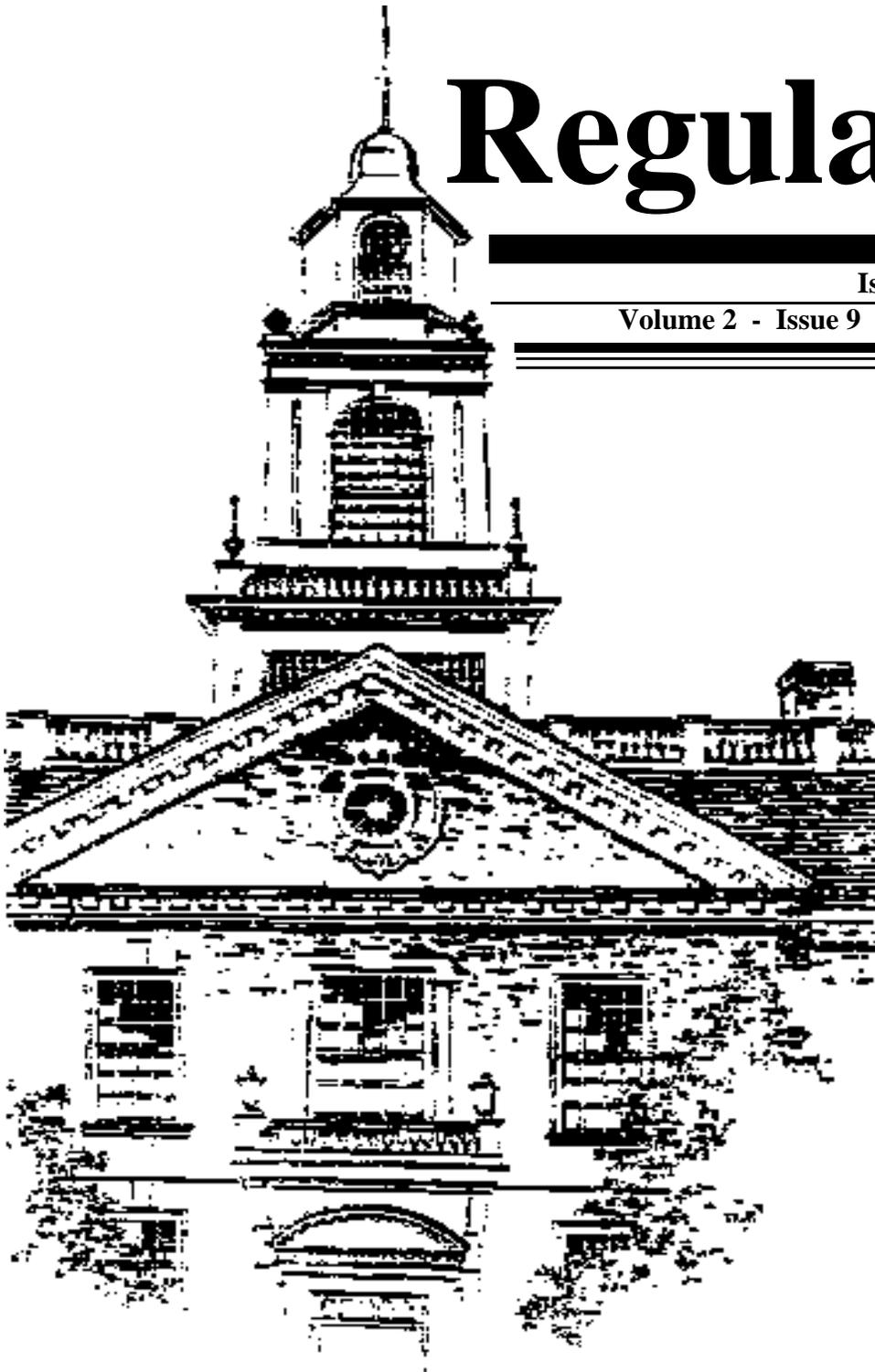


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# Delaware Register of Regulations



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Issue Date: March 1, 1999

Volume 2 - Issue 9

Pages 1420 - 1681

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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 February 15, 1999.

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The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.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

2:6 **Del. R.** 1000 - 1010 (December 1, 1998) refers to Volume 2, Issue 6, pages 1000 - 1010 of the Delaware Register issued on December 1, 1998.

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## SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

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# INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its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

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

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

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

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

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

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

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ISSUE DATE	CLOSING DATE	CLOSING TIME
APRIL 1	MARCH 15	4:30 P.M.
MAY 1	APRIL 15	4:30 P.M.
JUNE 1	MAY 15	4:30 P.M.
JULY 1	JUNE 15	4:30 P.M.
AUGUST 1	JULY 15	4:30 P.M.

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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,  
Chapter 60 (7 Del.C. Ch. 60)

The final regulations Governing the Control of Air Pollution, Numbers 24 and 38, relating to Dry Cleaning Facilities using Perchloroethylene were published in Volume 2, Issue 8 of the Register beginning at page 1387. Two corrections should be noted.

1. The effective date listed at the end of the table of contents should read 06/30/99. The corrected text, bolded and bracked, follows:

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2. On page 1393 section (q)(2) the sub-paragraph identifier (iii) should be added in front of the word "All". The corrected text, bold and bracked, follows:

(~~q~~) ~~The opening to p~~ Paragraph 63.324(c) shall be replaced with the following language: "(c)(1) Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption amounts specified in paragraphs 63.320 (d), (e) or (g) shall notify the Department not later

than 30 days after the exceedance occurred. The notification shall provide the following information and shall be signed by a responsible official who shall certify its accuracy:

(i) The name and address of the dry cleaning facility;

(ii) A copy of the yearly perchloroethylene consumption records that indicate that there was an exceedance of the applicable amount specified in paragraphs 63.320 (d), (e) or (g);

(iii) The circumstances that led to the exceedance;  
and

(iv) A statement that all information contained in the notification is true and accurate.

(2) Each owner or operator of an area source dry cleaning facility that becomes subject to additional requirements under Sec. 63.320 (f)(1) or (i)(1) shall submit to the Department on or before the dates specified in Sec. 63.320 (f)(~~2~~ 1) or (i)(~~2~~ 1), a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

(i) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to Sec. 63.323(d);

(ii) Whether or not they are in compliance with each applicable requirement of Sec. 63.322; and

**[(iii)]All information contained in the statement is accurate and true."**

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**Symbol Key**

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

**Proposed Regulations**

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

**DELAWARE HEALTH CARE  
COMMISSION**

**DELAWARE HEALTH INFORMATION NETWORK**

Statutory Authority: 16 Delaware Code,  
Section 9921 ( 16 Del.C. 9921)

Delaware Health Care Commission  
Delaware Health Information Network

Public Notice

Please Take Notice, pursuant to 29 Del.C. Chapter 101 and 16 Del.C. § 9925, that the Delaware Health Information Network has proposed regulations for the governance and administration of the Board of the Delaware Health Information Network. The regulations will describe the Board's organization and general rules of procedure. A public hearing will be held on the proposed regulations on Monday, March 22, at 3:00 p.m. in Downes Lecture Hall of the Delaware Technical and Community College, Terry Campus Conference Center, Dover, Delaware. The Delaware Health Care Commission will receive and consider input in writing from any person the proposed regulations. Written comments should be submitted in care of Judith Chaconas, Delaware Health Care Commission, Delaware Health Information Network, 150 William Penn Street, Ground Floor, Dover, DE 19901. Final date to submit written comments shall be March 31, 1999 by 4:30 p.m. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judith

Chaconas at the above address or by calling (302) 739-6906. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DELAWARE HEALTH INFORMATION NETWORK  
PROPOSED REGULATIONS**

Chapter 1 – Board of Governance and Administration

§ 101. Appointment; Terms of Office

(a) Individuals appointed to the Board of the Delaware Health Information Network (hereafter “Board”) shall be appointed in writing by the entity holding the power of appointment pursuant to 16 Del.C. § 9921. The appointing entity may remove any of its appointees by appointing another with at least thirty days notice to the Chairperson of the Board.

(b) Individuals shall be appointed to the Board for a term of three years, except as provided herein. The term for each Board position shall be staggered by thirds, more or less, so that the first term for a Board position may be one, two or three years and shall be determined by lot. The Secretary shall maintain a record of the terms for each Board position. Terms shall commence on January 1 and expire on December 31 of the appropriate year and upon appointment of their successors.

(c) A member of the Board may be removed for cause by the majority of the members appointed to the Board and confirmed by the Delaware Health Care Commission.

**§ 102. Officers of the Board; Duties**

(a) One member of the Board shall be elected to serve as Chairperson by a majority of the members appointed to the Board. The Chairperson shall:

- (1) preside over meetings of the Board;
- (2) maintain good order;
- (3) determine the agenda for meetings
- (4) appoint the membership of committees and work groups, except the Executive Committee;
- (5) execute documents in the name of the Board;

and

(6) perform such other matters as determined by the Board.

(b) One member of the Board shall be elected to serve as Vice-Chairperson by a majority of the members appointed to the Board. The Vice-Chairperson shall perform the duties of the Chairman when he or she is not able to do so.

(c) One member of the Board shall be elected to serve as Secretary by a majority of the members appointed to the Board. The Secretary shall maintain the records of the Board and its members, and attest to the official matters of the Board. Additionally, the Secretary shall perform the duties of the Chairman when the Chairperson and Vice-Chairperson are not able to do so.

**§ 103. Committees, Work Groups**

(a) The Board shall have an Executive Committee and such other committees or work groups as may be desirable from time to time. A member of the Board shall serve as the Chairperson of such committees. The Executive Committee shall be comprised of 7 members, to include the Chairperson, who shall preside, the Vice-Chairperson, the Secretary and 4 other members elected by a majority of the Board. The Executive Committee is authorized to act on behalf of the full Board where the full Board can not be reasonably convened to act in a timely manner on a matter, as assigned by the Board.

(b) No Committee, except the Executive Committee, or work group needs a quorum to conduct business. Nevertheless, such meetings shall be conducted publicly, unless the meeting is determined to be closed to the public.

(c) Meetings and activities of committees and work groups shall be determined by the committee and group leadership, and in accordance with the direction of the Board.

**§ 104. Board Meetings; Notice**

(a) The Chairperson, with the advice of the Board, shall determine the frequency and schedule of Board meetings and with the assistance of the staff provide the

required notices pursuant to 29 Del.C. ch. 100.

(b) A majority of the members of the Board shall constitute a quorum and shall be sufficient for any action by the Board provided, however, that if the number afterwards should be reduced below a quorum, business is not interrupted unless a member calls attention to the fact.

(c) The Board may convene special meetings or reschedule meetings as provided by law.

(d) All meetings of the Board shall be conducted in public unless it is closed to the public in accordance with law.

**§ 105. Public Access to Records**

(a) The Board shall permit access to its public records in accordance with the law and as that term is defined in 29 Del.C. ch. 100. A Delaware citizen that wishes to inspect the Board's public records shall call or write to staff to determine a convenient time and place. The Board may impose a reasonable charge for requested copying of any public records. The Chairperson may request legal advice from the Attorney General and authorize access to public records.

(b) No access shall be provided to the health information network or data without an order of the Health Care Commission or otherwise in accordance with these rules.

**§ 106. Conflict of Interest; Recusal**

(a) The members shall conduct themselves in accordance with the Delaware Code of Ethics, 29 Del.C. ch. 58.

(b) If any member has a conflict of interest as defined in the Code of Ethics, they shall recuse themselves from voting in the matter. The conflicted members may participate in discussions on the conflicted matter as long as they have disclosed the nature of the conflict to the other members. If they choose not to disclose the nature of the conflict to the other members, such conflicted members must publicly state at the Board meeting or in writing to the Chairperson they will not be participating in the conflicted matter. The Secretary shall maintain a record of such recusals.

(c) Members may seek legal advice on purported conflicts from the Attorney General or a determination from Ethics Counsel.

**§ 107. Statutory Authority**

The Delaware Health Care Commission is authorized pursuant to 16 Del.C. § 9925 (a) to promulgate these rules in accordance with 29 Del.C. ch. 101.

**DEPARTMENT OF EDUCATION**

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

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

**STUDENTS - NECESSARY AND LEGAL ABSENCES****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

The Secretary seeks the consent of the State Board of Education to amend the regulation entitled Necessary and Legal Absences found in Appendix A of the Handbook for K-12 Education, page 2. The amendment is needed to focus the language of the regulation on the four main areas where absences are permitted by the Secretary and the State Board of Education and to eliminate from regulation those areas covered in the Del. C. Local boards of education have the responsibility under 14 Del. C. to enforce the laws concerning school attendance and District Superintendents as the chief school officers may excuse or cause to be excused any child for necessary and legal absences. This regulation along with the Del. C. provides school districts with the parameters they need to establish their local attendance policies.

**C. IMPACT CRITERIA**

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

The amended regulation addresses absence from school, not academic achievement.

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

The amended regulation addresses absence from school, not equity issues.

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

The amended regulation addresses absences from school, not health and safety issues.

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

The amended regulation addresses absence from school and will be the foundation for defining excused absences which does relate to a student's legal rights.

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

The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level since the specifics of policies on school attendance continue to be left to the local school districts.

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

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

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

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

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

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

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

The regulation needs to be amended to remove the parts that are covered in the Del. C.

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

There is no cost to the state and the local school boards for compliance with the regulation.

**AS APPEARS IN APPENDIX A OF THE HANDBOOK  
FOR K-12 EDUCATION****NECESSARY AND LEGAL ABSENCES FROM THE  
RULES AND REGULATIONS OF THE STATE BOARD  
OF EDUCATION**

The superintendent of schools of each local school district as the chief school officer is responsible for enforcing the attendance laws of the State and is the person who may excuse or cause to be excused any child for "Necessary and Legal Absences" in accordance with Title 14, *Delaware Code*, not subject to the "Rules and Regulations" of the State Board of Education. The following excuses are recognized as valid for Necessary and Legal Absences:

1. Illness of child, attested, if necessary by a physician's certificate.
2. Contagious disease in the home of the child, subject to regulations of the Division of Public Health.
3. Pregnancy of the student (14 *Del. C.*, §122(b)(11).
4. Children are elsewhere receiving regular and thorough instruction during at least 180 days in the subjects prescribed for the public schools of the State in accordance with 14 *Del. C.*, §2702.
5. Death in the child's own home, or in the home of the grandparents, time not to exceed one week. Funerals of other relatives or close friends, not to exceed one day, if in the locality; or three days, if at some distance or outside of the state.
6. Provisions of §2705, Title 14 of the *Delaware Code* describe exclusions which may apply to some handicapped children. Specific guidelines can be found in the *Administrative Manual: Programs for Exceptional Children*, March, 1987.
7. An amendment to §2706, Title 14 of the *Delaware Code* describes truancy cases.
8. Legal business.
9. Suspension or expulsion from school for misconduct. Suspension is the exclusion of a pupil from school for a short and definite period of time. Suspension is a temporary measure for handling a behavior problem and may be delegated to the chief school officer or a building principal. Expulsion is the exclusion of a pupil from school on a permanent basis or for an indefinite period of time. Expulsion can be authorized only by the local district board. The designation of suspension and expulsion as a "Necessary and Legal Absence" applies specifically to 14 *Del. C.*, §2702 and §2706, and such authorized absence may not be construed to represent approval for the make-up of classwork missed due to suspension or expulsion.
10. The Superintendent of Schools shall have the authority for determining and approving other necessary and legal absences as deemed valid within the enforcement

provisions of the compulsory attendance law.

a. Applications to remain out of school for an extended period of time shall be made to the local chief school officer.

**AS AMENDED****600.5. Students - Necessary and Legal Absence**

1.0 In addition to any absence otherwise excused by law, upon the request of a parent, guardian or other person legally having control of a student, the following shall be deemed to be valid reasons for a student's absence from school:

1.1 Contagious disease in the home of the student, subject to regulations of the Division of Public Health; or

1.2 In the case of the death of an immediate family member of the student, an absence not to exceed one week. Members of the student's immediate family shall be defined as: Father, mother, brother, sister, son, daughter, spouse, parent-in-law and grandparent; or

1.3 In the discretion of each district board or its designee, funerals of other relatives or close friends, not to exceed three days; or

1.4 Appearances both in and out of court to attend to legal matters where the student is a plaintiff, defendant, witness or other party; or

1.5 Such other absences as deemed reasonably necessary by the district board or its designee and not otherwise inconsistent with the provisions of any attendance law.

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**EDUCATIONAL IMPACT ANALYSIS PURSUANT  
TO 14 DEL. C., SECTION 122(d)****USE OF QUICK RELIEF ASTHMATIC INHALERS BY  
STUDENTS IN SCHOOLS****A. TYPE OF REGULATORY ACTION REQUESTED**

Amendment to Existing Regulation

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

The Secretary seeks the consent of the State Board of Education to amend regulation 800.19 Possession, Use or Distribution of Drugs and Alcohol, found in the 800 section of the document Regulations of the Department of Education. The amendment adds a new section, 3.12, which permits students to have quick relief asthmatic inhalers in their possession and to use them during school hours. The purpose of this amendment is to exempt asthmatic inhalers from the phrase in the regulation that forbids students to be in possession of a drug or drug like substance. The

amendment requires that a prescription for the drug and parent's permission for the student to self medicate be on record in the school nurse's office. It also permits the school nurse to refuse to let the child carry his or her own quick relief asthmatic inhaler if necessary.

### C. IMPACT CRITERIA

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

The amendment to the regulation addresses health and safety issues, not academic achievement issues.

2. Will the amendment to the regulation help ensure that all students receive an equitable education?

The amendment to the regulation addresses health and safety issues, not equity issues.

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

The amendment to the regulation enables students to carry and use quick relief asthmatic inhalers in the schools in order to have them readily available in case of an asthma attack during school hours.

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

The amendment to the regulation protects the rights of all involved including the school administration.

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

The amendment to the regulation gives the school nurse final veto power if carrying the quick relief asthmatic inhaler would not be in the best interest of the child and the other students.

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

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

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

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

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

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

No, the amendment had to be added to the regulation if the change in procedure was going to occur in the schools.

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

There is no cost to the state and to the local school boards for compliance with this regulation.

### PROPOSED CHANGE

800.19. Possession, Use or Distribution of Drugs and Alcohol July 1998

1.0 The following policy on the possession, use, or distribution of drugs and alcohol shall apply to all public school districts.

1.1 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.

1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

1.3 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.

1.4 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.

2.0 The following definitions shall apply to this policy and will be used in all district policies.

2.1 "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.

2.2 "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.

2.3 "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.

2.4 "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.

2.5 "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.

2.6 "Nonprescription medication" shall mean any over-the-counter medication; some of these medications may be a "drug-like substance."

2.7 "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.

2.8 "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.

2.9 "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.

2.10 "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.

2.11 "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.

2.12 "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)

3.0 Each school district shall have a policy on file and update it periodically. The policy shall include, as a minimum the following:

3.1 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.

3.2 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.

3.3 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.

3.4 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.

3.5 A written policy on search and seizure.

3.6 A program of intervention and assistance, which includes:

3.6.1 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

3.6.2 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

3.6.3 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

3.6.4 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

3.6.5 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.

3.7 A discipline policy which contains, at a minimum, the following penalties for infractions of state and district drug policies.

3.7.1 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.

3.7.2 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.

3.7.3 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.

3.8 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.

3.9 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.

3.10 A policy which sets penalties for the unauthorized possession of communication devices.

3.11 A policy which sets out the conditions for return after expulsion for alcohol or drug infractions.

3.12 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts

relating to the possession or use of drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler ("Inhaler") with individual prescription label; provided, nevertheless, that the student uses the inhaler pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district; and further provided that the parent(s) or legal custodian(s) of such student provide the school district with written authorization for the student to possess and use the inhaler at such student's discretion, together with a form of release satisfactory to the school district releasing the school district and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler; and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler based upon the student's age, level of maturity, behavior, or other relevant considerations.

4.0 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 Education for review and approval.

**\* THE ABOVE REGULATORY CHANGES WILL BE PRESENTED AT THE MONTHLY MEETING OF THE STATE BOARD OF EDUCATION, MARCH 18, 1999.**

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## **DEPARTMENT OF HEALTH AND SOCIAL SERVICES**

Statutory Authority: 16 Delaware Code,  
Section 1143(e) (16 Del.C. 1143(e))

### **MANDATORY PRE-EMPLOYMENT CRIMINAL HISTORY RECORD CHECKS AND DRUG TESTING REGULATIONS**

As Authorized by Title 16 Del. Code Sections 1141-1142

#### PUBLIC NOTICE

Delaware Health & Social Services (DHSS), in compliance with Senate Bill 13 passed in the 140<sup>th</sup> General Assembly, has prepared draft regulations governing mandatory pre-employment criminal history record checks and drug testing for persons seeking to work in nursing homes or other facilities licensed under Title 16 Del. Code, Chapter 11. These requirements also apply to persons referred for placement in such facilities by temporary agencies.

The regulations lay out the responsibilities of employers, applicants, and DHSS. They contain a listing of the types of crimes, conviction for which disqualifies an individual from working in nursing homes or other facilities licensed under Title 16 Del. Code, Chapter 11.

#### INVITATION FOR PUBLIC COMMENT

*Public hearings* will be held as follows:

Tuesday, March 23, 1999, 10 am – noon  
The Chapel, Herman Holloway Campus  
Delaware Health & Social Services  
1901 N. DuPont Highway  
New Castle, DE

Thursday, March 25, 1999, 1 pm – 3 pm  
University of Delaware Kent County Center\*  
69 Transportation Circle  
Dover

[\*Traveling on Rt. 13 south, when you come to the split, follow “Rt. 113 for beaches” to the left. DelDot's Admin. Bldg. is a short way up on the right. The UD Kent County Center is in the same complex as DelDot's Administration Bldg.]

For clarifications or additional directions to either location, please call Barbara Baker at 577-4950

*Written comments* are also invited on these proposed new regulations and should be sent to the following address:

Linda Barnett  
Division of Management Services  
Delaware Health & Social Services  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle, DE 19720

Such comments must be received by April 1, 1999.

#### PROPOSED REGULATIONS FOR CRIMINAL HISTORY RECORD CHECKS AND PRE-EMPLOYMENT DRUG TESTING FOR PERSONS WORKING IN NURSING HOMES AND OTHER FACILITIES LICENSED UNDER 16 Del. C. Ch. 11.

##### LEGAL BASIS

1. The legal base for these regulations is in the Delaware Code, Title 16, Chapter 11, Sections 1141 and 1142.

##### PURPOSE

2. The overall purpose of these regulations is to ensure the safety and well-being of residents of facilities licensed pursuant to 16 Del. C. Ch. 11. To this end, persons selected for employment in these facilities, effective March 31, 1999, will be subject to pre-employment criminal history checks and pre-employment drug testing. Further, these regulations apply to any person referred by a temporary agency, as herein defined, to such facilities for temporary employment who was hired by such agency on or after March 31, 1999.

##### DEFINITIONS

3. “Nursing home” means a residential facility that provides shelter and food to more than one person who, because of their physical and/or mental condition, require a level of care and services suitable to their needs to contribute to their health, comfort, and welfare; and who are not related within the second degree of consanguinity to the controlling person or persons of the facility. The facilities covered here are those licensed pursuant to 16 Del. C. Ch. 11, and include but are not limited to nursing facilities (commonly referred to as nursing homes); assisted living facilities; intermediate care facilities for persons with mental retardation; neighborhood group homes; family care homes; and rest residential facilities.

4. “Applicant” means any person seeking employment in a nursing home; a current employee of such facility who seeks promotion within the same facility; and/or a person hired on or after March 31, 1999, by a temporary agency (as defined below and including, but not limited to, contractors and home health agencies) who is sent by that agency to work in a nursing home.

5. “Contractor or Temporary Agency” means any person or organization that provides services to a nursing home where the work responsibilities are located in the facility on a regular or intermittent basis and where the nursing home’s need for the service is ongoing (i.e., whether or not the specific person performs the service regularly or intermittently, the nursing home will need to ensure that those services are provided). This includes, but is not limited to, such services as housekeeping, food service, security, physicians, beauticians, and therapists. It does not include companies or vendors working on the physical structures, systems or grounds of nursing homes on a temporary, as needed, basis. For the purposes of these regulations, contractors are included in the definition of temporary agencies and are therefore subject to the same requirements as temporary agencies.

6. “Conditional Employment” is the period of time during which an applicant is working in a nursing home while his/her employer has not received the results of (a) the State criminal history record, (b) the Federal criminal history record, and (c) the drug test.

7. “Department or DHSS” means Delaware Health &

Social Services.

8. "Disqualifying convictions or disqualifying crimes" are the items delineated in Section 17 of these regulations.

9. "Employer" is any person, business entity, management company, temporary agency, or other organization that hires persons to work in a nursing home or that places persons for work in a nursing home.

10. "Evidence" means verification from the State Bureau of Identification or designee that the applicant has been fingerprinted and that his/her criminal history records have been requested. In addition, evidence means documentation that drug testing has been performed.

11. "Final Employment" is contingent upon the employer's receipt of the State Bureau of Identification criminal history record containing evidence of no disqualifying crimes or of any factors which would render that applicant unsuitable for employment in a nursing home; a report by the Department that there are no disqualifying crimes in such person's Federal criminal record; and the results of the drug testing.

12. To "hire" means to begin employment of an applicant after March 31, 1999, or to pay wages for the services of a person who has not worked for the employer during the preceding twelve-month period.

13. "Illegal drug" means: marijuana/cannabis; cocaine; opiates including heroin; phencyclidine (PCP); amphetamines; and any other illegal drug subsequently specified by the Department in the absence of a valid physician prescription.

14. "Temporary agency or contractor" means any business organization or person that places persons with another business organization to perform services. As used in these regulations, a temporary agency includes home health agencies which make such placements and contractors.

#### PERSONS SUBJECT TO THE LAW

15. All applicants hired on or after March 31, 1999, and all current employees who seek promotion in a nursing home are subject to the provisions of 16 Del.C. 1141 and 1142. In addition, all persons hired on or after March 31, 1999, by a temporary agency (as defined herein) and placed on or after March 31, 1999, at a nursing home are subject to the provisions of 16 Del.C. 1141 and 1142.

#### FREQUENCY OF CRIMINAL HISTORY RECORD CHECKS

16. Any applicant who has been the subject of a qualifying background check in Delaware within the previous 5 years shall be exempt from 16 Del.C. Section 1141, except that the applicant is not exempt from subsequent employer access to the information contained in that background check. To qualify, such a check must include both State and Federal criminal history record

checks and be pursuant to 16 Del.C. Section 1141. However, employers, at their own expense, shall have the right to require more frequent background checks.

#### CRITERIA FOR UNSUITABILITY FOR EMPLOYMENT

17. The following types of criminal convictions (or such crimes, if committed in another jurisdiction, which are comparable under Delaware law) automatically disqualify a person from working in a nursing home, if the person was convicted of the offense within the time parameters specified:

- Any felony, if convicted within the last five years.
- Those Class A misdemeanors included in Title 11, Chapter 5, Subchapter II, Subpart A, of the Delaware Code, if convicted within the last five years.
- Any misdemeanor in Delaware involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in Chapter 47 of Title 16 of the Delaware Code, or conviction of a crime in any state or local jurisdiction, any Federal or military reservation or the District of Columbia, or any foreign jurisdiction that would be equivalent to such a misdemeanor in Delaware, if convicted within the last five years.
- Any felony in Delaware involving a controlled substance, a counterfeit controlled substance, or a designer drug as specified in Chapter 47 of Title 16 of the Delaware Code, or conviction of a crime in any state or local jurisdiction, any Federal or military reservation or the District of Columbia, or any foreign jurisdiction that would be equivalent to such a felony in Delaware, if convicted within the last ten years.
- Any violent felony, as specified in Title 11 Del.C. Section 4201 (c), if convicted within the last ten years.
- Conviction of any act causing death (as defined in Title 11, Chapter 5, Subchapter II, Subpart B, of the Delaware Code, with no time limit.
- Conviction of any sexual offense designated as a felony in Title 11, Chapter 5, Subchapter II, Subpart D of the Delaware Code, with no time limit.

18. In regard to other criminal convictions, the following criteria are to be used in determining whether a person is suitable for employment in a nursing home:

- A. Type of offense(s)
- B. Frequency of offense(s)
- C. Length of time since the offense(s)
- D. Age at the time of the offense(s)
- E. Severity of the offense(s)
- F. Record since the offense(s)
- G. Nature of the offense(s) in relation to the type

of job assignment

H. Disposition of the offense(s).

#### SANCTIONS

19. Sanctions against applicants shall be applied and enforced in the following circumstance(s):

A. Failure by an applicant to disclose relevant criminal history information on a *criminal history record request form* that is subsequently disclosed as a result of the criminal history record check shall result in a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

B. Failure of an applicant to comply with pre-employment drug testing, as required, shall result in a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

C. Violations will be reported by the employer to the Division of Long Term Care Residents Protection.

20. Sanctions against employers shall be applied and enforced in the following circumstance(s):

A. An employer who hires an applicant conditionally before receiving verification that the applicant has been fingerprinted and that the State and Federal criminal history record checks have been requested shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

B. An employer who hires an applicant for final employment and fails to request and/or fails to obtain a report of the person's entire criminal history record from the State Bureau of Identification shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

C. An employer who hires an applicant for final employment and fails to request and/or fails to obtain a written report regarding suitability of the applicant based on his or her Federal criminal history shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

D. Employer failure to comply with the pre-employment drug testing law shall result in a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation.

#### EMPLOYER RESPONSIBILITIES

21. Criminal history record checks and drug testing are to be completed on applicants who have been prescreened and to whom an offer of employment may be made. Payment for drug testing is the responsibility of the employer or the applicant.

22. Conditional employment cannot begin until the employer has received evidence that the applicant's State and Federal criminal history records have been requested, he/she has been fingerprinted, and he/she has requested the appropriate drug testing. Under no circumstances shall an applicant be employed on a conditional basis for more than 2 months if the drug test results have not been received by his/her employer.

