications services, measured as a percentage of previous years’ revenues that are explicitly the result of unforeseen changes in the telecommunications service provider’s cost as defined in Rule 2.8.

§3.0. Annual Price Index Filings.

3.1. Annual Price Index Report. The telecommunications service provider shall submit to the Commission and interested parties on an annual basis a Price Index Report (the “PI Report”). The filing of the PI Report shall be subject to the following requirements.

3.4.2. Exogenous cost adjustments. Upon the application of any ratepayer or the telecommunications service provider, rates for basic services may be adjusted with approval by the Commission in order to reflect exogenous costs, as defined in Rule 2.8. Application by a service provider for exogenous cost adjustments, whether increases or decreases, may be filed once per calendar year in conjunction with the annual PI Report, as detailed in Rule 3.1.

3.2. Timing and notice of PI Report. No later than March 31 of each year, the electing telecommunications service provider shall file with the Commission its Annual PI Report which shall identify the beginning and ending values for the GDP-PI as defined in Rule 3.4.1. and based thereon provide a calculation of the new PI to be applicable for the coming 12-month period. The telecommunications service provider shall give notice of the details of such filings in accordance with Rule 2.10 and newspaper notice in accordance with Rule 2.11. The Commission will, to the extent possible, approve or adjust the PI Report no later than 120 days after such filing.

3.4.3. Filing Requirements for PI Report. The PI shall be based upon the GDP-PI as defined in Rule 3.4.1 and appropriate exogenous cost adjustments (also referred to as “Z” adjustments), as provided for in Rule 2.8. The PI Report shall contain supporting documentation and calculations (including documentation and calculations to support Z adjustments), and the telecommunications service provider shall, to the extent possible, respond to any requests for additional information propounded by the Commission’s Staff within ten (10) business days of the receipt of such request by the telecommunications service provider.

3.3 Extension for filing a PI Report. The Commission may, for good cause shown, grant an extension to a telecommunications service provider for filing its annual PI Report. The telecommunications service provider shall notify the Commission promptly, file a request for a delay and suggested revised dates. The Commission may set a new date on which the filing will be submitted.

3.4.4. Rate Increases for Basic Services. Increases in rates for basic services may not exceed that permitted by the application of the PI set forth in Rule 3.2. At its option, the telecommunications service provider filing the PI Report may seek, simultaneous with the filing of the Report, Commission approval for basic service rate increases permitted by application of the PI. The Commission shall render a decision on such proposed rate increases within 120 days of filing.

3.4. Rate adjustment mechanism for basic services. Rates for basic services may be adjusted consistent with the new PI throughout the calendar year upon approval by the Commission, but a rate for a basic service may not be changed based on the PI more than once in any calendar year.

In the event that the telecommunications service provider chooses to seek approval of basic service rate increases permitted by application of the PI at any time other than simultaneous with its annual PI Report, the provider shall file the rate change with the Commission and shall give notice in accordance with Rules 2.10 and 2.11. The Commission shall render a decision on such proposed rates within 120 days from such filing.

3.4.1. Price Index. The Price Index (“PI”) shall initially be set at 100 and shall be computed annually according to the following formula:

$$PI_{new} = PI_{old} \times [1 + DGDP-PI - X \pm Z]$$

where

$$PI_{new} = \text{PI for current year}$$

$$PI_{old} = \text{Calculated PI for previous year}$$

$$DGDP-PI = \text{Percentage change in Gross Domestic}$$

3.4.5. Rate Decreases for Basic Services. I n years when the  $PI_{new}$  is less than  $PI_{old}$ , the telecommunications

service provider shall decrease rates by no less than the change in the PI; provided, however, that the Commission may, for good cause shown, permit the requesting service provider to aggregate the resulting negative rate change and (1) apply the amount to less than all basic services; provided, however, that the aggregated amount shall be allocated equitably among residential, business and interexchange classes of customers, or (2) hold it in reserve and apply it in subsequent years, along with an amount representing interest at the rate established in Regulation Docket No. 11 for the period in which the telecommunications service provider reserved the rate decrease. In years when the  $PI_{new}$  is less than the  $PI_{old}$  the telecommunications service provider shall seek, simultaneous with the filing of the Report, Commission approval for basic service rate decreases indicated by the application of PI, or approval for aggregating or reserving such decreases as permitted by subparagraphs (1) and (2) of this Rule 3.4.5. The Commission shall render a decision on such proposal within 120 days from such filing.

Notwithstanding the provisions of this Rule 3.4.5, the telecommunications service provider, consistent with Section 707(c)(2), may elect to decrease rates in circumstances where the PI would permit otherwise and may decrease rates in an amount greater than would be required by the PI.

3.5. Rate cap for discretionary services. Discretionary service prices may not be increased by a telecommunications service provider until after one (1) year following the utility's initial election under Price Regulation. Discretionary service prices may be increased by not more than 15% per calendar year. All prices for discretionary services shall be filed with the Commission and made available for public inspection.

3.6. Rate adjustments or other changes to the terms and conditions for competitive services. Rates or terms and conditions for competitive services may be determined by the telecommunications service provider, subject to the provisions of 26 Del. C. §709. The telecommunications service provider shall provide information regarding prices, terms and conditions for competitive services to the Commission and shall, within 72 hours of a change thereto, give written notice to the Commission of such change or of a departure from such prices or terms and conditions.

3.7. Prohibition against cross-subsidization. In compliance with Section 710(a) of the Act, cross-subsidization of competitive services with revenue generated from basic services or discretionary services is prohibited.

3.8. Exogenous cost filing requirements. Any proposal for recovery of exogenous costs through an adjustment to the PI mechanism must include all of the following information:

- (1) a description of the exogenous event or

condition;

- (2) the date on which it occurred or became known;
- (3) the amount of the flow-through requested;
- (4) whether it is an increase or a decrease;
- (5) an indication of how the increase or decrease would be spread to each of the service categories (i.e., Basic, Discretionary and Competitive);
- (6) specifically how it would be spread to rates in the Basic category; and
- (7) the extent to which such an event or condition has a unique and specific effect on local exchange telecommunications utilities and/or Delaware regulated public utilities by virtue of their status as such.

3.9. Filing requirements for discretionary services. The telecommunications service provider shall submit with its annual P.I. Report discretionary service data including:

- (1) a list of all discretionary services;
- (2) the prices for the service;
- (3) a list of the basic services used separately or in combination in order to deliver the services;
- (4) the total incremental cost associated with the provision of the discretionary service that is separate from the incremental cost associated with any underlying basic service; and
- (5) the total revenues and incremental costs for competitive services as a whole.

3.10. Filing requirements for competitive services. The telecommunications service provider shall submit with its annual PI Report competitive service data sufficient to establish that no cross-subsidization of competitive services with revenues from basic or discretionary services exists. Such data shall include:

- (1) a list of all competitive services;
- (2) the rates for each service;
- (3) a list of the basic and/or discretionary services used separately or in combination in order to deliver the competitive service;
- (4) the total incremental cost associated with the provision of the competitive service that is separate from the incremental cost associated with any underlying basic and/or discretionary services; and
- (5) the total revenues and incremental costs for competitive services as a whole.

3.11. Unbundling requirements for competitive services. For each competitive service, the electing telecommunications service provider shall provide, to any requesting telecommunications service provider, nondiscriminatory access to all components of each basic or discretionary service that is/are used to deliver the competitive service, on an unbundled basis at any technically feasible point, at rates, terms, and conditions that are just, reasonable,

and nondiscriminatory.

3.12. Review of annual PI Report. Interested persons shall have thirty (30) days following the annual PI Report date in which to submit written comments, and the telecommunications service provider shall file a response with the Commission within fifteen (15) days of the end of the comment period. The Commission may extend the comment period for good cause shown.

3.13. Application by Purchasing Service Provider for Determination that a Purchased Basic Service Rate is Just and Reasonable. Upon application by a provider of telecommunications service, the rate charged for a basic service which is purchased as a necessary component by such provider of telecommunications services may be adjusted by the Commission at any time upon a showing by such telecommunications service provider that the rate is not just and reasonable, provided that the rate so established is consistent with Rule 7 of these Rules.

3.14. Revenue Neutral Changes. Notwithstanding any provisions within Section 3 of these Rules, upon application by a telecommunications service provider, the rate structure for a basic service may be adjusted by the Commission where such adjustments would neither increase nor decrease the total revenue to the service provider from that particular basic service.

§4.0 Service classification and reclassification. Telecommunications services will be regulated in accordance with the provisions of §§705-709 of the TTIA and shall each be classified or reclassified as specified below.

4.1 Classification of new services. Services shall be classified according to the specifications set forth below. Phrases used to identify specific services within the foregoing classifications shall be given meanings commonly ascribed to them in proceedings before the Commission. If the Commission determines that any of such phrases have uncertain meaning, the Commission shall, by order after duly noticed hearing, adopt an appropriate definition.

4.1.1. Basic services. An electing telecommunications service provider shall file with the Commission tariffs setting forth therein rates, terms, and conditions for all basic services.

4.1.1.1. Basic services test. Any new service or any existing service for which reclassification has been proposed pursuant to Section 5.0, which exhibits any one or more of the following characteristics shall be classified as a basic service: (a) the service is offered in the absence of services or products with similar or substitute capabilities (as defined in Rule 2.5) offered by another service provider not affiliated with the telecommunications service provider;

(b) it is a service for which significant barriers exist that impede entry into the market; (c) it is a service provided for the purpose of completing local telephone calls; (d) the service provides access to a local exchange carrier's network; or (5) the service is purchased as a necessary component, feature, or function for other providers of telecommunications services in order to offer (exclusive of stand-alone resale offerings) their telecommunications services.

4.1.1.2. Initial list of basic services. Unless and until the Commission shall determine otherwise, basic services shall include all of the following services:

- (1) residence, business, public and semi-public dial tone line services;
- (2) residence, business, and public local usage services;
- (3) switched access services;
- (4) exchange access component of Centrex service;
- (5) white page listings (whether listed, non-listed, or private);
- (6) local directory assistance services;
- (7) telecommunications relay service;
- (8) 911 enhanced emergency system;
- (9) direct inward dialing for PBX trunks;
- (10) basic service elements;
- (11) TouchTone service;
- (12) ISDN service and features;
- (13) basic rate interfaces;
- (14) primary rate interfaces;
- (15) services categorized as basic serving arrangements except for high capacity special services (1.544 mb and above); and
- (16) complementary network services except as provided by a local exchange carrier to end users or for stand-alone resale.

4.1.1.3. Other services. The Commission may, after notice and hearing, classify other telecommunications services as basic services.

4.1.2. Discretionary services. The telecommunications service provider shall file with the Commission a price list for all discretionary services. A full description of all terms and conditions for all discretionary services shall be provided to the Commission.

4.1.2.1 Discretionary services test. "Discretionary services" shall mean those telecommunications services that the Commission determines to be neither "basic services" nor "competitive services."

4.1.3. Competitive services. The telecommunications service provider shall provide to the Commission a price list accompanied by a full description of terms and conditions for all competitive services. Such price list shall be made available for public inspection at the

offices of the Commission. Competitive services shall be classified consistent with the following requirements.

4.1.3.1. Competitive services test. In order for any existing or new service provided by a telecommunications service provider to be classified as competitive, the following market conditions must exist with respect to such service: (1) similar or substitute services or products, as defined in Rule 2.5., are offered and generally available within the relevant geographic area from at least one unaffiliated provider; (2) there is at least one unaffiliated provider that is present and viable, as determined by the Commission; and (3) there are no significant barriers to market entry, as defined in Rule 2.7.

4.1.3.2. Other competitive service measures. The Commission may also consider any other factors it deems relevant and in the substantial public interest in making determinations regarding the classification of services as competitive.

§5.0 Service Reclassification. Reclassification of existing services may occur as specified below subject to the requirement that no service may be reclassified by the Commission less than twelve (12) months after an initial election by a telecommunications service provider made pursuant to Section 704(a) of the Act.

5.1 Petitions to reclassify a service. A telecommunications service provider, the Public Advocate, or any party may file a petition with the Commission to reclassify a service. The Commission may also undertake such activity on its own motion. Any party, including the Commission's Staff, proposing any such reclassification shall have the burden of supporting its proposal, except with respect to the reclassification of a competitive service, in which case the telecommunications service provider shall bear the burden of demonstrating that said service continues to be a competitive service.

5.2 Petition filing requirements. Any petition for reclassification of a service made by any party must include, at a minimum, the following information.

- (1) a description of the service to be reclassified;
- (2) the present category in which the service is classified;
- (3) the present and, if appropriate, the proposed rates of the service; and
- (4) a showing that the subject service meets all tests and requirements of the category into which it has been proposed to be classified.

5.3. Notice requirements. Any petition for reclassification shall be filed by the petitioning party concurrently with the Commission and the telecommunications service provider, no less than thirty (30) days prior to the

proposed implementation date for the reclassified service. The petitioning party shall publish newspaper notice pursuant to Rule 2.11. Such notice shall specifically describe the proposed filing and the effect of Commission approval of such filing, and shall state that written comments may be filed with the Commission for its consideration. In addition, the petitioning party shall serve a copy of the petition for reclassification on all interexchange telecommunications carriers and service providers who have submitted a written request for such notice with the petitioning party and the Commission and on the Division of the Public Advocate.

5.4. Opportunity for comment by interested parties. Interested persons may file comments with the Commission regarding any petition for reclassification and may also request that the Commission hold an evidentiary hearing on such petition. Comments shall be due twenty (20) days following the date of publication of newspaper notice. The Commission may, for good cause shown, extend the comment period for a specific petition. However, the Commission shall issue a final order on a petition to reclassify a service within one hundred twenty (120) days after the petition date.

5.5. Rates for reclassified services. Where the Commission has reclassified a service as a Basic service or a Discretionary service, the Commission may determine whether the current rate is just and reasonable.

#### § 6.0 Reporting Requirements.

6.1. Reports. A telecommunications service provider shall provide the Commission with any and all reports required by the Commission, unless a petition is filed and approved pursuant to Rule 7.2.

6.2. Petition to discontinue reports. A telecommunications service provider may petition the Commission to discontinue the provision of a report upon a showing that such report is no longer necessary in order for the Commission to fulfill its obligation under the Act.