23. An employer whose nursing home includes both licensed and unlicensed areas must ensure that all persons who perform services in the licensed areas comply with the law.

24. The employer shall ensure that every application for employment at a nursing home specifies that the applicant is required to provide any and all information necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire Federal criminal history record pursuant to the Federal Bureau of Investigations appropriation of Title II of Public Law 92-544. In addition, every application for employment shall contain a statement that must be signed by the applicant in which the applicant grants full release for the employer to request and obtain any such records or information contained on a criminal history record.

25. The employer shall ensure that a *criminal history record request form* has been completed and that the employer copy is maintained in its files.

26. The employer shall also maintain a signed copy of a *verification of providing fingerprints to the Delaware State Police form*.

27. When exigent circumstances exist, and an employer must fill a position in order to maintain the required level of service, the employer may hire an applicant on a conditional basis when the employer receives evidence that the applicant has actually had the appropriate drug testing, as long as the person has also provided verification of fingerprinting. All persons hired shall be informed in writing and shall acknowledge, in writing, that his/her drug test results have been requested.

28. The employer must ensure that no applicant remains employed in conditional status for more than two months without receiving the results of the mandatory drug testing. If the drug testing results are not received within two months, the applicant must be terminated from employment, or in the case of an applicant seeking promotion, the applicant must be demoted or removed from employment in the nursing home.

29. The employer must provide to the Department a copy of each applicant's mandatory drug test results within 10 business days of their receipt. Along with the results, or as soon thereafter as the decision is made, the employer shall notify the Department as to whether the applicant shall remain employed.

30. When the employer is notified of conviction of one or more disqualifying crimes in either the State or Federal criminal history of an applicant, the employer shall terminate the applicant. A copy of or documentation of the termination notification shall be sent to the Department and a copy maintained in the facility's files.

31. If an employer wishes to have a criminal history record check conducted on an applicant who has been the

subject of a qualifying State and Federal background check within the previous 5 years, the cost for this must be borne by the employer. Payment must be made directly to the State Police. The Department will, at no cost, provide the results of the Federal Bureau of Investigation information, just as it would for an applicant who had not had such a check conducted within the previous 5 years.

32. If a person is fingerprinted under the auspices of these regulations more than once during a five-year period, the cost of that fingerprinting will not be borne by the State. The potential employer is required to confirm with DHSS that the applicant has been previously fingerprinted. If billed, the Department will return such invoices to the State Police so that they can obtain payment from the employer specified on the *criminal history record request form*. Such employer may obtain payment from the applicant.

33. The employer will notify the Department if an applicant is separated from employment for any reason prior to completion of the criminal history check process.

34. The employer will have the responsibility for using the results of the criminal history record check and the drug testing as factors in making the determination of suitability for final employment, unless the State and/or Federal criminal history record check identifies the presence of a conviction of one or more disqualifying crimes, in which case the applicant is automatically disqualified for final employment and must be terminated.

35. The employer will notify the applicant of the findings.

36. The employer will notify the Department of the names of all persons who were offered and accepted conditional and final employment.

37. It is recommended that employers require that all new employees after March 31, 1999, notify them of any subsequent convictions. Subsequent convictions may impact the suitability of employment of the employee, as determined by the employer.

#### RESPONSIBILITIES OF TEMPORARY AGENCIES

38. As employers, temporary agencies are responsible for all items delineated above under the section titled "EMPLOYER RESPONSIBILITIES" (sections 21-37).

39. In addition, temporary agencies are responsible for the cost of criminal history record checks.

40. Also, temporary agencies are required to inform nursing homes of any criminal background identified in the criminal history information provided by the State Bureau of Identification and the Federal report, as summarized by the Department, regarding any person placed or referred for work at such facility. The temporary agency must have each applicant sign a full release giving the agency permission to provide any such criminal history information received about him/her to any nursing home where the person is placed to work.

41. Temporary agencies are required to inform nursing homes of the mandatory drug test results of persons placed or referred for work in such facilities. Applicants shall sign a full release giving the agency permission to provide any such information to any nursing home where they are placed to work.

#### APPLICANTS' RESPONSIBILITIES

42. Applicants are responsible for completing all information accurately and completely on a *criminal history record request form*; a *verification of providing fingerprints to the Delaware State Police form*; and any form provided by the employer for use in obtaining mandatory pre-employment drug testing. Any applicant who refuses to complete any one or more of these forms is deemed to have voluntarily withdrawn his/her application.

43. The applicant is responsible for having his/her fingerprints taken and returning a *verification of providing fingerprints to the Delaware State Police form* to the employer.

44. The applicant is responsible for informing any potential employer if he/she has already been fingerprinted under the jurisdiction of these regulations. The potential employer is required to confirm with DHSS that the applicant has been previously fingerprinted. The cost for additional fingerprinting, done above and beyond the one fingerprinting per five-year period required by these regulations, shall not be borne by the State.

45. The applicant is responsible for completing the required drug testing and providing verification to the employer.

#### THE DEPARTMENT'S RESPONSIBILITIES

46. The Department is responsible for promulgating these regulations and revising them, as the need may arise.

47. Since an applicant's Federal criminal record may not be provided to a privately-owned entity or to the applicant, the Department will issue a report to the employer based upon the information received.

48. Once the Department has received all necessary documentation, it shall perform a review, guided by criteria and timelines developed by the Department, and issue a written summary of findings to the employer. If conviction of a disqualifying crime is included on the State or Federal criminal history report, the Department will immediately notify the employer, prohibiting either the hire or continued conditional employment of the applicant.

#### CONFIDENTIALITY

Title 11, subsection 8513 (c) (1) of the Delaware Code permits the State Bureau of Identification to "furnish information pertaining to the identification and conviction data of any person...of whom the Bureau has record...to ...[i]ndividuals and agencies for the purpose of employment

of the person whose record is sought, provided...[t]he use of the conviction data shall be limited to the purpose for which it was given..."

49. The Department shall store written and electronically-recorded criminal history record information in a secure manner, to provide for the confidentiality of records and to protect against any possible threats to their security and integrity.

50. The Department shall limit the use of the criminal history record information to its purpose of determining suitability for employment.

51. The Department shall not release to employers, as defined in these regulations, copies of actual written reports of criminal history records prepared by the Federal Bureau of Investigation.

52. The following procedure shall be established to permit the review of criminal history record files by the applicant:

A. An applicant shall submit a request in writing to the Department for the on-site review of his/her criminal history record file.

B. An appointment shall be made for the applicant to review the record at the Department. Photo identification will be required at the time of the review.

C. The record shall be reviewed in the presence of a Department employee.

D. Written documentation of the date and time of the review and the name of those present shall be filed in the criminal history record file for the applicant.

E. The Department shall not remove criminal history records (written and electronic) from the secure files for any purpose other than to permit review by the named applicant.

53. Criminal history record information shall not be disseminated to any persons other than the applicant, his/her employer or subsequent employer(s), nursing homes to which a person is placed by a temporary agency, or the Department (11 Del. C. Section 513(d)).

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### **DIVISION OF SOCIAL SERVICES**

Statutory Authority: 31 Delaware Code,  
Section 107 (31 **Del.C.** 107)

#### **PUBLIC NOTICE**

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid

Program is amending its durable medical equipment and general policy provider manual(s).

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, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by March 31, 1999.

REVISION:

### **Durable Medical Equipment Manual**

#### External Ambulatory Infusion Pump, Insulin

The purchase of an external ambulatory infusion pump, insulin, may be covered by the DMAP only in situations where there is medical documentation that the pump use is reasonable and medically necessary for the individual patient. A detailed letter of medical necessity from an endocrinologist is required and must address the following:

- Duration and success of MDI (multi dose injection) therapy; inability to safely achieve adequate glycemic control;
- Pertinent laboratory testing, including Glycated Hemoglobin results;
- Number of diabetic related incidences (in the past year) that required hospitalization and/or assistance of another person;
- Description of any existing diabetic complications (Retinopathy, Nephropathy, Neuropathy);
- Recipient's level of understanding, motivation, and involvement in disease treatment plan; willingness to adhere to a proper diet and exercise regiment; ability to self monitor blood glucose levels;
- Ability to operate device with a brief description of training; and
- Medical treatment plan that includes use of device and planned follow-up.

When requesting prior authorization for the purchase of an external ambulatory infusion pump, insulin, the durable medical equipment provider is required to submit a Medicaid Certificate of Medical Necessity. If approved, the following supplies may be billed separately using the appropriate codes listed in Appendix A:

- Syringe with needle for external insulin pump, sterile, 3cc;
- Infusion set for external insulin pump, needle type; and
- Infusion set for external insulin pump, non-needle cannula type.

Replacement parts, such as batteries, piston rods, and adapters may also be billed separately using the appropriate code in Appendix A. Any additional medically necessary supplies, related to the use of the external ambulatory infusion pump, insulin, must be prior authorized. A letter detailing the medical necessity of the additional supplies must be submitted to the Medical Review Team.

### General Policy Manual

**Please Note: The Childhood Vaccination Schedule that currently appears in the general policy is being moved from the policy section into an Appendix within the manual. The schedule is not shown as part of the revisions since the layout would be difficult to place in the Register.**

#### Immunization Vaccines for Children Program

##### For Children Ages 0 Through 18 Years

The state of Delaware participates in the Vaccines for Children (VFC) Program which supplies free vaccines to providers for VFC eligible children under age 19. Children eligible to receive VFC-provided vaccines include the following: 1) children who receive Medicaid; 2) uninsured children; and 3) children who are American Indian or Alaskan Native. In addition, children who have health insurance that does not cover vaccines can receive VFC-provided vaccines at federally qualified health centers and rural health clinics. The VFC program is operationally administered by the Division of Public Health. Providers must enroll in the VFC Program to receive free vaccines and to receive an administration fee. For further information and enrollment materials please call DPH at 1-800-282-8672.

Medicaid does not pay providers for the cost of vaccines available through the VFC Program, but will pay an administration fee for each immunization given to a Medicaid eligible child not enrolled in the Diamond State Health Plan, the State's Medicaid managed care program. Under the DSHP, the participating Managed Care Organizations (MCOs) are responsible for all primary care services including immunizations. The administration fees for DSHP enrolled children are accounted for in the capitated rate paid to the MCOs, therefore the Medicaid Program does not pay providers for immunizations administered to DSHP enrolled children. MCOs determine their own policies on reimbursement of administration fees.

Providers will be paid the administration fee for children who have not yet been enrolled in a MCO and for those Medicaid eligible children who are ineligible for participation in the DSHP. The State of Delaware will also pay VFC-enrolled providers the administration fee for immunizations given to non-Medicaid VFC eligible

children. Enrolled providers must submit an Immunization Registry (IR) form to the Division of Public Health where the immunization data is recorded and passed electronically to EDS for adjudication and payment.

~~The following immunization vaccines CPT codes represent the vaccines currently covered under the VFC Program are identified in the Childhood Immunization Schedule found in Appendix L. VFC participating providers will receive an administration fee (as specified above) for these vaccines when administered according to the schedule recommended by the Advisory Committee on Immunization Practices (ACIP).~~

~~90700—90709, 90711—90713, 90718—90721, 90724, 90730, 90737, 90741, 90742, 90744, 90745, and 90747~~

Generally, only combined antigen vaccines will be provided through the VFC Program. Single antigen vaccines will be available and related administration fees reimbursable only when a normally appropriate combined antigen is contraindicated. ~~Varicella vaccine (CPT codes 90710 and 90716) and pneumococcal vaccine (CPT code 90732) are not currently available through the VFC Program and may be billed directly to the DMAP.~~

##### For Adults Ages 19 Years and Older

Providers may continue to be reimbursed for the actual cost of medically necessary vaccines provided to adults age 19 or older. NOTE: Vaccines required for travel outside the United States are not covered. ~~The following vaccine CPT codes will continue to be reimbursed at cost for adults over 18:~~

~~90703—90710, 90713, 90716, 90718, 90719, 90730, 90741, 90742, 90745—90747~~

Claims for adult immunizations should be sent directly to EDS for processing and payment. They should not be sent to the Division of Public Health's Immunization Registry. Administration fees will not be reimbursed separately for adult immunizations. The administration fee will continue to be considered part of the office visit fee paid in addition to the payment made for the vaccine.

##### Non-Covered Services

Some services are NEVER covered by the DMAP except if covered by Medicare or are in a managed care organization's benefit package. These services include, but are not limited to:

- Services which are not medically justified.
- Vaccines required for travel outside the United States;

- Cosmetic surgical procedures and treatment. The DMAP does not reimburse any provider for any services related to cosmetic treatment/procedures or plastic surgery services. Cosmetic services are defined as beautification or aesthetic procedures, surgery, drugs, etc. designed to improve the appearance of an individual's physical characteristic which is within the broad range of normal, by surgical alteration or other means.
- Procedures (other than those transplants covered by transplant criteria) designated as experimental by the Medicare program.
- Services denied by Medicare as not medically necessary.
- Drugs dispensed by the practitioner.
- Autopsies.
- Routine dental services for persons twenty-one (21) years of age and over. All routine and non-routine dental services are restricted to recipients under twenty-one (21) years of age and must be rendered or authorized by the Division of Public Health or a local dental clinic which is contracted to provide EPSDT dental services to DMAP recipients. No dental procedures for recipients over twenty-one (21) years of age are covered in any setting. Dental services include any services related to the dental treatment such as drugs, anesthetics, use of operating/recovery room, etc.
- Routine eye care and/or corrective lenses (except aphakic or bandage lenses necessary after cataract surgery) for persons twenty-one (21) years of age and over.
- Hearing aids for persons twenty-one (21) years of age and over.
- Social services.
- Pharmaceuticals not covered include: DESI drugs, drugs used for cosmetic purposes, drugs for obesity, fertility drugs, drugs used in the treatment of sexual dysfunction, investigational drugs and compound prescriptions.
- Infertility related services. The DMAP does not cover any services related solely to the treatment of infertility. Examples of these non-covered services include drug therapy, surgical procedures, laboratory testing, radiology services, hospital services and physician services.
- Podiatric services. The DMAP will pay for routine foot care ONLY for recipients who are diagnosed as having diabetes or circulatory/vascular disorders.
- Inpatient care in Institutions for Mental Diseases (IMDs) for individuals age 21 through 64 (no exceptions for Medicare deductible/co-insurance).
- Chiropractic services.

**DIVISION OF SOCIAL SERVICES**  
Statutory Authority: 31 Delaware Code,  
Section 512(1) (31 Del.C. 512(1))

**PUBLIC NOTICE**

Delaware Health and Social Services is proposing changes to regulations contained in the Division of Social Services Manual Section 9018, 9060, and 9068. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512. Written materials and suggestions by interested persons for related to this proposal must be forwarded by March 31, 1999, to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

**COMMENT PERIOD**

Any person who wishes to make petitions for reconsideration or revision thereof, such petitions must be forwarded by March 31, 1999 to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

**SUMMARY OF REGULATIONS:**

- Extends eligibility criteria for able-bodied adults without dependents to include participation in workfare;
- Expands the definition of legally obligated child support payments used as a food stamp deduction; and
- Changes the certification periods guidelines for certain households which was mandated by Food and Nutrition Services to help improve the food stamp error rate.

**NATURE OF PROPOSED REVISIONS:**

Proposed Policy:

**9018.2 Work Requirements for Able-Bodied Adults Without Dependents Effective November 22, 1996**

Individuals are ineligible to continue to receive food stamps if, during the preceding 36-month period they received food stamps at least three (3) months (consecutive or otherwise) while they did not either:

- work at least 20 hours per week (averaged monthly); ~~or~~
- participate in a work program at least 20 hours per week (averaged monthly);
- participates in and complies in a work

- supplementation program; or
- participates in a workfare program.

Work is defined as paid or non-paid employment, including volunteer work.

Qualifying work programs include programs under:

- Job Training and Partnership Act (JTPA);
- Trade Adjustment Assistance Act; or
- Employment and Training (except for job search or job search training programs).

#### Exemptions

Individuals are exempt from this work requirement if the individual is:

- under 18 or over 50 years of age; (The month after an individual turns 18 will be the first month the individual must start meeting the work requirements. The month an individual turns 50 years of age will start the exemption.)
- medically certified as physically or mentally unfit for employment, which requires a medical form;
- a parent or other household member with responsibility for a dependent child under the age of 18. (The exemption for non-parents will require a statement about the responsibility).
- pregnant (any trimester);
- or otherwise exempt from work requirement under DSSM 9018.3 .

#### Regaining eligibility

Individuals denied eligibility under this work requirement, or who would have been denied under this work requirement if they had reapplied, can regain eligibility if during a 30-day period the individual:

- works (paid or non-paid) for 80 hours or more;
- participates in and complies with a work program, as described above, for 80 hours or more; ~~or~~
- participates in and complies in a work supplementation program; or
- participates in a workfare program.

Individuals who regain eligibility based on the requirements above will remain eligible as long as they meet the above requirements.

Individuals who lose their employment or cease participation in work or work supplementation programs may continue to receive food stamps for up to three (3) consecutive months beginning from the date DSS is notified that work has ended.

The only remaining cure during the 36-month period is for the individual to:

- comply with the work requirements of this section; or
- to become exempt under other provisions of the requirement.

## **9060 INCOME DEDUCTIONS**

E. Child support payments deduction - Legally obligated child support payments made to or for, children who live outside of the household. Only child support payments that are legally obligated can be allowed as a deduction. This also includes:

a) Amounts paid out of the household's current income to make up for months in which the household did not meet its obligation, except for amount paid through tax intercept, ~~and~~

b) The value of legally binding child support that is provided in-kind, such as payment of rent directly to the landlord,

c) Payments provided for health care.

d) Payments for education.

e) Payments for recreation.

f) Payments for clothing.

g) Payments to meet other specific needs of a child or children, and

h) Payments to cover attorney's fee, interest, and court costs.

The following are examples of how to treat child support payments:

1. Mr. A is court ordered to pay Mrs. A \$100 a week in child support. He also pays \$30 a month child support for arrears to make up the months he was not able to pay. Mr. A is eligible for a \$430 child support deduction from his current income.

2. Mr. C is court ordered to pay Mrs. C \$800 a month in child support. He pays \$500 a month directly to the landlord for Mrs. C's rent and \$100 directly to the utility company for Mrs. C's electric. Mrs. C receives the \$200 balance in cash. Mr. C is eligible for a \$800 child support deduction from his current income.

Alimony payments are not included in the child support deduction.

## **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.

12-month certification periods are assigned to households when:

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

7-month certification periods are assigned to households when:

- Households receiving ABC/GA and FS so that the food stamp recertification period expires the month after the cash assistance redetermination date.

6-month certification periods are assigned to households when:

- Households have stable income such as, but not limited to, pensions, social security, SSI, in-state unemployment compensation, workman's compensation, child support paid through DCSE, and on-going ABC/GA households, and there is little likelihood of major changes in income, deductions and household composition;
- Households consist of ABAWD individuals because the system will close the case after three months of not meeting the work rules;
- Households claiming a child support deduction have a record of regular child support payments and or child support arrearage payments to nonhousehold members, 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;~~
- Households have unstable circumstances, such as households receiving child support payments directly from the absent parent, households

receiving out-of-state unemployment compensation, households with an unemployed adult who was employed with 12 months prior to the date of application, households with zero (0) income, households with expenses that exceed income, and all households with earned income;

- Households claiming a child support deduction have a record of irregular child support payments or child support arrearage payments to nonhousehold members;
- Homeless households receive their benefits at a P. O. Box;
- Households receive their benefits at the local office;
- 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.~~

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## **DEPARTMENT OF INSURANCE**

Statutory Authority: 18 Delaware Code,  
Section 314, 2503 (18 Del.C. 314, 2503)

### **Notice of Public Hearing**

Insurance Commissioner Donna Lee Williams hereby gives notice that a public hearing will be held on Tuesday, March 23, 1999 at 10:00 a.m. in the 2<sup>nd</sup> 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 insurance industry and the general public on the proposed revisions to Insurance Department Regulation 41, Medicare Supplement Insurance Minimum Standards.

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, March 19, 1999 and should be addressed to Fred A. Townsend, III, 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, March 19, 1999.

Dated: February 18, 1999

Regulation 41

## Medicare Supplement Insurance Minimum Standards

January 1, 1992

Amended Effective April 9, 1992

Amended Effective April 1, 1996

Amended Effective November 20, 1998

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## Section 1.Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies or contracts; to facilitate public understanding and comparison

of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

## Section 2.Authority

This regulation is issued pursuant to the authority vested in the Commissioner under Title 18, Delaware Code, Sections 314 and 3403.

## Section 3.Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 12, 13, 16 and 21, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this State on or after the effective date of this regulation, and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this State.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

## Section 4.Definitions

For purposes of this regulation:

A. "Applicant" means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

C. "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement policy.

D. "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

E. "Continuous period of creditable coverage" means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days.

F. (1) "Creditable coverage" means, with respect to

an individual, coverage of the individual provided under any of the following:

- (a) A group health plan;
  - (b) Health insurance coverage;
  - (c) Part A or Part B of Title XVIII of the Social Security Act (Medicare);
  - (d) Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under section 1928;
  - (e) Chapter 55 of Title 10 United States Code (CHAMPUS);
  - (f) A medical care program of the Indian Health Service or of a tribal organization;
  - (g) A State health benefits risk pool;
  - (h) A health plan offered under Chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program);
  - (i) A public health plan as defined in federal regulation; and
  - (j) A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)).
- (2) "Creditable coverage" shall not include one or more, or any combination of, the following:
- (a) Coverage only for accident or disability income insurance, or any combination thereof;
  - (b) Coverage issued as a supplement to liability insurance;
  - (c) Liability insurance, including general liability insurance and automobile liability insurance;
  - (d) Workers' compensation or similar insurance;
  - (e) Automobile medical payment insurance;
  - (f) Credit-only insurance;
  - (g) Coverage for on-site medical clinics; and
  - (h) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits.
- (3) "Creditable coverage" shall not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance or are otherwise not an integral part of the plan:
- (a) Limited scope dental or vision benefits;
  - (b) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and
  - (c) Such other similar, limited benefits as are specified in federal regulations.
- (4) "Creditable coverage" shall not include the following benefits if offered as independent, noncoordinated benefits:
- (a) Coverage only for a specified disease or illness; and
  - (b) Hospital indemnity or other fixed indemnity insurance.
- (5) "Creditable coverage" shall not include the

following if it is offered as a separate policy, certificate of contract of insurance:

- (a) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;
  - (b) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; and
  - (c) Similar supplemental coverage provided to coverage under a group health plan.
- G. "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act).
- H. "Insolvency" means when an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.
- I. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.
- EJ. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.
- K. "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in [refer to definition of Medicare+Choice plan in Section 1859 found in Title IV, Subtitle A, Chapter 1 of P.L. 105-33], and includes:
- (1) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
  - (2) Medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and
  - (3) Medicare+Choice private fee-for-service plans.
- FL. "Medicare Supplement Policy" means a group or individual policy of accident and sickness insurance or a subscriber contract other than a policy issued pursuant to a contract of hospital and medical service associations or health maintenance organizations, under Section 1876 or Section 1833 of the Federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. § 1395ss(g)(1), which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.
- GM. "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

N. "Secretary" means the Secretary of the United States Department of Health and Human Services.

## Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms which confirm to the requirements of this section.

A. "Accident," "Accidental Injury," or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit Period" or "Medicare Benefit Period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent Nursing Home," "Extended Care Facility," or "Skilled Nursing Facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers.

Expenses shall not include:

- (1) Home office and overhead costs;
- (2) Advertising costs;
- (3) Commissions and other acquisition costs;
- (4) Taxes;
- (5) Capital costs;
- (6) Administrative costs; and
- (7) Claims processing costs.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially 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.

G. "Medicare Eligible Expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

## Section 6. Policy Provisions

A. Except for permitted preexisting condition clauses as described in Section 7A(1) and Section 8A(1) of this Regulation, no policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the State shall contain benefits which duplicate benefits provided by Medicare.

## Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to January 1, 1992

No policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

### A. General Standards.

The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was

given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and co-payment percentage factors. Premiums may be modified to correspond with such changes.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) Be cancelled or nonrenewed by the insurer solely on the grounds of deterioration of health.

(5) (a) Except as authorized by the Commissioner of this state, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(1) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(2) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation.

(c) If membership in a group is terminated, the issuer shall:

(1) Offer the certificateholder the conversion opportunities as are described in Subparagraph (b); or

(2) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of

termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

**B. Minimum Benefit Standards.**

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [\$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

(8) Cancer Screening every other year for both men and women as recommended by the U.S. Department of Health and Human Services, Office of Disease Prevention and Health Promotion, except that nothing in this Section shall contravene Section 7.A of this regulation.

(9) Annual influenza immunizations.

Section 8. Benefit Standards for Policies or Certificates Issued or delivered on or after January 1, 1992.

The following standards are applicable to all Medicare

supplement policies of certificates delivered or issued for delivery in this State on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accident.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and co-payment percentage factors. Premiums may be modified to correspond with such changes.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse because of the occurrence of an event specified for termination of coverages of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable and

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or materials misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificate-holders an individual Medicare supplement policy which (at the option of the certificate holder):

(i) Provides for continuation of the benefits contained in the group policy; or

(ii) Provides for such benefits that otherwise meet the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall:

(i) Offer the certificateholder the

conversion opportunity described in Section 8A(5)(c); or

(ii) At the option of the group policyholder, offer the certificate-holder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7) (a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.

(b) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of such entitlement, if the policyholder or certificate holder provides notice of loss of such entitlement within ninety (90) days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.

(c) Reinstatement of such coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension; and

(iii) Shall provide for classification of premiums on terms as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder

had the coverage not been suspended.

B. Standards for Basic ("Core") Benefits Common to All Benefit Plans.

Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic "core" package, but not in lieu of it:

(1) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packaged red blood cells as defined under federal regulations) unless replaced in accordance with federal regulations.

(5) Coverage for the coinsurance amount (under a prospective payment system) of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this Regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the

Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(65) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar (\$250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(76) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar (\$250) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent no coverage by Medicare.

(87) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars (\$250), and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(98) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from subsection (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate.

(1) Fecal occult blood test and/or digital rectal examination, or both;

(2) Mammogram;

(3) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;

(4) Pure tone (air only) hearing screening test, administered by a physician;

(5) Serum cholesterol screening (every five (5) years);

(6) Thyroid function test;

(7) Diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every ten (10) years).

(d) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to one hundred (100) percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

~~(109)~~At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive 4 hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a conditioner for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery

visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved Home Care Plan of Treatment.

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40) per visit.

(III) One thousand six hundred dollars (\$1,600) per calendar year.

(IV) Seven (7) visits in any one week.

(V) Care furnished on a visiting basis in the insured's home.

(VI) Services provided by a care provider as defined in this section.

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

~~(110)~~New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

## Section 9. Standard Medicare Supplement Benefit Plans

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 8B(10) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C and list of the benefits in the order shown in this subsection. For purposes of this section, "structure, language and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in subsection C, other designations to the extent permitted by law.

E. Make-up Benefit Plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the basic ("core") benefits common to all benefit plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (3) and (8) respectively.

(~~3~~4) Standardized Medicare supplement benefit plan "D" shall include only the following: the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Section 8C(1), (2), (~~8~~7) and (~~10~~9) respectively.

(~~4~~5) Standardized Medicare supplement benefit plan "E" shall include only the following: the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical Care as defined in Sections 8C(1), (2), (~~8~~7) and (~~9~~8) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: ~~The~~ core benefit as described in Section 8B of this regulation , plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred (100%) of the Medicare Part B excess charges, and the medically necessary emergency care in a foreign country as defined in Sections 8C (1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: 100% of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Sections 8 C(1), (2), (3), (5) and (8) respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, and shall be in addition to any other specific

benefit deductibles. The annual high deductible plan "F" deductible shall be \$1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10.

(8) Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined in Sections 8C(1), (2), (4), (8) and (10) respectively.

(9) Standardized Medicare supplement benefit plan "H" shall include only the following: the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit and medically necessary emergency care in a foreign country as defined in Sections 8C(1), (2), (6), and (8) respectively.

(10) Standardized Medicare supplement benefit plan "I" shall consist of only the following: the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country and at-home recovery benefit as defined in Sections 8C(1), (2), (5), (6), (8) and (10) respectively.

(11) Standardized Medicare supplement benefit plan "J" shall consist of only the following: the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care and at-home recovery benefit as defined in Section 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively.

(12) Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: 100% of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Section 8B of this regulation, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in Sections 8 C(1), (2), (3), (5), (7), (8), (9) and (10), respectively. The annual high deductible plan "J" deductible

shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible plan "J" deductible shall be \$1500 for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of \$10.

#### Section 10. Medicare Select Policies and Certificates:

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices or provision of services concerning a Medicare Select issuer or its network providers.

(3) "Medicare Select issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select policy" or "Medicare Select certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network provider" means a provider of health care, or a group of providers of health care which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted network provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service area" means the geographic area approved by the Commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The Commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to his section and section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the Commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this State until its plan of operation has been approved by the Commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the Commissioner in a format prescribed by the Commissioner. The plan of operation shall contain at

least the following information:

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care is available twenty-four (24) hours per day and seven (7) days per week.

(e) In the case of covered services that are subject to a restricted network basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating the quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with subsection I.

(7) Any other information requested by the Commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers with the Commissioner prior to implementing such changes. Such changes shall be considered approved by the Commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the Commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain such services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make a full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out of service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include

arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the Commissioner regarding its grievance procedure. The report shall be in a format prescribed by the Commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select

policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverages for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program.

Editor's Note: Section 10, Medicare Select Policies and Certificates, of this Regulation is effective October 6, 1995, pursuant to President Clinton's signing H.R. 483 on July 7, 1995, permitting Medicare Select policies to be offered in all fifty states, and the Delaware Insurance Commissioner's amending this regulation pursuant to 29 Del. C. 10013(b)(5).

## Section 11. Open Enrollment

A. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both 65 years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this subsection without regard to age.

B. (1) If an applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of the application, has had a continuous period of creditable coverage of at least six months, the issuer shall not exclude benefits based on a preexisting condition.

(2) If the applicant qualifies under Subsection A and submits an application during the time period referenced in Subsection A and, as of the date of application, has had a continuous period of creditable coverage that is less than six months, the issuer shall reduce the period of any preexisting

condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary shall specify the manner of the reduction under this subsection.

CB. Except as provided in Section 223, subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective.

## Section 12. Guaranteed Issue for Eligible Persons

### A. Guaranteed Issue

(1) Eligible persons are those individuals described in Subsection B who apply to enroll under the policy not later than sixty-three (63) days after the date of the termination of enrollment described in Subsection B, and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy.

(2) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection C that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

### B. Eligible Persons

An eligible person is an individual described in any of the following paragraphs:

(1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan;

(2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances apply:

(i) The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(ii) The individual is no longer eligible to elect the plan because of a change in the individual's place of

residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area;

(iii) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(I) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(II) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(iv) The individual meets such other exceptional conditions as the Secretary may provide."

(3) (a) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 (Medicare risk or cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(b) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Section 12B(2).

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(a) (i) Of the insolvency of the issuer or bankruptcy of the nonissuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy;

(b) The issuer of the policy substantially violated a material provision of the policy; or

(c) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;

(5) (a) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 (Medicare risk or cost),

any similar organization operating under demonstration project authority, an organization under an agreement under section 1833(a)(1)(A) (health care prepayment plan), or a Medicare Select policy; and

(b) The subsequent enrollment under subparagraph (a) is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851(e) of the federal Social Security Act); or

(6) The individual, upon first becoming enrolled in Medicare part B at age 65 or older, enrolls in a Medicare+Choice plan under Part C of Medicare, and disenrolls from the plan by not later than twelve (12) months after the effective date of enrollment.

C. Products to Which Eligible Persons are Entitled  
The Medicare supplement policy to which eligible persons are entitled under:

(1) Section 12B(1), (2), (3) and (4) is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.

(2) Section 12B(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subsection C(1).

(3) Section 12B(6) shall include any Medicare supplement policy offered by any issuer.

D. Notification Provisions

(1) At the time of an event described in Subsection B of this section because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Subsection A. Such notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in Subsection B of this section because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under Section 12A. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment.

Consumer Protections for the Eligible Persons of 1999.

(1) The eligible persons of 1999 are those persons who meet the definition of eligible persons set forth in

Section 12 B on or about January 1, 1999, including those persons who were originally eligible for Medicare benefits due to disability.

(2) Notwithstanding any provision of this regulation to the contrary, issuers of Medicare supplement policies or certificates shall:

(a) File forms with the Department for standardized plans A, B, C and F described in Section 9 above for any such plans not on file with the Department as of the date of this amendment on or before October 6<sup>1</sup>, 1998;

(b) Offer such plans on a guaranteed issue basis to the eligible persons of 1999 in conformance with the provisions of subsections A. and B. of Section 12 above;

(c) Not discriminate in the pricing of any Medicare supplement policy offered to eligible persons of 1999 because of health status, claims experience, receipt of health care, or medical condition and shall not impose an exclusion of benefits based on a pre-existing condition; and

(d) Give written notice of the availability of guaranteed issue plans A, B, C, and F to the eligible persons of 1999 to whom they solicit Medicare supplement policies.

(3) Issuers of Medicare supplement policies and certificates shall certify in writing that the plans filed in accordance with this section are identical with the exception of benefit package to Medicare supplement plans that such issuer currently has on file with the Department. Such issuers shall submit required filings such as outlines of coverage on or before November 1, 1999.

(4) Any provision of this regulation not in direct conflict the provisions of this subsection E shall remain in full force an effect.

### Section 13. Standards for Claims Payment

A. An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA), Pub. L. No. 100—203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing at the time of enrollment, each

1. Filing deadline set by adoption of Life and Health Bulletin No. 21 on October 6, 1998.

enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

### Section 14. Loss Ratio Standards and Refund or Credit of Premium

#### A. Loss Ratio Standards

(1) (a) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least 75 percent of the aggregate amount of premiums earned in the case of group policies, or

(ii) At least 65 percent of the aggregate amount of premiums earned in the case of individual policies,

(b) Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying subsection A(1) of this Section and Subsection C(3) of Section 14 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

#### B. Refund or Credit Calculation

(1) An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the applicable reporting form contained in Appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reported the

benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) For the purposes of this section, policies or certificates issued prior to January 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the (effective date of this amendment). The first such report shall be due by May 31, 1998.

(4) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based

#### C. Annual Filing of Premium Rates

An issuer of Medicare supplement policies and certificates issued before or after the effective date of January 1, 1992 in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. 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 (3) years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or Medicare supplement policies or certificates in this State shall file with the Commissioner, in accordance with the applicable filing procedures of this State:

(1) (a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or contracts. The supporting documents as necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make such premium

adjustments as are necessary to produce an expected loss ratio under the policy or certificate to conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement insurance policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

#### D. Public Hearings

The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of this Regulation if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the Commissioner.

#### Section 154. Filing and Approval of Policies and Certificates and Premium Rates

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this State unless the policy form or certificate form has been filed with and approved by the Commissioner in accordance with filing requirements and procedures prescribed by the Commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the Commissioner in accordance with the filing requirements and procedures prescribed by the Commissioner.

C. (1) Except as provided in paragraph (2) of this subsection, an insurer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the

Commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases.

- (a) The inclusion of new or innovative benefits;
- (b) The addition of either direct response or agent marketing methods;
- (c) The addition of either guaranteed issue or underwritten coverage;
- (d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purposes of this action, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D. (1) Except as provided in paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this Regulation that has been approved by the Commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months.

(a) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the Commissioner in writing its decision at least 30 days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the Commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this State.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the Commissioner of the discontinuance. The period of discontinuance may be reduced if the Commissioner determined that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the Commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum

to change. The Commissioner may approve a change to the differential which is in the public interest.

E. (1) Except as provided in paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 13 hereof.

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refunds or credit calculation.

#### Section 165. Permitted Compensation Arrangements

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than two hundred percent (200%) 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 no fewer than five (5) renewal years.

C. No issuer or other 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 issuer or renewal policies or certificates if an existing policy or certificate is replaced.

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 176. Required Disclosure Provisions

##### A. General Rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which

reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of the policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) (a) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to a person(s) eligible for Medicare shall provide to those applicants a "Guide to Health Insurance for People with Medicare" in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and ~~acknowledgment~~ ~~acknowledgement~~ of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) For purposes of this section, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing.

**B. Notice Requirements.**

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare

benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the Commissioner. The notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) Such notices shall not contain or be accompanied by any solicitation.

**C. Outline of Coverage Requirements for Medicare Supplement Policies.**

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this Section consists of four parts: a cover page, premium information disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A, B, ~~C~~, ~~D~~, ~~E~~, ~~F~~, ~~G~~, ~~H~~, ~~I~~ and ~~J~~, ~~E~~, ~~I~~, and ~~J~~ shall be shown on the cover page, and the plan(s) that are offered by this issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

**PROPOSED REGULATIONS**

[COMPANY NAME]

Outline of Medicare Supplement Coverage Cover Page  
Benefit Plan(s) \_\_\_\_\_ [insert letters of plan(s) being offered]

Medicare supplement insurance can be sold in only six ten standard plans, plus two high deductible plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

**BASIC BENEFITS:** Included in All Plans.  
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.  
Medical Expenses: Part B coinsurance (20% of Medicare-approved expenses), or, under a prospective payment system, applicable copayments.  
Blood: First three pints of blood each year.

A	B	C	D	E	F F <sup>4</sup>	G	H	I	J J <sup>4</sup>
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance							
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency							
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs (\$1,250 Limit)	Basic Drugs (\$1,250 Limit)	Extended Drugs (\$3,000 Limit)
				Preventive Care					Preventive Care

**PREMIUM INFORMATION [Boldface Type]**

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

**DISCLOSURES [Boldface Type]**

Use this outline to compare benefits and premiums among policies.

**READ YOUR POLICY VERY CAREFULLY [Boldface Type]**

This is only an outline, describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

**RIGHT TO RETURN POLICY [Boldface Type]**

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the

policy back to us within 30 days after your receive it, we will treat the policy as if it had never been issued and return all of your payments.

**POLICY REPLACEMENT [Boldface Type]**

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you wan to keep it.

**NOTICE [Boldface Type]**

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "*The Medicare Handbook*" for more details.

**COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]**

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify

important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant Section 9D of this Regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the Commissioner.]

**PLAN A**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous service and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: -Additional 365 days  - Beyond the Additional 365 days	All but \$[764] All but \$[191] a day  All but \$[382] a day  \$0  \$0	\$0 \$[191 a day]  \$[382] a day  100% of Medicare Eligible Expenses  \$0	\$716 (Part A Deductible) \$0  \$0  \$0**  All Costs

**PROPOSED REGULATIONS**

<p>SKILLED NURSING FACILITY CARE*</p> <p>You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</p> <ul style="list-style-type: none"> <li>- First 20 days</li> <li>- 21st thru 100th day</li> <li>- 101st day and after</li> </ul>	<p>All approved amounts</p> <p>All but \$[95.50] a day</p> <p>\$0</p>	<p>\$0</p> <p>\$0</p> <p>\$0</p>	<p>\$0</p> <p>Up to \$[95.50] a day</p> <p>All costs</p>
<p>BLOOD</p> <p>First 3 pints</p> <p>Additional</p>	<p>\$0</p> <p>100%</p>	<p>3 pints</p> <p>\$0</p>	<p>\$0</p> <p>\$0</p>
<p>HOSPICE CARE</p> <p>Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for outpatient drugs and inpatient respite care</p>	<p>\$0</p>	<p>Balance</p>

**PLAN A**

\*\*NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<p>MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUTPATIENT TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</p> <ul style="list-style-type: none"> <li>- First 100 days of Medicare Approved Amounts*</li> <li>- Remainder of Medicare Approved Amounts</li> <li>- Part B Excess Charges (Above Medicare Approved Amounts)</li> </ul>	<p>\$0</p> <p>Generally 80%</p> <p>\$0</p>	<p>\$0</p> <p>Generally 20%</p> <p>\$0</p>	<p>\$100 (Part B Deductible)</p> <p>\$0</p> <p>All Costs</p>
<p>BLOOD</p> <ul style="list-style-type: none"> <li>- First 3 pints</li> <li>- Next \$100 of Medicare Approved Amounts*</li> <li>- Remainder of Medicare Approved Amounts</li> </ul>	<p>\$0</p> <p>\$0</p> <p>80%</p>	<p>All Costs</p> <p>\$0</p> <p>20%</p>	<p>\$0</p> <p>\$100 (Part B Deductible)</p> <p>\$0</p>

# PROPOSED REGULATIONS

1469

CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0
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**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
— Medically necessary skilled care services and medical supplies	100%	\$0	\$0
— Durable medical equipment	100%	\$0	\$0
First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	\$0

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**PLAN B**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous service and supplies:			
First 60 days			
61 <sup>st</sup> thru 90 <sup>th</sup> day	All but \$[764]	\$[764] (Part A Deductible)	\$0
91 <sup>st</sup> day and after:	All but \$[191] a day	\$[191] a day	\$0
- While using 60 lifetime reserve days			
- Once lifetime reserve days are used:			
- Additional 365 days	All but \$[382] a day	\$[382] a day	\$0
- Beyond the Additional 365 days	\$0	100% of Medicare Eligible Expenses	\$0**
	\$0	\$0	All Costs

**PROPOSED REGULATIONS**

<p><b>SKILLED NURSING FACILITY CARE*</b>                  You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital                  - First 20 days                  - 21st thru 100th day                  - 101st day and after</p>	<p>All approved amounts                  All but \$[95.50] a day                  \$0</p>	<p>\$0                  \$0                  \$0</p>	<p>\$0                  Up to \$[95.50] a day                  All costs</p>
<p><b>BLOOD</b>                  First 3 pints                  Additional amounts</p>	<p>\$0                  100%</p>	<p>3 pints                  \$0</p>	<p>\$0                  \$0</p>
<p><b>HOSPICE CARE</b>                  Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for out- patient drugs and in-patient respite care</p>	<p>\$0</p>	<p>Balance</p>

**PLAN B**

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare-Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<p><b>MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT,</b> such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,                  - First 100 days of Medicare Approved Amounts*                  - Remainder of Medicare Approved Amounts                  - Part B Excess Charges (Above Medicare Approved Amounts)</p>	<p>\$0                   Generally 80%                   \$0</p>	<p>\$0                   Generally 20%                   \$0</p>	<p>\$100 (Part B Deductible)                   \$0                   All Costs</p>

# PROPOSED REGULATIONS

1471

BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0	All Costs	\$0
	\$0	\$0	\$100 (Part B Deductible)
	80%	20%	\$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100%	\$0	\$0
	\$0	\$0	\$100 (Part B Deductible)
	80%	20%	\$0

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**PLAN C**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous service and supplies: First 60 days 61 <sup>st</sup> thru 90 <sup>th</sup> day 91 <sup>st</sup> day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: - Additional 365 days  - Beyond the Additional 365 days	All but \$7[64] All but \$[191] a day	\$7[64] (Part A Deductible) \$[191] a day	\$0 \$0
	All but \$3[82] a day	\$3[82] a day	\$0
	\$0	100% of Medicare Eligible Expenses	\$0**
	\$0	\$0	All Costs

**PROPOSED REGULATIONS**

<p><b>SKILLED NURSING FACILITY CARE*</b>                  You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital                  - First 20 days                  - 21st thru 100th day                  - 101st day and after</p>	<p>All approved amounts                  All but \$[95.50] a day                  \$0</p>	<p>\$0                  Up to \$[95.50] a day                  \$0</p>	<p>\$0                  \$0                  All costs</p>
<p><b>BLOOD</b>                  First 3 pints                  Additional amounts</p>	<p>\$0                  100%</p>	<p>3 pints                  \$0</p>	<p>\$0                  \$0</p>
<p><b>HOSPICE CARE</b>                  Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for out-patient drugs and in-patient respite care</p>	<p>\$0</p>	<p>Balance</p>

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare-Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**PLAN C**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<p><b>MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT,</b> such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,                  - First 100 days of Medicare Approved Amounts*                  - Remainder of Medicare Approved Amounts                  - Part B Excess Charges (Above Medicare Approved Amounts)</p>	<p>\$0                   Generally 80%                   \$0</p>	<p>\$100 (Part B deductible)                   Generally 20%                   \$0</p>	<p>\$0                   \$0                   All Costs</p>

# PROPOSED REGULATIONS

1473

BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0  \$0  80%	All Costs  \$100 (Part B deductible)  20%	\$0  \$0  \$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment First \$100 of Medicare Approved Amounts* Remainder of Medicare Approved Amounts	100%  \$0  80%	\$0  \$100 (Part B deductible)  20%	\$0  \$0  \$0

**OTHER BENEFITS — NOT COVERED BY MEDICARE**

FOREIGN TRAVEL — NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year - Remainder of Charges	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
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\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**PLAN D**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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**PROPOSED REGULATIONS**

<p>HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous service and supplies                      First 60 days                      61st thru 90th day                      91st day and after:                      - While using 60 lifetime reserve days                      - Once lifetime reserve days are used:                      - Additional 365 days                        - Beyond the Additional 365 days</p>	<p>All but \$[764]                      All but \$[191] a day                        All but \$[382] a day                        \$0                        \$0</p>	<p>\$[764] (Part A Deductible)                      \$[191] a day                        \$[382] a day                        100% of Medicare Eligible Expenses                        \$0</p>	<p>\$0                      \$0                        \$0                        \$0**                        All Costs</p>
<p>SKILLED NURSING FACILITY CARE*                      You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital                      - First 20 days                      - 21st thru 100th day                      - 101st day and after</p>	<p>All approved amounts                      All but \$[95.50] a day                      \$0</p>	<p>\$0                      Up to \$[95.50] a day                      \$0</p>	<p>\$0                      \$0                      All costs</p>
<p>BLOOD                      First 3 pints                      Additional amounts</p>	<p>\$0                      100%</p>	<p>3 pints                      \$0</p>	<p>\$0                      \$0</p>
<p>HOSPICE CARE                      Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for out-patient drugs and in-patient respite care</p>	<p>\$0</p>	<p>Balance</p>

\*\*NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**PLAN D**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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# PROPOSED REGULATIONS

1475

<p>MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</p> <ul style="list-style-type: none"> <li>- First 100 days of Medicare Approved Amounts*</li> <li>- Remainder of Medicare Approved Amounts</li> <li>- Part B Excess Charges (Above Medicare Approved Amounts)</li> </ul>	<p>\$0</p> <p>Generally 80%</p> <p>\$0</p>	<p>\$0</p> <p>Generally 20%</p> <p>\$0</p>	<p>\$100 (Part B Deductible)</p> <p>\$0</p> <p>All Costs</p>
<p>BLOOD</p> <ul style="list-style-type: none"> <li>- First 3 pints</li> <li>- Next \$100 of Medicare Approved Amounts*</li> <li>- Remainder of Medicare Approved Amounts</li> </ul>	<p>\$0</p> <p>\$0</p> <p>80%</p>	<p>All Costs</p> <p>\$0</p> <p>20%</p>	<p>\$0</p> <p>\$100 (Part B Deductible)</p> <p>\$0</p>
<p>CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES</p>	<p>100%</p>	<p>\$0</p>	<p>\$0</p>

**PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<p>HOME HEALTH CARE MEDICARE APPROVED SERVICES</p> <p>— Medically necessary skilled care services and medical supplies</p> <p>— Durable medical equipment</p> <ul style="list-style-type: none"> <li>- First \$100 of Medicare Approved Amounts*</li> <li>- Remainder of Medicare Approved Amounts</li> </ul>	<p>100%</p> <p>\$0</p> <p>80%</p>	<p>\$0</p> <p>\$0</p> <p>20%</p>	<p>\$0</p> <p>\$100 (Part B Deductible)</p> <p>\$0</p>

**PROPOSED REGULATIONS**

<p>AT-HOME RECOVERY SERVICES — NOT COVERED BY MEDICARE Home care certified by your doctors, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan — Benefit for each visit</p> <p>— Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)</p> <p>— Calendar year maximum</p>	<p>\$0</p> <p>\$0</p> <p>\$0</p>	<p>Actual Charges to \$40 a visit</p> <p>Up to the number of Medicare Approved visits, not to exceed 7 each week</p> <p>\$1,600</p>	<p>Balance</p>
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**OTHER BENEFITS — NOT COVERED BY MEDICARE**

<p>FOREIGN TRAVEL — NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year</p> <p>- Remainder of Charges</p>	<p>\$0</p> <p>\$0</p>	<p>\$0</p> <p>80% to a lifetime maximum benefit of \$50,000</p>	<p>\$250</p> <p>20% and amounts over the \$50,000 lifetime maximum</p>
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**PLAN E**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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# PROPOSED REGULATIONS

1477

<p>HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous service and supplies</p> <p>First 60 days 61st thru 90th day 91st day and after:</p> <ul style="list-style-type: none"> <li>- While using 60 lifetime reserve days</li> <li>- Once lifetime reserve days are used:</li> <li>- Additional 365 days</li>   <li>- Beyond the Additional 365 days</li> </ul>	<p>All but \$[764 All but \$[191] a day</p> <p>All but \$[382] a day</p> <p>\$0</p> <p>\$0</p>	<p>\$[764] (Part A Deductible) \$[191] a day</p> <p>\$[382] a day</p> <p>100% of Medicare Eligible Expenses \$0</p>	<p>\$0 \$0 \$0</p> <p>\$0**</p> <p>All Costs</p>
<p>SKILLED NURSING FACILITY CARE*</p> <p>You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</p> <ul style="list-style-type: none"> <li>- First 20 days</li> <li>- 21st thru 100th day</li> <li>- 101st day and after</li> </ul>	<p>All approved amounts All but \$[95.50] a day \$0</p>	<p>\$0 Up to \$[95.50] a day \$0</p>	<p>\$0 \$0 All costs</p>
<p>BLOOD</p> <p>First 3 pints Additional amounts</p>	<p>\$0 100%</p>	<p>3 pints \$0</p>	<p>\$0 \$0</p>
<p>HOSPICE CARE</p> <p>Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for out-patient drugs and in-patient respite care</p>	<p>\$0</p>	<p>Balance</p>

### PLAN E

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

### MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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**PROPOSED REGULATIONS**

MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUTPATIENT TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, - First 100 days of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts - Part B Excess Charges (Above Medicare Approved Amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  \$0	\$100 (Part B Deductible)  \$0  All Costs
BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0  \$0  80%	All Costs  \$0  20%	\$0  \$100 (Part B Deductible)  \$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment - First \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	100%  \$0  80%	\$0  \$0  20%	\$0  \$100 (Part B Deductible)  \$0

(continued)

OTHER BENEFITS — NOT COVERED BY MEDICARE

PLAN E (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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<p>FOREIGN TRAVEL — NOT COVERED BY MEDICARE</p> <p>Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA</p> <ul style="list-style-type: none"> <li>- First \$250 each calendar year</li> <li>- Remainder of Charges</li> </ul>	<p>\$0</p> <p>\$0</p>	<p>\$0</p> <p>80% to a lifetime maximum benefit of \$50,000</p>	<p>\$250</p> <p>20% and amounts over the \$50,000 lifetime maximum</p>
<p><u>*PREVENTIVE MEDICAL CARE BENEFIT — NOT COVERED BY MEDICARE</u> <del>A</del>Some annual physical and preventive tests and services such as: <del>fecal occult blood test,</del> digital rectal exam, <del>mammogram,</del> hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, <del>influenza shot,</del> tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare</p> <ul style="list-style-type: none"> <li>- First \$120 each calendar year</li> <li>- Additional charges</li> </ul>	<p>\$0</p> <p>\$0</p>	<p>\$120</p> <p>\$0</p>	<p>\$0</p> <p>All Costs</p>

\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

begin until out-of-pocket expenses are [\$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

\*\*This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [\$1500] deductible. Benefits from the high deductible plan F will not

# PROPOSED REGULATIONS

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1500 DEDUCTIBLE,** YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous service and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: - Additional 365 days  - Beyond the Additional 365 days	All but \$[764] All but \$[191] a day  All but \$[382] a day  \$0  \$0	\$[764] (Part A Deductible) \$[191] a day  \$[382] a day  100% of Medicare Eligible Expenses \$0	\$0 \$0  \$0  \$0**  All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital - First 20 days - 21st thru 100th day - 101st day and after	All approved amounts All but \$[95.50] a day \$0	\$0 Up to \$[95.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and in-patient respite care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN F or HIGH DEDUCTIBLE PLAN F

MEDICARE (PART B) — HOSPITAL SERVICES — PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

\*\*This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [\$1500] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are [\$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** YOU PAY
MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, - First 100 days of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts - Part B Excess Charges (Above Medicare Approved Amounts)	\$0  Generally 80%  \$0	\$100 (Part B Deductible)  Generally 20%  100%	\$0  \$0  \$0
BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0  \$0  80%	All Costs  \$100 (Part B Deductible)  20%	\$0  \$0  \$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(continued)

**PARTS A & B**

**PLAN F or HIGH DEDUCTIBLE PLAN F (cont.)**

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** YOU PAY

**PROPOSED REGULATIONS**

HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment - First \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	100%	\$0	\$0
	\$0	\$100 (Part B Deductible)	\$0
	80%	20%	\$0

**OTHER BENEFITS — NOT COVERED BY MEDICARE**

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** YOU PAY
FOREIGN TRAVEL — NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year  - Remainder of Charges	\$0  \$0	\$0  80% to a lifetime maximum benefit of \$50,000	\$250  20% and amounts over the \$50,000 lifetime maximum

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

**PLAN G**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous service and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: - Additional 365 days  - Beyond the Additional 365 days	All but \$[764] All but \$[191] a day  All but \$[382] a day  \$0  \$0	\$[764] (Part A Deductible) \$[191] a day  \$[382] a day  100% of Medicare Eligible Expenses \$0	\$0 \$0  \$0  \$0**  All Costs

# PROPOSED REGULATIONS

<p><b>SKILLED NURSING FACILITY CARE*</b>                  You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</p> <ul style="list-style-type: none"> <li>- First 20 days</li> <li>- 21st thru 100th day</li> <li>- 101st day and after</li> </ul>	All approved amounts All but \$[95.50] a day \$0	\$0 Up to \$[95.50] a day \$0	\$0 \$0 All costs
<p><b>BLOOD</b>                  First 3 pints                  Additional amounts</p>	\$0 100%	3 pints \$0	\$0 \$0
<p><b>HOSPICE CARE</b>                  Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	All but very limited coinsurance for out-patient drugs and in-patient respite care	\$0	Balance

**PLAN G**

\*\*NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<p><b>MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT</b>, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</p> <ul style="list-style-type: none"> <li>- First 100 days of Medicare Approved Amounts*</li> <li>- Remainder of Medicare Approved Amounts</li> <li>- Part B Excess Charges (Above Medicare Approved Amounts)</li> </ul>	\$0  Generally 80%  \$0	\$0  Generally 20%  80%	\$100 (Part B Deductible)  \$0  20%

**PROPOSED REGULATIONS**

BLOOD - First 3 pints	\$0	All Costs	\$0
- Next \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
- Remainder of Medicare Approved Amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(continued)

PARTS A & B

PLAN G (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies	100%	\$0	\$0
— Durable medical equipment - First \$100 of Medicare Approved Amounts*	\$0	\$0	\$100 (Part B Deductible)
- Remainder of Medicare Approved Amounts	80%	20%	\$0
AT-HOME RECOVERY SERVICES — NOT COVERED BY MEDICARE Home care certified by your doctors, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
— Benefit for each visit	\$0	Actual Charges to \$40 a visit	Balance
— Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0	Up to the number of Medicare Approved visits, not to exceed 7 each week	
— Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS — NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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# PROPOSED REGULATIONS

1485

FOREIGN TRAVEL — NOT COVERED BY MEDICARE Medically necessary emer-gency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year  - Remainder of Charges	\$0  \$0	\$0  80% to a lifetime maximum benefit of \$50,000	\$250  20% and amounts over the \$50,000 lifetime maximum
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\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

PLAN H

MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous service and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: - Additional 365 days  - Beyond the Additional 365 days	All but \$[764] All but \$[191] a day  All but \$[382] a day  \$0  \$0	\$[764] (Part A Deductible) \$[191] a day  \$[382] a day  100% of Medicare Eligible Expenses \$0	\$0 \$0  \$0  \$0**  All Costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital - First 20 days - 21st thru 100th day - 101st day and after	All approved amounts All but \$[95.50] a day \$0	\$0 Up to \$[95.50] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and in-patient respite care	\$0	Balance

\*\*NOTICE: When your Medicare Part A hospital benefits

# PROPOSED REGULATIONS

are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR

\*Once you have been billed \$100 of Medicare Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

PLAN H

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUTPATIENT TREAT-MENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, - First 100 days of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts - Part B Excess Charges (Above Medicare Approved Amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  \$0	\$100 (Part B Deductible)  \$0  All Costs
BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0  \$0  80%	All Costs  \$0  20%	\$0  \$100 (Part B Deductible)  \$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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# PROPOSED REGULATIONS

HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment - First \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	100%     80%	\$0     \$0     20%	\$0     \$100 (Part B Deductible)     \$0
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(continued)

## OTHER BENEFITS — NOT COVERED BY MEDICARE

### PLAN H (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL — NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year  - Remainder of Charges	\$0   \$0	\$0   80% to a lifetime maximum benefit of \$50,000	\$250   20% and amounts over the \$50,000 lifetime maximum
BASIC OUTPATIENT PRESCRIPTION DRUGS — NOT COVERED BY MEDICARE - First \$250 each calendar year - Next \$2,500 each calendar year - Over \$2,500 each calendar year	\$0 \$0 \$0	\$0 50% — \$1,250 calendar year maximum benefit \$0	\$250 50%  All Costs

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

### PLAN I

#### MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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**PROPOSED REGULATIONS**

<p>HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous service and supplies                      First 60 days                      61st thru 90th day                      91st day and after:                      - While using 60 lifetime reserve days                      - Once lifetime reserve days are used:                      - Additional 365 days                       - Beyond the Additional 365 days</p>	<p>All but \$[764]                      All but \$[191] a day                       All but \$[382] a day                       \$0                       \$0</p>	<p>\$[764] (Part A Deductible)                      \$[191] a day                       \$[382] a day                       100% of Medicare Eligible Expenses                       \$0</p>	<p>\$0                      \$0                       \$0                       \$0**                       All Costs</p>
<p>SKILLED NURSING FACILITY CARE*                      You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital                      - First 20 days                      - 21st thru 100th day                      - 101st day and after</p>	<p>All approved amounts                      All but \$[95.50] a day                      \$0</p>	<p>\$0                      Up to \$[95.50] a day                      \$0</p>	<p>\$0                      \$0                      All costs</p>
<p>BLOOD                      First 3 pints                      Additional amounts</p>	<p>\$0                      100%</p>	<p>3 pints                      \$0</p>	<p>\$0                      \$0</p>
<p>HOSPICE CARE                      Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for out- patient drugs and in- patient respite care</p>	<p>\$0</p>	<p>Balance</p>

\*\*NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare-Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**PLAN I**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
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# PROPOSED REGULATIONS

MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT, such as Physician's services, in-patient and out-patient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, - First 100 days of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts - Part B Excess Charges (Above Medicare Approved Amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  100%	\$100 (Part B Deductible)  \$0  \$0
BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0 \$0  80%	All Costs \$0  20%	\$0 \$100 (Part B Deductible)  \$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(continued)

PARTS A & B

PLAN I (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment - First \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	100%  \$0  80%	\$0  \$0  20%	\$0  \$100 (Part B Deductible)  \$0

**PROPOSED REGULATIONS**

AT-HOME RECOVERY SERVICES — NOT COVERED BY MEDICARE Home care certified by your doctors, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan — Benefit for each visit	\$0	Actual Charges to \$40 a visit  Up to the number of Medicare Approved visits, not to exceed 7 each week  \$1,600	Balance
— Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	\$0		
— Calendar year maximum	\$0		

**OTHER BENEFITS — NOT COVERED BY MEDICARE**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL — NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year - Remainder of Charges*	\$0 \$0	\$0 80% to a lifetime maximum benefit of \$50,000	\$250 20% and amounts over the \$50,000 lifetime maximum
<b>BASIC OUTPATIENT PRESCRIPTION DRUGS — NOT COVERED BY MEDICARE</b> - First \$250 each calendar year - Next \$2,500 each calendar year - Over \$2,500 each calendar year	\$0 \$0 \$0	\$0 50% — \$1,250 calendar year maximum benefit \$0	\$250 50% All Costs

\*\*This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [\$1500] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are [\$1500]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate prescription drug deductible or the plan's separate foreign travel emergency deductible.