#### § 7.0 Incremental Cost Price Floor and Cross Subsidization Prohibitions.

7.1. Definition of Incremental Costs to be used to Determine a Service Price Floor. Calculations of incremental costs using the methodology described in this rule shall be used by the telecommunications service provider.

7.1.1. The incremental costs used to determine a price floor for a service and to insure the absence of service cross subsidization as required by Section 710 of the Act will be Total Service Long Run Incremental Costs ("TSLRIC"), defined as the difference in the forward looking total costs of the service provider less the forward looking



total costs of the service provider without the service or services at issue.

7.1.2. TSLRIC for determination of product or service price floors shall be performed on the basis of the individual service and shall include the forward looking volume sensitive costs plus the product or service specific fixed costs. These forward looking volume sensitive costs and the product or service specific fixed costs shall be known as direct costs.

7.2. Additional Use of Incremental Costs in the Calculation of a Price Floor for Discretionary and Competitive Services. Incremental costs using the methodology described herein shall be used by the telecommunications service provider to meet the requirements of Sections 708 (a) (2) and 709 (2) of the TTIA. To meet these requirements a telecommunications service provider shall demonstrate:

7.2.1. That the revenue resulting from the proposed rate for a Discretionary Service equals or exceeds the revenue resulting from the sum of the rate(s) for the Basic Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for the Basic Services that are used to provide the Discretionary Service. In determining when another telecommunications service provider "typically uses" a Basic Service in its provision of a competing Discretionary Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic Services, and such other factors as the Commission deems appropriate.

7.2.2. That the revenue resulting from the proposed rate for a Competitive Service equals or exceeds the revenue resulting from the rate(s) for Basic and Discretionary Services which another telecommunications service provider typically uses in its provision, plus any additional incremental costs incurred by the electing telecommunications service provider and not associated with the rate(s) for such Basic and Discretionary Services that are used to provide the Competitive Service. In determining when another telecommunications service provider "typically uses" a Basic or Discretionary Service in its provision of a competing Competitive Service, the Commission shall consider the current practices of other providers, whether technically feasible, economically reasonable alternatives exist for the underlying Basic and Discretionary Services and such other factors as the Commission deems appropriate.

7.2.3. Individual customer contracts that include Discretionary or Competitive Services with underlying Basic or Discretionary Services that competitors typically use to compete with BA-Del must satisfy the requirements of Rule 7.2.1 and 7.2.2, as applied to the complete contract price.

7.3. Total Service Long Run Incremental Cost Study Methodology.

7.3.1. General Methodology. The telecommunications service provider will perform TSLRIC studies in compliance with the Act using the following:

1. Long Run. Long run shall be defined to mean a period of time over which all optimal capacity expansions or contractions can be accomplished.

2. Forward-Looking. Forward looking shall be defined to mean that the telecommunications service provider will include in its incremental cost studies the technology, or mix of technologies, that would be chosen in the long run as the most economically efficient choice for replacement of existing plant, equipment, or other investments.

3. Network Topology. Existing network topology will be assumed to exist over the long run, unless the telecommunications service provider has documented plans to change such topology. If a planned, rather than actual, network topology is used, it shall be used for all cost studies performed in compliance with this section. The technologies that provide the most efficient means of supplying the necessary capacity, given this topology, should be assumed.

4. Currently Available Technologies. The telecommunications service provider's economical choice of forward looking technologies may be restricted to those technologies available in the marketplace and for which vendor prices can be obtained at the time the study is performed.

5. Increment to be Studied. For purposes of all studies performed in compliance with this Rule, the relevant increment of output shall be the level of output necessary to satisfy the total current or forecasted demand of the service being studied.

6. Planning Period. The planning horizon for service offerings shall be no less than 5 years and no greater than 8 years, unless otherwise authorized by the Commission.

7. Assumptions. The telecommunications service provider shall fully document all assumptions used to compute the proposed TSLRIC prices.

7.3.2. Administrative Requirements The telecommunications service provider shall produce available documentation for all incremental cost studies performed in compliance with this Rule. Such documentation shall be substantively equivalent to that provided by Bell Atlantic-Delaware, Inc. in connection with incremental cost studies at the time of the adoption of these rules. The telecommunications service provider shall provide a copy of all documentation produced to the Division of the Public Advocate.

7.4. The Application of the TSLRIC Price Floor and Imputation Standard.

1. The revenue associated with a particular Basic service offering must be sufficient to meet its TSLRIC price floor, unless otherwise authorized by the Commission.

2. The revenue associated with a particular

Discretionary service offering must be sufficient to meet its TSLRIC price floor and imputation standard.

3. The revenue associated with a particular Competitive service offering must be sufficient to meet its TSLRIC price floor and imputation standard.

4. The revenue associated with an individual customer contract must be sufficient to meet the contract's TSLRIC price floor and applicable imputation standard.

<sup>1</sup>This docket commenced and hearings were held prior to the implementation of the Delaware Register and the modifications to the rule-making process brought about by 71 Del. Laws Ch. 48 (June 1, 1997).

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**DEPARTMENT OF STATE****OFFICE OF THE STATE BANKING COMMISSIONER**

Statutory Authority: 5 Delaware Code, Section 121(b) (5 Del.C. 121(b))

ORDER ADOPTING REVISED REGULATIONS 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, AND 5.3404.0001, AND RESCINDING REGULATION 5.853.0001.P

IT IS HEREBY ORDERED, this 13th day of July, 1998, that revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 are adopted, and regulation 5.853.0001.P is rescinded, as regulations of the State Bank Commissioner. Copies of revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 are attached hereto and incorporated herein by reference. Revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 supersede previous regulations 5.750/751.0013, 5.852.0002, 5.1403.0001.P, 5.1403.0002.P, 5.1403/1101.0003.NC, 5.1422.0004.P, and 5.304(b).0001, respectively. The effective date of revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 is August 13, 1998. Regulation 5.853.0001.P is rescinded, effective August 13, 1998. Revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 are issued by the State Bank Commissioner, and regulation 5.853.0001.P is rescinded, in accordance with Title 5 of the Delaware Code.

Revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001 are adopted, and regulation 5.853.0001.P is rescinded, pursuant to the requirements of Chapters I I and 101 of Title 29 of the Delaware Code, as follows:

1. Notice of the proposed amendments and the text of amended regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001, and notice of the proposed rescission and the text of regulation 5.853.0001.P, were published in the June 1, 1998 issue of the Delaware Register of Regulations. The Notice also was published in the News Journal and the Delaware State News on June 3, 1998, and mailed on or before that date to all persons who had made timely written requests to the Office of the State Bank Commissioner for advance notice of its regulation-making proceedings. The Notice included, among other things, a summary of the proposed amended regulations, invited interested persons to submit written comments to the Office of the State Bank Commissioner on or before July 13, 1998, and stated that the proposed amended regulations were available for inspection at the Office of the State Bank Commissioner, that copies were available upon request, and that a public hearing would be held on July 13, 1998 at 10: 00 a.m. in Room 113 of the Tatnall Building, William Penn Street, Dover, Delaware 19901.
2. No comments were received on or before July 13, 1998.
3. A public hearing was held on July 13, 1998 at 10: 00 a.m. regarding the proposed amended regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001, and the proposed rescission of regulation 5.853.0001.P. The State Bank Commissioner, the Deputy Bank Commissioner for Supervisory Affairs, and the Court Reporter attended the hearing. No other person attended the hearing. The State Bank Commissioner and the Deputy Bank Commissioner for Supervisory Affairs summarized the proposed amended regulations for the record. No other comments were made or received at the hearing on the proposed amended regulations.
4. After review and consideration, the State Bank Commissioner decided to adopt revised regulations 5.751.0013, 5.852.0002, 5.1403.0001, 5.1403.0002, 5.1403/1101.0003, 5.1422.0004, and 5.3404.0001, and to rescind regulation 5.853.0001.P, as proposed.

Timothy R. McTaggart  
State Bank Commissioner

Regulation No.: 5.751.0013

Effective Date: August 13, 1998

**PROCEDURES GOVERNING THE DISSOLUTION OF A STATE CHARTERED BANK OR TRUST COMPANY**

5 Del. C. §751

The procedure governing the dissolution of a state chartered bank or trust company are set forth in Chapter 1 of Title 8 (§§103 and 275) of the Delaware Code. In addition, no bank or trust company shall file a Certificate of Dissolution of the Bank with the Secretary of State until approval, both in form and substance, is granted by the State Bank Commissioner. The Commissioner may require such information as to the assets and liabilities and condition of the bank(s) concerned as necessary.

Letter of Intent

A letter stating the intent to dissolve a bank or trust company and the target date for dissolution shall be filed with the Commissioner thirty (30) days prior to the anticipated dissolution. Included in the letter shall be a detailed description of the method used to dissolve the bank, including, but not limited to, the following:

1. Proposed or contracted terms of all asset sales including: loans, securities, fixed assets and other assets;
2. Proposed or contracted terms for the assumption of deposit liabilities;
3. Proposed or contracted terms for disposition of other liabilities including contingent liabilities;
4. Proposed disposition of capital accounts including, if any, settlements with dissenting shareholders.

In addition, the Applicant shall provide in timely manner verified copies of the following:

1. Consent of shareholders of the dissolution;
2. Letter of intent regarding the purchase and assumption of assets and liabilities as submitted to the Federal Deposit Insurance Corporation or other federal regulatory authorities;
3. Letters of approval from appropriate federal regulatory authorities.

Findings and Decision of the Commissioner

A review and analysis of the proposed dissolution shall be performed by the State Bank Commissioner. Upon making a determination, the Commissioner shall issue his approval of dissolution pursuant to 5 Del. C. §751, if appropriate.

Certificate of Dissolution

Applicant shall file in timely manner a certified copy of the Certificate of Dissolution, signed by the Secretary of State, with the Office of the State Bank Commissioner.

Document Control No.: 20-15/98/7/02

Regulation No.: 5.852.0002  
Effective Date: August 13, 1998

APPLICATION TO BECOME A DELAWARE BANK HOLDING COMPANY  
5 DEL. C. §852

## I. Scope of Regulation

This regulation establishes procedures governing the creation of a Delaware bank holding company. A bank holding company with bank subsidiaries in Delaware whose operations are principally conducted within this state is required to become a Delaware bank holding company. A bank holding company is deemed to be principally conducting operations in Delaware when the total deposits of all bank subsidiaries in this State are greater than in any other state (See 5 Del. C. §851(3)). Except as provided in §852(a), no bank holding company other than a Delaware bank holding company may own a Delaware bank.

## II. Application

Notice of Intent to become a Delaware Bank Holding Company constitutes an application. Said Notice of Intent shall be filed in duplicate with the Office of the State Bank Commissioner. The Notice of Intent shall include:

- A) Name of Applicant and address of principal office.
- B) The State in which the Applicant is (or will be) incorporated. If the Applicant is incorporated outside of the State of Delaware, identify the name and address of a resident of Delaware designated as the Applicant's agent for the service of any paper or notice of legal process.
- C) If applicable, the corporate title and the address of the bank to be acquired; the number of voting shares to be acquired; and the percentage of said shares this number represents.
- D) The name, address and telephone number of the person(s) to whom inquiries may be directed.
- E) The Notice of Intent shall include the following exhibits:
  - 1) A copy of the Resolution by the Board of Directors of the Applicant authorizing the establishment of a Delaware bank holding company.
  - 2) A description of the Applicant and the transaction.
  - 3) A description of the financial and managerial resources of the proposed Delaware bank holding company.
  - 4) The future prospects of the bank holding company and the bank whose assets or shares it will acquire, if applicable, to include a statement in narrative form of a three (3) year business plan of the Applicant for the proposed bank holding company and, if applicable, the bank to be acquired.
  - 5) The financial history of the Applicant:
    - a) Provide a narrative description of the financial history of the Applicant and its bank and deposit taking non-bank subsidiaries over the past three (3) years. Include as exhibits all annual statements of income and condition filed with the bank regulatory authority or authorities in each state where the bank holding company maintains a bank subsidiary or, in the case of a national bank, with the Comptroller of the Currency; provided that such filings shall not be required with respect to any bank subsidiary under the jurisdiction of the Delaware State Bank Commissioner.
    - b) Provide for the past three calendar years, copies of all Form 10-Ks.
    - c) Describe regulatory action taken or anticipated or any agreements in lieu thereof entered into with a regulatory agency, either federal or state, with regard to any bank subsidiary within the holding company.
  - 6) The effects of the proposed acquisition on competition in Delaware.
  - 7) Describe how this transaction will better meet the needs and convenience of the public in the State of Delaware.
  - 8) A copy of the application filed with the Board of Governors of the Federal Reserve System to become a Bank Holding Company.

## III. Publication

A proposed form of public notice shall be filed at the time the Notice of Intent (Application) is submitted for the Commissioner's approval. Said public notice shall include: the name and address of the Applicant, the subject matter of the application, the name and address of the bank to be acquired, and a statement indicating: a) for a period of 20 days commencing with the second date of publication, interested parties may submit written comments to the State Bank Commissioner at 555 E.

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Loockerman Street, Dover, Delaware 19901; and b) the application is on file in the Office of the State Bank Commissioner and the non-confidential portions thereof will be available for examination by interested parties during regular office hours.

Upon written notice from the Commissioner that the proposed public notice is satisfactory, the Applicant shall cause said public notice to be published once a week for two consecutive weeks in a newspaper of general circulation in the community in which the head office of the bank of which shares are to be acquired is located. An affidavit of publication shall be submitted to the Commissioner for the record.

#### IV. Additional Information

Upon review and consideration of the application, the Commissioner may require any additional information deemed necessary.

#### V. Confidential Information

An Applicant may request that specific information included in the Notice of Intent be treated as confidential. Any information or exhibits of which the applicant claims the designation of confidential shall be segregated at the end of the application as a separate exhibit designated as "confidential". The Commissioner, in his sole discretion, shall determine whether any or all of the information for which the "confidential" designation is requested by the Applicant meets the criteria for confidentiality set forth in 29 Del. C. §10112(b)(4). All portions of the Notice of Intent which the Commissioner does not designate as "confidential" shall be made available for public inspection and copying in the manner provided by law with the exception of the copy of the Application filed with the Federal Reserve.

#### VI. Fees

The Notice of Intent (Application) shall be accompanied by a filing fee in the amount of five thousand seven hundred and fifty dollars (\$5,750.00) for the use of the State and a non-refundable processing fee in the amount of one thousand one hundred and fifty dollars (\$1,150.00). Checks shall be made payable to the Office of the State Bank Commissioner.

#### VII. Hearing

If, after the twenty (20) day comment period, the Commissioner determines a public hearing should be conducted, such determination shall be made within ten (10) days after the conclusion of the 20-day comment period. Notice fixing the time, place and date for the holding of a hearing on the application shall be published at least twenty (20) days prior to the day it is to be held. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the Delaware Code.

#### VIII. Findings and Decision of the Commissioner

The Findings and Decision approving or disapproving the Application will be issued in accordance with Chapter 101 of Title 29, Delaware Code.

Document Control No.: 20-15/98/7/03

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Regulation No.: 5.1403.0001  
Effective Date: August 13, 1998

**PROCEDURES GOVERNING FILINGS AND DETERMINATIONS RESPECTING  
APPLICATIONS FOR A FOREIGN BANK LIMITED PURPOSE BRANCH  
OR FOREIGN BANK AGENCY**

5 DEL. C. §1403

1. Application Process

A. Form of Application - An Applicant to establish a limited purpose branch or agency of a foreign bank in Delaware shall complete the "Application for Chartering of a Delaware Foreign Bank Limited Purpose Branch or Foreign Bank Agency" (Regulation No. 5.1403.0002). Such Application shall not be regarded as having been received by the Commissioner for the purposes of these regulations unless (1) all information solicited is provided in satisfactory form; (2) all documents which are required are attached to the application; (3) a duly empowered executive officer has signed and certified to the Application; and the Application is accompanied by a certified check made payable to the "State of Delaware" in the amount of \$2,000.00.

B. Notice of Receipt of Application - Within seven (7) days of the date on which the Commissioner shall deem an Application to have been received, he shall cause to be published, at the expense of the Applicant, once a week for two consecutive weeks in a publication of general circulation within the County where the office of said Agency is to be located a notice acknowledging receipt of the Application, which further recites:

- (i) The location of the proposed office of the Foreign Bank Limited Purpose Branch or Agency;
- (ii) A statement regarding where members of the general public may view, for a period of twenty (20) days, a copy of that portion of the Application which is not deemed to be "confidential".
- (iii) A statement requesting any objections to the application be filed with the State Bank Commissioner in writing within twenty (20) days of the first publication.

2. Hearing

If after the twenty (20) day comment period, the Commissioner determines a public hearing shall be conducted:

- (a) Such determination shall be made within ten (10) days after the conclusion of the 20-day comment period;
- (b) The Commissioner shall fix a time, place, and date for the holding of a hearing for the presentation of data, views or arguments pertinent to the application. In no event may the date fixed be less than twenty (20) days after publication of notice of the hearing. The hearing shall be conducted in accordance with Chapter 101 of Title 29 of the Delaware Code.

3. Findings and Decision of the Commissioner

The Commissioner shall issue his Findings and Decision relative to the application within sixty (60) days from the receipt of an Application, or within thirty (30) days of a hearing on such Application, whichever shall later occur.

Document Control No.: 20-15/98/7/04

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Regulation No.: 5.1403.0002  
Effective Date: August 13, 1998

**APPLICATION BY A FOREIGN BANK FOR A CERTIFICATE OF AUTHORITY TO ESTABLISH  
A FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY  
PURSUANT TO 5 DELAWARE CODE, §1403**

Any application made to the State Bank Commissioner pursuant to §1403 of Title 5, Delaware Code, shall be submitted on the form appended hereto and accompanied by all documents called for by such form as well as by a duly authenticated copy of its charter and bylaws. A non-refundable filing fee of \$2,000 - payable to "State of Delaware", must accompany the filing of the attached application (5 Del. C., §1403(c)).

**FINAL REGULATIONS**

Attachment

Document Control No.: 20-15/98/7/05

State of Delaware  
**OFFICE OF THE STATE BANK COMMISSIONER**  
 Application of a Foreign Bank for a  
 Certificate of Authority to Establish a Foreign Bank Limited Purpose Branch  
 or Foreign Bank Agency  
 Pursuant to 5 Del. C. §1401

APPLICANT (Foreign Bank)

Name of Bank

Address of Principal Office (Street, City/Town, County, Country and Zip Code)

Country Organized in

Date Incorporated

Duration of Corporation

Type of Business:  Commercial Banking  Merchant Bank  Other Foreign Institution

PROPOSED (please indicate)

 FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY

Proposed Location (Street), City/Town, County, State and Zip Code)

I, the undersigned, President of \_\_\_\_\_,  
 being duly authorized by a resolution of the Board of Directors (copy herewith submitted), hereby apply for a Certificate of Authority with respect to the proposed \_\_\_ foreign bank limited purpose branch or \_\_\_ foreign bank agency (please indicate). In making this application, I am not acting as an agency for other persons undisclosed to the State Bank Commissioner.

In support of the application, I hereby make the following statements and representations and submit the following information for the purpose of inducing the State Bank Commissioner to issue such Certificate of Authority:

The UNDERSIGNED HEREBY CERTIFIES that the statements contained herein are true to my best knowledge and belief.

\_\_\_\_\_  
(Print or Type Name of President)\_\_\_\_\_  
Signature\_\_\_\_\_  
Date

Sworn and Subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
Notary Public

## Part I. APPLICANT

1. List the States and Countries into which the Applicant has been admitted or is qualified to transact business. Provide the title and address of the appropriate regulator in each case.



2. Provide an opinion of a member of the Bar of the State or Country of origin that:
  - (a) applicant's charter authorizes it to carry on the business contemplated by the application;
  - (b) applicant has at all times conducted, and is now conducting, its business as authorized by its charter and bylaws and in compliance with the laws of the State or Country of origin; and
  - (c) the application complies with the laws of the State or Country of origin.

3. If the Applicant is required to make filings with the Securities and Exchange Commission under Section 14 or 15(d) of the Securities Exchange Act of 1934, the Applicant shall file with this application copies of all such filings made within the three year period immediately preceding the date of this application (provided that 10Q filings need not be included if 10K filings for the applicable year are provided). If no such filings are made, then there shall be attached to this application copies of the applicant's annual certified financial statements for the most recent three fiscal years for which they are available and the latest available quarterly statement. If the Applicant is a subsidiary of a bank holding company, the annual financial statements for such bank holding company for the most recent three fiscal years for which they are available and for the latest available fiscal quarter shall also be attached (provided that if the Applicant's annual financial statements are prepared on a consolidated basis with those of its parent bank company, only the consolidated financial statements need be attached).

Also attach a listing of all persons who are directors or executive officers of the Applicant Bank, listing as to each: his or her name and business address, present principal business activity, occupation or employment (including office held) and, if carried on with an organization other than that the applicant, the name, principal business and address of such other organization.

4. The attached statement of financial condition should be prepared as of the date within 120 days prior to the date of the application.

#### INSTRUCTIONS

This statement of the financial condition of your institution should be prepared as at the date within 120 days prior to the date of the application.

1. It is requested that the statement form be carefully reviewed before preparing the figures, and that all assets, liabilities and capital accounts be segregated and reported in the appropriate printed titles, wherever possible. If you have items which cannot properly be classified under these titles, use the additional lines, and indicate clearly the nature of each such item by attaching explanations where necessary.
2. All "reserves" or "provisions" should be analyzed and reported as follows:
  - (a) Reserves or provision for known or expected losses on assets should be deducted from such asset accounts;
  - (b) Reserves or provision for known or expected liabilities should be reported in Liability items 9 or 14, as the case may be; and
  - (c) Reserves or provision for future contingencies or unforeseen losses should be included in Liability item 18.
3. Include in Asset item 3 only balances on deposit by your institution with other banks. Do not include overdrafts by other banks in their accounts with your institution, or "call loans" or other extensions of credit to them. All such advances should be included as loans, Asset item 6, or should be reported separately below in Asset item 15, with appropriate explanations.
4. Include in Asset item 4 all obligations of National governments, such as short term "treasury bills" discounted, as well as bonds or other securities issued by them. Securities included in both Asset items 4 and 5 should be reported at net book values, less the allocated "reserves" or "provisions". The current market value (at the statement date) must also be reported in the footnote to the statement.
5. Include in Liability item 17 all "reserves" or "surplus" paid in or accumulated from prior periods, and all profits carried forward at previous closings of the books, less amounts actually appropriated for dividends already declared. Current earnings and profits, less expenses and losses incurred since the latest closing of the books, should also be included in this item.

# FINAL REGULATIONS

6. Unpaid dividends, including amounts declared by the directors out of current or prior profits should be included in Liability item 14.

7. All “per contra” accounts such as “collections for account of customers,” “securities held for account of customers,” “customers’ liability on letters of credit,” “guarantees,” et cetera, should be omitted from the statement of assets, liabilities and capital accounts, but should be reported separately as “contingent assets and liabilities.”

8. This statement should be verified by the oath of a principal executive officer of the bank. If that officer is unable to verify, the reasons for his failure to execute the affidavit should be recited in and made a part of the verification. The required oath may be administered without the United States by an ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, a charge d’affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States within his jurisdiction. The seal of his office or the seal of the consulate or legation to which he is attached should be affixed.

BEFORE PREPARING THIS STATEMENT  
PLEASE READ THE INSTRUCTIONS ON THE PREVIOUS PAGE  
STATEMENT TO THE BANK COMMISSIONER OF THE STATE OF DELAWARE  
ASSETS

ASSETS	FOREIGN AMOUNT	CONVERSION RATE*	U.S. DOLLARS
1. Cash on hand (currency, coin, and bullion)	_____	_____	_____
2. Exchanges and checks for next day’s clearings	_____	_____	_____
3. Deposits in other banking institutions (See Instruction No. 3)	_____	_____	_____
4. Securities of National Governments** (See Instruction No. 4)	_____	_____	_____
5. Other readily marketable securities** (See Instruction No. 4)	_____	_____	_____
6. Loans and discounts, including overdrafts and mortgages	_____	_____	_____
7. Bills rediscounted or sold with endorsement	_____	_____	_____
8. Customers’ liability on acceptances	_____	_____	_____
9. Investments in banking premises, furniture and fixtures	_____	_____	_____
10. Investments in affiliated and subsidiary companies	_____	_____	_____
11. Loans and advances to affiliated and subsidiary companies	_____	_____	_____
12. Accrued interest and commissions receivable	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other cash items	_____	_____	_____
15. Other assets	_____	_____	_____
16. Total assets	_____	_____	_____

\*Conversion rate should be as of the date of the statement

\*\*Current market value of:

(Item 4) Securities of National Governments	_____	_____	_____
(Item 5) Other readily marketable securities	_____	_____	_____

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# FINAL REGULATIONS

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STATEMENT TO THE BANK COMMISSIONER  
OF THE STATE OF DELAWARE  
LIABILITIES AND CAPITAL ACCOUNTS

LIABILITIES AND CAPITAL ACCOUNTS	FOREIGN AMOUNT	CONVERSION RATE	U.S. DOLLARS
1. Deposits secured by pledge of assets	_____	_____	_____
2. Deposits of National Governments and political subdivisions	_____	_____	_____
3. Deposits of banking institutions	_____	_____	_____
4. Other demand deposits, including certified and officers' checks	_____	_____	_____
5. Other time deposits, including certificates of deposits and savings accounts	_____	_____	_____
6. Total deposits (total of items 1 to 5, inclusive)	_____	_____	_____
7. Currency in circulation	_____	_____	_____
8. Bills rediscounted or sold with endorsement	_____	_____	_____
9. Other liabilities for borrowed money, however represented	_____	_____	_____
10. Acceptances outstanding	_____	_____	_____
11. Accrued interest, taxes and expenses payable	_____	_____	_____
12. Unearned interest and commissions	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other liabilities	_____	_____	_____
15. Total liabilities (total of items 6 to 14 inclusive)	_____	_____	_____
16. Capital stock	_____	_____	_____
17. Surplus and undivided profits (See Instruction No. 5)	_____	_____	_____
18. Reserves for contingencies (See Instruction No. 2)	_____	_____	_____
19. Total capital accounts (items 16 to 18 inclusive)	_____	_____	_____
20. Total liabilities and capital (item 15 plus item 19)	_____	_____	_____

Part II. PROPOSED (please indicate)

\_\_\_\_ FOREIGN BANK LIMITED PURPOSE BRANCH OR  
\_\_\_\_ FOREIGN BANK AGENCY

1. Provide the name and title of the individual(s) who shall be in charge of the business and affairs of the proposed \_\_\_\_ foreign bank limited purpose branch or \_\_\_\_ foreign bank agency (please indicate).

2. List the address of the proposed registered office in this State and the name of the proposed registered agent in this State at that address for service of any paper, notice or legal process upon the applicant.

3. PRO FORMA STATEMENT OF CONDITION - BEGINNING OF BUSINESS

Assets		Liabilities and Capital	
<u>Description</u>	<u>Amount</u>	<u>Description</u>	<u>Amount</u>
Cash and due from banks	_____	Liabilities	_____
Securities	_____		
Loans	_____		
Bank premises	_____	Total Liabilities	_____
Furniture, fixtures and equipment	_____		

Other Assets \_\_\_\_\_

Net organization expense

Total Assets \_\_\_\_\_

**4. OFFICE(S)**

Instructions: Complete all appropriate sections below. Where not applicable, insert "none." When the disclosure of any information may adversely affect ongoing negotiations, include such information in the Confidential Section of this application. Copies of any completed contracts should be submitted for the confidential use of the State Bank Commissioner.

a. Type of Occupancy (Check all which apply to indicate both type of quarters at opening and contemplated permanent quarters.)