**PLAN J or HIGH DEDUCTIBLE PLAN J**

**MEDICARE (PART A) — HOSPITAL SERVICES — PER BENEFIT PERIOD**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	IN ADDITION TO \$1500 DEDUCTIBLE,** YOU PAY
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<p><b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous service and supplies First 60 days 61st thru 90th day 91st day and after: - While using 60 lifetime reserve days - Once lifetime reserve days are used: - Additional 365 days  - Beyond the Additional 365 days</p>	<p>All but \$[764] All but \$[191] a day  All but \$[382] a day  \$0  \$0</p>	<p>\$[764] (Part A Deductible) \$[191] a day  \$[382] a day  100% of Medicare Eligible Expenses  \$0</p>	<p>\$0 \$0  \$0  \$0**  All Costs</p>
<p><b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital - First 20 days - 21st thru 100th day - 101st day and after</p>	<p>All approved amounts All but \$[95.50] a day \$0</p>	<p>\$0 Up to \$[95.50] a day \$0</p>	<p>\$0 \$0 All costs</p>
<p><b>BLOOD</b> First 3 pints Additional amounts</p>	<p>\$0 100%</p>	<p>3 pints \$0</p>	<p>\$0 \$0</p>
<p><b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services</p>	<p>All but very limited coinsurance for out-patient drugs and in-patient respite care</p>	<p>\$0</p>	<p>Balance</p>

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**MEDICARE (PART B) — MEDICAL SERVICES — PER CALENDAR YEAR**

\*Once you have been billed \$100 of Medicare-Approved Amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

**PLAN J**

<p>SERVICES</p>	<p>MEDICARE PAYS</p>	<p><u>AFTER YOU PAY \$1500 DEDUCTIBLE,**</u> PLAN PAYS</p>	<p><u>AFTER YOU PAY \$1500 DEDUCTIBLE,**</u> YOU PAY</p>
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**PROPOSED REGULATIONS**

MEDICAL EXPENSES — IN OR OUT OF THE HOSPITAL AND OUT-PATIENT TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, - First 100 days of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts - Part B Excess Charges (Above Medicare Approved Amounts)	\$0  Generally 80%  \$0	\$100 (Part B Deductible)  Generally 20%  100%	\$0  \$0  \$0
BLOOD - First 3 pints - Next \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0 \$0  80%	All Costs \$100 (Part B Deductible)  20%	\$0 \$0  \$0
CLINICAL LABORATORY SERVICES — BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(continued)

PARTS A & B

PLAN J or HIGH DEDUCTIBLE PLAN J (cont.)

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES — Medically necessary skilled care services and medical supplies — Durable medical equipment	100%	\$0	\$0
- First \$100 of Medicare Approved Amounts* - Remainder of Medicare Approved Amounts	\$0  80%	\$100 (Part B Deductible)  20%	\$0  \$0

# PROPOSED REGULATIONS

<p>AT-HOME RECOVERY SERVICES — NOT COVERED BY MEDICARE Home care certified by your doctors, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan</p> <p>— Benefit for each visit</p> <p>— Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)</p> <p>— Calendar year maximum</p>	<p>\$0</p> <p>\$0</p> <p>\$0</p>	<p>Actual Charges to \$40 a visit</p> <p>Up to the number of Medicare Approved visits, not to exceed 7 each week</p> <p>\$1,600</p>	<p>Balance</p>
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(continued)

OTHER BENEFITS—NOT COVERED BY MEDICARE

PLAN J or HIGH DEDUCTIBLE PLAN J (cont.)

SERVICES	MEDICARE PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** PLAN PAYS	AFTER YOU PAY \$1500 DEDUCTIBLE,** YOU PAY
<p>FOREIGN TRAVEL — NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA - First \$250 each calendar year - Remainder of Charges</p>	<p>\$0</p> <p>\$0</p>	<p>\$0</p> <p>80% to a lifetime maximum benefit of \$50,000</p>	<p>\$250</p> <p>20% and amounts over the \$50,000 lifetime maximum</p>
<p>EXTENDED OUTPATIENT PRESCRIPTION DRUGS — NOT COVERED BY MEDICARE - First \$250 each calendar year - Next \$6,000 each calendar year - Over \$6,000 each calendar year</p>	<p>\$0</p> <p>\$0</p> <p>\$0</p>	<p>\$0</p> <p>50% — \$3,000 calendar year maximum benefit</p> <p>\$0</p>	<p>\$250</p> <p>50%</p> <p>All Costs</p>
<p>***PREVENTIVE MEDICAL CARE BENEFIT — NOT COVERED BY MEDICARE Some annual physical and preventive tests and services such as: <del>fecal occult blood test,</del> digital rectal exam, <del>mammogram,</del> hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, <del>influenza shot,</del> tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare - First \$120 each calendar year - Additional charges</p>	<p>\$0</p> <p>\$0</p>	<p>\$120</p> <p>\$0</p>	<p>\$0</p> <p>All Costs</p>

\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

[Drafting Note: The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate.]

D. Notice Regarding Policies or Certificates Which are Not Medicare Supplement Policies.

(1) Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy, or a policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. § 1395 et seq.), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in Section 3B of this regulation, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the "Guide to Health Insurance for People with Medicare" available from the company."

(2) Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection D(1) shall disclose, using the applicable statement in Appendix C, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate.

Cross-reference to Section 16: See Appendix C, page \_\_\_\_.

Section 187. Requirements for Application Forms and Replacement Coverage

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 Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and

statements may be used.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility.

(5) Counseling services are available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB).

[Questions]

To the best of your knowledge.

(1) Do you have another Medicare supplement policy or certificate in force (including health care service contract, health maintenance organization contract)?

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplement policy with this policy [certificate]?

(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(a) If so, with which company?

(b) What kind of policy?

(3) Are you covered for medical assistance through the State Medicaid program:

(a) As a Specified Low-Income Medicare Beneficiary (SLMB)?

(b) As a Qualified Medicare Beneficiary (QMB)?

(c) For Other Medicaid medical benefits?

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

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

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

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response insurer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of accident and sickness coverage. One copy of such notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the insurer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than twelve (12) point type.

**NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE**

[Insurance company's name and address]

**SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE**

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with a policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement coverage. You should evaluate the need for other accident and sickness coverage you have that may duplicate this policy.

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

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare coverage because you intend to terminate your existing Medicare supplement coverage. The replacement policy is being purchased for the following reason(s) (check one):

- Additional benefits.
- No change in benefits, but lower premiums.

- Fewer benefits and lower premiums.
- Other.

\_\_\_\_\_

\_\_\_\_\_

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 of a claim for 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 preexisting conditions, waiting period, elimination periods or probationary periods.

3. If 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 and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any 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, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

\_\_\_\_\_  
(Signature of Agent, Broker or Other Representative)

[Typed Name and Address of Issuer, Agent or Broker]

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

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

\*Signature not required for direct response sales.

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

**Section 198. Filing Requirements for Advertising**

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of

Insurance of this State for review or approval by the Commissioner to the extent it may be required under state law.

Section ~~20~~<sup>19</sup>.Standards for Marketing

A. An issuer 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 or other appropriate means, on the first page of the policy the following:

"Notice to buyer: This policy may not cover all of your medical expenses."

(4) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(5) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], 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 including, 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.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wraparound" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

Section ~~21~~<sup>0</sup>.Appropriateness of Recommended Purchase and Excessive Insurance

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of

a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

Section ~~22~~<sup>+</sup>.Reporting of Multiple Policies

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this State for which the issuer has in force more than one Medicare supplement policy or certificate:

1. Policy and certificate number; and
2. Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

Section ~~23~~<sup>2</sup>.Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods.

Section ~~24~~<sup>3</sup>.Separability

If any provision of this regulation or the application thereof to any person or circumstances 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 ~~25~~<sup>4</sup>.Effective Date

This Regulation shall be effective on January 1, 1992.

David N. Levinson

November 8, 1991

APPENDIX A

MEDICARE SUPPLEMENT REFUND CALCULATION FORM  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup> \_\_\_\_\_

SMSBP<sup>2</sup> \_\_\_\_\_

**PROPOSED REGULATIONS**

FOR THE STATE OF \_\_\_\_\_ COMPANY  
NAME \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_ NAIC Company  
Code \_\_\_\_\_  
PERSON COMPLETING THIS EXHIBIT

Title \_\_\_\_\_ Telephone  
Number \_\_\_\_\_

(a) (b)  
Earned Incurred  
Premium<sup>3</sup>Claims<sup>4</sup>

Line

1. Current Year's Experience  
a. Total (all policy years)  
b. Current year's issues (%)  
c. Net (for reporting purposes = 1a - 1b) \_\_\_\_\_

2. Past Years' Experience (All Policy Years)  
\_\_\_\_\_

3. Total Experience  
(Net Current Year + Past Years' Experience)  
\_\_\_\_\_

4. Refunds Last Year (Excluding Interest)  
\_\_\_\_\_

5. Previous Since Inception (Excluding Interest)  
\_\_\_\_\_

6. Refunds Since Inception (Excluding Interest)  
\_\_\_\_\_

7. Benchmark Ratio Since Inception  
(SEE WORKSHEET FOR RATIO 1) \_\_\_\_\_

8. Experienced Ratio Since Inception \_\_\_\_\_

Total Actual Incurred Claims (Line 3, Col. b) = Ratio 2  
\_\_\_\_\_

Tot. Earned Prem. (Line 3, Col. a — Refunds Since  
Inception (line 6)

9. Life Years Exposed Since Inception  
\_\_\_\_\_

If the Experienced Ratio is less than the Benchmark Ratio,  
and there are more than 500 life years exposure, then  
proceed to calculation of refund.

APPENDIX A

MEDICARE SUPPLEMENT REFUND CALCULATION  
FORM  
FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup> \_\_\_\_\_  
SMSBP<sup>2</sup> \_\_\_\_\_

FOR THE STATE OF \_\_\_\_\_ COMPANY  
NAME \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_ NAIC Company  
Code \_\_\_\_\_  
PERSON COMPLETING THIS EXHIBIT

Title \_\_\_\_\_ Telephone  
Number \_\_\_\_\_

10. Tolerance Permitted (obtained from credibility table)  
\_\_\_\_\_

11. Adjustment to Incurred Claim for Credibility  
\_\_\_\_\_

Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than benchmark ratio (ratio 1), a refund or  
credit to premium is not required.

12. Adjusted Incurred Claims =

(Tot. Earned Premiums (line 3, col. a) — Refunds Since  
Inception (line 6) x Ratio 3 (line 11)

13. Refund = Total Earned Premium (line 3, col. a) —  
Refunds Since Inception (line 6) —  
Adjusted Incurred Claims (line 12)  
Benchmark Ratio (Ratio 1)

If the amount on line 13 is less than .005 times the  
annualized premium in force as of December 31 of the  
reporting year, then no refund is made. Otherwise, the  
amount on line 13 is to be refunded or credited, and a  
description of the refund and/or credit against premiums to  
be used must be attached to this form.

MEDICARE SUPPLEMENT CREDIBILITY TABLE

Life Years Exposed Since Inception Tolerance

10,000+0.0%  
5,000 - 9,999 5.0%  
2,500 - 4,999 7.5%  
1,000 - 2,499 10.0%

# PROPOSED REGULATIONS

500 - 99915.0%

Title \_\_\_\_\_

If less than 500, no credibility.

Date \_\_\_\_\_

<sup>1</sup>Individual, group, individual Medicare Select, or group Medicare "Select only

APPENDIX A  
REPORTING FORM FOR THE CALCULATION OF  
BENCHMARK RATIO SINCE INCEPTION  
FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan

<sup>3</sup>Includes model Loadings and fees charged.

<sup>4</sup>Excludes Active Life Reserves.

<sup>5</sup>This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

TYPE<sup>1</sup> \_\_\_\_\_  
SMSBP<sup>2</sup> \_\_\_\_\_  
FOR THE STATE OF \_\_\_\_\_ COMPANY  
NAME \_\_\_\_\_  
NAIC Group Code \_\_\_\_\_ NAIC Company  
Code \_\_\_\_\_  
PERSON COMPLETING THIS EXHIBIT

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title \_\_\_\_\_ Telephone  
Number \_\_\_\_\_

\_\_\_\_\_  
Name — Please Type

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b) x (c)	Cumulative Loss Ratio	(d) x (e)	Factor	(b) x (g)	Cumulative Loss Ratio	(h) x (i)	Policy Year Loss Ratio
1		2.770		0.442		0.000		0.000		0.4
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77

# PROPOSED REGULATIONS

13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception:  $(l \div n) / (k \div m)$ :  
\_\_\_\_\_

<sup>1</sup>Individual, group, individual Medicare Select, or group Medicare "Select only

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

<sup>3</sup>Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup>For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup>These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

## APPENDIX A

### REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR \_\_\_\_\_

TYPE<sup>1</sup> \_\_\_\_\_  
 SMSBP<sup>2</sup> \_\_\_\_\_  
 FOR THE STATE OF \_\_\_\_\_ COMPANY  
 NAME \_\_\_\_\_  
 NAIC Group Code \_\_\_\_\_ NAIC Company  
 Code \_\_\_\_\_  
 PERSON COMPLETING THIS EXHIBIT  
 \_\_\_\_\_  
 Title \_\_\_\_\_ Telephone  
 Number \_\_\_\_\_

(a) <sup>3</sup>	(b) <sup>4</sup>	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o) <sup>5</sup>
Year	Earned Premium	Factor	(b) x (c)	Cumulative Loss Ratio	(d) x (e)	Factor	(b) x (g)	Cumulative Loss Ratio	(h) x (i)	Policy Year Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.8
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88

# PROPOSED REGULATIONS

12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total			(k):		(l):		(m):		(n):	

Certificate #Issuance

Benchmark Ratio Since Inception:  $(l \div n) / (k \div m)$ :

<sup>1</sup>Individual, group, individual Medicare Select, or group Medicare "Select only

<sup>2</sup>"SMSBP" = Standardized Medicare Supplement Benefit Plan - Use "P" for pre-standardized plans

<sup>3</sup>Year 1 is the current calendar year - 1. Year 2 is the current calendar year - 2 (etc.) (Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

<sup>4</sup>For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

<sup>5</sup>These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

## APPENDIX B

### FORM FOR REPORTING DUPLICATE MEDICARE SUPPLEMENT POLICIES

Company Name:

\_\_\_\_\_

Address:

\_\_\_\_\_  
\_\_\_\_\_

Phone Number:

\_\_\_\_\_

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Date of

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and Title (please type)

\_\_\_\_\_  
Date

## APPENDIX C

### DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for Health Insurance Policies sold to Medicare Beneficiaries that Duplicate Medicare

1. Section 1882(d) of the Federal Social Security Act, P.L. 103~~N~~432, [42 U.S.C. 1395ss] prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it includes the prescribed disclosure statement on or together with the application.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Disability income policies are not considered to provide benefits that duplicate Medicare.

6. Long-term care insurance policies that coordinate

with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.

7. The federal law does not pre-empt state laws that are more stringent than the federal requirements.

87. The federal law does not pre-empt existing state form filing requirements.

9. Section 1882 of the federal Social Security Act was amended in Subsection (d)(3)(A) to allow for alternative disclosure statements. The disclosure statements already in Appendix C remain. Carriers may use either disclosure statement with the requisite insurance product. However, carriers should use either the original disclosure statements or the alternative disclosure statements and not use both simultaneously.

[Original disclosure statement fFor policies that provide benefits for expenses incurred for an accidental injury only]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance

counseling program.

[Original disclosure statement Ffor policies that provide benefits for specified limited services]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement Ffor policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement For policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because

Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement For indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

**Before You Buy This Insurance**

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement For policies that provide benefits for both expenses incurred and fixed indemnity basis]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

**Before You Buy This Insurance**

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare

Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

~~[For long-term care policies providing both nursing home and noninstitutional coverage]~~

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

~~This is not Medicare Supplement Insurance~~

~~Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.~~

- ~~This is a long-term care insurance that provides benefits for covered nursing home and home care services.~~
- ~~In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.~~
- ~~This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.~~

~~Neither Medicare nor Medicare Supplement insurance provides benefits for most long-term care expenses.~~

**Before You Buy This Insurance**

✓ ~~Check the coverage in all health insurance policies you already have.~~

✓ ~~For more information about long-term care insurance, review the *Shopper's Guide to Long-Term Care Insurance*, available from the insurance company.~~

✓ ~~For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.~~

✓ ~~For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.~~

~~[For policies providing nursing home benefits only]~~

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE  
BENEFITS**

~~This is not Medicare Supplement Insurance~~

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

#### Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about long-term care insurance, review the *Shopper's Guide to Long-Term Care Insurance*, available from the insurance company.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[For policies providing home care benefits only]

#### **IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered home care services.
- In some situations Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.

#### Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about long-term care insurance, review the *Shopper's Guide to Long-Term Care Insurance*, available from the insurance company.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Original disclosure statement Ffor other health insurance policies not specifically identified in the previous statements]

#### **IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

#### Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits for expenses incurred for an accidental injury only.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE**

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

**Before You Buy This Insurance**

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits for specified limited services.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE**

Some health care services paid for by Medicare may also

trigger the payment of benefits from this policy.

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

**Before You Buy This Insurance**

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that reimburse expenses incurred for specified diseases or other specified impairments. This includes expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE**

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy. Medicare generally pays for most or all of these expenses.

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.]

### IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services

- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.]

### IMPORTANT NOTICE TO PERSONS ON MEDICARE THIS IS NOT MEDICARE SUPPLEMENT INSURANCE

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you

already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE**

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

**Before You Buy This Insurance**

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact

your state insurance department or state senior insurance counseling program.

[Alternative disclosure statement for other health insurance policies not specifically identified in the preceding statements.]

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS IS NOT MEDICARE SUPPLEMENT INSURANCE**

Some health care services paid for by Medicare may also trigger the payment of benefits from this policy.

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

This policy must pay benefits without regard to other health benefit coverage to which you may be entitled under Medicare or other insurance.

**Before You Buy This Insurance**

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR & WASTE MANAGEMENT**

**AIR QUALITY MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch. 60)

**REGISTER NOTICE**

1. TITLE OF THE REGULATIONS:

**REGULATION NO. 25 - "REQUIREMENTS FOR  
PRECONSTRUCTION REVIEW" OF THE STATE OF  
DELAWARE REGULATIONS GOVERNING THE  
CONTROL OF AIR POLLUTION**

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE  
AND ISSUES:

The Department is proposing to amend Regulation No. 25 to correct deficiencies identified by the EPA in an April 3, 1998 Federal Register rulemaking (Volume 63, Number 64, pages 16433 - 16435) and to clarify existing provisions of the regulation. The corrections to noted deficiencies include the public participation procedures for nonattainment new source review (NSR) permits, and the criteria to claim emission reductions to be used as the offset requirement for new major sources or major modifications to existing major sources of volatile organic compounds or nitrogen oxides emissions. The federal requirements for these provisions are found at 40 CFR Part 51 Subpart I, "Review of New Sources and Modifications."

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO  
ACT:

7 Delaware Code, Chapter 60

5. OTHER REGULATIONS THAT MAY BE AFFECTED  
BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed revision will extend to, at least, March 30, 1999. Interested parties may submit comments in writing during this time frame to: Leslie Andersen, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, March 23, 1999 beginning at 6:00 p.m. at the DNREC Richardson & Robbins

Building in Dover, DE.

7. PREPARED BY:

Leslie C. Andersen (302) 323-4542, February 10, 1999

**REGULATION NO. 25  
REQUIREMENTS FOR PRECONSTRUCTION  
REVIEW**

~~01/11/93~~ xx/xx/99

Section 1 - General Provisions

1.1 Requirements of this regulation are in addition to any other requirements of the State of Delaware Regulations Governing the Control of Air Pollution.

1.2 Any stationary source which will impact an attainment area or an unclassifiable area as designated by the U.S. Environmental Protection Agency (EPA) pursuant to Section 107 of the Clean Air Act Amendments of 1990 (CAA), is subject to the regulations of Section 3, Prevention of Significant Deterioration (PSD).

1.3 Any stationary source which will impact a non-attainment area as designated by the EPA pursuant to Section 107 of the CAA is subject to the regulations of Section 2, Emission Offset Provisions (EOP).

1.4 A source may be subject to PSD for one pollutant and to EOP for another pollutant, or may affect both attainment or unclassifiable areas and a non-attainment area for the same pollutant.

1.5 Any emission limitation represented by Lowest Achievable Emission Rate (LAER) may be imposed by the Department pursuant to regulations adopted under Section 2 herein notwithstanding any emission limit specified elsewhere in the State of Delaware Regulations Governing the Control of Air Pollution.

1.6 Any emission limitation represented by Best Available Control Technology (BACT) may be imposed by the Department pursuant to regulations adopted under Section 3 herein notwithstanding any emission limit specified elsewhere in the State of Delaware Regulations Governing the Control of Air Pollution.

1.7 No stationary source shall be constructed unless the applicant can substantiate to the Department that the source will comply with any applicable emission limit or New Source Performance Standard or Emission Standard for a Hazardous Air Pollutant as set forth in the State of Delaware Regulations Governing the Control of Air Pollution.

1.8 Any stationary source that implements, for the purpose of gaining relief from Regulation 25, Section 3, by any physical or operational limitation on the capacity of the source to emit a pollutant, including (but not limited to) air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design and the limitation or the effect it would have on emissions is enforceable, notwithstanding any emission limit specified elsewhere in the State of Delaware Regulations Governing the Control of Air Pollution. If a source petitions the Department for relief from any resulting limitation described above, the source is subject to review under Regulation 25, Sections 2 and 3 as though construction had not yet commenced on the source or modification.

1.9 Definitions - For the purposes of this regulation

A. "Major Stationary Source" - See Sections 2.2 and 3.0

B. "Major Modification"

1. Major modification means any physical change or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the CAA.

2. Any net emissions increase that is significant for either volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

3. A physical change or change in the method of operation shall not include:

i. Routine maintenance, repair and replacement;

ii. Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

iii. Use of an alternative fuel by reason of an order or rule under Section 125 of the CAA;

iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

v. Use of an alternative fuel or raw material by a stationary source which:

a. The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any previously issued permit condition which was established after January 6, 1975.

b. The source is approved to use under any previously issued PSD permit or under Regulation 25, Section 3.

vi. An increase in the hours of operation or in the production rate, unless such change would be prohibited under any previously issued permit condition which was

established after January 6, 1975;

vii. Any change in ownership at a stationary source.

C. "Net Emissions Increase"

1. Net emissions increase means the amount by which the sum of the following exceeds zero:

i. Any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and

ii. Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

2. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

i. The date five years before construction on the particular change commences; and

ii. The date that the increase from the particular change occurs.

3. An increase or decrease in actual emissions is creditable only if the Department has not relied on it in issuing a permit for the source under this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

4. An increase or decrease in actual emissions of sulfur dioxide or particulate matter which occurs before the applicable baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

5. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

6. A decrease in actual emissions is creditable only to the extent that:

i. The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

ii. It is enforceable at and after the time that actual construction on the particular change begins; and

iii. It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

iv. It has not been adopted by the Department as a required reduction to be made part of the SIP or it is not required by the Department pursuant to an existing requirement of the SIP.

7. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

D. "Potential to Emit" means the maximum capacity of a stationary source to emit a pollutant under its physical

and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

E. "Stationary Source" means any building, structure, facility or installation which emits or may emit any air pollutant subject to regulation under the CAA.

F. "Building, Structure, Facility, or Installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively). For purposes of Section 2, this definition shall apply only to the "Building, Structure or Facility".

G. "Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the CAA.

H. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition or modification of an emissions unit) which would result in a change in actual emissions.

I. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

J. "Necessary Preconstruction Approvals or Permits" means those permits or approvals required under Delaware air quality control laws and regulations.

K. "Begin Actual Construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction or permanent storage structures.

With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

L. "Best Available Control Technology" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under CAA which would be emitted from any proposed major stationary source or major modification which the Department, on a case-by-case basis, takes into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under Regulation 20 and 21. If the Department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

M. "Baseline Concentration"

1. Baseline concentration means that ambient concentration level which exists in the baseline area at the time of the applicable baseline date. A baseline concentration is determined for each pollutant for which a baseline date is established and shall include:

- i. The actual emissions representative of sources in existence on the applicable baseline date, except as provided in paragraph 1.9M(2);
- ii. The allowable emissions of major stationary sources which commenced construction before January 6, 1975, but were not in operation by the applicable baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

- i. Actual emissions from any major stationary source on which construction commenced after January 6, 1975; and
- ii. Actual emissions increases and decreases at any stationary source occurring after the baseline date.

N. "Baseline Date"

1. Baseline date means the earliest date after August 7, 1977, on which the first complete application is

submitted by a major stationary source or major modification subject to the requirements of Regulation 25, Section 3.

2. Baseline date means the earliest date after August 7, 1977, but before the effective date of this regulation, on which the first complete application by a major stationary source or major modification which would have been subject to the requirements of Regulation 25, Section 3 if application were submitted after the effective date of this regulation.

3. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

i. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable for the pollutant on the date of its complete application under this section; and

ii. In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

O. "Baseline Area"

1. Baseline area means any intrastate area (and every part thereof) designated as attainment or unclassifiable in which the major source or major modification establishing the baseline date would construct or would have an air quality impact equal to or greater than 1  $\text{lg}/\text{m}^3$  (annual average) of the pollutant for which the baseline date is established.

2. Area redesignations cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

- i. Establishes a baseline date, or
- ii. Is subject to this section.

P. "Allowable Emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in Regulations 20 and 21;

2. Other applicable Delaware State Implementation Plan emissions limitations, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

Q. "Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions

must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

1. Emissions from ships, trains, or other vehicles coming to or from the new or modified stationary source; and

2. Emissions from any offsite support facility(s) which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

R. "Innovative Control Technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy economics, or non-air quality environmental impacts.

S. "Fugitive Emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

T. "Actual Emissions:

1. Actual emissions means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with subparagraphs (2) through (4) below.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The Department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The Department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

U. "Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application.

V. "Significant"

1. Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

**Pollutant and Emissions Rate**

Carbon monoxide: 100 tons per year (TPY)

Sulfur dioxide: 40 TPY

Particulate matter: 25 TPY

Ozone: New Castle and Kent Counties - 25 TPY of either volatile organic compounds or nitrogen oxides \*

Sussex County - 40 TPY of either volatile organic compounds or nitrogen oxides \*

Lead: 0.6 TPY

Asbestos: 0.007 TPY

Beryllium: 0.0004 TPY

Mercury: 0.1 TPY

Vinyl chloride: 1 TPY

Fluorides: 3 TPY

Sulfuric acid mist: 7 TPY

Hydrogen sulfide (H<sub>2</sub>S): 10 TPY

Total reduced sulfur (including H<sub>2</sub>S): 10 TPY

Reduced sulfur compounds (including H<sub>2</sub>S): 10 TPY

PM<sub>10</sub> particulate: 15 TPY

\* Note: Increases in net emissions shall not exceed 25 tons per year in New Castle and Kent Counties, or 40 tons per year in Sussex, when aggregated with all other net increases in emissions from the source over any period of five consecutive calendar years which includes the calendar year in which such increases occur. No part of the five consecutive years shall extend before January 1, 1991.

2. "Significant" means, in reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the CAA that paragraph 1.9 V.(1) does not list, any emissions rate.

3. Notwithstanding paragraph 1.9 V.(1), "significant" means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 µg/m<sup>3</sup>, (24-hour average).

W. "Fixed capital cost" means the capital needed to provide all the depreciable components.

X. "Lowest Achievable Emission Rate (LAER) means the same as defined in Regulation No. 1, "Definitions and Administrative Principles".

Y. "Reconstruction" will be presumed to have taken place where the fixed capital cost of the new components exceed 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of 40 CFR 60.15(f)(1)-(3). A reconstructed stationary source will be treated as a new stationary source for purposes of this regulation. In determining lowest achievable emission rate (LAER) for a reconstructed stationary source, the provisions of 40 CFR 60.15(f)(4) shall be taken into account in assessing whether a

new source performance standard is applicable to such stationary source.

Z. "Ozone Transport Region" means the region designated by section 184 of the federal Clean Air Act and comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and northern Virginia.

AA. "Permanent" (Reductions) means that the actual emission reductions submitted to the Department for certification have been incorporated in a permit or a permit condition or, in the case of a shutdown, the permit to operate for the emission unit(s) has been voided.

BB. "Quantifiable" (Reductions) means that the amount, rate and characteristics of emission reductions can be determined by methods that are considered reliable by the Department and the Administrator of the EPA.

CC. "Real" (Reductions) means reductions in actual emissions released into the atmosphere.

DD. "Surplus" (Reductions) means actual emission reductions below the baseline (see Section 2.5(B)) not required by regulations or proposed regulations, and not used by the source to meet any state or federal regulatory requirements.