\_\_\_\_\_ Permanent quarters leased (Complete b and c below)

\_\_\_\_\_ Temporary quarters (Complete e below)

\_\_\_\_\_ Permanent quarters owned (Complete b and d below)

b. Description of Premises

Dimensions of Lot	Dimensions of Building	Number of Stories	Number of Parking Spaces
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Type of construction of building:

Details of building interior (mention all employee facilities and size of lobby area):

**c. PREMISES LEASED**

Name of Owner: \_\_\_\_\_

Cost or appraised value of premises: \_\_\_\_\_

Cost and description of leasehold improvements: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Terms of Lease (Include renewal options): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Insurance to be carried: \_\_\_\_\_

Annual Rental: \_\_\_\_\_

Annual Amortization: \_\_\_\_\_

Copies of any lease should be submitted for the confidential use of the State Bank Commissioner. Except where State law obviates the need, a clause similar to the following should be incorporated in all leases drawn for the term exceeding one year in connection with this application:

"Notwithstanding any other provisions contained in this lease, in the event the lessee is closed or taken over by the banking authority in the State of Delaware, or other bank supervisory authority, the lessor may terminate the lease only with the concurrence of such banking authority or other bank supervisory authority, and any such authority shall in any event have the election either to continue or to terminate the lease: Provided, that in the event this lease is terminated, the maximum claim of Lessor for damages or indemnity for injury resulting from the rejection or abandonment of the unexpired term of the lease shall in no event be in any amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises to the Lessor, or the date of re-entry of the Lessor, whichever first occurs, whether before or after the

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closing of the lessee, plus an amount equal to the unpaid rent accrued, without acceleration up to such date.”

d. PREMISES OWNED

Existing Structure

Name of Seller: \_\_\_\_\_  
Date Constructed: \_\_\_\_\_  
Cost to Bank: \_\_\_\_\_  
Cost and description of necessary repairs and alterations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Assessed Valuation: \_\_\_\_\_  
Insurance to be Carried: \_\_\_\_\_  
Estimated Annual Depreciation: \_\_\_\_\_  
Depreciation Method: \_\_\_\_\_

Proposed Structure

Important: In estimating cost of construction, include architect’s fee, site preparation, paving and landscaping.

Name of Seller of lot: \_\_\_\_\_  
Cost of lot to bank: \_\_\_\_\_  
Construction Cost: \_\_\_\_\_  
Estimated Assessed Valuation: \_\_\_\_\_  
Insurance to be carried: \_\_\_\_\_  
Estimated Annual Depreciation: \_\_\_\_\_  
Depreciation Method: \_\_\_\_\_  
Is the bank structure to be designed to permit additions to the building at a later date?     yes     no

e. Temporary Quarters

Name of Owner: \_\_\_\_\_  
Cost or monthly rental: \_\_\_\_\_  
Location (Include distance and direction from permanent quarters): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Insurance to be carried: \_\_\_\_\_

Description of facilities and services offered (submit copies of lease or other contracts): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FINAL REGULATIONS****5. PROPOSED INVESTMENT IN AND RENTAL OF FURNITURE, FIXTURES AND EQUIPMENT**

Description:

ITEM	Total Cost (if owned)	Annual Rental (if leased)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
TOTALS	_____	_____

Total Insurance to be Carried	Total Annual Depreciation	Depreciation Method
_____	_____	_____

Do proponents plan to contract for off-premise electronic data processing service?  yes  no (If yes, list servicer(s) if known and the applications that would be processed off-premise. Attach copies of any electronic data processing agreements that have been executed.)

**6. ORGANIZATION EXPENSES**

**INSTRUCTIONS:** List all expenses related to the organization of the foreign bank limited purpose branch or foreign bank agency. Include all expenses paid, additional costs anticipated prior to the opening date, and include any expenses for work performed during the organization phases for which disbursement has been deferred beyond the opening date.

**IMPORTANT:** If legal or other fees appear to be excessive in volume or amount, supportive documentation will be required.

NAME OF RECIPIENT	ASSOCIATION WITH BANK			TYPE OF RELATIONSHIP (Specify Director, Officer, 5% Stockholder, or their relatives. Designate any business interests of the aforementioned.)	AMOUNT
	Direct	Indirect	None		
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Attorney Fees:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**1. TOTAL ATTORNEY FEES**

Consultant Fees:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. TOTAL CONSULTANT FEES \_\_\_\_\_

3. TOTAL PRE-OPENING SALARIES \_\_\_\_\_

4. TOTAL PRE-OPENING TRAVEL AND ENTERTAINMENT \_\_\_\_\_

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# FINAL REGULATIONS

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5. TOTAL APPLICATION AND INVESTIGATION FEES \_\_\_\_\_

Other Expenses: (Describe in detail any item in excess of \$1,000)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. TOTAL OTHER EXPENSES \_\_\_\_\_

Total Organization Expenses (Sum of lines 1-6 above.)

Pre-opening income

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NET TOTAL

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DESCRIBE SOURCE OF PRE-OPENING INCOME

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DESCRIBE HOW ORGANIZATION EXPENSES WILL BE PAID

PROPOSED FOREIGN BANK LIMITED PURPOSE BRANCH OR  
FOREIGN BANK AGENCY  
PROJECTED AVERAGE ASSETS AND LIABILITIES

<u>ASSETS</u>	YEAR 1	YEAR 2	YEAR 3
1. Cash & Cash Items in Process of Collection	_____	_____	_____
2. Due from U.S. Office of Banks (including placements of \$ ) (1)	_____	_____	_____
3. Due from Foreign Offices of Banks (1)	_____	_____	_____
4. Investment Securities	_____	_____	_____
5. Securities Purchased under Resale Agreements	_____	_____	_____
6. Loans, Advances, Overdrafts (1)	_____	_____	_____
7. Federal Funds Sold (1)	_____	_____	_____
8. Customers' Liability on Acceptances and Deferred Payment Credits (1)	_____	_____	_____
9. Bank Premises, Leasehold Improvements	_____	_____	_____
10. Furniture, Fixtures and Equipment	_____	_____	_____
11. Other Assets (1)	_____	_____	_____
12. TOTAL ASSETS (Excluding Head Office, Branches & Wholly Owned Subsidiaries)	_____	_____	_____
13. Due from Head Office, Branches, Wholly Owned Subsidiaries (Including loans, overdrafts, def. pay't credits, accept., FF sold, etc.)	_____	_____	_____
14. TOTAL ASSETS	_____	_____	_____

(1) Excluding Due from Head Office, Branches and Wholly Owned Subsidiaries

# FINAL REGULATIONS

## PROPOSED FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY PROJECTED AVERAGE ASSETS AND LIABILITIES

<u>LIABILITIES</u>	YEAR 1	YEAR 2	YEAR 3
CREDIT BALANCES (1)			
15. Domestic IPCs	_____	_____	_____
16. U.S. Offices of Banks	_____	_____	_____
17. U. S. Government	_____	_____	_____
18. Foreign IPCs	_____	_____	_____
19. Foreign Offices of Banks	_____	_____	_____
20. Foreign Governments, Official Institutions	_____	_____	_____
21. Other Credit Balances	_____	_____	_____
22. TOTAL CREDIT BALANCES	_____	_____	_____
23. Borrowings from Banks (Outside U.S. \$ ) (1)	_____	_____	_____
24. Securities Sold Under Repurchase Agreements (1)	_____	_____	_____
25. Federal Funds Purchases (1)	_____	_____	_____
26. Acceptances & Deferred Payments Credits	_____	_____	_____
27. Other Liabilities (1)	_____	_____	_____
28. SUBTOTAL LIABILITIES	_____	_____	_____
29. Accrued Expenses Payable	_____	_____	_____
30. Due to Head Office, Branches, Wholly Owned Subsidiaries (including borrowings of \$ )	_____	_____	_____
31. Reserves for Loan Losses	_____	_____	_____
32. Other Reserves (Specify)	_____	_____	_____
33. TOTAL LIABILITIES	_____	_____	_____

(1) Excluding Due to Head Office, Branches and Wholly Owned Subsidiaries

## PROJECTION OF INCOME AND EXPENSE TO BE FILED IN CONNECTION WITH APPLICATION BY FOREIGN BANKING CORPORATION TO OPEN AND MAINTAIN A FOREIGN BANK LIMITED PURPOSE BRANCH OR FOREIGN BANK AGENCY

<u>OPERATING INCOME</u>	YEAR 1	YEAR 2	YEAR 3
1. Interest & Fees on Loans Income On:	_____	_____	_____
2. Federal Funds Sold	_____	_____	_____
3. Time Placements and C/Ds Purchased	_____	_____	_____
4. Securities Purchased Under Agreements to Resell	_____	_____	_____
5. Interest & Dividends on Investment Securities	_____	_____	_____
6. Service Charges, Commissions and Fees Foreign Exchange	_____	_____	_____
7. Service Charges, Commissions and Fees All Other	_____	_____	_____
8. Net Profit on Foreign Exchange Trading	_____	_____	_____
9. Other Operating Income (Itemized categories aggregating \$5,000 and over)	_____	_____	_____
10. TOTAL OPERATING INCOME	_____	_____	_____
<u>OPERATING EXPENSE</u>			
11. Salaries and other employee benefits	_____	_____	_____



12. Interest on time certificates of deposit of \$100,000 and over	_____	_____	_____
13. Interest on all other deposits or credit balances	_____	_____	_____
EXPENSE INCURRED ON:			
14. Federal funds purchased	_____	_____	_____
15. Securities Sold Under Agreements to Repurchase	_____	_____	_____
16. Interest on borrowings (Other than Head Office Branches and Wholly Owned Subsidiaries)	_____	_____	_____
17. Interest on borrowings from Head Office, Branches and Wholly Owned Subsidiaries	_____	_____	_____
18. Occupancy Expense - Banking Premises	_____	_____	_____
19. Furniture & Equipment Expense - Include Deprec.	_____	_____	_____
20. Amortization of start-up costs	_____	_____	_____
21. Travel Expense	_____	_____	_____
22. Insurance Expense	_____	_____	_____
23. Legal Expense	_____	_____	_____
24. Audit Expense	_____	_____	_____
25. Communication Expense (Tel., Telex, Postage)	_____	_____	_____
26. Promotional Expense	_____	_____	_____
27. Other Operating Expense (Itemize categories aggregating \$5,000 and Over)	_____	_____	_____
28. Provision for Loan Losses	_____	_____	_____
29. TOTAL OPERATING EXPENSE	_____	_____	_____
30. INCOME BEFORE INCOME TAXES AND SECURITIES GAINS OR LOSSES	_____	_____	_____
31. Applicable Income Taxes	_____	_____	_____
32. INCOME BEFORE SECURITIES GAINS OR LOSSES	_____	_____	_____
33. Net Securities Gains or Losses (Net of Related Tax Effects)	_____	_____	_____
34. NET INCOME	_____	_____	_____

\* If projection does not show profitable operation (including provision for interest on borrowings from Head Office, branches and wholly owned subsidiaries) by year 3, please indicate when profits are expected.

9. FIDELITY COVERAGE

The applicant bank will at all times maintain sufficient surety bond coverage on its active officers and employees to conform with generally accepted banking practices and will at all times maintain an excess employee dishonesty bond in the amount of \$1,000,000 or more.

10. PUBLIC CONVENIENCE AND ADVANTAGE

**INSTRUCTIONS:** The proponents are responsible for developing the Legal factor Public Convenience and Advantage in a way which clearly shows the economic support and justification for the Proposed Foreign Bank Limited Purpose Branch or Foreign Bank Agency. Submit such data relating to the trade area which you feel is relevant to the proposal. If an economic survey or feasibility study has been prepared it may provide most of the information requested. Such information submitted in support of your application will be included in the public file.

A. Briefly describe the geographical and product markets which the proposed Agency will principally serve.

B. Briefly indicate the reasons for submitting this Application and how the proposed Agency will become an economically viable institution.

# FINAL REGULATIONS

## PART III

### APPLICATION FOR CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY - CONFIDENTIAL SECTION

In preparing your application, keep in mind that the State Bank Commissioner deems that public policy warrants making all information submitted to him in connection with this application available for public review, unless it qualifies for confidential treatment under 29 Del. C. §§10002(d), 10112(b)(4), and Superior Court Rule of Civil Procedure 26(c). The Commissioner has determined that trade secrets, proprietary information and confidential financial information useful to the applicant in its business will ordinarily qualify for such protection.

However, specific determinations of the question of confidentiality and non-disclosure rests in the first instance in the discretion of the Commissioner and the specific information you include in the following section may be available for public review in the discretion of the Commissioner.

#### I. FINANCIAL HISTORY AND CONDITION

Outline below information with regard to fixed assets which you believe, if disclosed to the public, would adversely affect ongoing negotiations.

Outline below, in detail, the basis for cost estimates for premises shown in the public section.

If fixed assets are to be purchased from a related party, evidence of the reasonableness of the cost(s) must be provided. Attach copies of bids, independent appraisals and/or other supporting evidence.

If an insider is a party to any lease contract in connection with the application, explain the manner in which lease payments were determined.

Specify the time required to prepare the foreign bank limited purpose branch or foreign bank agency premises for occupancy. If temporary quarters are anticipated, estimate the probable term of occupancy and describe the disposition of such quarters.

#### II. FUTURE EARNINGS PROSPECTS

##### ESTIMATE OF SALARIES AND WAGES

POSITION	FIRST YEAR	SECOND YEAR	THIRD YEAR
Officers	_____	_____	_____
Other Employees	_____	_____	_____
Total	_____	_____	_____

##### ESTIMATED LOAN DIVERSIFICATION

TYPE OF LOAN	<u>FIRST YEAR</u>		<u>SECOND YEAR</u>		<u>THIRD YEAR</u>	
	Estimated Average Volume	Average Percent Return	Estimated Average Volume	Average Percent Return	Estimated Average Volume	Average Percent Return
Commercial	_____	_____ %	_____	_____ %	_____	_____ %
Installment	_____	_____ %	_____	_____ %	_____	_____ %

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# FINAL REGULATIONS

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Real Estate	_____	_____ %	_____	_____ %	_____	_____ %
Term	_____	_____ %	_____	_____ %	_____	_____ %
Purchased Participations	_____	_____ %	_____	_____ %	_____	_____ %

Exchange and Service charge policies to be followed.

COMMENTS (Include other information supporting income and expense estimates reported in the Public Section of this application).

### III. PROPOSED OFFICERS

NOTE: Attach a copy of the financial report and biographical information to include educational and business background for each individual in charge of the business and affairs of the Proposed Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

PROPOSED OFFICERS OF THE FOREIGN BANK LIMITED PURPOSE BRANCH OR  
FOREIGN BANK AGENCY

<u>NAME</u>	<u>ADDRESS</u>	<u>AGE</u>	<u>OCCUPATION</u>	<u>TITLE</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

- A. Has any proposed director, officer, or employee been convicted of any criminal offense involving dishonesty or a breach of trust? \_\_\_\_\_ yes \_\_\_\_\_ no (If yes, explain in Comments below.)
  
- B. List names and addresses of all correspondent banks.
  
- C. Are bonus, management or director compensation, or other similar plans in effect or anticipated?  
\_\_ yes \_\_ no (If yes, attach copies.)

COMMENTS:

### IV. PUBLIC CONVENIENCE AND ADVANTAGE

List the proposed hours of operation for the proposed Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

\_\_\_\_\_

Regulation No.: 5.1403/1101.0003

Effective Date: August 13, 1998

**REGULATIONS GOVERNING THE ORGANIZATION, CHARTERING, SUPERVISION, OPERATION AND AUTHORITY OF A DELAWARE FOREIGN BANK LIMITED PURPOSE BRANCH, A DELAWARE FOREIGN BANK AGENCY AND A DELAWARE FOREIGN BANK REPRESENTATIVE OFFICE**

**I. Statement of Authority.**

These regulations are promulgated pursuant to the authority vested in the Commissioner under the provisions of Chapter 14, Title 5, Delaware Code, including without limitation §1403 (relating to the foreign bank limited purpose branch or foreign bank agency application process); §1404(a)(2) (relating to the taking and maintenance of deposits by a foreign bank limited purpose branch or foreign bank agency); §1405 (maintenance of assets by a foreign bank limited purpose branch or foreign bank agency within Delaware); §1406(a) (relating to the making of written reports to the Commissioner by a foreign bank limited purpose branch or foreign bank agency); §1407 (relating to the rule-making power of the Commissioner generally); §1420 (relating to the licensing and operation of a foreign bank representative office); §1422(a) (relating to the application fee); and §1424(b) (relating to the fee which must accompany certain reports). The Commissioner is authorized to adopt appropriate regulations regarding the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency or federal branch or agency located in Delaware pursuant to the provisions of §1101(a) of Title 5. Additionally, §121(b) authorizes the Commissioner to prescribe regulations to carry out the purposes of Title 5.

**II. General Powers.**

**A. Foreign Bank Agency.**

A "foreign bank agency", as defined in §101 of Title 5 of the Delaware Code, shall be entitled to engage within the State of Delaware in the general business of banking in the State of Delaware, subject, however, to the limitations set forth in 5 Del. C. §1404(a)(1). The deposit taking authority of such agency, in addition to the authority expressly granted under §1404, shall be co-extensive with the full authority which a federal agency operating in this State would have pursuant to the provisions of the International Banking Act of 1978 as amended.

**B. Foreign Bank Limited Purpose Branch**

A "foreign bank limited purpose branch", as defined in §101 of Title 5 of the Delaware Code, shall be entitled to engage in all the activities of a foreign bank agency and, in addition, may accept such deposits as would be permissible for a corporation organized under §25A of the Federal Reserve Act (12 U.S.C. §611 et seq.).

**C. Foreign Bank Representative Office.**

A foreign bank representative office may conduct within the State of Delaware representative activities intended to promote banking services offered by and originating from an office or offices of the foreign bank located outside the State of Delaware. A foreign bank representative office is prohibited from either offering or contracting for any product or service within the State of Delaware which would constitute the doing of a general banking business in Delaware.

**III. General Regulations.**

**A. Application Fees.**

1) A foreign bank shall apply for a certificate of authority for a foreign bank limited purpose branch or foreign bank agency on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a filing fee in the amount of \$2,000.00 for the use of the State made payable to the State of Delaware.

2) A foreign bank shall apply for a license to establish a representative office on such forms and in such manner as the Commissioner shall from time to time prescribe. The application shall be accompanied by a license fee of \$500.00 and a processing fee of \$500.00 made payable to the State of Delaware.

**B. Records.**

In addition to such records as the Commissioner may from time to time require with respect to the computation of tax liability of a foreign bank limited purpose branch or foreign bank agency, each foreign bank limited purpose branch, foreign bank agency and foreign bank representative office shall maintain at its place of business in Delaware in the English language and in United States dollar equivalents a correct and complete set of books and records of account of all business transacted by such office.

**C. Reports.**

1) Whenever the Commissioner shall require, the foreign bank limited purpose branch or foreign bank agency shall make a written report in the English language and in United States dollar equivalents in such form as he shall from time to time prescribe and verified by a duly authorized executive officer of the foreign bank limited purpose branch or foreign bank agency. Such report shall show the actual financial condition of the business of the foreign bank limited purpose branch or foreign bank agency in the State of Delaware at the close of any past day designated by the Commissioner. The verification of such Report shall state that the person making it on behalf of the foreign bank limited purpose branch or foreign bank agency solemnly swears or affirms that the information set forth therein is a true and correct statement of the condition of the Delaware foreign bank limited purpose branch or foreign bank agency to the best of his knowledge, information and belief.

Additionally, the Commissioner may from time to time request from a foreign bank limited purpose branch or foreign bank agency a copy of any report of condition or the like filed by the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part with any other State, the Federal Deposit Insurance Corporation, or the Federal Reserve Board.

2) Every licensed foreign bank representative office shall file annually a written report of activities conducted during the previous twelve-month period, in the English language and in United States dollar equivalents in such form as the Commissioner shall prescribe. Said report shall be accompanied by a \$500.00 fee.

**D. Maintenance of Assets in Delaware; Separate Assets.**

A foreign bank limited purpose branch or foreign bank agency shall maintain within the State of Delaware currency, real estate (at net book value or appraised value, whichever is less), precious metals (to the extent of 75% of market value), bonds, notes, debentures, drafts, bills of exchange or other evidence of indebtedness, including loan participation agreements or certificates, or other obligations payable in the United States or in United States funds, or, with the prior approval of the Commissioner, in funds freely convertible into United States funds, or also with the prior approval of the Commissioner, such other assets as the Commissioner may permit, in an amount which shall be equal to one hundred percent (100%) of the liabilities of the foreign bank of which the foreign bank limited purpose branch or foreign bank agency is a part which are payable at or through the foreign bank limited purpose branch or foreign bank agency, including acceptances, but excluding (without duplication) (1) accrued expenses, (2) amounts due and other liabilities to other offices, agencies or branches of, and wholly-owned (except for a nominal number of directors' shares) subsidiaries of, such foreign bank, (3) liabilities maintained on the books of an international banking facility located at such foreign bank limited purpose branch or foreign bank agency, and (4) such other liabilities as the Commissioner shall determine. The valuation of securities shall be in the manner provided in §1405. Each foreign bank limited purpose branch or foreign bank agency shall keep the assets of its business in this State separate and apart from the assets of its business outside this State.

**E. Deposit of Assets.**

The Commissioner may by order direct a foreign bank limited purpose branch or foreign bank agency to deposit all or a portion of the assets which the foreign bank limited purpose branch or foreign bank agency is required to maintain in this State with such banks or trust companies or national banks located in this State as the Commissioner may from time to time designate where the Commissioner finds such order necessary or desirable for the maintenance of the sound financial condition of the foreign bank limited purpose branch or foreign bank agency, the protection of depositors, creditors and the public interest, and the maintenance of public confidence in the business of a foreign bank limited purpose branch or foreign bank agency.

Where deposits constituting liabilities for purposes of paragraph (D) of this Article III are fully insured by the Federal Deposit Insurance Corporation, such deposits shall be excluded from the definition of liabilities for the purpose of determining the amount of assets which must be maintained by the foreign bank limited purpose branch or foreign bank agency within the

State of Delaware.

IV. Revocation of Certificate of Authority or License.

A. Revocation of Foreign Bank Limited Purpose Branch or Foreign Bank Agency Certificate of Authority.

1. Determination of Cause.

Whenever the Commissioner shall have cause to believe that a foreign bank limited purpose branch or foreign bank agency has engaged in conduct which, pursuant to Section 1410, would constitute cause for the revocation of the certificate of authority of such foreign bank limited purpose branch or foreign bank agency, he shall notify such foreign bank limited purpose branch or foreign bank agency in writing of the alleged violation, and, by means of informal fact-finding, determine whether an order should be issued directing such foreign bank limited purpose branch or foreign bank agency to cease and desist from the conduct giving rise to the violation by a date certain.

2. Violation of Order.

If the Commissioner shall determine that a foreign bank limited purpose branch or foreign bank agency which is the subject of a cease and desist order has not, within the time established, discontinued or rectified the conduct which was the subject of the violation order, he shall give written notice in the manner provided by the provisions of 29 Del. C. §10122 to the foreign bank limited purpose branch or foreign bank agency of the date, time and place of a formal hearing at which the foreign bank limited purpose branch or foreign bank agency shall appear and show cause why its certificate of authority should not be revoked. In addition to witnesses appearing on behalf of the foreign bank limited purpose branch or foreign bank agency, the Commissioner shall, by either informal or formal fact finding, take such testimony and gather such evidence as he deems necessary and appropriate in reaching a decision. Within thirty (30) days following the adjournment of such hearing, the Commissioner shall issue his findings and order revoking the certificate of authority, imposing a lesser sanction, or determining that the order to show cause should be retired without action. The foreign bank limited purpose branch or foreign bank agency shall have such right of appeal from such findings and order as is provided for in Subchapter V of Chapter 101, Title 29, Delaware Code.

B. Revocation of Foreign Bank Representative Office License.

Upon a preliminary determination by the Commissioner that a foreign bank representative office may have engaged in conduct which would constitute cause for the revocation of the license of such foreign bank representative office under the provisions of §1425, he shall give notice in writing to such foreign bank representative office setting forth the alleged violation, and directing such foreign bank representative office to appear at a place, on a date and at a time certain to show cause why its license should not be revoked. At such hearing, the foreign bank representative office shall be accorded the right to appear and be heard. The Commissioner shall, by either informal or formal fact finding and within thirty (30) days from the adjournment of such hearing, issue findings and order directing the revocation of the license of the foreign bank representative office, some lesser sanction, or the retirement of the notice to show cause without action. The foreign bank representative office shall have such rights of appeal from such findings and order as are provided in Subchapter V of Chapter 101, Title 29, Delaware Code.

V. Allocation of Income and Expenses for Purposes of Determining Delaware Tax Liability of Foreign Bank Limited Purpose Branch or Foreign Bank Agency.

A. Method of Allocation.

Although technically a part of the foreign bank, a Delaware foreign bank limited purpose branch or foreign bank agency is to be treated for purposes of assessing and collecting the Delaware Bank Franchise Tax on taxable income (5 Del. C. §1101 et seq.) as if it were a bank having separate corporate existence (§1101(a)). To that end, and in order to derive the amount of "net operating income before taxes" for purposes of §1101(a), a foreign bank limited purpose branch or foreign bank agency shall maintain at all times separate books of account in its Delaware office which fully segregate and portray:

1. With respect to income:

(a) all receipts directly attributable to an asset carried on the books of the foreign bank limited purpose branch or foreign bank agency; and

(b) all receipts arising from a transaction entered into or a service provided by the foreign bank limited purpose branch or foreign bank agency within the State of Delaware;

provided, that the foreign bank limited purpose branch or foreign bank agency may exclude from its accounting of income

otherwise properly allocated to Delaware such receipts as are directly or indirectly subject to taxation in any state other than Delaware by reason of either: (1) the existence of a taxable nexus under the laws of any such state between such state and the transaction of service giving rise to such receipts; or (2) the required inclusion under the laws of any such state of such receipts in the numerator of a receipts factor of a formula used to calculate the income of the foreign bank subject to tax in such state.

2. With respect to expenses:

- (a) all costs directly incurred in the start up, maintenance and operation of the Delaware office;
- (b) all other costs attributable to the generation of income allocated to Delaware pursuant to subsection 1. above;

and

(c) to the extent not included in paragraph (a) and (b) of this subsection 2. above, an aliquot portion of indirect costs incurred by the foreign bank (in both the United States and the home country) with respect to the start up, maintenance and operation of the foreign bank limited purpose branch or foreign bank agency.

Costs under subparagraphs (b) and (c) of this subsection 2. shall be allocated to Delaware in the same ratio as the gross receipts of the foreign bank are allocated to Delaware, or in such other fair, equitable and consistent manner as the Commissioner shall, upon request of a foreign bank limited purpose branch or foreign bank agency, approve.

**B. Commissioner's Right of Examination**

The Commissioner shall have the right from time to time to examine the books and records of a foreign bank limited purpose branch or foreign bank agency for the purpose of determining whether all or any portion of the income of the foreign bank limited purpose branch or foreign bank agency has been properly allocated to Delaware, and to issue such findings and orders as he deems necessary and appropriate regarding the reallocation of income which he shall find to have been improperly allocated to a state or states other than Delaware.

**VI. Change of Location, Name or Business.**

A foreign bank limited purpose branch or foreign bank agency may, pursuant to the provisions of §1408, make written request of the Commissioner to change its place of business (accompanied by a filing fee of \$500.00) or to change its corporate name for the duration of its corporate existence (no filing fee required). Upon the receipt of such application, the Commissioner shall grant such application within twenty (20) days thereof unless he shall have determined by informal fact finding or otherwise that there exists cause for denying such application. If the Commissioner should determine that facts or circumstances exist constituting cause for denying such application, he shall provide notice and opportunity to be heard to the applicant foreign bank limited purpose branch or foreign bank agency in the manner provided for under the provisions of 29 Del. C. §10123. Not less than thirty (30) days after the adjournment of such hearing, the Commissioner shall issue his final order and findings with respect to the grant or denial of the requested change of location or change of name. An applicant foreign bank limited purpose branch or foreign bank agency aggrieved by the determination of the Commissioner shall have such right of appeal as is granted pursuant to the provisions of Subchapter V, Chapter 101, Title 29, Delaware Code.