EE. "Enforceable" means any standard, requirement, limitation or condition established by an applicable federal or state regulation or specified in a permit issued or order entered thereunder, or contained in a SIP approved by the Administrator of the U.S. Environmental Protection Agency (EPA), and which can be enforced by the Department and the Administrator of the EPA.

01/11/93 xx/xx/99

Section 2 - Emission Offset Provisions (EOP)

2.1 Applicability - The provisions of this Section shall apply to any person responsible for any proposed new major stationary source or any proposed major modification.

2.2 For purposes of Section 2, "major stationary source" means

A. Any stationary source of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act, except for either volatile organic compound or nitrogen oxides, or

B. Any stationary source of air pollutants which emits, or has the potential to emit either volatile organic compounds or nitrogen oxides in the following amounts:

1. New Castle & Kent Counties - 25 tons per year of either volatile organic compounds or oxides of nitrogen For areas in ozone attainment, ozone marginal, or ozone moderate nonattainment areas and located in the ozone transport region - 50 tons per year volatile organic

compounds or 100 tons per year of oxides of nitrogen; or

2. ~~Sussex County~~ For serious ozone nonattainment areas - 50 tons per year of either volatile organic compounds or oxides of nitrogen, or

3. For severe ozone nonattainment areas - 25 tons per year of either volatile organic compounds or oxides of nitrogen, or

4. For extreme ozone nonattainment areas - 10 tons per year of either volatile organic compounds or oxides of nitrogen.

C. Any physical change that would occur at a stationary source not qualifying under paragraph (A) or (B) as a major stationary source, if the change would constitute a major stationary source by itself.,or

D. A major stationary source that is major for either volatile organic compounds or nitrogen oxides shall be considered major for ozone, and "installation" means an identifiable piece of process, combustion or incineration equipment.

2.3 For the purposes of Sections 2.4 and 2.5 of this regulation, emission units located in areas designated as attainment or marginal nonattainment areas that are located within the ozone transport region shall be considered located in a moderate ozone nonattainment area.

~~2.3~~ 2.4 Conditions for Approval - No person subject to the provisions of subsection 2.1 shall install a major stationary source of volatile organic compounds or of nitrogen oxides, or make a major modification to a source which will cause or contribute to any violation of the national ambient air quality standards for ozone within an area of non-attainment for that pollutant unless the following conditions are met:

A. The new major source or the major modification is controlled by the application of lowest achievable emission rate (LAER) control technology.

B. All existing sources in the State owned or controlled by the owner of the proposed new or modified source are in compliance with the applicable local, State and federal regulations or are in compliance with a consent order specifying a schedule and timetable for compliance.

C. ~~To the extent that allowable emissions of VOC from the new major stationary source or major modification will exceed the growth allowance in the State Implementation Plan, an emission reduction from existing sources shall be provided prior to start-up of the applicable source such that total allowable emissions from the existing sources and new major stationary sources will be less than that allowed from the existing source under the existing state implementation plan requirements. Where no emission limit exists under the state implementation plan, the level of emissions in existence at the time the permit application is filed shall be used in determining the baseline for the emission reduction.~~

~~For the purposes of satisfying~~ The new or modified source must satisfy the following offset requirements;

~~1. For New Castle & Kent Counties, 1.3 to 1, or~~

~~2. For Sussex County, 1.15 to 1~~

1. The ratio of total actual emissions reductions of volatile organic compounds or nitrogen oxides to total allowable increased emissions of volatile organic compounds or nitrogen oxides shall be:

a. For moderate ozone nonattainment areas, 1.15 to 1, or

b. For serious ozone nonattainment areas, 1.2 to 1, or

c. For severe ozone nonattainment areas, 1.3 to 1, or

d. For extreme ozone nonattainment areas, 1.5 to 1.

2. All offsets shall be federally enforceable at the time of application to construct and shall be in effect by the time the new or modified source commences construction.

~~D. The emission reduction required by Section 2.3 C is implemented such that there is a net air quality benefit in the affected area.~~

~~E.~~

D. 1. The application for construction permit pursuant to Regulation No. ~~H~~ 2 shall include an analysis of alternative sites, sizes, production processes and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

2. Public participation for the construction permit shall be pursuant to Regulation No. 2, Section 12.3 or 12.4 and 12.5.

2.5 Criteria for Emission Reductions Used as Offsets

A. All emission reductions claimed as offset credits shall be real, surplus, quantifiable, and federally enforceable;

B. The baseline for determining credit for emissions reductions shall be the lower of actual or allowable emissions. The offset credit shall only be allowed for emission reductions made below the baseline;

C. Emission reductions claimed as offsets shall be included in the most recent rate of progress (ROP) emissions inventory and shall have occurred on or after January 1, 1991;

D. Credit for an emission reduction may be claimed for use as an offset to the extent that the Department has not relied on it in issuing any permit under this regulation and has not relied on it for demonstration of attainment or reasonable further progress;

E. Emission reductions shall not be used as offsets in an area with a higher nonattainment classification than the one in which they were generated.

E. Emission reductions claimed as offsets by a source must be generated from within the same nonattainment area or from any other area that contributes to a violation of the ozone National Ambient Air Quality Standard in the nonattainment area which the source is located.

2.6 Emission reductions generated in a state other than Delaware and which are placed in the emissions bank established pursuant to Regulation No. 34 of the State of Delaware's "Regulations Governing the Control of Air Pollution" may be used as offsets provided they are federally enforceable and meet, at a minimum, all the provisions of Regulation No. 34 and Sections 2.5(E), and (F) of this regulation.

03/29/88

Section 3 - Prevention of Significant Deterioration of Air Quality

3.0 Definitions - For purposes of this Section 3

A. "Major Stationary Source"

(1) Major stationary source means:

(i) Any of the following stationary sources of air pollutants which emits or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the CAA: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(ii) Notwithstanding the stationary source size specified in paragraph 3.0 A.(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the CAA; or

(iii) Any physical change that would occur at a stationary source not otherwise qualifying under paragraph 3.0 as a major stationary source, if the change would constitute a major stationary source by itself.

(2) A major stationary source that is major for volatile organic compounds shall be considered major for

ozone.

3.1 Ambient Air Increments. In areas designated as Class I, II or III, increases in pollutant concentration over the baseline concentration shall be limited to the following:

Maximum allowable increase  
(Micrograms per cubic meter)

Class I

Pollutant

Total suspended particulates:

Annual geometric mean	5
24-hour maximum	10

Sulfur dioxide:

Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Class II

Pollutant

Total suspended particulates:

Annual geometric mean	19
24-hour maximum	37

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Class III

Total suspended particulates:

Annual geometric mean	37
24-hour maximum	75

Sulfur dioxide:

Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

3.2 Ambient Air Ceilings. No concentration of a pollutant shall exceed:

A. The concentration permitted under the national secondary ambient air quality standard, or

B. The concentration permitted under the national primary ambient air quality standard, whichever concentration is lowest for the pollutant for a period of exposure.

3.3 Restrictions on Area Classification.

A. All Areas in the State of Delaware are designated Class II, but may be redesignated as provided in 40 CFR 52.51(g).

B. The following areas may be redesignated only as Class I:

- (1) Bombay Hook National Wildlife Refuge; and
- (2) A national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

### 3.4 Exclusions from Increment Consumption

A. Upon written request of the governor, made after notice and opportunity for at least one public hearing to be held in accordance with procedures established by the State of Delaware, the Department shall exclude the following concentrations in determining compliance with a maximum allowable increase:

(1) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(2) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(3) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

B. No exclusion of such concentrations shall apply more than five years after the effective date of the order to which paragraph 3.4A(1) refers or the plan to which paragraph 3.4A(2) refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than five years after the later of such effective dates.

### 3.5 Stack Heights

The provisions of Regulation 27 - STACK HEIGHTS, are applicable to this section.

### 3.6 Review of Major Stationary Sources and Major Modifications - Source Applicability and Exemptions.

A. No stationary source or modification to which the requirements of paragraphs 3.7 through 3.14 of this section apply shall begin actual construction without a permit which states that the stationary source or modification would meet those requirements. The Department has authority to issue any such permit.

B. The requirements of paragraphs 3.7 through 3.14 of

this section shall apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the CAA that it would emit, except as this section otherwise provides.

C. The requirements of paragraphs 3.7 through 3.14 of this section apply only to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassifiable.

D. The requirements of paragraphs 3.7 through 3.14 of this section shall not apply to a particular major stationary source or major modification, if:

(1) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor requests that it be exempt from those requirements; or

(2) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input:
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;  
 (xxvi) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the CAA; or

(3) The source is a portable stationary source which has previously received a permit under this section, and

(i) The owner or operator proposal to relocate the source and emissions of the source at the new location would be temporary; and

(ii) The emissions from the source would not exceed its allowable emissions; and

(iii) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(iv) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Department not less than ten days in advance of the proposed relocation unless a different time duration is previously approved by the Department.

E. The requirements of paragraphs 3.7 through 3.14 of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment.

F. The requirements of paragraphs 3.8, 3.10, and 3.12 of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(1) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(2) Would be temporary.

G. The Department may exempt a stationary source or modification from the requirements of paragraph 3.10 with respect to monitoring for a particular pollutant if:

(1) The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide: 575 ug/m<sup>3</sup>, 8-hour average;

Nitrogen dioxide: 14 ug/m<sup>3</sup>, annual average;

Total suspended particulate: 10 ug/m<sup>3</sup>, 24-hour average;

Sulfur dioxide: 13 ug/m<sup>3</sup>, 24-hour average;

Ozone (Note 1)

Lead: 0.1 ug/m<sup>3</sup>, 24-hour average;

Mercury: 0.25 ug/m<sup>3</sup>, 24-hour average;

Beryllium: 0.0005 ug/m<sup>3</sup>, 24-hour average;

Fluorides: 0.25 ug/m<sup>3</sup>, 24-hour average;

Vinyl chloride: 15 ug/m<sup>3</sup>, 24-hour average;

Total reduced sulfur: 10 ug/m<sup>3</sup>, 1-hour average;

Hydrogen sulfide: 0.04 ug/m<sup>3</sup>, 1-hour average;

Reduced sulfur compounds: 10 ug/m<sup>3</sup>, 1-hour average;

PM<sub>10</sub> particulate: 10 ug/m<sup>3</sup>, 24-hour average

(2) The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in paragraph 3.6G(1), or the pollutant is not listed in paragraph 3.6G(1).

### 3.7 Control Technology Review

A. A major stationary source or major modification shall meet each applicable emissions limitation of the State of Delaware's Air Pollution Control Regulations.

B. A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the CAA that it would have the potential to emit in significant amounts.

C. A major modification shall apply best available control technology for each pollutant subject to regulation under the CAA for which it would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

D. For phase construction projects, the determination of best available control technology shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of best available control technology for the source.

Note 1: No de minimus air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds subject to PSD would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

3.8 Source Impact Analysis. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions (including secondary

emissions), would not cause or contribute to air pollution in violation of:

A. Any national ambient air quality standard in any air quality control region; or

B. Any applicable maximum allowable increase over the baseline concentration in any area.

### 3.9 Air Quality Models.

A. All estimates of ambient concentrations required under this section shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models" (OA-QPS 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711, April, 1978 or its subsequent revisions). This document is incorporated by reference.

B. When an air quality impact model specified in the "Guideline on Air Quality Models" is inappropriate, the model may be modified or another model substituted. Such a change must be subject to the notice and opportunity for public comment under paragraph 3.14 of this section. Written approval of the Department must be obtained for any modification or substitution. Methods like those outlined in the "Workbook for the Comparison of Air Quality Models" (U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 17711, May, 1978 or its subsequent revisions) should be used to determine the comparability of air quality models.

### 3.10 Air Quality Analysis

#### A. Preapplication Analysis.

(1) Any application for a permit under this section shall contain an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

(i) For the source, each pollutant that it would have the potential to emit in a significant amount;

(ii) For the modification, each pollutant for which it would result in a significant net emissions increase.

(2) With respect to any such pollutant for which no National Ambient Air Quality Standard exists, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of that pollutant would affect.

(3) With respect to any such pollutant (other than non-methane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.

(4) In general, the continuous air quality monitoring data that is required shall have been gathered

over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Department determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.

(5) The owner or operator of a proposed stationary source or modification of volatile organic compounds who satisfies all of the following conditions may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under paragraph 3.10A.

Condition 1: The new source is required to meet an emission limitation which specifies the lowest achievable emission rate for such source.

Condition 2: The applicant must certify that all existing major sources owned or operated by the applicant (or any entity controlling, controlled by, or under common control with the applicant) in Delaware are in compliance with all applicable emission limitations and standards under the CAA (or are in compliance with an expeditious schedule approved by the Department).

Condition 3: Emission reductions ("offsets") from existing sources in the area of the proposed source (whether or not under the same ownership) are required such that there will be reasonable progress toward attainment of the applicable NAAQS. Only intrapollutant emission offsets will be acceptable (e.g., hydrocarbon increases may not be offset against SO<sub>x</sub> reductions).

Condition 4: The emission offsets will provide a positive net air quality benefit in the affected area (see 40 CFR Part 51 App. S). Atmospheric simulation modeling is not necessary for volatile organic compounds and NO<sub>x</sub>. Fulfillment of Condition 3 will be considered adequate to meet this condition for volatile organic compounds and NO<sub>x</sub>.

B. Post-construction monitoring. The owner or operator of a major stationary source or major modification shall, after construction of the stationary source or modification conduct such ambient monitoring as the Department determines is necessary to determine the effect emissions from the stationary source or modification may have, or are having, on air quality in any area.

C. Operations of monitoring stations. The owner or operator of a major stationary source or major modification shall meet the Quality Assurance Requirements for PSD Air Monitoring as preapproved by the Department during the operation of monitoring stations for purposes of satisfying paragraph 3.10 of this section.

3.11 Source Information. The owner or operator of proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this section.

A. With respect to a source or modification to which paragraphs 3.8, 3.10, and 3.12 of this section apply, such information shall include but not be limited to:

(1) A description of the nature, location, design capacity and typical operating schedule of the source or modification, including specifications and drawings showing its design and plant layout;

(2) A detailed schedule for construction of the source or modification;

(3) A detailed description as to what system of continuous emission reduction is planned for the source or modification, emission estimates, and any other information necessary to determine that best available control technology would be applied

B. Upon request of the Department, the owner or operator shall also provide information on:

(1) The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 or the applicable baseline date(s), in the area the source or modification would affect.

### 3.12 Additional Impact Analyses.

A. The owner or operator shall provide an analysis of the impairment to visibility, soils and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.

B. The owner or operator shall provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial and other growth associated with the source or modification.

### 3.13 Public Participation

A. Within 30 days after receipt of an application to construct, or any addition to such application, the Department shall advise the applicant of any deficiency in the application or in the information submitted. In the event of such a deficiency, the date of receipt of the application shall be, for the purpose of this section, the date on which the Department received all required information.

B. Within one year after receipt of a complete application, the Department shall make a final determination on the application. This involves performing the following actions in a timely manner:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source or modification would be constructed, of the application, the preliminary determination, the degree of increment consumption that is expected from the source or modification, and the opportunity for comment at public hearing as well as written public comment.

(4) Send a copy of the notice of public comment to the applicant and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: the chief executives of the city and county where the source or modification would be located and any comprehensive regional land use planning agency whose lands may be affected by emissions from the source or modification. Additionally, if the proposed source would have significant interstate impact, the Governor of that impacted state would be notified.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source or modification, alternatives to the source or modification, the control technology required, and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. No later than ten days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Department shall consider the applicant's response in making a final decision. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved pursuant to this section.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source or modification.

### 3.14 Source Obligation.

A. Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who

commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate enforcement action.

B. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The Department may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

C. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of any other requirements under local or Federal law.

D. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980 on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements or paragraphs 3.7 through 3.14 of this section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

### 3.15 Innovative Control Technology.

A. An owner or operator of a proposed major stationary source or major modification may request the Department in writing no later than 30 days after the close of the public comment hearing to approve a system of innovative control technology.

B. The Department shall, with the consent of the Governor of Delaware, determine that the source or modification may employ a system of innovative control technology, if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under paragraph 3.7B by a date specified by the Department. Such date shall not be later than four years from the time of startup or seven years from permit issuance;

(3) The source or modification would meet the requirements of paragraphs 3.7 and 3.8 based on the emissions rate that the stationary source employing the system of innovative control technology would be required

to meet on the date specified by the Department;

(4) The source or modification would not be before the date specified by the Department:

(i) Cause or contribute to a violation of an applicable national ambient air quality standard; or

(ii) Impact any Class I area; or

(iii) Impact any area where an applicable increment is known to be violated; and

(5) All other applicable requirements including those for public participation have been met.

C. The Department shall withdraw any approval to employ a system of innovative control technology made under this section, if:

(1) The proposed system fails before the specified date to achieve the required continuous emissions reduction rate; or

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

D. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with paragraph 3.15C, the Department may allow the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

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## **DIVISION OF AIR & WASTE MANAGEMENT**

### **AIR QUALITY MANAGEMENT SECTION**

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

#### REGISTER NOTICE

1. TITLE OF THE REGULATIONS:

**Amendment to Regulation 31 and its plan for implementation**

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Regulation 31 (Inspection and Maintenance Program) as follows:

1. To extend the new model year exemption for the exhaust idle test from 3 years to 5 years.

2. To revise the procedure of the exhaust idle test for model year vehicles 1981 and newer, whereby the new procedure would test vehicles at an engine speed of normal idle and 2500 rpms, and;

3. To amend Section 3 (c) (1) of the Regulation

to specify the VMAS™ dynamometer procedure as the method of evaluating the I/M program.

4. To add a new section to the regulation, titled Clean Screening whose provisions would allow exempting vehicles normally required to be tested for exhaust and evaporative emissions when those vehicles are at a inspection facility and the wait time for vehicles at the at end of the testing queue is 90 minutes or greater. The new section describes the model years eligible for the "clean screen exemption". The clean screen exemption is given to vehicles categorized by model and model year that have passed vehicle exhaust emissions inspections in the State of Colorado.

To amend the Plan for Implementation of Regulation 31 as follows:

To revise the performance standard modeling to reflect the change in the new idle test procedure

3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

- 7 Del. C. Section 6010
- Clean Air Act Amendments of 1990

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

Public Hearing is on April 13, 1999, 6 PM, Richardson and Robbins Auditorium, 89 Kings Highway, Dover

PREPARED BY:

Philip A. Wheeler 739-4791, 2/24/99

REGULATION NO. 31

LOW ENHANCED  
INSPECTION AND MAINTENANCE  
PROGRAM

PROPOSED  
SIP REVISION

Prepared by the Delaware Department of Natural Resources and Environmental Control  
Division of Air and Waste Management  
Air Quality Management Section  
2/24/99

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

*Proposed change:* Regulation 31 is proposed to be changed by revising one existing provision and adding four new provisions as follows: changing the new model year exemption for the exhaust emission test from 3 years to 5 years; requiring 1981 and newer model year vehicles to undergo a new idle test procedure which will be the two speed idle test; to add a new exemption of vehicle criteria that is referred in the regulation as *clean screening*; amending Section 3 (c) (2): Transient mass emission test procedure which is reserved in the existing regulation.

Low enhanced Inspection and Maintenance Program  
Regulation No. 31

Section 1 - Applicability.

(a) This program shall be known as the "Low enhanced Inspection and Maintenance Program" or "LEIM Program", and shall be identified as such in the balance of this regulation.

(b) This regulation shall apply to New Castle and Kent Counties.

(c) This regulation shall apply to all vehicles registered in the following postal ZIP codes:

19701	19702	19703	19706	19707	19708
19709	19710	19711	19712	19713	19714
19715	19716	19717	19718	19720	19730
19731	19732	19733	19734	19735	19936

19703	19938	19800	19801	19802	19803
19804	19805	19806	19807	19808	19809
19810	19850	19890	19894	19896	19897
19898	19899	19901	19902	19903	19904
19934	19936	19938	19942	19943	19946
19952	19953	19954	19955	<del>19960</del>	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.

## 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]

## Section 3 - Network Type And Program Evaluation.

(a) The LEIM Program shall be a test-only, centralized system operated in New Castle and Kent Counties by the State of Delaware's Division of Motor Vehicles.

### (1) Network type:

Centralized testing.

### (2) Start date:

January 1, 1995

### (3) Test frequency:

Biennial testing.

### (4) Model year coverage:

Idle and two-speed idle test of all covered vehicles: Model years 1968 and newer for light duty vehicles and model years 1970 and newer for light duty trucks with the exception of the five most recent model years.

### (5) Vehicle type coverage:

Light duty vehicles, and light duty trucks, rated up to 8,500 pounds Gross Vehicle Weight Rating (GVWR).

### (6) Exhaust emission test type:

(i) Idle test of all covered vehicles: Model years 1968 ~~and newer~~ through 1980 for light duty vehicles and model years 1970 ~~and newer~~ through 1980 for light duty trucks according to the requirements found in Appendix 6 (a).

(ii) Two-speed idle test (vehicle engine at idle and 2500 revolutions per minute (rpm) of all covered vehicles model years 1981 and newer 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.~~ A randomly selected number of subject vehicles that are due to be tested according to the requirements of this regulation will be required to undergo, in addition to the required tests, an alternative test procedure to provide information for the purpose of evaluating the overall effectiveness of the Low Enhanced Inspection and Maintenance Program. The test is referred to as the VMAS<sup>TM</sup> method. See Appendix 3 (c) (2).

Section 4 - Test Frequency And Convenience.

(a) The LEIM Program shall be operated on a biennial frequency, which requires an inspection of each subject vehicle at least once every two years, regardless of any change in vehicle status, at an official inspection station. New vehicles must be presented for LEIM program testing not more than ~~36~~ 60 months after initial titling.

(b) This system of inspections and registration renewals allows the additional benefit of coupling both enforcement systems together. Local, County and State

police shall continue to enforce registration requirements, which shall require inspection in order to come into compliance. Requirements of inspection of motor vehicles before receiving a vehicle registration is found in the Delaware Criminal and Traffic manual Title 21 Chapter 21. Violations of registration provisions and the resulting penalties are found in the Delaware Criminal and Traffic Law Manual, Title 21, Chapter 21. One 60 day extension shall be available to allow testing and repair.(See Appendix 4 (a) for the citations)

(c) Stations shall be open to the public at hours designed for maximum public convenience. These hours shall equal a minimum of 42 hours per week. Stations shall remain open continuously through the designated hours, and every vehicle presented for inspection during these hours shall receive a test prior to the daily closing of the station. Testing hours shall be Monday and Tuesday: 8:00 am to 4:30 pm, Wednesday: 12 noon to 8 pm, Thursday and Friday 8:00 am to 4:30 pm. These hours may be subject to change by the State. Official inspection stations shall adhere to regular, extended testing hours and shall test any subject vehicle presented for a test during its test period.

Section 5 - Vehicle Coverage.

(a) Subject Vehicles

The LEIM program is based on coverage of all 1968 and later model year, gasoline powered, light duty vehicles and 1970 and later model year light duty trucks up to 8,500 pounds GVWR (with the exception of the five most recent model years). 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.

(f) Clean Screening: Vehicle types (name of manufacturer, model, model year and engine type) that are subject to this regulation and have met clean emissions criteria developed by the Division of Motor Vehicles, may be exempt from the two speed idle exhaust emissions test and the evaporative emissions test (except for a fuel cap pressure test) if warranted by queue conditions at the inspection lanes. Each Delaware inspection lane shall independently control clean screen activation. Clean screen mode shall occur when the inspection lane queue exceeds 60 minutes. The Lane Manager (or designee) must advise inspection personnel to activate the process. Once a queue reduction to less than 60 minutes takes place, reversion to the normal testing protocol shall occur. (See Appendix 5(f) Clean Screening Vehicle Exemption)

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~~ five 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.

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;

(ii) 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.

#### 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.

#### Section 9 - Enforcement Against Operators And Motor Vehicle Technicians.

##### (a) Imposition of penalties

The State of Delaware shall continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of program requirements, the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8, Disciplinary Action, and, the State of Delaware Merit Rules, shall be adhered to in all matters. Applicable provisions of these documents are found in Appendix 9 (a).

##### (b) Legal authority.

(1) The Director shall have the authority to temporarily suspend station Motor Vehicle Technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, Section 8 Disciplinary Action.

(2) The Director shall have the authority to impose disciplinary action against the station manager or the Motor

Vehicle Technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the Agreement between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees, and the State of Delaware Merit Rules. The lane manager shall be held fully responsible for performance of the motor vehicle technician in the course of duty.

#### Section 10 - Improving Repair Effectiveness.

A prerequisite for a retest shall be a completed repair form that indicates which repairs were performed. (See Section 6 (a) (5) of this Regulation).

#### Section 11 - Compliance With Recall Notices.

[Reserved]

#### Section 12 - On-Road Testing.

(a) Periodic random Delaware registered vehicle pullovers on Delaware highways will occur without prior notice to the public for on-road vehicle exhaust emission testing.

(b) Vehicles identified by the on-road testing portion of the LEIM program shall be notified of the requirement for an out-of-cycle emission retest, and shall have 30 days from the date of the notice to appear for inspection. Vehicles not appearing for a retest shall be out of compliance, and be liable for penalties under Title 21 of Delaware Criminal and Traffic Law Manual and the Division will take action to suspend the vehicle registration.

#### Section 13 - Implementation Deadlines.

All requirements related to the LEIM program shall be effective ten days after the Secretary's order has been signed and published in the State Register except for the following provisions that have been amended to this regulation:

##### Date of Implementation

- |  |                          |
|--|--------------------------|
| (a) <u>Five year new model year exemption from the idle and two speed idle tests</u>                             | <u>September 1, 1999</u> |
| (b) <u>Two-speed idle test (vehicle at idle and 2500 rpm) of all covered vehicles model years 1981 and newer</u> | <u>November 1, 1999</u>  |
| (c) <u>Clean Screen exemptions.</u>  | <u>January 1, 2000</u>   |
| (d) <u>Program Evaluation using VMAS<sup>TM</sup> test procedure.</u>  | <u>January 1, 2000</u>   |

~~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.

PROPOSED AMENDED  
APPENDIX 2 - (b)

INPUT AND OUTPUT FILES RELATING TO  
MOBILE5A ANALYSIS  
MOBILE5A LOCAL INPUT SOURCES AND  
CALCULATIONS  
RESULTS OF MODELLING ANALYSIS  
AND CLEAN SCREEN ANALYSIS

This document may be reviewed during normal business hours (8:30 am – 4 pm) Monday through Friday at the Air Quality Management Section Office, 156 South State Street, Dover. For more information call Philip Wheeler at 302/739-4791

APPENDIX 3 (c) (2)

VMAS™ TEST PROCEDURES

Proposed Amendment to Regulation 31

**General Requirements**

(1) Test Parameters. The following information shall be determined for the vehicle being tested and used to automatically select the dynamometer inertia, power absorption settings, and evaporative emission test parameters.

- (i) Model Year
- (ii) Manufacturer
- (iii) Model name
- (iv) Body style
- (v) Number of cylinders
- (vi) Engine displacement

Alternative computerized methods of selecting dynamometer test conditions, such as VIN de-coding, may be used.

(2) Ambient Conditions. The ambient temperature, absolute humidity, and barometric pressure shall be recorded continuously during the transient test, or as a single set of readings if taken less than 4 minutes prior to the transient driving cycle.

(3) Restart. If shut off, the vehicle shall be restarted as soon as possible before the test and shall be running at least 30 seconds prior to the transient driving cycle.

(4) During the entire VMAS™ testing procedure the vehicle shall be operated by a certified Motor Vehicle Technician (herein called inspector) and the vehicle owner or operator shall be asked to wait in a specified area during the test.

**Pre-inspection and Preparation**

(1) Accessories. All accessories (air conditioning, heat, defogger, radio, automatic traction control if switchable, etc.) shall be turned off by the inspector, if necessary.

(2) Traction Control and Four-Wheel Drive (4WD). Vehicles with traction control systems that cannot be turned off shall not be tested on two wheel drive dynamometers. Vehicles with 4WD that cannot be turned off shall only be tested on 4WD dynamometers. If the 4WD function can be disabled, then 4WD vehicles may be tested on two wheel drive dynamometers.

(3) Leaks. The vehicle shall be inspected for exhaust leaks. Audio assessment while blocking exhaust flow, or measurement of carbon dioxide or other gases, shall be acceptable. Vehicles with leaking exhaust systems shall be rejected from testing.

(4) Operating Temperature. The vehicle temperature gauge, if equipped and operating, shall be checked to assess temperature. If the temperature gauge indicates that the engine is well below (less than 180(F) normal operating temperature, the vehicle shall not be fast-failed and shall get a second-chance emission test if it fails the initial test for any criteria exhaust component. Vehicles in overheated condition shall be rejected from testing.

(5) Tire Condition. Vehicles shall be rejected from testing if tire cords, bubbles, cuts, or other damage are visible. Vehicles shall be rejected that have space-saver spare tires on the drive axle. Vehicles may be rejected if they do not have reasonably sized tires. Vehicle tires shall be visually checked for adequate pressure level. Drive wheel tires that appear low shall be inflated to approximately 30 psi, or to tire side wall pressure, or manufacturer's recommendation. The tires of vehicles being tested for the purposes of program evaluation under §51.353(c) shall have their tires inflated to tire side wall pressure.

(6) Ambient Background. [RESERVED]

(7) Sample System Purge. [RESERVED]

**Equipment Positioning and Settings**

(1) Purge Equipment. If an evaporative system flow meter purge test is to be performed:

(i) The purge flow meter shall be connected in series between the evaporative canister and the engine.

(ii) All hoses disconnected for the test shall be reconnected after a purge flow test is performed.

(2) Roll Rotation. The vehicle shall be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer. Drive wheel tires shall be dried if necessary to prevent slippage during the initial acceleration.

(3) Cooling System. The use of a cooling system is optional when testing at temperatures below 50(F).