Document Control No.: 20-15/98/7/06

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Regulation No.: 5.1422.0004

Effective Date: August 13, 1998

**APPLICATION BY A FOREIGN BANK FOR A LICENSE  
TO ESTABLISH A FOREIGN BANK REPRESENTATIVE OFFICE  
PURSUANT TO SUBCHAPTER II, CHAPTER 14, TITLE 5, DELAWARE CODE**

Any application made to the State Bank Commissioner pursuant to §1422 of Title 5, Delaware Code, shall be submitted on the form appended hereto and accompanied by all documents called for by such form as well as by a duly authenticated copy of the foreign bank's charter and bylaws. A non-refundable processing fee of \$500 payable to "State of Delaware" must accompany the filing of the attached application. Upon approval of the application, an additional \$500 fee must be remitted prior to issuance of the license.

The Commissioner may, without notice or hearing, issue the requested license; provided that, at his discretion, the Commissioner may require public notice and a hearing on the application.

**FINAL REGULATIONS**

All portions, except for the financial report requested in item 5, of this application shall be considered public information.

Document Control No.: 20-15/98/7/07

State of Delaware  
**OFFICE OF THE STATE BANK COMMISSIONER**  
 Application of a Foreign Bank  
 for a License to Establish a Foreign Bank Representative Office  
 Pursuant to 5 Del. C. Chapter 14 Subchapter II

**APPLICANT (Foreign Bank)**

Name of Bank

Address of Principal Office (Street, City/Town, County, Country and Zip Code)

Country Organized in

Date Incorporated

Duration of Corporation

Type of Business:  Commercial Banking     Merchant Bank     Other Foreign Institution

**PROPOSED FOREIGN REPRESENTATIVE OFFICE**

Proposed Location (Street), City/Town, County, State and Zip Code)

I, the undersigned, President of \_\_\_\_\_,  
 being duly authorized by a resolution of the Board of Directors (copy herewith submitted), hereby apply for a License with respect to the proposed foreign bank representative office. In making this application, I am not acting as an agent for other persons undisclosed to the State Bank Commissioner.

In support of the application, I hereby make the following statements and representations and submit the following information for the purpose of inducing the State Bank Commissioner to issue such License:

The UNDERSIGNED HEREBY CERTIFIES that the statements contained herein are true to my best knowledge and belief.

\_\_\_\_\_  
 (Print or Type Name of President)

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

Sworn and Subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
 Notary Public

1. List the States and Countries into which the Applicant has been admitted or is qualified to transact business. Provide the title and address of the appropriate regulator in each case.

2. Provide an opinion of a member of the Bar of the State or Country of origin that:

- (a) applicant's charter authorizes it to carry on the business contemplated by the application;
- (b) applicant has at all times conducted, and is now conducting, its business as authorized by its charter and bylaws and in compliance with the laws of the State or Country of origin; and
- (c) the application complies with the laws of the State or Country of origin.

3. If the Applicant is required to make filings with the Securities and Exchange Commission under Section 14 or 15(d) of the



Securities Exchange Act of 1934, the Applicant shall file with this application copies of all such filings made within the three year period immediately preceding the date of this application (provided that 10Q filings need not be included if 10K filings for the applicable year are provided). If no such filings are made, then there shall be attached to this application copies of the applicant's annual certified financial statements for the most recent three fiscal years for which they are available and the latest available quarterly statement. If the Applicant is a subsidiary of a bank holding company, the annual financial statements for such bank holding company for the most recent three fiscal years for which they are available and for the latest available fiscal quarter shall also be attached (provided that if the Applicant's annual financial statements are prepared on a consolidated basis with those of its parent bank company, only the consolidated financial statements need be attached).

Also attach a listing of all persons who are directors or executive officers of the Applicant Bank, listing as to each: his or her name and business address, present principal business activity, occupation or employment (including office held) and, if carried on with an organization other than that the applicant, the name, principal business and address of such other organization.

4. The attached statement of financial condition should be prepared as of the date within 120 days prior to the date of the application.
5. Attach the name and title as well as a biographical and financial report of the individual(s) who shall be in charge of the business and affairs of the proposed representative office. Additionally, three personal references are required.
6. Describe the scope and nature of the business to be conducted by the representative office.
7. Pursuant to §1422(b)(3), provide sufficient data as to how the convenience and needs of the public shall be served by the establishment of the representative office.

#### INSTRUCTIONS

This statement of the financial condition of your institution should be prepared as at the date within 120 days prior to the date of the application.

1. It is requested that the statement form be carefully reviewed before preparing the figures, and that all assets, liabilities and capital accounts be segregated and reported in the appropriate printed titles, wherever possible. If you have items which cannot properly be classified under these titles, use the additional lines, and indicate clearly the nature of each such item by attaching explanations where necessary.
2. All "reserves" or "provisions" should be analyzed and reported as follows:
  - (a) Reserves or provision for known or expected losses on assets should be deducted from such asset accounts;
  - (b) Reserves or provision for known or expected liabilities should be reported in Liability items 9 or 14, as the case may be; and
  - (c) Reserves or provision for future contingencies or unforeseen losses should be included in Liability item 18.
3. Include in Asset item 3 only balances on deposit by your institution with other banks. Do not include overdrafts by other banks in their accounts with your institution, or "call loans" or other extensions of credit to them. All such advances should be included as loans, Asset item 6, or should be reported separately below in Asset item 15, with appropriate explanations.
4. Include in Asset item 4 all obligations of National governments, such as short term "treasury bills" discounted, as well as bonds or other securities issued by them. Securities included in both Asset items 4 and 5 should be reported at net book values, less the allocated "reserves" or "provisions". The current market value (at the statement date) must also be reported in the footnote to the statement.
5. Include in Liability item 17 all "reserves" or "surplus" paid in or accumulated from prior periods, and all profits carried forward at previous closings of the books, less amounts actually appropriated for dividends already declared. Current earnings and profits, less expenses and losses incurred since the latest closing of the books, should also be included in this item.
6. Unpaid dividends, including amounts declared by the directors out of current or prior profits should be included in Liability

item 14.

7. All "per contra" accounts such as "collections for account of customers," "securities held for account of customers," "customers' liability on letters of credit," "guarantees," et cetera, should be omitted from the statement of assets, liabilities and capital accounts, but should be reported separately as "contingent assets and liabilities."

8. This statement should be verified by the oath of a principal executive officer of the bank. If that officer is unable to verify, the reasons for his failure to execute the affidavit should be recited in and made a part of the verification. The required oath may be administered without the United States by an ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, a charge d'affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States within his jurisdiction. The seal of his office or the seal of the consulate or legation to which he is attached should be affixed.

BEFORE PREPARING THIS STATEMENT  
PLEASE READ THE INSTRUCTIONS ON THE PREVIOUS PAGE

STATEMENT TO THE BANK COMMISSIONER OF THE STATE OF DELAWARE  
ASSETS

ASSETS	FOREIGN AMOUNT	CONVERSION RATE*	U.S. DOLLARS
1. Cash on hand (currency, coin, and bullion)	_____	_____	_____
2. Exchanges and checks for next day's clearings	_____	_____	_____
3. Deposits in other banking institutions (See Instruction No. 3)	_____	_____	_____
4. Securities of National Governments** (See Instruction No. 4)	_____	_____	_____
5. Other readily marketable securities** (See Instruction No. 4)	_____	_____	_____
6. Loans and discounts, including overdrafts and mortgages	_____	_____	_____
7. Bills rediscounted or sold with endorsement	_____	_____	_____
8. Customers' liability on acceptances	_____	_____	_____
9. Investments in banking premises, furniture and fixtures	_____	_____	_____
10. Investments in affiliated and subsidiary companies	_____	_____	_____
11. Loans and advances to affiliated and subsidiary companies	_____	_____	_____
12. Accrued interest and commissions receivable	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other cash items	_____	_____	_____
15. Other assets	_____	_____	_____
16. Total assets	_____	_____	_____
*Conversion rate should be as of the date of the statement			
**Current market value of:			
(Item 4) Securities of National Governments	_____	_____	_____
(Item 5) Other readily marketable securities	_____	_____	_____

STATEMENT TO THE BANK COMMISSIONER  
OF THE STATE OF DELAWARE  
LIABILITIES AND CAPITAL ACCOUNTS

LIABILITIES AND CAPITAL ACCOUNTS	FOREIGN AMOUNT	CONVERSION RATE	U.S. DOLLARS
1. Deposits secured by pledge of assets	_____	_____	_____
2. Deposits of National Governments and political subdivisions	_____	_____	_____
3. Deposits of banking institutions	_____	_____	_____
4. Other demand deposits, including certified and officers' checks	_____	_____	_____
5. Other time deposits, including certificates of deposits and savings accounts	_____	_____	_____
6. Total deposits (total of items 1 to 5, inclusive)	_____	_____	_____
7. Currency in circulation	_____	_____	_____
8. Bills rediscounted or sold with endorsement	_____	_____	_____
9. Other liabilities for borrowed money, however represented	_____	_____	_____
10. Acceptances outstanding	_____	_____	_____
11. Accrued interest, taxes and expenses payable	_____	_____	_____
12. Unearned interest and commissions	_____	_____	_____
13. Inter-branch accounts	_____	_____	_____
14. Other liabilities	_____	_____	_____
15. Total liabilities (total of items 6 to 14 inclusive)	_____	_____	_____
16. Capital stock	_____	_____	_____
17. Surplus and undivided profits (See Instruction No. 5)	_____	_____	_____
18. Reserves for contingencies (See Instruction No. 2)	_____	_____	_____
19. Total capital accounts (items 16 to 18 inclusive)	_____	_____	_____
20. Total liabilities and capital (item 15 plus item 19)	_____	_____	_____

Regulation No.: 5.3404.0001  
Effective Date: August 13, 1998

**PRENEED FUNERAL CONTRACTS REGULATIONS  
GOVERNING IRREVOCABLE TRUST AGREEMENTS  
5 DEL. C. §3404**

Disclosure Requirements for the Irrevocable Trust Document

The trust document establishing the irrevocable trust permitted by §3404 shall contain, at a minimum, the following mandatory provisions:

- (a) A provision which expressly identifies the trust as irrevocable for the lifetime of the beneficiary;

(b) A provision for the disposition of trust funds to an alternate trustee upon discontinuation of business or inability to provide goods or services by the original trustee in accordance with the terms of the trust;

(c) A provision that in the event funds paid into the trust are inadequate, at the time of the death of the beneficiary, to cover anticipated funeral expenses, the trustee shall contribute all trust funds toward payment of the actual funeral expenses for the funeral of the beneficiary;

(d) A provision that in the event the sum held by the trust exceeds the total actual costs of the goods and services for the funeral of the beneficiary, the excess funds shall be paid to the estate of the beneficiary;

(e) A provision that the trustee may, from time to time, accept periodic monetary contributions to the trust, provided that the principal sum contributed, exclusive of interest earned, shall not exceed \$10,000;

(f) A provision which shall state "In no event shall the principal amount of the trust exceed \$10,000 plus interest."

Document Control No.: 20-15/98/7/08

Regulation No.: ~~5.853.0001.P~~

Effective Date: ~~7/31/89~~

**PROCEDURES GOVERNING THE REGISTRATION OF DELAWARE BANK HOLDING COMPANIES WITH THE BANK COMMISSIONER PURSUANT TO THE PROVISIONS OF SECTION 853 OF TITLE 5, DELAWARE CODE**

Subchapter V of Chapter of Chapter 8 of Title 5, Delaware Code provides for the regulation of Delaware bank holding companies. A Delaware bank holding company is defined in 5 Del. C. §851(3) as a bank holding company with bank subsidiaries whose operations are principally located in Delaware. The operations of a bank subsidiary or subsidiaries are deemed to be "principally located" in Delaware if the total deposits of all such subsidiaries in Delaware are greater than in any other state. (Note that non-Delaware bank holding companies may be subject to regulation by the Delaware Bank Commissioner under other Subchapters of Title 5: see, for example, 5 Del. C. §845, regarding the regulation and examination of out-of-state bank holding companies which acquire a Delaware bank or bank holding company).

Filing Deadline. Any bank holding company which was a Delaware bank holding company as of May 18, 1987 shall complete and file this registration form not later than September 1, 1989. Any bank holding company which became or intends to become a bank holding company after May 18, 1987 shall comply with the registration requirement by making application to become a Delaware bank holding company pursuant to the provisions of Section 852 of Title 5, Delaware Code.

Registration Information:

1. Name of Delaware bank holding company: \_\_\_\_\_

2. Date on which bank holding company formed: \_\_\_\_\_

Date on which bank holding company became a Delaware bank holding company (if different): \_\_\_\_\_

3. Principal address of Delaware bank holding company: \_\_\_\_\_

4. Name and address of Delaware agent for the service of any paper, notice of legal process, etc.: \_\_\_\_\_

5. Name and address of each Delaware bank subsidiary of the Delaware bank holding company: \_\_\_\_\_

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# FINAL REGULATIONS

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- 6: Name and address of all non-bank subsidiaries of either the Delaware bank holding company of the Delaware bank:
- 7: Name and address of each bank subsidiary of the Delaware bank holding company located in a state other than Delaware:
- 8: Identify by government, region and address each regulatory authority (other than the Delaware Bank Commissioner) having jurisdiction over the Delaware bank holding company or any bank subsidiary thereof. With respect to each such regulator, identify each report filed by the Delaware bank holding company or bank subsidiary.

(Signed)

\_\_\_\_\_  
Keith H. Ellis  
State Bank Commissioner

## CERTIFICATION

I, (Name) \_\_\_\_\_

(Title or designation) \_\_\_\_\_

of \_\_\_\_\_, a Delaware bank holding company, do hereby certify that I have been duly authorized to execute and file this registration; and I further certify that, to my knowledge, information and belief, the information provided as part of this registration is true and correct. Finally, I certify that \_\_\_\_\_

(Name of Delaware Bank Holding Company) \_\_\_\_\_ will fully comply with the reporting obligations imposed upon it by the provisions of 5 Del. C. §854.

SWORN TO AND SUBSCRIBED BEFORE me, a Notary Public, this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_

\_\_\_\_\_  
(NOTARY PUBLIC)

## GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Cash Management Policy Board	Mr. John V. Flynn, Jr., Chairperson	07/08/01
Delaware Advisory Council on Natural Areas	Mr. George M. Records, Jr.	07/08/02
	Ms. Delores A. Washam	07/08/02
	Ms. Lynn W. Williams	07/08/02
Delaware Solid Waste Authority	Ms. Phyllis M. McKinley	07/08/01
	The Honorable Theodore W. Ryan	07/08/01
Health Facilities Authority	Mr. Desmond A. Baker	06/19/03
	Mr. Richard H. Derrickson	06/19/03
	Mr. Rolf F. Eriksen	06/19/03
	Mr. Stephen T. Golding	06/19/03
	Ms. Shirley Tarrant	06/19/03
Industrial Accident Board	Mr. Lowell L. Groundland	07/08/04
Justice of the Peace for Kent County	The Honorable Margaret Barrett	07/08/04
	The Honorable Karen N. Bundeck	07/08/04
	The Honorable Frederick W. Dewey, Jr.	07/08/04
Justice of the Peace for New Castle County	The Honorable Robert A. Armstrong	07/08/04
	The Honorable Thomas M. Kenney	07/08/04
Justice of the Peace for Sussex County	The Honorable John R. Hudson	07/08/04
	The Honorable Marcealeate S. Ruffin	07/08/04
Merit Employee Relations Board	Ms. Susan L. Parker, Chairperson	07/08/01
	Mr. Robert J. Burns	07/08/01
	Mr. Dallas D. Green	07/08/01
New Castle County Board of Elections	Mr. Ross E. Austin	07/08/02
	Mr. Edmund S. Krzyzanowski	07/08/02
	Mr. Lowell W. Parke	07/08/02
Public Integrity Commission	The Honorable Paul E. Ellis	07/08/05
	General Arthur V. Episcopo	
State Coastal Zone Industrial Control Board	Mr. George J. Collins	07/08/03
	Mr. R. Jefferson Reed	07/08/03

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# GOVERNOR'S APPOINTMENTS

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<b>BOARD/COMMISSION OFFICE</b>	<b>APPOINTEE</b>	<b>TERM OF OFFICE</b>
Sussex County Board of Elections	Ms. Deborah B. Hammond	07/08/02
Tax Appeals Board	Ms. John H. Cordrey, Esq. Mr. Cynthia H. Jarman Mr. Todd C. Schiltz	07/08/01 07/08/01 07/08/01
University of Delaware Board of Trustees	Mr. Steven J. Rothschild	07/08/04
Wastewater Facilities Advisory Council	Mr. Thomas Novak, Jr.	07/08/01

STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
**ATTORNEY GENERAL OPINION**  
**NO. 98-IB03**

The Honorable Harriet Smith Windsor  
State Personnel Office  
Townsend Building  
401 Federal Street, Suite 5  
Dover, DE 19901

Re: Authority to Delegate Approval of Certain  
Personnel Transactions

Dear Dr. Windsor:

Pursuant to a report from the Office of Auditor of Accounts, you requested an informal opinion from the Attorney General as whether 29 Del.C. 5943(f) permits the State Personnel Director to delegate final authority for approving personnel transactions to individual state agencies. We conclude that the State Personnel Director's delegation of final authority to an agency does not violate Delaware law.

Twenty-nine Del.C. 5943(d) provides that a person who is appointed improperly under Delaware law or the Merit Rules but who nonetheless renders services to the state may maintain an action against any officer to recover agreed wages and benefits or both. In addition, 5943(e) provides that it is the obligation of the appointing authority to determine that the documents necessary for placing a person on the state payroll are properly executed prior to the initial hiring, promotion, demotion or any other change in an employee's position in state employment. The statute provides examples of the proper documentation for such personnel transactions. *Id.*

Section 5943(f) provides:

For the purpose of subsections (d) and (e) of this section, the Director of Personnel or the Director's designee shall determine whether an employee is properly appointed. The Director or the Director's designee shall certify the appointment by approving the state personnel transaction supplied by the agency.

29 Del.C. 5943(f). Moreover, subsection (f) provides that the certification of the appointment relieves the appointing authority of any liability for an improper appointment except in cases of fraud.

Historically, an appointing authority would complete a Personnel Action Request ("PAR-34") form documenting new hires, promotions and changes of address or paygrade relating to state employees. These forms would be forwarded to the State Personnel Director for approval. The Office of State Personnel would then perform the simple ministerial task of confirming the documentation submitted, indicating approval

by the signature of the State Personnel Director.

On May 6, 1981, the then State Personnel Director delegated the final approval of these personnel transactions to individual state agencies submitting the forms. As a result, PAR-34 forms are no longer reviewed and forwarded to the State Personnel Office. Instead, the forms are computer generated electronically and forwarded directly to the Department of Finance/Payroll. You have advised that there are approximately 50,000 PAR-34 forms completed each year.

Section 5943(f) does not restrict the Director's ability to delegate. In other words, the Director may delegate her responsibility under 5943(f) to a proper state agency at her sole election. Moreover, this delegation to state agencies is reasonably related to the Director's duty to "encourage the development of more effective personnel administration with the departments and agencies in the state service." 29 Del. C. 5911(4). Effective personnel administration requires the avoidance of unnecessary ministerial acts to effectuate a personnel transaction within an agency.

The delegation of this authority was made to agency personnel, specifically Human Resource professionals, who receive training and support from State Personnel Office on all aspects of personnel administration. There is no evidence that any state agency has improperly certified a personnel transaction without appropriate documentation, nor that any such transaction failed to receive final approval. Therefore, we conclude that the delegation by the State Personnel Director to individual state agencies of her authority to determine whether an employee is properly appointed does not violate any statute.

Please feel free to contact us if you have any questions or comments.

Very truly yours,  
Marsha Kramarck  
Deputy Attorney

Elizabeth Daniello Maron  
Deputy Attorney General

Approved:  
Michael J. Rich,  
State Solicitor



STATE OF DELAWARE  
DEPARTMENT OF JUSTICE  
**ATTORNEY GENERAL OPINION**  
**NO. 98-IB04**

Mr. D. Wood  
330 Union Church Road  
Townsend, DE 19734

RE: Freedom of Information Act Complaint  
Against Appoquinimink School District

Dear Mr. Wood:

By letter dated April 14, 1998 (received by this Office on April 20, 1998), you alleged that the Appoquinimink School District ("the School District") had violated the Delaware Freedom of Information Act, 29 Del. C. Sections 10001-10005 ("FOIA"), by holding a retreat workshop in executive session on April 4, 1998 where public business was discussed.

By letter dated April 21, 1998, we asked the School District for its response to your complaint. By letter dated May 1, 1998, Superintendent Marchio confirmed that the Appoquinimink Board of Education held a retreat workshop on April 4, 1998 "to do creative thinking and planning for the school district." The minutes of the April 7, 1998 meeting of the School Board state that the following matters were discussed at the retreat: (1) the consequences of a failed referendum; (2) a year-round school schedule; (3) the need to develop a comprehensive vocational and career development program and tracking system; (4) reporting requirements for the human resource department; (5) raising standards for athletic participation; (6) recruitment; (7) electrical rates; (8) common terms for curriculum, instruction and policy; and (9) review of grants.

Mr. Marchio states in his letter that "no official action was taken by the board" at the April 7, 1998 meeting on the basis of his report of the matters discussed at the April 4 retreat. He further stated: "The district did err, however, in how the workshop was posted in the newspaper. It should have been posted as a workshop open to the public. Instead, it was posted as a closed executive session." According to Mr. Marchio, "this was not done intentionally, and I can assure you that future workshops will be advertised correctly. . . . The posting and advertising of meetings is a responsibility of the district office administration not the board of education, and the error that has occurred here clearly belongs to me. I can assure you that this error will not be repeated."

#### STATUTORY PROVISIONS

Section 10004 of FOIA requires that every meeting of a public body "shall be open to the public except those closed"

for a purpose authorized by statute for executive session. Although the notice FOIA authorizes a public body to go into executive session to discuss personnel matters (Section 10004(b)(9)), or to discuss pending or potential litigation (Section 10004(b)(4)), at the April 4, 1998 retreat the School Board did not in fact discuss legal and personnel issues but rather discussed other matters of public business.

#### OPINION

The School District has admitted that it violated FOIA by giving improper notice of its April 4, 1998 retreat. By stating in the notice that the retreat would be "a closed executive session," the School District deprived the public of an opportunity to attend and speak out on matters of important public interest. It is irrelevant whether any "official action" was taken at the retreat. The open meeting law "applies to meetings called to discuss public business as well as to meetings called to take action on public business." *The News Journal Co. v. McLaughlin*, Del. Ch., 377 A.2d 358, 362 (1977) (Brown, V.C.).

Whether the error in the posting of the notice was the fault of the district office administration or the board of education is also irrelevant. The important point is that a public body held a meeting to discuss matters of important public interest; the public not only was not invited, but was discouraged from attending by noticing the meeting as an executive session. If the board relies on the district office administration to post notice, and that notice is defective, then the meeting of the board was in violation of law and may be deemed invalid.

As for remediation of this violation of law, we do not believe that it would be appropriate, under the circumstances, to direct the School Board to meet again. As Mr. Marchio points out, the board members "gave up a Saturday of their own time to better fulfill their responsibilities as board members." Moreover, since the School District does not appear to have taken any action on the matters discussed at the retreat, presumably the public will have a further opportunity for input before the School District takes any action. If, however, the School District were to take action on any of the matters discussed at the retreat, the School District would have to give notice to the public and an opportunity to comment at a public meeting before taking action.

#### CONCLUSION

For the foregoing reasons, we determine that the School District violated FOIA by: (1) stating in the posted notice that the retreat workshop would be held in executive session, thereby conveying the message to the public that they could not attend; and (2) meeting in executive session for a purpose

not authorized by law. We do not feel that any remediation is necessary, however, for two reasons. First, at the next meeting of the School District on April 7, 1998, Mr. Marchio reported on the matters discussed at the retreat workshop. Since that meeting was publicly noticed, the public had an opportunity to comment. Second, the School Board did not take any action based on what happened at the retreat workshop.

While we agree with the School District that workshops can be "useful and productive," they should be noticed and open to the public unless the topic to be discussed falls within a statutorily authorized ground for executive session. The School District has represented "that future workshops will be advertised correctly." The School District is on notice that the requirements of the open meeting law must be strictly followed in the future.

Very truly yours,  
W. Michael Tupman  
Deputy Attorney General

APPROVED:  
Michael J. Rich  
State Solicitor

**DEPARTMENT OF FINANCE****DIVISION OF REVENUE**

Technical Information No. 98-3  
July 14, 1998

Subject: Offset of State Tax Refunds for Federal Liabilities.

Senate Bill No. 347 of the 139<sup>th</sup> General Assembly, amended by Senate Amendment No. 1, 71 Del. Laws, ch. 386, permits the setoff of state refunds for federal tax obligations provided the Director:

“finds, based on specific action of the United States Senate or House of Representatives or a Committee thereof, reasons to believe the United States may extend a like comity for the collection of a tax debt owed to this State no later than January 1, 2001.”

In fact, the IRS Restructuring Legislation, H.R. 2676, has passed both the House and the Senate and provides for reciprocal offsets by January 1, 2000.

This constitutes the finding required in 30 Del. C. § 558(b)(10).

William M. Remington  
Director of Revenue

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**DEPARTMENT OF  
TRANSPORTATION****SUBDIVISION PLAN REVIEW FEE PROCEDURES  
EFFECTIVE OCTOBER 1, 1998**

17 Delaware Code, Section 131(i) as amended provides for the Department of Transportation to collect fees for the costs of administering the subdivision approval process.

These fees will be assessed for both residential and non-residential development proposals at two different stages: (1) the Initial Stage and (2) the Construction Stage.

**Definitions**

1. Gross floor area: The sum of the total horizontal areas of every floor of every building on a lot. The measurement of gross floor area shall be computed by applying the following criteria:

a. The horizontal square footage is measured from the face of all exterior walls.

b. Enclosed storage, mechanical areas, mezzanines and similar structures shall be included as gross floor area wherever at least seven feet are provided between the finished floor and the ceiling.

c. No deduction shall apply for horizontal areas void of actual floor space, for example, elevator shafts and stairwells.

2. Lot: A parcel of land whose boundaries are established by legal instrument such as recorded deed, court order or a recorded plot which is recognized as a separate legal entity for the purposes of transfer of title.

3. Major residential subdivision: A subdivision of five or more residential lots.

4. Minor residential subdivision: A subdivision of four or less residential lots.

5. Record plan: A complete plan which defines property lines, proposed street and other improvements, and easements; or a plan of private streets to be dedicated to public use.

6. Subdivision:

a. The division or redivision of a lot, or a parcel of land, by any means, including a plan or a description of metes and bounds, into two or more lots, tracts, parcels, or other divisions of land for the purpose of, whether immediate or future, of lease, of the transfer of ownership or of building development.

b. The division or allocation of land for the opening, widening, or extension of any street or streets, or other public facilities.

**Policy/Guideline**

(1) All fees are non-refundable. Fees to be assessed are as follows:

(a) **Initial Stage.** Fees are collected at the time of submission of the Record Plan for the Department's review. The fees associated with this stage reimburse the Department for all plan review activities prior to plan recordation by the county. An "Initial Stage Fee Calculation Form" must be submitted with the fee.

(1) Minor residential subdivision: \$100

(2) Major residential subdivision: \$400 plus \$10 per

lot.

(3) Non-residential development: \$500 plus \$20 per lot or \$500 plus \$20 per 1,000 square feet of gross floor area, whichever is greater.

(b) Construction Stage. Fees are collected at the time of submission of the Construction Plans for the Department's review. The fees associated with this review reimburse the Department for the technical review of subdivision street plans

and highway access plans. A "Construction Stage Fee Calculation Form" must be submitted with the fee.

(1) Minor residential subdivision: N/A

(2) Major residential subdivision: 125% of the Initial Stage fee for a major residential subdivision as identified in item 1(a).

(3) Non-residential development: 150% of the Initial Stage fee for non-residential development as identified in item 1(a).

(2) The person responsible for implementing this procedure within the Subdivision Office will be the Subdivision/Utilities Engineer. Collection and recording of fees will take place in the Division of Preconstruction's financial management unit. All fees shall be submitted to the Subdivision/Utilities Engineer or designee with the appropriate fee calculation form and plan submission. The Subdivision/Utilities Engineer or a Subdivision Manager shall review for accuracy the fee calculation form with respect to the plan and fee submitted. Once reviewed and approved for accuracy, the reviewer will give the check/money order to the Division of Preconstruction's financial management unit. The financial management unit will record the payment, assign an internal control number and initiate the process to deposit the fee through the Office of Finance.