Furthermore, the hood may be opened at the state's discretion. If a cooling system is in use, testing shall not begin until the cooling system is positioned and activated. The cooling system shall be positioned to direct air to the vehicle cooling system, but shall not be directed at the catalytic converter.

(4) Vehicle Restraint. Testing shall not begin until the vehicle is restrained. Any restraint system shall meet the requirements of the Code of Federal Regulations Title 40, §85.2226(a)(5)(vii). The parking brake shall be set for front wheel drive vehicles prior to the start of the test. The parking brake need not be set for vehicles that release the parking brake automatically when the transmission is put in gear.

(5) Dynamometer Settings. Dynamometer power absorption and inertia weight settings shall be automatically chosen from an EPA-supplied electronic look-up table which will be referenced based upon the vehicle identification information obtained in Code of Federal Regulations Title 40, §85.2221(a)(1). Vehicles not listed shall be tested using default power absorption and inertia settings in the latest version of the EPA I/M Look-up Table, as posted on EPA's web site: [www.epa.gov/orcdizux/im.htm](http://www.epa.gov/orcdizux/im.htm)

(6) Exhaust Collection System. The exhaust collection system shall be positioned to insure complete capture of the entire exhaust stream from the tailpipe during the transient driving cycle. The system shall meet the requirements of §85.2226(b)(2) in the Code of Federal Regulations Title 40,.

(2) Program Evaluation. Vehicles being tested for the purpose of program evaluation under Section 3 (c) (2) shall receive two full VMAS emission tests (i.e., a full 240 seconds each). Results from both tests and the test order shall be separately recorded in the test record. Emission scores and results provided to the motorist may be from either test.

(3) Discretionary Preconditioning.

(i) Any vehicle may be preconditioned by maneuvering the vehicle on to the dynamometer and driving the 94 to 239 second segment of the transient cycle in § 85.2221(e)(1) Code of Federal Regulations Title 40,. This method has been demonstrated to adequately precondition the vast majority of vehicles (SAE 962091). Other preconditioning cycles may be developed and used if approved by the Administrator of the USEPA.

(4) Second-Chance Purge Testing. Not applicable

**Vehicle Emission Test Sequence**

(1) Transient Driving Cycle. The vehicle shall be driven over the following cycle:

Table A

**Vehicle Conditioning**

(1) Queuing Time. Not applicable

Time	Speed										
(sec)	(mph)										
0	0.0	40	17.7	80	32.2	120	18.1	160	33.5	200	56.7
1	0.0	41	19.8	81	32.4	121	18.6	161	36.2	201	56.7
2	0.0	42	21.6	82	32.2	122	20.0	162	37.3	202	56.3
3	0.0	43	23.2	83	31.7	123	20.7	163	39.3	203	56.0
4	0.0	44	24.2	84	28.6	124	21.7	164	40.5	204	55.0
5	3.0	45	24.6	85	25.1	125	22.4	165	42.1	205	53.4
6	5.9	46	24.9	86	21.6	126	22.5	166	43.5	206	51.6
7	8.6	47	25.0	87	18.1	127	22.1	167	45.1	207	1.8
8	11.5	48	25.7	88	14.6	128	21.5	168	46.0	208	52.1
9	14.3	49	26.1	89	11.1	129	20.9	169	46.8	209	52.5
10	16.9	50	26.7	90	7.6	130	20.4	170	47.5	210	53.0
11	17.3	51	27.5	91	4.1	131	19.8	171	47.5	211	53.5

# PROPOSED REGULATIONS

12	18.1	52	28.6	92	0.6	132	17.0	172	47.3	212	54.0
13	20.7	53	29.3	93	0.0	133	17.1	173	47.2	213	54.9
14	21.7	54	29.8	94	0.0	134	15.8	174	47.2	214	55.4
15	22.4	55	30.1	95	0.0	135	15.8	175	47.4	215	55.6
16	22.5	56	30.4	96	0.0	136	17.7	176	47.9	216	56.0
17	22.1	57	30.7	97	0.0	137	19.8	177	48.5	217	56.0
18	21.5	58	30.7	98	3.3	138	21.6	178	49.1	218	55.8
19	20.9	59	30.5	99	6.6	139	22.2	179	49.5	219	55.2
20	20.4	60	30.4	100	9.9	140	24.5	180	50.0	220	54.5
21	19.8	61	30.3	101	13.2	141	24.7	181	50.6	221	53.6
22	17.0	62	30.4	102	16.5	142	24.8	182	51.0	222	52.5
23	14.9	63	30.8	103	19.8	143	24.7	183	51.5	223	51.5
24	14.9	64	30.4	104	22.2	144	24.6	184	52.2	224	50.5
25	15.2	65	29.9	105	24.3	145	24.6	185	53.2	225	48.0
26	15.5	66	29.5	106	25.8	146	25.1	186	54.1	226	44.5
27	16.0	67	29.8	107	26.4	147	25.6	187	54.6	227	41.0
28	17.1	68	30.3	108	25.7	148	25.7	188	54.9	228	37.5
29	19.1	69	30.7	109	25.1	149	25.4	189	55.0	229	34.0
30	21.1	70	30.9	110	24.7	150	24.9	190	54.9	230	30.5
31	22.7	71	31.0	111	25.2	151	25.0	191	54.6	231	27.0
32	22.9	72	30.9	112	25.4	152	25.4	192	54.6	232	23.5
33	22.7	73	30.4	113	27.2	153	26.0	193	54.8	233	20.0
34	22.6	74	29.8	114	26.5	154	26.0	194	55.1	234	16.5
35	21.3	75	29.9	115	24.0	155	25.7	195	55.5	235	13.0
36	19.0	76	30.2	116	22.7	156	26.1	196	55.7	236	9.5
37	17.1	77	30.7	117	19.4	157	26.7	197	56.1	237	6.0
38	15.8	78	31.2	118	17.7	158	27.3	198	56.3	238	2.5
39	15.8	79	31.8	119	17.2	159	30.5	199	56.6	239	0.0
(sec)	(mph)										

(2) Driving Trace. The inspector shall follow an electronic, visual depiction of the time/speed relationship of the transient driving cycle (hereinafter, the trace). The visual depiction of the trace shall be of sufficient magnification and adequate detail to allow accurate tracking by the inspector/driver and shall permit anticipation of upcoming speed

changes. The trace shall also clearly indicate gear shifts as specified in paragraph (3) and Table B below.

(3) Shift Schedule. To identify gear changes for manual shift vehicles, the driving display presented to the inspector/driver shall be designed according to the following shift schedule and prominently display visual cues where the inspector/driver is required to change gears:

Table B

Shift Sequence (gear)	Speed (miles per hour)	Approximate Cycle Time(seconds)
1 - 2	15	9.3
2 - 3	25	47.0
De-clutch	15	87.9
1 - 2	15	101.6
2 - 3	25	105.5
3 - 2	17.2	119.0
2 - 3	25	145.8
3 - 4	40	163.6
4 - 5	45	167.0
5 - 6	50	180.0
De-clutch	15	234.5

Gear shifts shall occur at the points in the driving cycle where the specified speeds are obtained. For vehicles with fewer than six forward gears the same schedule shall be followed with shifts above the highest gear disregarded.

Automatic shift vehicles with overdrive or fuel economy drive modes shall be driven in those modes.

(4) Speed Excursion Limits. Speed excursion limits shall apply as follows:

(i) The upper limit is 2 mph higher than the highest point on the trace within 1 second of the given time.

(ii) The lower limit is 2 mph lower than the lowest point on the trace within 1 second of the given time.

(iii) Vehicle speed excursions beyond tolerance limits given in items a. and b. above are acceptable provided that each such excursion is not more than 2 seconds in duration.

(iv) Speeds lower than those prescribed during accelerations are acceptable provided the vehicle is operated at maximum available power during such accelerations until the vehicle speed is within the excursion limits.

(v) [Reserved : Criteria that shall allow limited excursions of speed higher than the prescribed upper limit in paragraphs (i) through (iii) ]

(vi) A transient emissions test shall be void and the vehicle retested if the speed excursion limits prescribed by paragraphs (i) through (iii) are exceeded, except in the event

that computer algorithms, developed by the Department, determine that the conditions of paragraphs (v) and (vi) are applicable. Tests may be aborted if the speed excursion limits are exceeded.

Proposed  
APPENDIX 5(f)

CLEAN SCREENING VEHICLE EXEMPTION

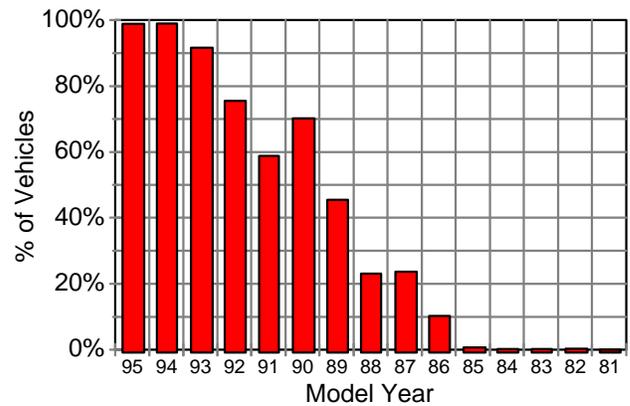
BACKGROUND ON CLEAN SCREENING

Delaware plans to implement a clean screen program that combines the use of the low emitter profile model (LEP) with an expansion of model year exemptions from 3 year old and newer vehicles to 5 year old and newer vehicles. The LEP model uses data from Arizona's IM240 program to predict whether a vehicle will pass the test. Analysis of data from applying the LEP to Colorado's fleet indicate that up to half of the vehicles can be exempted without greatly impacting the emission benefits of the program. The model only requires an accurate vehicle identification number (VIN) to project emission characteristics.

The LEP would be used primarily a lane management tool to increase throughput during peak periods. Under this scenario, the LEP would be used only during peak periods to clean screen vehicles more than 5 years old. Vehicles

flagged as clean screen candidates would receive the gas cap test and the safety inspection, but would be exempted from the exhaust emission and pressure test when in clean screen mode. Delaware expects that “clean screening” would be activated less than 40% of the time. During off-peak periods, all vehicles more than 5 years old would receive exhaust emission and tank pressure tests along with the gas cap and safety test. Figure one and Table A show the possible percentages of vehicle model years that would be

**Figure 1. % of Vehicles Clean Screened  
By Model Year**



exempt under clean screening if queue conditions warranted.

**Table A  
Percent of Vehicles Eligible for Clean Screen When in Clean  
Screen Mode**

Vehicle Age	Observed Clean Screen %	Assumed Clean Screen %
1	99.00%	100%
2	98.83%	100%
3	99.00%	99.00%
4	91.59%	88.00%
5	75.50%	77.00%
6	58.74%	66.00%
7	70.20%	55.00%
8	45.48%	44.00%
9	23.08%	33.00%
10	23.62%	22.00%
11	10.17%	11.00%
12 and older	0.65%	0.00%

<sup>1</sup>Based on Arizona IM240 data

The Division of Motor Vehicles will determine when and if any applicable vehicles are exempt under the clean screen

program. Typically, applicable vehicles will be exempt if queue conditions result in a wait time at the lane of 60 minutes or more. However, there are factors in the program that will automatically prevent the clean screen exemption

from being implemented. Specifically, a budget of the total number of the applicable vehicles that can be exempt under clean screen will be established for any one calendar year and therefore if that budget is exceeded, the clean screen exemption will not apply even when wait times are 60 minutes or longer.

APPENDIX 6 (a)  
IIDLE EMISSIONS TEST PROCEDURES  
Proposed Amendment

There are no changes to the single speed idle test procedure. This amendment only includes the addition of the two speed idle test cited in the body of the text of Regulation 31, Section 6 (a))

The on-site test inspection of motor vehicles uses the ESP FICS 4000 - Bar 90 computerized Emission Analyzer which will require minimal time to complete the inspection procedure.

**GENERAL TEST PROCEDURES**

1. If the inspection technician observes a vehicle having coolant, oil, excess smoke or fuel leaks or any other such defect that is unsafe to allow the emission test to be conducted the vehicle shall be rejected from the testing area. The inspection technician is prohibited from conducting the emissions test until the defects are corrected.

2. The vehicle transmission is to be placed in neutral gear if equipped with a manual transmission, or in park position if equipped with an automatic transmission. The hand or parking brake is to be engaged. If the parking brake is found to be defective, then wheel chocks are to be placed in front and/or behind the vehicle's tires.

3. The inspection technician advises the owner to turn off all vehicle accessories.

4. The inspection technician enters the vehicle registration number (tag) or the vehicle identification number into the BAR 90 system. This information is electronically transmitted to the Division of Motor Vehicle's database. The system will also identify for each vehicle entered into the BAR 90 system whether the vehicle is eligible for a clean screen exemption. Only under certain conditions determined by the vehicle services chief or his designee will those vehicles eligible for the clean screen exemption be excused from any exhaust emissions test for the current two year test cycle. In no case shall the number of vehicles exempt in any one calendar year, under the clean screen procedures, exceed 40% of the total number of

vehicles subject to the requirements of Regulation 31. The clean screen procedures or methodology is described in Appendix Y.

5. If the vehicle registration number is in the database, the following information will be transmitted to and verified by the inspection technician:

- a. Vehicle make
- b. Vehicle Year
- c. Vehicle Model
- d. Vehicle Body Style
- e. Vehicle fuel type and
- f. other related information

6. The inspection technician will verify this information and verify the last five characters of the Vehicle Identification Number (VIN) prior to beginning the emission test.

7. If the vehicle's identification number is not on the database, the R.L. Polk VIN Package shall be automatically accessed. This VIN package will return the following information to the inspection technician who, in turn will verify the returned information:

- a. Vehicle make
- b. Vehicle Year
- c. Vehicle Model
- d. Vehicle Body Style
- e. Vehicle fuel type

8. The DMV System will identify and require an emission inspection on all eligible vehicles meeting the State's criteria for an emission inspection. Once the vehicle information has been verified and accepted, the system will prompt the inspection technician to place the analyzer test probe into the tailpipe. The technician connects the tachometer lead to the vehicle's spark plug and verifies that the idle RPM is within the specified range. If the RPM exceeds the allowed range the vehicle is rejected and not tested. The technician will insert the probe at least 8 inches into the exhaust pipe. Genuine dual exhaust vehicles will be tested with a dual exhaust probe. Once the probe has been placed into the exhaust pipe the test will begin. The test process is completely automatic, including the pass/fail decision.

9. If the vehicle has been identified as requiring a completed Vehicle Inspection Repair (VIRR) Report Form prior to reinspection, the inspection technician will review the form for completeness and, if applicable, record into the system the Certified Emission Repair Technician's (CERT) number or Certified Manufacturer's Repair Technician (CMRT) number before the retest.

**TWO SPEED IDLE TEST PROCEDURES**

1. Exhaust gas sampling algorithm. The analysis of exhaust gas concentrations will begin 10 seconds after the applicable test mode begins. Exhaust gas concentrations will

be analyzed at a rate of two times per second. The measured value for pass/fail determinations will be a simple running average of the measurements taken over five seconds.

2. Pass/fail determinations. A pass or fail determination will be made for each applicable test mode based on a comparison of the applicable standards listed in Appendix 3 (a)(7) and the measured value for HC and CO. A vehicle will pass the test mode if any pair of simultaneous values for HC and CO are below or equal to the applicable standards. A vehicle will fail the test mode if the values for either HC or CO, or both, in all simultaneous pairs of values are above the applicable standards.

3. Void test conditions. The test will immediately end and any exhaust gas measurements will be voided if the measured concentration of CO plus CO<sub>2</sub> (CO + CO<sub>2</sub>) falls below six percent of the total concentration of CO plus CO<sub>2</sub> or the vehicle's engine stalls at any time during the test sequence.

4. Multiple exhaust pipes. Exhaust gas concentrations from vehicle engines equipped with dual exhaust systems will be sampled accordingly.

5. The test will be immediately terminated upon reaching the overall maximum test time.

6. Test sequence.

(a) The test sequence will consist of a first-chance test and a second chance test as follows:

(i) The first-chance test will consist of an idle mode followed by a high-speed mode.

(ii) The second-chance high-speed mode, as described will immediately follow the first-chance high-speed mode. It will be performed only if the vehicle fails the first-chance test. The second-chance idle will follow the second chance high speed mode and be performed only if the vehicle fails the idle mode of the first-chance test.

(b) The test sequence will begin only after the following requirements are met:

(i) The vehicle will be tested in as-received condition with the transmission in neutral or park, the parking brake actuated (or chocked) and all accessories turned off. The engine shall appear to and is assumed to be at normal operating temperature.

(ii) The tachometer will be attached to the vehicle in accordance with the analyzer manufacturer's instructions.

(iii) The sample probe(s) will be inserted into the vehicle's tailpipe to a minimum depth of 8 inches. If the vehicle's exhaust system prevents insertion to this depth, a tailpipe extension will be used.

(iv) The measured concentration of CO plus CO<sub>2</sub> (CO + CO<sub>2</sub>) will be greater than or equal to 6% of the total concentration.

(c) First-chance test and second-chance high-speed mode. The test timer will start (tt=0) when the

conditions specified above are met. The first-chance test and second-chance high-speed mode will have an overall maximum test time of 390 seconds (tt=390). The first-chance test will consist of an idle mode following immediately by a high-speed mode. This is followed immediately by an additional second-chance high-speed mode, if necessary.

(d) First-chance idle mode. The mode timer will start (mt=0) when the vehicle engine speed is between 550 and 1300 rpm. If engine speed exceeds 1300 rpm or falls below 550 rpm, the mode timer will reset to zero and resume timing. The maximum idle mode length will be 30 seconds (mt=30) elapsed time. The pass/ fail analysis will begin after an elapsed time of 10 seconds (mt=10). A pass or fail determination will be made for the vehicle and the mode terminated as follows:

(i) The vehicle will pass the idle mode and the mode will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), measured values are less or equal to the applicable standards listed in Appendix 3 (a)(7)

(ii) The vehicle will fail the idle mode and the mode will be terminated if the provisions of d (i) are not satisfied within an elapsed time of 30 seconds (mt=30).

(iii) The vehicle may fail the first-chance and second-chance test will be omitted if no exhaust gas concentration less than 1800 ppm HC is found by an elapsed time of 30 seconds (mt=30).

(e) First-chance and second-chance high-speed modes. This mode includes both the first-chance and second-chance high-speed modes, and follows immediately upon termination of the first-chance idle mode. The mode timer will reset (mt=0) when the vehicle engine speed is between 2200 and 2800 rpm. If engine speed falls below 2200 rpm or exceeds 2800 rpm for more than two seconds in one excursion, or more than six seconds over all excursions within 30 seconds of the final measured value used in the pass/fail determination, the measured value will be invalidated and the mode continued. If any excursion lasts for more than ten seconds, the mode timer will reset to zero (mt=0) and timing resumed. The minimum high-speed mode length will be determined as described under paragraphs (e) (i) and (ii) below. The maximum high-speed mode length will be 180 seconds (mt=180) elapsed time.

(i) Ford Motor Company and Honda vehicles. For 1981-1987 model year Ford Motor Company vehicles and 1984-1985 model year Honda Preludes, the pass/fail analysis will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination, as described below, will be used, for vehicles that passed the idle mode, to determine whether the high-speed test should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180).

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) If at an elapsed time of 30 seconds (mt=30) the measured values are greater than the applicable standards listed in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds have elapsed (mt=40).

(III) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at any point between an elapsed time of 40 seconds (mt=40) and 60 seconds (mt=60), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7). (V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (A) (III) or (e) (i) (A) (IV), above, are not satisfied by an elapsed time of 180 seconds (mt=180).

(B) A pass or fail determination will be made for vehicles that failed the idle mode and the high-speed mode terminated at the end of an elapsed time of 180 seconds (mt=180) as follows:

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) Restart. If at an elapsed time of 30 seconds (mt=30) the measured values of HC and CO exhaust gas concentrations during the high-speed mode are greater than the applicable short test standards as described in Appendix 3 (a)(7), the vehicle's engine will be shut off for not more than 10 seconds after returning to idle and then will be restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure. The mode timer will stop upon engine shut off (mt=30) and resume upon engine restart. The pass/fail determination will resume as follows after 40 seconds (mt=40) have elapsed.

(III) The vehicle will pass the high-

speed mode and the mode will be terminated at an elapsed time of 60 seconds (mt=60) if any measured values of HC and CO exhaust gas concentrations during the high-speed mode are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(IV) The vehicle will pass the high-speed mode and the test will be immediately terminated if, at a point between an elapsed time of 60 seconds (mt=60) and 180 seconds (mt=180) both HC and CO emissions continue to decrease and measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(V) The vehicle will fail the high-speed mode and the test will be terminated if neither paragraphs (e) (i) (B) (I), (e) (i) (B) (III) or e (i) (B) (IV), above, is satisfied by an elapsed time of 180 seconds (mt=180).

(ii) All other light-duty vehicles. The pass/fail analysis for vehicles not specified in paragraph (e) (i), above, will begin after an elapsed time of 10 seconds (mt=10) using the following procedure.

(A) A pass or fail determination will be used for 1981 and newer model year vehicles that passed the idle mode, to determine whether the high-speed mode should be terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, no high speed idle mode test will be performed.

(I) The vehicle will pass the high-speed mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds (mt=30), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds (mt=30) and if, at any point between an elapsed time of 30 seconds (mt=30) and 180 seconds (mt=180), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high-speed mode and the test will be terminated if neither the provisions of paragraphs (e) (ii)(A)(I) or (e) (ii)(A)(II), above, is satisfied.

(B) A pass or fail determination will be made for 1981 and newer model year vehicles that failed the idle mode and the high-speed mode terminated prior to or at the end of an elapsed time of 180 seconds (mt=180). For pre-1981 model year vehicles, the duration of the high speed idle mode will be 30 seconds and no pass or fail determination will be used at the high speed idle mode.

(I) The vehicle will pass the high-speed mode and the mode will be terminated at an elapsed time of 30 seconds (mt=30) if any measured values are less than or equal to the applicable standards listed Appendix 3 (a)(7).

(II) The vehicle will pass the high-speed mode and the test will be immediately terminated if emissions continue to decrease after an elapsed time of 30 seconds ( $mt=30$ ) and if, at any point between an elapsed time of 30 seconds ( $mt=30$ ) and 180 seconds ( $mt=180$ ), the measured values are less than or equal to the applicable standards listed in Appendix 3 (a)(7).

(III) The vehicle will fail the high speed mode and test will be terminated if neither the provisions of paragraphs (e) (ii)(B)(I) or (e) (ii)(B)(II) is satisfied.

(f) Second-chance idle mode. If the vehicle fails the first-chance idle mode and passes the high-speed mode, the mode timer will reset to zero ( $mt=0$ ) and a second chance idle mode will commence. The second-chance idle mode will have an overall maximum mode time of 30 seconds ( $mt=30$ ). The test will consist on an idle mode only.

(i) The engines of 1981-1987 Ford Motor Company vehicles and 1984-1985 Honda Preludes will be shut off for not more than 10 seconds and restarted. The probe may be removed from the tailpipe or the sample pump turned off if necessary to reduce analyzer fouling during the restart procedure.

(ii) The mode timer will start ( $mt=0$ ) when the vehicle engine speed is between 550 and 1300 rpm. If the engine speed exceeds 1300 rpm or falls below 550 rpm the mode timer will reset to zero and resume timing. The minimum second-chance idle mode length will be determined as described in paragraph (f) (iii) below. The maximum second-chance idle mode length will be 30 seconds ( $mt=30$ ) elapsed time.

(iii) The pass/fail analysis will begin after an elapsed time of 10 seconds ( $mt=10$ ). A pass or fail determination will be made for the vehicle and the second-chance mode will be terminated as follows:

(A) The vehicle will pass the second-chance idle mode and the test will be immediately terminated if, prior to an elapsed time of 30 seconds ( $mt=30$ ), any measured values are less than or equal to 100 ppm HC and 0.5 percent CO.

(B) The vehicle will pass the second-chance idle mode and the test will be terminated at the end of an elapsed time of 30 seconds ( $mt=30$ ) if, prior to that time, the criteria of paragraph (f)(iii)(A), above, are not satisfied and the measured values during the time period between 25 and 30 seconds ( $mt=25-30$ ) are less than or equal to the applicable short test standards listed Appendix 3 (a)(7).

(C) The vehicle will fail the second-chance idle mode and the test will be terminated if neither of the provisions of paragraphs (f) (iii)(A) or (f)(iii)(B), above are satisfied by an elapsed time of 30 seconds ( $mt=30$ ).

## 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)

## DEPARTMENT OF PUBLIC SAFETY ALCOHOLIC BEVERAGE CONTROL COMMISSION

Statutory Authority: 4 Delaware Code,  
Section 304(a)(1) (4 **Del.C.** 304(a)(1))

In compliance with 29 Del.C. section 10115, the Commission submits the following:

1. **TITLE OF THE REGULATIONS:**

Rules of the Delaware Alcoholic Beverage Control Commission

2. **BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:**

The Delaware Alcoholic Beverage Control Commission is proposing to amend Rule 29. The rule as amended provides non-discriminatory procedures for timely notification of prices, post-offs, and quantity discounts of alcoholic liquor offered for sale by Delaware wholesalers to Delaware retailers and governs related practices.

3. **POSSIBLE TERMS OF THE AGENCY ACTION:**

None.

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

4 **Del.C.** Chp. 3

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

None

6. **NOTICE OF PUBLIC COMMENT:**

A public hearing on the proposed amendment to Rule 29 will be held on April 1, 1999 at 9:00 a.m. in the third floor conference room of the Commission, Carvel State Building, 820 North French Street, Wilmington, Delaware. Written comments may be submitted any time prior to April 1, 1999 to Donald J. Bowman, Sr., Director, Delaware Alcoholic Beverage Control Commission, 820 North French Street, Wilmington, Delaware, 19801. For copies of the proposed regulation, the public should call Joanne Episcopo at (302) 577-5222.

### RULE 29

#### ~~PUBLICATION OF PRICES AND POST-OFFS BY WHOLESALEERS~~

I. Purpose

The purpose of this rule shall be to promote the public benefits of a competitive, economic environment based upon free enterprise within the Delaware alcoholic liquor industry. It is the intent of the Delaware Alcoholic Beverage Control Commission to promote an equitable system for the efficient distribution of alcoholic liquor in our state and to promote freedom of economic opportunity for all Delaware liquor

licensees.

In furtherance of these goals, this rule is promulgated to provide non-discriminatory procedures for the publishing of prices, post-offs, and quantity discounts of alcoholic liquor offered for sale by Delaware wholesalers to Delaware retailers and to govern related practices.

II. Authority

The Delaware Alcoholic Beverage Control Commission is authorized pursuant to 4 Del. C., § 304(a)(2), to establish by rules and regulations an effective control of the manufacture, sale, dispensing, distribution, and importation of alcoholic liquor within and into this state. Such rules, however, may not be inconsistent with Title 4 of the Delaware Code or any other law of the State. This rule, therefore, implements and clarifies the grant of authority to the Commission contained in 4 Del. C., § 304(a)(2), to control the time, place, and manner in which alcoholic liquor shall be sold or dispensed.

The need to promulgate this rule was based on testimony received at public hearings and is consistent with the Commission's duty to promulgate rules that serve the public interest and further the objectives of the Liquor Control Act. It is the Commission's finding that a procedure is needed to ensure timely and accurate publication to the industry of all prices, post-offs, and quantity discounts to be offered in a non-discriminatory manner by wholesalers to retailers during specified periods of time.

The Commission further finds that the orderly publication of prices will benefit the Commission in its duties to effectively control the manufacture, sale, dispensing, distribution and importation of alcoholic liquor within and into this state including the time, place, and manner in which alcoholic liquor shall be sold and dispensed not inconsistent with the Liquor Control Act or any other laws of the State.

The Commission also finds that the orderly publication of prices and the establishment of procedures governing post-offs and quantity discounts will further the underlying purpose of the Liquor Control Act to provide the people of every community in Delaware with a reasonably convenient opportunity to make a legal purchase of alcoholic liquor.

III. 29.1 Definitions

**Price:** Means the amount of money given or set as consideration for the sale of a specified order of alcoholic liquor.

**Post-Off:** Means a reduction in the price regularly charged

by wholesalers, as published to the trade, which is sold by wholesalers to licensed retailers.

**Quantity Discount:** Means a reduction in the price regularly charged by wholesalers, as published to the trade, which is sold by wholesalers to licensed retailers and is based on whole or in part on the quantity of alcoholic liquor purchased.

**Monthly Price List:** Means the monthly price listing prepared by, or on behalf of, a Delaware licensed wholesaler for all alcoholic liquor prices, post-offs, and quantity discounts offered for sale to Delaware licensed retailers. The monthly price list shall contain the presumptive price, but may be superseded by any subsequent updated notification issued by the wholesaler, provided the Division is notified of the updated listing.

**Designated Publication:** Means the single publication agreed to be used by ~~the a majority of the licensed Delaware Alcoholic Beverage Wholesalers Association as the monthly price listing for the compilation of monthly price lists~~ for all alcoholic liquor prices, post-offs, and quantity discounts offered for sale to Delaware licensed retailers. In the absence of a clear majority voting to change the existing publication, the publication will remain the publication that is in effect at the time of the vote.

**Updated Notification:** Means notification of changes to prices, post-offs and quantity discounts made after the submission of the monthly Price List to the designated publication.