(3) The Department's Cash Receipt Policy must be followed in order to be in compliance with 29 Delaware Code, Section 6103 (all receipts in excess of \$100 per day must be deposited daily). The date that applications/fees are received in the Division of Preconstruction's financial management unit in the Department's administration building in Dover will be recorded for this purpose.

(4) Separate spreadsheets have been developed which will record fees received by the Division of Preconstruction's financial management unit for Initial Stage fees and Construction Stage fees. These spreadsheets are to be utilized to record the payment, verify fees received and perform monthly reconciliation of revenues.

(5) The following program code has been established for the revenues generated in accordance with this policy.

1898203-2N-8405-87-05000000 Plan Review Fees

(6) The following revenue codes have been established for recording the revenue on both the DFMS and BACIS accounting systems.

Initial Stage fee - 3717 01

Construction Stage fee - 3717 02

(7) Monthly Remittance to Trust Fund Administrator

Each month the Department's Finance Office shall process a payment voucher if the Subdivision Review Fee account balance exceeds \$1,000. This check will be forwarded with a cover letter to the Trust Fund Administrator for deposit.

(8) The Division of Preconstruction's financial management unit must maintain a ledger of all receipts. Monthly revenue reports shall be generated by the Department's Finance office and forwarded to the Division of Preconstruction's financial management unit in order to reconcile monthly receipts. A report of reconciliation, including any discrepancies with explanation thereof, will be forwarded to the Department's Finance Office, Trust Fund Administrator, and the Subdivision Section on or before the 15<sup>th</sup> day of the next following month. The Finance Office will retain a copy of the reconciliation for one full year after successful audit.

(9) The Department will not accept a Record Plan or Construction Plan submission without a respective fee calculation form and payment. Should any payment received be deemed insufficient, one of the following two options are available at the discretion of the Department:

(a) Funds will be accepted and deposited in accordance with the Department's Cash Receipts Policy. The Department shall notify the applicant that no action on paperwork submitted will take place until the balance of required fees is received.

(b) All documents subject to review by the Subdivision Office will be returned to the applicant. Documents can be resubmitted with correct fees at a later date.

(10) Only certified checks or money orders will be accepted and shall be made out to the Delaware Department of Transportation.

(11) Any requests for changes in this policy/guideline must be forwarded in writing for approval of the following:

(a) Subdivision/Utilities Engineer

(b) Assistant Director for Design Support

(c) Office of Administration, Finance Administrator.

(d) Trust Fund Administrator

(e) Deputy Attorney General (representing DelDOT)

Upon approval of modifications, written approval will be forwarded.

**DELAWARE DEPARTMENT OF TRANSPORTATION  
Subdivision Plan Review Fee**

**CONSTRUCTION STAGE FEE CALCULATION FORM**

**I. Application Information**

Development Name \_\_\_\_\_  
Location \_\_\_\_\_  
Parcel Number \_\_\_\_\_  
Owner (applicant) Name \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone \_\_\_\_\_

**II. Construction Plan Submission**

A. \_\_\_\_\_ Residential Land Development  
Number of Recorded Lots \_\_\_\_\_  
Number of lots being constructed this phase \_\_\_\_\_  
B. \_\_\_\_\_ Non-Residential land development

**III. Construction Stage Fee Calculations**

Initial Stage Fees Previously Submitted (attach a copy of the Initial Stage Fee Form):

A. Major Subdivision \$ \_\_\_\_\_ Non-Residential Land Development \$ \_\_\_\_\_

Major Subdivision ..... 125% of Design Fee  
\_\_\_\_\_ x 1.25 x \_\_\_\_\_ = \$ \_\_\_\_\_  
**Design Fee                      Phased Const. Ratio                      Total**

*(For Phased Construction Plans, adjust total by ratio of Number of Lots  
for Phase/Total Number of Recorded Lots)*

B. Non-Residential Land Development ..... 150% of Design Fee  
\_\_\_\_\_ x 1.50 = \$ \_\_\_\_\_  
**Design Fee                      Total**

**IV. Total Amount Remitted: \$ \_\_\_\_\_ Check/M.O. Number: \_\_\_\_\_**

(Please make **certified check or money order** payable to the Department of Transportation)

**V. Signatures**

Applicant: \_\_\_\_\_ Date: \_\_\_\_\_  
Applicant

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_  
DelDOT

(This signature acknowledges receipt of fee and does not constitute approval of project by the Department)

REMARKS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Remit this form along with copy of Initial Stage Fee Form and certified check or money order to the Delaware Department of Transportation, P.O. Box 778, Dover, DE 19903.



**DEPARTMENT OF  
ADMINISTRATIVE SERVICES  
DIVISION OF PROFESSIONAL REGULATION  
DELAWARE BOARD OF CLINICAL  
SOCIAL WORK EXAMINERS**

**The Delaware Board of Clinical Social Work Examiners** shall, pursuant to Title 24, Sections 3901 and 3906(a)(1) of the Delaware Code, and Title 29, Section 10115 of the Delaware Code, conduct a public hearing on the proposed rules and regulations of the Delaware Board of Clinical Social Work Examiners for clinical social workers licensed in the State of Delaware.

The hearing shall be held on Monday, September 21, 1998 at 9:30 a.m. in the Second Floor Conference Room B of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

The proposed rules and regulations include provisions: (1) requiring an applicant holding a degree from a program outside the United States to supply the Board with an educational credential evaluation; (2) changing the date by which licensees must submit documentation of continuing education hours and providing for good cause extensions of time in which continuing education credits can be submitted; and (3) establishing procedures and requirements for licensees seeking inactive status.

Copies of the proposed rules and regulations of the Delaware Board of Clinical Social Work Examiners may be obtained by contacting Ms. Gayle L. Franzolino at (302) 739-4522 Extension 220, or by writing the Board of Clinical Social Work Examiners at 861 Silver Lake Blvd., Suite 203, Cannon Building, Dover, DE 19904-2467.

Persons wishing to comment in writing on the proposed rules and regulations must submit such comments to Ms. Gayle L. Franzolino at the above address on or before the scheduled hearing.

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**DEPARTMENT OF EDUCATION**

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

**State Board of Education will hold its monthly meeting on August 20, 1998 at 11:00 a.m.**

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**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES  
DIVISION OF SOCIAL SERVICES**

**Food Stamp Program**

The Delaware Health and Social Services, Division of Social Services, is proposing to implement a policy change to the Division of Social Services' Manual Section 9068, regarding certification periods during which a household is eligible to receive food stamp benefits.

**SUMMARY OF PROPOSED REVISIONS:**

Establishes circumstances under which different households will be assigned certification periods of varying lengths.

**COMMENT PERIOD**

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by August 30, 1998.

**Simplified Food Stamp Program**

The Delaware Health and Social Services, Division of Social Services, is proposing to implement on a permanent basis a policy change to the Division of Social Services' Manual Section 9000 that was implemented previously by emergency order. The change arises from Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (national welfare reform), as an option and was first announced in January, 1995, as part of the original *A Better Chance (ABC)* waiver design. These changes were previously published for public comment in the June 1, 1998 Delaware Register of Regulations. However, due to subsequent staff analysis and substantial modification of the proposal, it is being re-proposed for public comment.

**SUMMARY OF PROPOSED REVISIONS:**

Replaces food stamp work exemptions with ABC exemptions, lowering to under 13 weeks the age at which a child exempts a parent/caretaker for ABC clients in Workfare.

Allows the agency to use the food stamp allotment along with the ABC benefit in determining the number of hours a household is required to participate in Workfare, which is a work experience program in which participants work to earn their benefits.

**COMMENT PERIOD**

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 the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by August 30, 1998.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER RESOURCES  
WATER SUPPLY SECTION**

**TITLE OF THE REGULATIONS:**

**Regulations for Licensing Water Well Contractors, Pump  
Installer Contractors, Well Drillers, Well Drivers and Pump  
Installers.**

**BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE  
AND ISSUES:**

The proposed changes and additions add a continuing education requirement as a prerequisite for renewing licenses to practice well drilling, well driving and pump installation. Revisions are proposed to section 6 and a new section 7 has been added. Sections 7 through 15 of the current regulations will be renumbered and section references located throughout the current regulations will be corrected as needed.

**NOTICE OF PUBLIC COMMENT:**

The public hearing will be held on August 27, 1998 at 7:00 p.m. in the auditorium of the DNREC office building located at 89 Kings Highway in Dover. Written comments must be received by 4:30 p.m. on August 31, 1998. Comments may be mailed to the attention of Carol W. Apgar, Water Supply Section, 89 Kings Highway, Dover, DE 19901 or E-Mailed to [capgar@dnrec.state.de.us](mailto:capgar@dnrec.state.de.us).

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**DIVISION OF WATER RESOURCES  
WATERSHED ASSESSMENT SECTION**

**Total Maximum Daily Loads (TMDLs) for Indian River,  
Indian River Bay, and Rehoboth Bay, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily

Load (TMDL) Regulations for nitrogen and for phosphorous for the Indian River, Indian River Bay, and Rehoboth Bay. 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).

**Possible Terms of the Agency Action**

Following adoption of the proposed Total Maximum Daily Load for the Indian River, Indian River Bay, and Rehoboth Bay, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with the Department's ongoing Whole Basin Management Program and the affected public.

**Notice of Public Comment**

A public workshop will be held on Wednesday, September 2, 1998, 1:00 to 4:00 p.m., at the Virden Center, University of Delaware College of Marine Studies, Lewes, Delaware.

A public hearing will be held on Wednesday, September 2, 1998, at 6:00 p.m. at the Virden Center, University of Delaware College of Marine Studies, Lewes, Delaware. The hearing record will remain open until 4:30 p.m., September 11, 1998. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739-6242. All written comments must be received by 4:30 p.m., September 11, 1998. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Betty Turner, (302-739-4590; facsimile: (302) 739-6140; email: [bturner@state.de.us](mailto:bturner@state.de.us)) by 4:30 p.m., September 1, 1998.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 29 South State Street, Dover, DE 19901, (302) 739-4590, facsimile: (302) 739-6140.

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**Total Maximum Daily Loads (TMDLs) for Nanticoke  
River and Broad Creek, Delaware**

**Brief Synopsis of the Subject, Substance, and Issues**

The Department of Natural Resources and Environmental Control (DNREC) is proposing to adopt Total Maximum Daily Load (TMDL) Regulations for nitrogen and for phosphorous



for the Nanticoke River and Broad Creek. 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).

#### **Possible Terms of the Agency Action**

Following adoption of the proposed Total Maximum Daily Loads for the Nanticoke River and Broad Creek, DNREC will develop a Pollution Control Strategy (PCS) to achieve the necessary load reductions. The PCS will identify specific pollution reduction activities and timeframes and will be developed in concert with the Department's ongoing Whole Basin Management Program and the affected public,

#### **Notice of Public Comment**

A public workshop will be held on Wednesday, September 9, 1998, 1:00 to 4:00 p.m., at the Kiwanis Room, the Boys & Girls Club of Delaware Western Sussex County, 310 Virginia Ave., Seaford, Delaware.

A public hearing will be held on Wednesday, September 9, 1998, at 6:00 p.m., at the Kiwanis Room, the Boys & Girls Club of Delaware Western Sussex County, 310 Virginia Ave., Seaford, Delaware. The hearing record will remain open until 4:30 p.m., September 18, 1998. Please bring written comments to the hearing or send them to Rod Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE, 19901; facsimile: (302) 739- 6242. All written comments must be received by 4:30 p.m., September 18, 1998. For planning purposes, those individuals wishing to make oral comments at the public hearing are requested to notify Betty Turner, (302-739-4590; facsimile: (302) 739-6140; email: bturner@state.de.us) by 4:30 p.m., September 8, 1998.

Additional information and supporting technical documents may be obtained from the Watershed Assessment Section, Division of Water Resources, Department of Natural Resources and Environmental Control, 29 South State Street, Dover, DE 19901, (302) 739-4590, facsimile: (302) 739-6140.

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### **DEPARTMENT OF INSURANCE**

**INSURANCE COMMISSIONER DONNA LEE H. WILLIAMS** hereby gives notice that a **PUBLIC HEARING** will be held on Friday, August 21, 1998 at 10:00 a.m. in the 2nd Floor Conference Room of the Delaware Insurance Department at 841 Silver Lake Boulevard, Dover, DE 19904.

The purpose of the Hearing is to solicit comments from the industry, the agent community, and the general public on

the agent community's request to strike the cap on agent commissions from Insurance Department Regulation 63, Section 24 relating to long term care insurance policies, which reads as follows:

“Section 24. Permitted compensation arrangements

- A. An insurer or other entity may provide commission or other compensation to an agent or other representative for the sale of a longterm care insurance policy or certificate which shall not exceed twentyfive percent (25%) of the total premium paid for that policy year.
- B. No entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than twenty-five percent (25%) of the total premium paid for that policy year for the sale of a replacement long-term care insurance policy or certificate.
- C. For purposes of this section, “compensation” includes pecuniary or non-pecuniary remuneration or any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.”

and to consider numerous consumer protection provisions contained in the National Association of Insurance Commissioners' Long Term Care Model Regulation.

The hearing will be conducted in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Chapter 101. Comments are being solicited from any interested party. Comments may be in writing or may be presented orally at the hearing. Written comments must be received by the Department of Insurance no later than Friday, August 14, 1998 and should be addressed to Fred A. Townsend, 111, Deputy Insurance Commissioner, 841 Silver Lake Boulevard, Dover, DE 19904. Those wishing to testify or those intending to provide oral testimony must notify Fred A. Townsend, III at 302.739.4251, ext. 157 or 800.282.8611 no later than Friday, August 14, 1998.

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### **DELAWARE RIVER BASIN COMMISSION P.O. BOX 7360 WEST TRENTON, NEW JERSEY**

The Delaware River Basin Commission will meet on Wednesday, August 12, 1998, in Deposit, New York. For more information contact Susan M. Weisman at (609)883-9500 ext. 203