**Wholesaler:** Means licensed Delaware wholesaler.

**Retailer:** Means all establishments licensed by the Commission to sell alcoholic liquor directly to the public.

#### IV. History

~~Prior to the current revision of Rule 29, the regulation of pricing, post-offs, and tie-in sales were controlled separately by Rules 29, 29.1, and 30, respectively. Quantity discounts from wholesalers to retailers were prohibited by Rules 29 and 29.1. The Commission, by promulgation of this rule, is repealing the prohibition on quantity discounts; however, it is not requiring wholesalers to offer quantity discounts or post-offs. It is the Commission's finding that the offering of quantity discounts is a decision that should be made by each wholesaler.~~

~~In addition to removing the ban on quantity discounts,~~

~~the Commission has consolidated and clarified the remaining provisions of Rules 29, 29.1, and 30 (including the removal of the ninety-day post and hold rule) into the current, revised edition of Rule 29.~~

#### V. 29. Applicability **REGULATION OF PRICES AND POST-OFFS BY WHOLESALERS**

~~This rule regulation shall govern the procedure by which all licensed wholesalers publish notice prices, post-offs, and quantity discounts of alcoholic liquor offered for sale to licensed Delaware retailers. The sale of all alcoholic liquor in Delaware by wholesalers to retailers must conform to the provisions of this rule regulation. In addition, this rule regulation shall govern the procedure by which records relating to post-offs and quantity discounts are maintained.~~

#### VI. 29.2. Procedures for Providing Notice of Prices, Post-Offs, and Quantity Discounts

~~A. Every wholesaler, licensed by the Commission to sell alcoholic liquor, shall submit by the eighteenth day of each month a written notice to the designated publication listing all of the alcoholic products they intend to offer for sale during the next calendar month. This notice shall include regular prices, as well as post-offs and quantity discounts if offered.~~

~~B. A copy of the aforementioned notice shall also be filed with the Division of Alcoholic Beverage Control when transmitted to the designated publication. There shall be no change, revision, substitution, or addition to the aforementioned price listing notice after the eighteenth day of each month without prior approval of the Commission.~~

~~C. The duration of the prices set for post-offs and quantity discounts shall be the effective dates listed in the designated publication and shall be five (5) days or more.~~

~~D. The publisher of the designated publication shall make every reasonable effort to ensure that the publication is transmitted to all subscribers of record in time to be received by them not less than five (5) working days before the effective date of the prices listed in that particular monthly issue of the designated publication.~~

a. Every wholesaler shall prepare a monthly price list of all alcoholic products they intend to offer for sale during the next month. This monthly price list shall include regular prices, as well as post-offs and quantity discounts, if offered. The monthly price list shall be printed in a publication designated by a majority of licensed Delaware Wholesalers not less than five (5) business days prior to the end of the preceding month.

b. A copy of the monthly price list shall also be filed with the Division(via hard copy and/or electronically) when

submitted to the designated publication. The prices stated therein shall be the "presumptive price", subject to change, revision, substitution, or addition in accordance with the updated notification procedures set forth herein.

c. In the event of a change in the price from that set forth in the monthly price list, the wholesaler shall provide Updated Notification, to all licensed retailers, and to the Division (via hard copy and/or electronically) Updated notification shall be made by a wholesaler to all licensed retailers via a recorded message, accessible through a toll-free "800" number, which can be accessed by any licensed retailer 24 hours a day to obtain information regarding current pricing of items being offered by the wholesaler. The "800" number will be updated every Monday by 10:00 A.M.; provided however, notwithstanding anything in this regulation to the contrary, that any wholesaler may change prices at anytime by mailing a pricing announcement to all retailers and the Division by U.S. mail. In the event of a conflict between the recorded message and the mailed notice the lower price will control. In addition, the wholesaler shall advise the Division of prices offered in the "800" number at the time any change is made to the recorded message.

d. Upon Petition of an interested party, the Commission may approve an alternative procedure(s) for providing notice of prices, post-offs and quantity discounts where the petitioner demonstrates that (1) the alternative method is technologically feasible, (2) will provide sufficient notice of prices, post-offs and quantity discounts to Delaware retailers and to the Division, and (3) will not harm the public interest.

**VII. 29.3. Procedures for Providing Notice of Prices for New Products**

A. a. Prices of new brands, types, or sizes shall be effective ~~three (3) days~~ after the wholesaler has given the required notice in writing to the trade industry, as follows:

1. By mailing a pricing announcement directly to all retail licensees of the trade and the Division by United States mail, or

2. ~~By publication of prices in the designated publication as heretofore described, or~~

By inclusion of prices in the monthly price list submitted to the designated publication as heretofore described, or

3. ~~By other means approved by the Commission which are reasonably likely to reach all retail licensees of the trade in a timely manner. By including notice thereof in the form of Updated Notification, as described in 29.2 (c) above.~~

B. b. Newly listed or changed prices shall continue

from their effective date until changed by the wholesaler in accordance with the procedures established by this ~~rule~~ regulation. The duration of the prices set for post-offs and quantity discounts of new products shall be the effective dates listed in the new product pricing announcement ~~and shall be five (5) days or more,~~ the monthly price list, and/or in the Updated Notification.

c. Alternative methods for providing notice of prices for new products may be approved by the Commission in the same manner set forth in paragraph 29.2 (d) of this regulation.

**~~VIII.~~ 29.4. Duty of Wholesalers to Fill Orders**

The procedure and ~~rules~~ regulations for licensed wholesalers who offer post-offs or quantity discounts to licensed retailers shall be as follows:

A. a. Licensed wholesalers shall not discriminate among licensed retailers in filling orders for post-offs or quantity discounts, ~~based on the size of the order or the retail licensee's geographic location within the state.~~

B. ~~Licensed wholesalers shall not offer post-offs or quantity discounts to licensed retailers unless they are reasonably certain that adequate inventory is either on hand or on order to satisfy anticipated demand during the effective dates of the offering.~~

C. b. Licensed wholesalers must honor the orders placed by licensed retailers for post-offs and quantity discounts in the sequential order in which they are placed, unless excused from doing so by the Commission upon proof of good cause.

D. c. If a licensed wholesaler is unable to fill the first order of a retailer for a post off or quantity discount due to the depletion of its stock, the retailer shall have the option of having the order filled ~~when stock is again available~~ at the same price offered during the post-off or quantity discount period when stock is next available, or of purchasing a suitable substitute product of comparable value if the wholesaler chooses to offer a substitute product.

E. d. Licensed wholesalers shall deliver all alcoholic liquor products offered for sale as post-offs or quantity discounts to the purchasing licensed retailer within ~~three (3)~~ five (5) working days, not including weekends or legal holidays, of the last date that the post-off or quantity discount is offered.

e. Notwithstanding anything within this regulation to the contrary, offers of distressed items in quantities of more than 10 cases shall be made on a "first come/first serve" basis, subject to the requirement that Updated Notification of such post-off be given. Distressed items, excluding beer, in quantities of 10 cases or less shall not be subject to the

Updated Notification requirements of these regulations and may be offered for sale to any retail licensee at the licensed wholesaler's discretion. For purposes of this subsection: 1) a distressed item is an alcoholic beverage product subject to close-out and/or expiration, and 2) "first come/first serve" means that orders for alcoholic beverage products are filled in the sequential order by which the orders are received by the wholesaler.

~~IX.~~ 29.5. Procedure for Recording the Sale of Alcoholic Liquor by Wholesalers

Every sale of alcoholic liquor, including post-offs, quantity discounts, and otherwise reduced prices, shall be recorded by the licensed wholesaler on a written invoice or bill of sale containing at a minimum the following:

- ~~A.~~ 1. Name of the wholesaler
- ~~B.~~ 2. Name of the retailer
- ~~C.~~ 3. Date of sale
- ~~D.~~ 4. Quantity of alcoholic liquor sold
- ~~E.~~ 5. Price of alcoholic liquor sold
- ~~F.~~ 6. Brand
- ~~G.~~ 7. Size of container
- ~~H.~~ 8. Date of delivery

The regular price of alcoholic liquor sold at post-off, ~~or~~ quantity discount, or discount pursuant to Section 29.4 (d) above shall also be stated on the bill of sale or invoice, as well as the basis for the discount. All credit(s) associated with the sale of alcoholic liquor must be stated or affixed to the original bills of sale or invoices retained by the licensed retailer and wholesaler.

~~X.~~ 29.6. Tie-In Sales

A requirement by a wholesaler that a retailer purchase one product in order to purchase another is prohibited. This prohibition includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, a wholesaler is not prohibited from selling at a special combination price two or more kinds or brands of products to a retailer, provided (a) the retailer has the option of purchasing either or both products at the usual price, and (b) the retailer is not required to purchase any product he or she does not want. As to (a) and (b) above, wholesaler licensees shall not ~~however,~~ be required to sell or deliver beer to a retail licensee in quantities of less than five (5) cases.

~~XI.~~ 29.7. Consortium Buying

a. Nothing in this regulation shall be deemed to preclude a wholesaler of alcoholic liquor licensed by the

Delaware Alcoholic Beverage Control Commission from publishing or offering a discount, based upon the quantity of product purchased, to a pool, cooperative, or consortium of two or more licensed retailers, provided that the billing, shipment, transportation, and storage of all related alcoholic liquor conforms with state law and the regulations of the Commission. Similarly nothing in this regulation shall be deemed to require a wholesaler of alcoholic liquor to offer post-offs or quantity discounts.

b. The delivery of all alcoholic liquor purchased by a pool, cooperative, or consortium of retailers, to its members, must be made by the holder of a license issued by the Commission to deliver alcoholic liquor, as required by 4 Del. C., § 701.

~~XII.~~ 29.8. Severability

If any part of this regulation is held to be unconstitutional or otherwise contrary to law, then it shall be severed and the remaining portions shall remain in full force and effect.

Symbol Key

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

Final Regulations

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

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

**DEPARTMENT OF EDUCATION**

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

## REGULATORY IMPLEMENTING ORDER

**OPTIONS FOR AWARDING CREDIT TOWARD HIGH SCHOOL GRADUATION****I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED**

The Secretary seeks the consent of the State Board of Education to amend six regulations by combining them into one regulation entitled Options For Awarding Credit Toward High School Graduation. The existing regulations are found on pages D-6 to D-12 in the Handbook for K-12 Education. They include C., 1-3, Early College Admission, D., 1 and 2, Make-up Work or Nontraditional Study, E., 1 and 2, Make-up Work Because of Failure, H., 1 and 2, Correspondence Schools, I., 1-5, Tutoring, and J., 1., a-c, Additional Options for High School Graduation. Sections F and G were amended previously as the regulations for the James H. Groves High School.

The focus of the amended regulation is drawn from existing regulation J., Additional Options for High School Graduation and adds correspondence courses, distance learning courses, and tutoring to the list of options. The

amended regulation clearly states that a student must have the school board or its designee's pre-approval of the option(s) and that the option(s) must meet the state content standards. The amended regulation eliminates repetitious language of a technical assistance nature, the formula for equating college and high school credits and the equating of a correspondence school diploma with a Delaware high school diploma through an endorsement by the Department of Education.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on January 15, 1999, 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 amend these regulations because they all address the same issue and need to be consolidated into one regulation. The technical assistance parts need to be eliminated and the remaining language needs to be clarified.

**III. DECISION TO AMEND THESE REGULATIONS**

For the foregoing reasons, the Secretary concludes that it is necessary to amend these regulations. Therefore, pursuant to 14 Del. C., Section 122, the regulations attached hereto as Exhibit B are hereby amended. Pursuant to the

provisions of 14 Delaware Code, Section 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation hereby amended shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the document entitled the Regulations of the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 Del. C., Sec. 122, in open session at the said Board's regularly scheduled meeting on February 18, 1999. 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 18th day of February, 1999.

DEPARTMENT OF EDUCATION

Dr. Iris T. Metts, Secretary of Education  
Approved this 18th day of February, 1999.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President  
Nancy A. Doorey  
John W. Jardine, Jr.  
Dr. Joseph A. Pika  
Dennis J. Savage  
Dr. Claibourne D. Smith

AS AMENDED  
EXHIBIT B

500.12. Options for Awarding Credit Toward High School Graduation

1.0 The following options are approved by the Department of Education as means for awarding credit toward high school graduation. In all cases listed the option or options selected shall be approved ahead of time by the local School Board or their designee(s) and shall [meet incorporate] the appropriate state content standards.

1.1 Courses taken at or through an accredited community college, two or four year college.

1.2 Voluntary community service as defined in 14 Del. C., Sections 8901A and 8902A.

1.3 Supervised work experience in the school and the community which meets the educational objectives or special career interest of the individual student.

1.4 Independent Study.

1.5 Nationally Accredited Correspondence Courses.

1.6 Distance Learning Courses. These courses may be synchronous or asynchronous via videos or online format.

1.7 High school courses taken while in the middle school in conjunction with an articulated agreement between the district middle school and the district high school(s).

1.8 Course credit transferred from another high school.

1.9 Course credit earned through summer or evening school classes, as a member of the military service and/or as part of the James H. Groves Adult High School.

1.10 Tutoring programs taught by a teacher certified in the subject being taught.

1.11 Course credit awarded by agencies or instrumentalities of the state other than public schools which provide educational services to students. A description of the program provided to the student, grades given, and the number of clock hours of instruction or a demonstration of competency must be provided to the school district prior to receipt of credit.

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**DEPARTMENT OF HEALTH  
AND SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES**

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

IN THE MATTER OF:

**REVISION OF THE REGULATIONS  
OF THE FOOD STAMP PROGRAM**

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services (DHSS) initiated proceedings to amend existing regulations contained in Section 9085 of the Division of Social Services Manual (DSSM), pursuant to the Administrative Procedures Act.

On January 1, 1999, the DHSS published in the Delaware Register of Regulations (pages 1074-1075) its notice of proposed regulation changes, pursuant to 29 Delaware Code Section 10115. Emergency regulations were also published in the January 1, 1999, Register (pages 1054-1055) for these changes. Both requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by January 31, 1999, at which time the Department would review information, factual evidence and public comment to the said proposed changes to the regulations.

It was determined that no written materials or

suggestions had been received from any individual or the public.

FINDINGS OF FACT:

The Department finds that the proposed changes, as set forth in the attached copy should be made in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED that the proposed regulations of the Food Stamp Program are adopted and shall become effective ten days after publication of the final regulation in the Delaware Register.

2/8/99 GREGG C. SYLVESTER

9085 Reporting Changes

Certified households are required to report the following changes in circumstances:

Changes in the sources of ~~income~~ or in the amount of gross unearned income of more than \$25, except changes in the public assistance grant or GA grant in project areas where the GA grant and the food stamp application are jointly processed. Since DSS has prior knowledge of all changes in the public assistance grant and general assistance grants, action shall be taken on the DSS information. Changes reported in person or by telephone are to be acted upon in the same manner as those reported on the change report form;

Changes in the amount of gross earned income will be reported as follows:

- New source of employment, or
- Changes in the hourly rate or salary of current employment, or
- Changes in employment status from part-time to full-time.

**DIVISION OF SOCIAL SERVICES**

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

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 outpatient hospital, inpatient hospital, EPSDT, school based health services and general policies. 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 January 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 1999, 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 January 1999 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 March 10, 1999.

2/11/99 Gregg C. Sylvester, M.D.  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 1999 issue of the Register at page 1076 (2:7 Del.R. 1076). Therefore, the final regulation is not being republished. Please refer to the January 1999 issue of the Register or contact the Department of Health and Social Services.**

**DIVISION OF SOCIAL SERVICES**

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

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

Medical Assistance eligibility rules. 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 January 1999 Delaware Register of Regulations, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by February 1, 1999, 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 January 1999 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 March 10, 1999.

2/12/99 Gregg C. Sylvester, M.D.  
Secretary

**\*Please note that no changes were made to the regulation as originally proposed and published in the January 1999 issue of the Register at page 1075 (2:7 Del.R. 1075). Therefore, the final regulation is not being republished. Please refer to the January 1999 issue of the Register or contact the Department of Health and Social Services.**

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR & WASTE MANAGEMENT**  
**WASTE MANAGEMENT SECTION**  
Statutory Authority: 7 Delaware Code,  
Chapter 60 (7 Del.C. Ch.60)

**Secretary's Order No. 99-A-0005**  
**Date of Issuance: February 10, 1999**

Re: *Proposal to Amend the Delaware Regulations  
Governing Solid Waste*

Effective Date of Regulatory Amendments: March 10, 1999

**I. Background**

On Thursday, January 7, 1999, at 7:00 p.m. a public hearing was held in the DNREC Auditorium at 89 Kings Highway, Dover, Delaware. Proper notice of the hearing was provided as required by law. The public hearing concerned proposed amendments to the *Delaware Regulations Governing Solid Waste*. The Department had adopted the *Delaware Regulations Governing Solid Waste* in 1988 and last amended them in 1994. The purpose of the 1999 hearing was to revise certain items in the 1994 version of the Regulations.

These proposed modifications to the regulations were first published in the *Delaware Register of Regulations*, Vol. 2, Issue 4, on Thursday, October 1, 1998. Thereafter, a public workshop was held on October 22, 1998, to explain the proposed changes and allow the Solid Waste Branch an opportunity to directly respond to questions from the public. As a result of these comments, the Solid Waste Branch proposed modifications to the previously noticed changes. The revised proposed regulatory changes were again published in the *Delaware Register of Regulations*, Vol. 2, Issue, 6, on Tuesday, December 1, 1998. Thereafter on January 7, the public hearing was held. At that time, the Solid Waste Branch noted four corrections from the version of the regulatory language that had been published on December 1.

During the hearing, the Solid Waste Branch identified several written comments which it had received and further received oral comments from several members of the public at the hearing. The hearing record was closed at the conclusion of the public hearing, except that the Hearing Officer requested that the Solid Waste Branch issue a technical evaluation of the comments in the record to assist in his review of the public record. The Solid Waste Branch's technical evaluation was presented in a document entitled "Response to Public Comments Re: Proposed Changes in the Delaware Regulations Governing Solid Waste." This document was received by the Hearing Officer on or about February 2, 1999, and is expressly incorporated herein. Thereafter, on February 8, 1999, the Hearing Officer issued his report and recommendation which is also expressly incorporated herein by reference.

**II. Findings**

1. The Department provided proper notice of the hearing as required by law.
2. An informal public workshop concerning the regulatory proposal was held on October 22, 1998.
3. The Solid Waste Branch's evaluation of the technical issues in the record includes all comments received

in writing before the hearing and presented orally during the public hearing.

4. The Solid Waste Branch's technical evaluation is extremely thorough and addresses all comments pertaining to areas in which there have been proposed changes.

5. In addition, the Solid Waste Branch's technical evaluation also notes areas in which future changes or modifications have been suggested and agrees to take these into account when developing future revisions to the Regulations.

6. In each instance where the Solid Waste Branch recommended not making changes suggested by the public, its recommendation was supported by technical evidence that the proposed change would not sufficiently protect public health and the environment.

7. Any changes in the text of the proposed regulatory changes made in response to comments in the record are not significant with respect to requiring this regulatory action be republished before changes may be promulgated.

8. The record supports promulgation of the amendment to the *Delaware Regulations Governing Solid Waste*.

### III. Order

In view of the above findings, it is hereby ordered that the *Delaware Regulations Governing Solid Waste* be amended as recommended by the Solid Waste Branch's technical evaluation in the manner and form provided by law.

### IV. Reasons

The proposed amendments to the *Delaware Regulations Governing Solid Waste* will further the policies and purposes of 7 Del. C. Chapter 60, in that they will address the disposal of solid waste in a manner designed to reduce negative impacts on surface and ground waters.

Mary L. McKenzie, Acting Secretary

## SECTION 1: DECLARATION OF INTENT

The Delaware Department of Natural Resources and Environmental Control finds and declares that improper solid waste handling and disposal practices may result in environmental damage, including substantial degradation of the surface and ground water and waste of valuable land and other resources, and may constitute a continuing hazard to the health and welfare of the people of the State. The Department further finds that the utilization of solid waste handling and disposal facilities which are properly located,

designed, operated, and monitored will minimize environmental damage and protect public health and welfare.

It is the intent of the Department to require that solid waste handling and disposal be conducted in a manner and under conditions which will eliminate the dangerous and deleterious effects of improper solid waste handling and disposal upon the environment and upon human health, safety, and welfare.

The purposes of these regulations are:

1. To encourage, in all appropriate ways, recycling, reuse, and reclamation processes, and

2. To implement the provisions of 7 Del. Code, Chapter 60, ~~the Delaware Environmental Protection Act~~, which directs the Department to put into effect a program for improved solid waste storage, collection, transportation, processing, transfer, and disposal by providing that such activities may henceforth be conducted only in an environmentally acceptable manner pursuant to a permit obtained from the Department.

## SECTION 2. SCOPE AND APPLICABILITY

### A. AUTHORITY

1. These regulations are enacted pursuant to 7 Del. Code, Chapter 60, ~~entitled "Delaware Environmental Protection Act"~~.

2. These regulations shall be known as "Regulations Governing Solid Waste" and shall repeal the "Delaware Solid Waste Disposal Regulation".

### B. APPLICABILITY

1. These regulations apply to any person using land or allowing the use of land for the purposes of storage, collection, processing, transfer, or disposal of solid waste; and to any person transporting solid waste in or through the State of Delaware. The following shall be subject to the provisions of these regulations:

- a. Sanitary landfills
- b. Industrial landfills
- c. ~~Dry waste disposal facilities~~  
Resource recovery facilities
- d. Transfer stations
- e. Special wastes handling
- f. Transportation of solid waste
- g. Storage of solid waste

2. These regulations do not apply to those agricultural wastes that are subject to regulations promulgated by the Division of Water Resources.

3. ~~For the purposes of these regulations, all liquid~~

wastes as defined herein are not regulated as solid wastes. Liquid wastes are subject to regulations promulgated by the Division of Water Resources.

For the purposes of these regulations, all wastes defined herein and that are subject to regulations promulgated by the Division of Water Resources shall not be regulated as solid wastes.

4. These regulations do not apply to any waste which meets the criteria of hazardous waste as described in the Delaware Regulations Governing Hazardous Waste.

### C. EXEMPTIONS

The following activities are exempted from these regulations:

1. Disposal on a farm of the agricultural wastes which are generated on the farm or result from the operation of the farm, provided that the disposal is conducted in a manner that does not threaten potable drinking water supplies or surface waters [human health or the environment].

2. Composting, on a private property, the leaves, grass clippings, and other vegetation originating on the property. For all other composting operations, written approval must be obtained from the Department prior to commencing the composting operation. To obtain an approval, a person must submit the following to the Department:

a. A written plan of operation sufficient to assure the Department that the person understands the principles and proper methods of composting and has the intention and capability of applying proper methods and of conducting the operation in a manner that will not pose a threat to human health or the environment; and

b. A written statement of how the applicant proposes to use or dispose of the compost.

3. Disposal of clean fill.

4. Creation of brush piles on the property on which the material was generated.

5. The use of vegetative matter and untreated ground wood products to construct berms on the property on which the materials were generated. (Notification must be made to the Department prior to commencing this activity.)

6. Recycling of solid wastes into specific market applications. Written approval must be obtained from the Department prior to commencing this activity. Approval will be based on demonstration that there is an available market for the intended recycled material. To obtain approval, a person must submit the following to the Department:

a. A written plan of operation describing the types and quantities of materials that will be accepted at the facility, the processing methods and equipment that will be

used, and the products that will be produced; and

b. Documentation demonstrating the existence of markets for the product.

### D. ~~TIMETABLE FOR COMPLIANCE~~

1. Existing facilities

a. ~~Sanitary and industrial landfills~~

All existing facilities must comply with the provisions of these regulations, must be in compliance with these regulations by October 9, 1993, with the following exceptions:

a. Closed facilities or closed portions of facilities will not be required to disturb or replace their cap or cover system for the purpose of coming into compliance with these regulations.

b. Facilities currently operating under a permit which does not require a liner and/or a leachate detection system will not be required to install a liner or leachate detection system in closed or currently active areas for the purpose of coming into compliance with these regulations.

b. ~~Dry waste disposal facilities~~

~~An owner or operator of an existing facility shall, within six months of enactment of Section 8 of these regulations, follow the procedures described in Section 4.C.2. All existing facilities must be in compliance with these regulations within six months after the date on which the Department approves the compliance plan described in Section 4.C.2.~~

e. ~~Transfer stations~~

~~An owner or operator of an existing facility shall, within six months of enactment of Section 10 of these regulations, follow the procedures described in Section 4.E.2. All existing facilities must be in compliance with these regulations within six months after the date on which the Department approves the compliance plan described in Section 4.E.2.~~

d. ~~Resource recovery facilities~~

~~An owner or operator of an existing facility shall follow the procedures described in Section 4.D.2. All existing facilities must come into compliance with these regulations in accordance with the compliance plan and timetable approved by the Department pursuant to Section 4.D.2.b (12).~~

2. New facilities and expansions of existing facilities

All new facilities and all expansions of existing facilities shall comply with the provisions of these regulations.

E. Nothing in these regulations shall be construed as relieving an owner or operator of a facility from the

obligation of complying with any other laws, regulations, orders, or requirements which may be applicable.

### SECTION 3: DEFINITIONS

The following words, phrases, and terms as used in these regulations have the meanings given below:

"100-YEAR FLOOD" means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"ACTION LEAKAGE RATE" means the ~~flow rate that can be sustained by the drainage layer (in a double liner system) without the head on the secondary liner exceeding the drainage layer thickness.~~ **[quantity of liquid collected from a leak detection system of a double liner system over a specified period of time which, when exceeded, requires certain actions to be taken as described in the Action Leakage Rate response plan approved by the Department.]**

"ACTIVE LIFE" means the period of operation beginning with the initial receipt of solid waste and ending at the completion of closure activities.

"ACTIVE PORTION" means that portion of a facility that presently has an operating permit issued by the Department of Natural Resources and Environmental Control.

"AGRICULTURAL WASTE" means ~~the carcasses of poultry or livestock which are being disposed for the purpose of disease control and crop residue~~, **crop residue,** ~~or animal excrement which is returned to the land for use as a soil amendment.~~

"AQUIFER" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells, springs or surface water.

"ASTM" means the American Society for Testing and Materials.

"AUTHORIZED REPRESENTATIVE" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, landfill manager, superintendent, or person of equivalent responsibility.

"BOTTOM ASH" means the residue remaining in the combustion chamber of an incinerator after the combustion of fossil fuels.

"BUFFER ZONE" means those on-site areas adjacent to the facility property line which shall be left undeveloped during the active life as well as the inactive life of the facility.

"BULKY WASTE" means items whose large size or weight precludes or complicates their handling by normal collection, processing, or disposal methods.

"CAP" or "CAPPING SYSTEM" means the material used to cover the top and sides of a sanitary or industrial landfill when fill operations cease.

"CELL" means a discrete engineered area that is designed for the disposal of solid waste and that is a subpart of a landfill.

"CERTIFICATION" means a statement of professional opinion based upon knowledge and belief.

"CFR" means the Code of Federal Regulations.

"CLAY", as a soil separate, means the mineral soil particles less than 0.002 mm in diameter. As a soil textured class, "CLAY" means soil material that is 40% or more clay, less than 45% sand, and less than 40% silt. Clay used as a liner or cap should be classifiable as a CL or CH (Unified Soil Classification System) with a liquid limit between 30 and 60, should place above the A-line on the plasticity chart, and should have a minimum plastic index of 15. A clay liner should have a cation exchange capacity greater than 15 meq/100 grams and be in the neutral pH range.

"CLEAN FILL" means a nonwater-soluble, nondecomposable, environmentally inert solid such as rock, soil, gravel, concrete, broken glass, and/or clay or ceramic products.

"CLOSED PORTION" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all other applicable closure requirements.

"CLOSURE" means the cessation of operation of a facility or a portion thereof and the act of securing such a facility so that it will pose no significant threat to human health or the environment.

"CLOSURE PLAN" means written reports and engineering plans detailing those actions that will be taken by the owner or operator of a facility to effect proper closure of that facility or a portion thereof.

"COMMERCIAL WASTE" means solid waste generated by stores, offices, restaurants, warehouses, and other non-manufacturing, non-processing activities.

"CONFINED AQUIFER" means an aquifer containing ground water which is everywhere at a pressure greater than atmospheric pressure and from which water in a well will rise to a level above the top of the aquifer. A confined aquifer is overlain by material of distinctly lower permeability ("confining bed") than the aquifer.

"CONTAMINANT" means any substance that enters the environment at a concentration that has the potential to endanger human health or degrade the environment.

"CONTROLLING SLOPES" means slopes on those areas of a liner that have a direct influence on the maximum leachate head, or slopes that are perpendicular to the collection laterals.

"DAILY COVER" means a layer of compacted earth, or other suitable material as approved by the Department, used to enclose a volume of solid waste each working day.

"DEPARTMENT" means The Department of Natural Resources and Environmental Control.

"DIKE" means an embankment or ridge of either natural or man-made materials used to prevent or to control the movement of solids, liquids, or other materials.

"DISCHARGE" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a substance into or onto any land, water, or air.

"DISPOSAL" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or upon any land or water.

"DISPOSAL FACILITY" means any facility or portion of a facility at which solid waste is intended to be and/or is intentionally placed into or onto any land and at which solid waste will remain after closure has taken place.

"DOUBLE LINER SYSTEM" means a liner system

consisting of two liners with a leachate detection and collection system in between.

"DRY WASTE" (formerly called "INERT SOLID WASTE") means wastes including, but not limited to, plastics, rubber, lumber, trees, stumps, vegetative matter, asphalt pavement, asphaltic products incidental to construction/demolition debris, or other materials which have reduced potential for environmental degradation and leachate production.

"ENVIRONMENTAL ASSESSMENT" means a detailed and comprehensive description of the condition of all environmental parameters as they exist at and around the site of a proposed action prior to implementation of the proposed action. This description is used as a baseline for assessing the environmental impacts of a proposed action.

"ENVIRONMENTALLY UNSOUND" means characterized by any condition, resulting from the methods of operation or design of a facility, which impairs the quality of the environment when compared to the surrounding background environment or any appropriate promulgated federal, state, county or municipal standard.

"EXISTING FACILITY" means a facility which was in operation or for which construction had commenced on or before the date of enactment of these regulations, provided that the facility was being constructed or operated pursuant to all permits and/or approvals required by the Department at the time of enactment. A facility has commenced construction if either:

(i) an on-site physical construction program has begun and is moving toward completion within a reasonable time; or

(ii) the owner or operator has entered into contractual obligations -- which cannot be cancelled or modified without substantial loss -- for physical construction to be completed within a reasonable time.

"EXPANSION" means the process of increasing the areal dimensions, vertical elevations, or slopes beyond the original approved limits of the facility.

"FACILITY" means all contiguous land, and structures, other appurtenances, and improvements on the land, used in resource recovery and/or the treatment, handling, composting, storage, or disposal of solid waste. A facility may consist of several operational units (e.g., one or more landfills, cells, incinerators, compactors, or combinations

thereof).

"FINAL COVER" means the material used to cover the top and sides of a dry waste disposal facility when fill operations cease.

"FLOOD PLAIN" means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100-YEAR FLOOD.

"FLY ASH" means a powdery residue resulting from the combustion of fossil fuels and captured by air pollution control equipment prior to exiting the smokestack.

"FREE LIQUIDS" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure, using any or all of the following tests: EPA Paint Filter Test; EPA Plate Test; EPA Gravity Test.

"GARBAGE" means any putrescible solid and semi-solid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

"GENERATION" means the act or process of producing solid waste.

"GENERATOR" means the producer or the source of the solid waste.

"GEOMEMBRANE" means a prefabricated continuous sheet of flexible polymeric or geosynthetic material.

"GROUND WATER" means any water naturally found under the surface of the earth.

"HAZARDOUS WASTE" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible, illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. Without limitation, included within this definition are those hazardous wastes described in Sections 261.31, 261.32, and 261.33 of the Delaware Regulations Governing Hazardous Waste.

"HOUSEHOLD WASTE" means any solid waste derived

from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"HYDRAULIC CONDUCTIVITY" means the capacity to transmit water. It is expressed as the volume of water that will move in a unit of time under a unit hydraulic gradient through a unit area.

"IMPERMEABLE" means having a hydraulic conductivity equal to or less than  $1 \times 10^{-7}$  cm/sec as determined by field and laboratory permeability tests made according to standard test methods which may be correlated with soil densification as determined by compaction test.

"INDUSTRIAL LANDFILL" means a land site at which industrial waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"INDUSTRIAL WASTE" means any water-borne liquid, gaseous, solid, or other waste substance or a combination thereof resulting from any process of industry ~~[(including the construction and demolition industry)]~~, manufacturing, trade or business, or from the development of any agricultural or natural resource ~~[and includes DRY WASTE]~~.

~~"INERT SOLID WASTE": see "DRY WASTE".~~

"INFECTIOUS WASTE": see section 11, Part 1.B for definitions pertaining to infectious waste.

"INSTITUTIONAL WASTE" means solid waste that is generated by institutional enterprises such as social, charitable, educational, and government services and that is similar in nature to household waste.

"INTERMEDIATE COVER" means a layer of compacted earth, or other suitable material as approved by the Department, applied to a partially completed landfill.

"LANDFILL" means a natural topographic depression and/or man-made excavation and/or diked area, formed primarily of earthen materials, which has been lined with man-made and/or natural materials or remains unlined and which is designed to hold an accumulation of solid wastes.

"LEACHATE" means liquid that has passed through, contacted, or emerged from solid waste and contains dissolved, suspended, or miscible materials, chemicals, and microbial waste products removed from the solid waste.

"LIFT" means a completed series of compacted layers within a cell.

"LIMITED TRANSPORTER" means a person who uses five (5) or fewer vehicles to transport solid waste (excluding infectious waste and asbestos), which vehicles have a manufacturers Gross Vehicle Weight Rating of 26,000 pounds or more.

"LINER" means a continuous layer of impermeable material beneath and on the sides of a landfill or landfill cell.

"LIQUID WASTE" means a waste that contains less than 20 percent solids or releases free liquids.

"LOCAL AGENCY" means any special district, authority, municipality, county, or any other political subdivision.

"MATERIALS RECOVERY FACILITY" means a facility at which materials, other than source separated materials, are recovered from solid waste for recycling or for use as an energy source.

"MUNICIPAL SOLID WASTE" means household waste and solid waste that is generated by commercial, institutional, and industrial sources and is similar in nature to household waste.

"MUNICIPAL SOLID WASTE ASH" means the ash resulting from the combustion of municipal solid waste in a thermal recovery facility.

"MUNICIPALITY" means a city or town of the State of Delaware.

"NEW SANITARY LANDFILL CELL" means any municipal solid waste landfill unit which has not received waste prior to the effective date of these regulations. "SANITARY LANDFILL CELL" has the same meaning as "MUNICIPAL SOLID WASTE LANDFILL UNIT" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"NEW SOLID WASTE FACILITY" means a facility which was not in operation or for which construction had not commenced on or before the date of enactment of these

regulations.

"ON-SITE" means on the same or geographically contiguous property which may be divided by public or private right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access are also considered on-site property.

"OPEN BURNING" means the combustion of solid waste without:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (3) Control of the emission of the combustion products.

"OPERATOR" means the person responsible for the overall operation of a solid waste facility.

"OWNER" means the person who owns a facility or any part of a facility.

"PERMITTEE" means a person holding a permit issued by the Department pursuant to this regulation.

"PERSON" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state, any interstate body, company, society, or any organization of any form.

"PERSONNEL" or "FACILITY PERSONNEL" means all persons who work at, or oversee the operations of, a solid waste facility, and whose actions or failure to act may result in noncompliance with the requirements of the Delaware Solid Waste Regulations or other regulations under the jurisdiction of the State of Delaware.

"POST-CLOSURE CARE" means maintenance and long-term monitoring of, and financial responsibility for, a closed facility.

"RECHARGE AREA" means that portion of a drainage basin in which the net saturated flow of ground water is directed away from the water table.

"RECYCLABLE MATERIAL" means a solid waste that

exhibits the potential to be used repeatedly in place of a virgin material.

"RECYCLING" means the process by which recyclable materials, which would otherwise be disposed of as solid waste, are returned to the economic mainstream in the form of raw materials or products.

"REFUSE" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes, and construction wastes.

"REGULATED MEDICAL WASTE": see Section 11, Part 1.B. for definitions pertaining to REGULATED MEDICAL / INFECTIOUS WASTE.

"RESOURCE RECOVERY" means the process by which materials, excluding those under control of the Nuclear Regulatory Commission, which still have useful physical or chemical properties after serving a specific purpose are reused or recycled for the same or another purpose, including use as an energy source.

"RESOURCE RECOVERY FACILITY" means a facility that is either a MATERIALS RECOVERY FACILITY or a THERMAL RECOVERY FACILITY.

"RUBBISH" means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings, small pieces of wood, excelsior, rubber, leather, crockery, and other waste materials.

"RUN-OFF" means any precipitation that drains over land from any part of a facility.

"RUN-ON" means any precipitation that drains over land onto any part of a facility.

"SALVAGING" means the controlled removal of solid waste from any facility for reuse of the waste material.

"SANITARY LANDFILL" means a land site at which solid waste is deposited on or into the land as fill for the purpose of permanent disposal, except that it will not include any facility that has been approved for the disposal of hazardous waste under the Delaware Regulations Governing Hazardous Waste.

"SANITARY LANDFILL CELL BOUNDARY" means a vertical surface located at the hydraulically downgradient limit of the cell. This vertical surface extends down into the uppermost aquifer. "Sanitary Landfill Cell Boundary" has the same meaning as "Waste Management Unit Boundary" in the RCRA Subtitle D (40 CFR Part 258) Regulations. "Sanitary Landfill" has the same meaning as "MSWLF" in the RCRA Subtitle D (40 CFR Part 258) Regulations.

"SATURATED ZONE" means that part of the earth's crust in which all the voids are filled with water.

"SCAVENGING" means the uncontrolled and/or unauthorized removal of solid waste from any facility.

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

"SETBACK" means the area between the actual disposal area and the property line which can be used for construction of environmental control systems such as run-off diversion ditches, monitoring wells, or scales.

"SITE" means the area of land or water within the property boundaries of a facility where one or more solid waste treatment, resource recovery, recycling, storage or disposal areas are located.

"SLUDGE" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"SOLID WASTE" means any garbage, refuse, rubbish, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semi-solid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under 7 Del. Code, Chapter 60, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

"SOURCE SEPARATED" means divided into its separate recyclable components at the point of generation.

"SPECIAL SOLID WASTES" means those wastes that require extraordinary management. They include but are not limited to abandoned automobiles, white goods, used tires, waste oil, sludges, dead animals, agricultural and industrial wastes, infectious waste, municipal ash, septic tank pumpings, and sewage residues.

"STORAGE" means the holding of solid waste for a temporary period, at the end of which time the solid waste is treated, disposed of, or stored elsewhere.

"SUBBASE" means the supporting soil layers beneath a liner.

"SURFACE WATER" means water occurring generally on the surface of the earth.

"THERMAL RECOVERY FACILITY" means a facility designed to thermally break down solid waste and to recover energy from the solid waste.

"TOPSOIL" means the friable dark upper portion of a soil profile that contains mineral substances and organic material in varying degrees of decomposition and is capable of supporting vegetation.

"TRANSFER STATION" means any facility where quantities of solid waste delivered by vehicle are consolidated or aggregated for subsequent transfer by vehicle for processing, recycling, or disposal.

"TRANSPORTATION" means the movement of solid waste by air, rail, water, over the roadway, or on the ground.

"TRANSPORTER" means any person engaged in the transportation of solid waste.

"TREATMENT" means the process of altering the physical, chemical, or biological condition of the waste to prevent pollution of water, air, or soil or to render the waste safe for transport, disposal, or reuse.

"UNCONFINED AQUIFER" means an aquifer in which the upper surface of the zone of saturation is at atmospheric pressure.

"UPPERMOST AQUIFER" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"VARIANCE" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure, as provided in 7 Del. Code, Chapter 60.

"VECTOR" means a carrier organism that is capable of transmitting a pathogen from one organism to another.

"VEHICLE" means a motorized means of transporting something. "Vehicle" includes both the motorized unit and all containerized units of a conveyance attached thereto. For purposes of determining whether a transporter qualifies as a "LIMITED TRANSPORTER", motorized units will be counted.

"WATER TABLE" means that surface in a ground water body at which the water pressure is atmospheric. It is defined by the levels at which water stands in wells that penetrate the water body just far enough to hold standing water.

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

"WORKING FACE" means that portion of a landfill where waste is discharged, spread and compacted prior to placement of daily cover

#### SECTION 4: PERMIT REQUIREMENTS AND ADMINISTRATIVE PROCEDURES

##### A. GENERAL PROVISIONS

###### 1. Permit required

a. No person shall engage in the construction, operation, material alteration, or closure of a solid waste facility, unless exempted from these regulations under Section 2.C, without first having obtained a permit from the Department.

b. No person that is subject to the requirements of Section 7.B or 7.C of these regulations shall transport solid waste in or through the State of Delaware without first having obtained an appropriate solid waste transporter's permit from the Department.

###### 2. Public notice; hearing

Within 60 days after receipt of a completed application and all other required information, the Department will give public notice and the opportunity for a public hearing as

provided in 7 Del. Code Ch. 60. The cost of the advertisement shall be borne by the applicant. A 15 day comment period will follow the publication date of each public notice. If no meritorious adverse public comments are received during this period, and the Secretary does not deem a public hearing to be in the best interest of the State, the Department will enter into the permit approval/denial phase. If a meritorious request for a hearing is received during the comment period, or if the Secretary deems a hearing to be in the best interest of the State, a public hearing will be held as provided in 7 Del. Code, Chapter 60, Sections 6004 and 6006.

### 3. Approval/denial

The Department shall act upon an application for a permit within 60 days after the close of the public notice comment period or upon receipt of the hearing officer's report if a hearing was required. When a final determination is made on an application, the Department shall issue a permit or send a letter of denial to the applicant explaining the reasons for the denial.

### 4. Suspension, revocation of permit

A permit may be revoked or suspended for violation of any condition of the permit or any requirement of this regulation, after notice and opportunity for hearing in accordance with 7 Del. Code, Chapter 60.

### 5. Duration of permit

A permit will be issued for a specific duration which will be determined by the Department. ~~In no case will a permit be valid for more than five years.~~

a. Solid waste facility operating permits (landfills, resource recovery facilities, transfer stations, incinerators) shall not be issued for periods greater than 10 years.

b. Post-closure permits shall be valid and enforceable throughout the entire post-closure period.

### 6. Permit renewal

Any person wishing to renew an existing permit shall, not less than 90 days prior to the expiration date of that permit, submit a ~~[written request for permit renewal. This request may be in the form of a letter but shall not be combined with correspondence relating to any matter other than the permit renewal]~~ **[permit renewal application form, provided by the Department].**

In the event that the permittee submits a timely ~~request~~ **[application]** for permit renewal, and the Department, through no fault of the permittee, is unable to make a final determination on the ~~request~~ **[application]** before the expiration date of the current permit, the Department may, at its discretion, grant an extension of the permit. If the Department issues an extension, all conditions of the permit,

and all modifications previously requested by the Department, will remain in effect, for a period of time which will be determined by the Department.

### 7. Modification of permit

a. A permittee may request modifications to a permit. All such requests must be submitted in writing to the Department.

b. The Department may initiate modification of a permit if it finds that the existing permit conditions either are not adequate or are not necessary to protect human health and the environment.

c. Public notice and opportunity for hearing in accordance with paragraph A.2. of this Section shall be accomplished for all major modifications proposed for the permit. In the event a hearing is requested or deemed necessary by the Secretary, only the permit conditions subject to the modification shall be reopened for public comment.

d. Public notice shall not be required for minor modifications to the permit. Minor modifications are those which if granted would not result in any increased impact or risk to the environment or to the public health. Minor modifications include but are not limited to:

(1) Changes in operation or design which are not related to pollution control devices or procedures.

(2) Improvements to approved pollution control devices or procedures.

(3) Administrative changes.

(4) A change in monitoring or reporting frequency.

(5) The correction of typographical errors.

### 8. Transfer of permit

A written request for the transfer of a permit must be submitted to the Department at least 15 days prior to the date of the proposed transfer. The actual transfer will be contingent upon the transferee's meeting all Department requirements; until such time, the original permittee will remain liable regardless of who owns the facility.

### 9. Enforcement

a. The Department reserves the right to inspect any site, or any vehicle intended for use in the transportation of solid waste, before issuing a solid waste permit for the site or the transporter.

b. The Department may, at any reasonable time, enter any permitted solid waste facility or inspect any vehicle being used in the transportation of solid waste in order to verify compliance with the permit and these regulations.

c. The Department may require such reports, interviews, tests or other information necessary for the

evaluation of permit applications and the verification of compliance with the permit and these regulations.

d. Any person using land, or allowing the use of land, for the storage, processing, or disposal of solid waste who violates a requirement of this regulation shall be subject to the provisions of Sections 6005, 6013, 6018, and 6025(c) of 7 Del. Code, Chapter 60.

#### 10. Replacement of Contaminated Water Supplies

If the Department determines, based on information obtained by or submitted to the Department or the Division of Public Health, that any drinking water supply well has become contaminated as a result of the construction or operation of a solid waste facility, the owner or operator of the facility will be required to construct and maintain, at his or her expense, a permanent alternative water supply of comparable quantity and quality to the source before it was contaminated. Such a determination will be subject to the review procedures contained in 7 Del. Code, Chapter 60.

#### 11. Financial Assurance Criteria

##### a. Applicability and effective date

~~(1)~~ The requirements of this section apply to owners and operators of all solid waste facilities, except owners or operators who are State or Federal Government entities whose debts and liabilities are the debts and liabilities of the State or the United States.

~~(2) The requirements of this section are effective immediately upon adoption, except the requirements pertaining to sanitary landfills become effective April 9, 1995 (or on any alternate date that the Federal requirements pertaining to financial assurance for MSWLFs become effective).~~

b. Financial Assurance for Closure, Post-Closure Care, and Corrective Action

(1) The owner or operator of a solid waste facility must provide assurance that the financial costs associated with closure, post-closure care, and corrective action can be met throughout the life of the facility until released from these requirements by the Department after demonstrating successful completion of compliance with the requirements for each of these activities.

(2) The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners or operators must choose from the options specified in paragraphs (a) through (i) of this section, and comply with any conditions noted therein.

##### (a) Trust Fund

Condition 1: The trustee must be an entity

which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2: The trust agreement shall be worded as prescribed by the Department.

Condition 3: The owner or operator shall submit the receipt from the trustee for the initial payment into the trust fund as well as the originally signed duplicate of the trust agreement for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 4: Pay-in periods and amounts for all solid waste facilities shall be in accordance with those specified in 40 CFR Part 258.74, subsections (a)(2), (a)(3), (a)(4) and (a)(6) or otherwise acceptable to the Department.

Condition 5: Schedule A, attached to the trust agreement, shall list the facility name and address and the current cost estimate. Schedule A must relate the trust agreement to the specific facility and obligation(s) being assured and shall be updated at least annually to account for inflation or other increases to the cost estimate. Costs reflected in Schedule A shall not be reduced without the written consent of the Department.

Condition 6: Schedule B, attached to the trust agreement, shall list the property or money that the fund consists of initially. Property must consist of cash or securities acceptable to the trustee. Other property (e.g. real estate) is not an acceptable payment into the trust fund.

Condition 7: Exhibit A, attached to the trust agreement, shall list the persons designated by the Grantor to sign orders, requests, and instructions to the trustee.

Condition 8: Annual valuation. Annually, the trustee shall furnish to the Department and to the owner or operator, a statement confirming the value of the trust fund. Any securities in the trust fund shall be valued at market value as of no more than 60 days prior to the date the statement is submitted to the Department. If possible, the statement should be submitted during the month that Schedule A is adjusted annually.

Condition 9: The trustee shall make payments from the fund only as the Department directs to provide for the payment for the costs of corrective action, closure, and/or post-closure care.

Condition 10: After beginning closure, post-closure care, or corrective action, an owner or operator or other person authorized in accordance with Condition 7 may request reimbursements for partial expenditures by submitting itemized bills to the Secretary. The owner or

operator may request reimbursements for partial closure, post-closure care, or corrective action only if sufficient funds are remaining in the trust fund to cover the maximum costs of completing the activities for which the trust agreement was established. Within 60 days after receiving bills for reimbursable closure, post-closure care, or corrective action activities, the Secretary will instruct the trustee to make reimbursements in those amounts as the Secretary specifies in writing. Reimbursements will be allowed only if the Secretary determines that the partial or final expenditures are in accordance with the approved closure, post closure care, or corrective action plan or are otherwise justified. If the Secretary has reason to believe that the maximum cost of closure over the remaining life of the facility will be significantly greater than the value of the trust fund, he/she may withhold reimbursements of such amounts as he/she deems prudent. If the Secretary does not instruct the trustee to make such reimbursements, he/she will provide the owner or operator with a detailed written statement of reasons.

Condition 11:Amendments. The trust agreement may be amended by an instrument in writing executed by the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

Condition 12:Irrevocability and termination. Subject to Condition 11, the trust agreement shall be irrevocable and shall continue until terminated at the written agreement of the grantor, the trustee, and the Department, or by the trustee and the Department if the grantor ceases to exist.

(b) Surety Bond for Payment or Performance

Condition 1:At a minimum, the surety company issuing the bond must be listed in Circular 570 of the U.S. Department of Treasury as qualified in the state where the bond was executed.

Condition 2:The surety's underwriting limit must be at least as great as the amount of the surety bond.

Condition 3:The surety bond shall be worded as prescribed by the Department.

Condition 4:The owner or operator shall submit the bond and standby trust fund for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5:Standby trust fund. The owner or operator must establish a standby trust fund, and the standby trust fund must meet the requirements of these regulations except that initial and annual payments are not

required. Updates of Schedule A, and annual valuation reporting will not be required until payment is made into the trust fund. Payments made under the terms of the surety bond shall be deposited by the issuing institution directly into the standby trust fund.

Condition 6:The payment surety bond may not be used for corrective actions.

Condition 7:Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner and operator at least 120 days in advance of cancellation. If the Surety cancels the bond, the owner or operator must obtain alternate financial assurance. The Department may draw on the surety bond if the owner or operator has not provided alternative financial assurance within 90 days after receipt by the Solid Waste Management Branch of a notice of cancellation from the surety.

Condition 8:The owner or operator may cancel the surety bond if the Department provides its written consent to do so. The Department will provide such written consent when the owner substitutes alternate financial assurance as specified in these regulations or the bonded activity has been completed in accordance with these regulations.

Condition 9:The surety shall become liable on the bond when the owner or operator has failed to fulfill the closure, post-closure care or corrective action activities as required. Upon notification by the Department that the owner or operator has failed to perform closure or post-closure care guaranteed by a payment bond, the surety shall place funds in the amount guaranteed for the facility into the standby trust fund. Upon notification that the owner or operator has failed to perform closure, post-closure care, or corrective action as guaranteed by a performance bond, the surety shall either perform the activities guaranteed by the bond or place funds in the amount guaranteed for the facility into the standby trust fund.

(c) Letter of Credit

Condition 1:The issuing financial institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State of Delaware agency.

Condition 2:The letter of credit shall be worded as prescribed by the Department.

Condition 3:Accompanying letter. The owner or operator shall also submit an accompanying letter referring to the letter of credit by number and listing the following information: complete name and address of

facility, issuing institution and date, and amount and purpose of funds assured.

Condition 4:The owner or operator shall submit the letter of credit and accompanying letter for Department approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 5:The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies the Secretary of the Department, [the Solid] ~~to extend the expiration date.~~ ~~Waste~~ [Waste Management Branch, and the owner or operator of a decision not to extend the expiration date.]

Condition 6: Once the issuing financial institution notifies the Solid Waste Management Branch of its intent not to extend the Letter of Credit, the owner or operator must, within 90 days, provide alternate financial assurance. The Department may draw on the letter of credit if the owner or operator has not provided alternative financial assurance within 90 days.

Condition 7:Following a determination by the Secretary of the Department that the owner or operator has failed to perform closure, post-closure-care, or corrective action when required to do so, the Department may draw on the letter of credit.

(d) Insurance

Condition 1:The insurer must be licensed to transact the business of insurance in one or more states or be eligible to provide insurance as an excess or surplus lines insurer in one or more states.

Condition 2:Captive insurance companies and risk retention groups cannot be used to satisfy the requirements of this section.

Condition 3:Insurance is not an allowable mechanism for demonstrating financial responsibility for corrective action.

Condition 4:The policy must guarantee that the funds will be available whenever needed and that the insurer will be responsible for paying out funds to authorized persons.

Condition 5:The policy must allow assignment to a successor owner or operator. Assignment may be conditional upon consent of the insurer provided that such consent is not unreasonably refused.

Condition 6:The policy must provide that the insurer may not cancel, terminate or fail to renew the

policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy.

Condition 7:If the owner or operator fails to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner or operator of the facility, at least 120 days in advance of the cancellation and date of expiration. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration, the Secretary of the Department deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Secretary of the Department, or a U.S. District Court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) USC; or the premium due is paid.

Condition 8:Prior to requesting reimbursement from the insurer, owners or operators shall submit justification and documentation of the reimbursable expenses to the Department for its consent.

Condition 9:A copy of the policy shall be submitted to the Department for its approval prior to receiving solid waste, or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(e) ~~Corporate~~ or Local Government Financial Test and Guarantee

Condition 1:Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2:Guarantees shall be worded as specified by the Department.

Condition 3:A local government is not eligible to assure its obligations by this mechanism if it: is currently in default of any outstanding general obligation bonds; or has any general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's; or operated at a deficit equal to five percent or more of total annual revenue in each of the past two fiscal years; or received an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement, and the Department deems the reason for the qualification as significant.

Condition 4:Bond Rating/Financial Ratio Alternatives. The local government must meet one of the

following two financial tests: a) If the local government has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB as issued by Standard and Poor's on all such general obligation bonds; or b) Based upon the most recently audited annual financial statement, a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

Condition 5: The total costs being assured through a financial test must not exceed 43 percent of the local government's total annual revenue. If the local government assures other environmental obligations through financial tests; including those associated with UIC facilities under 40 CFR 144.62, underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265; it must add those costs to the closure costs it seeks to assure under this mechanism.

Condition 6: Public Notice. The local government shall place a reference to the closure costs assured through the financial test into its next comprehensive annual financial report (CAFR).

Condition 7: Accountants Opinion. A Certified Public Accountant's opinion of the local government's financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year. The opinion must be unqualified and demonstrate that the local government has prepared its financial statements in accordance with the requirements of the General Accounting Standards Board Statement 18.

Condition 8: Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the local government has complied with Conditions 3, 4, 5, and 6. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the local government's fiscal year.

Condition 9: If, at the end of any fiscal year, the local government fails to meet the financial test criteria required by conditions 3, 4, or 5, then the local government shall send, within 90 days, by certified mail, notice to the Secretary of the Department and to the Solid Waste Management Branch, that they intend to provide alternate financial assurance as required by these

regulations. The local government shall, within 210 days following the close of the fiscal year, obtain alternative financial assurance that meets the requirements of these regulations.

Condition 10: The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

Condition 11: The guarantee shall remain in force unless the local government sends notice of cancellation by certified mail to the Secretary of the Department and to the Solid Waste Management Branch. Such notice shall be given at least 120 days in advance of the cancellation. Within 90 days of receipt of this notice of cancellation by the Solid Waste Management Branch, the local government shall provide alternative financial assurance acceptable to the Department.

(f) ~~Corporate or Local Government~~ Financial Test and Guarantee

Condition 1: Financial tests and guarantees shall not be used for assuring funds for post-closure periods or corrective actions.

Condition 2: Guarantees shall be worded as prescribed by the Department.

Condition 3: A resolution agreeing to the terms and conditions of the guarantee and signed by the guarantor's board of directors shall be attached to the guarantee.

Condition 4: The guarantor must be the direct or higher tier parent company of the owner or operator, or a firm whose parent corporation is also the parent corporation of the owner or operator.

Condition 5: Minimum size requirement. The guarantor must have a tangible net worth equal to the sum of the costs they seek to assure through a financial test, plus \$10 million. The costs that the guarantor seeks to assure are equal to the current cost estimates for closure, post-closure care, corrective action, and any other environmental obligation assured by a financial test and/or corporate guarantee by the guarantor (including other landfills or solid waste facilities; PCB storage facilities; underground storage tanks; hazardous waste treatment, storage, disposal facilities; or underground injection control program facilities).

Condition 6: Bond Rating/Financial Ratio Alternatives. Guarantors must meet one of the following three financial tests: a) A most recent bond rating no lower than Baa as issued by Moody's or BBB as issued by Standard and Poor's. b) A leverage ratio of less than 1.5 based on the ratio of total liabilities to tangible net worth. c)

A profitability ratio of greater than 0.10 based on the sum of the net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities.

Condition 7:Domestic Assets Requirement. Guarantors must have assets in the United States at least equal to the costs they seek to assure through a financial test (costs include those reported for Condition 5).

Condition 8:Chief Financial Officer letter. The Chief Financial Officer must include a letter demonstrating that the guarantor has complied with Conditions 4, 5, 6, and 7. The CFO letter shall be submitted to the Department as part of the initial financial assurance package and annually no later than 90 days after the close of the guarantors fiscal year.

Condition 9:Accountants Opinion. A Certified Public Accountant’s opinion of the guarantors financial statements for the most recent fiscal year must also be included in the initial financial assurance package and annually no later than 90 days after the close of the guarantor’s fiscal year. The opinion must be unqualified (not modified by conditions or reservations) and demonstrate that the firm has prepared its financial statements in accordance with generally accepted accounting principals for corporations.

Condition 10:Special Report. In the event that the CFO does not use financial test figures directly form the annual statements provided to the Securities and Exchange Commission, then a special report from an independent accountant shall be required. In the report, the Certified Public Accountant must confirm that the data used in the CFO letter was appropriately derived from the audited, year-end financial statements.

Condition 11:Incapacity. The guarantor shall notify the Secretary of the Department and the Solid Waste Management Branch by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 Bankruptcy, USC, naming the guarantor, owner or operator of the facility as debtor, within 10 days after commencement of the proceeding.

Condition 12:If, at the end of any fiscal year, the guarantor fails to meet the financial test criteria required by conditions 5, 6, or 7, then the guarantor shall send, within 90 days, by certified mail, notice to the Secretary of the Department, to the Solid Waste Management Branch, and to the owner or operator, that guarantor intends to provide alternate financial assurance as required by these regulations. Within 120 days of such fiscal year, the guarantor shall establish such financial assurance unless the owner or operator has done so.

Condition 13:Within 30 days of being

notified by the Department that a determination has been made that the guarantor no longer meets the requirements stated in Conditions 5, 6, or 7, the guarantor shall establish alternate financial assurance in accordance with these regulations.

Condition 14:The guarantee, approved by the Department, must be effective prior to the initial receipt of waste or in the case of an existing facility, prior to the cancellation of the existing financial assurance mechanism.

(g) ~~State~~ Department-Approved Mechanism.

(h) State Assumption of Responsibility.

(i) Use of Multiple Financial Mechanisms (any combination of the options listed above).

(3) The language of the financial assurance mechanisms listed in this section must satisfy the following criteria:

(a) They must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed.

(b) They must ensure that funds will be available in a timely fashion when needed.

(c) They must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected, until the owner or operator is released from the financial assurance requirements.

(d) They must be legally valid, binding, and enforceable under State law.

**(4) ~~The [Upon request by the Department, the] applicant or permittee shall reimburse the Department for its reasonable costs incurred in obtaining third party review of [provide a third party review of the] financial assurance documents submitted. Third parties may include Certified Public Accountants, Attorneys, or other professionals versed in the application of the particular financial assurance mechanism chosen. Reimbursement shall be made [The third party review must certify to the Department that the financial assurance documents as submitted] by the applicant or permittee within 30 days of receipt of an itemized statement of incurred costs submitted by the Department [meet the requirements of Section 4.A.11.b(2) of these regulations, and be sealed and signed by a Certified Public Accountant duly registered in Delaware.~~**

**(5) The application shall not be deemed complete until and unless the applicant has complied**

with Section 4.A.11.b(4) of these regulations as specified above].

c. Cost Estimate for Closure

(1) The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of closing the facility that is consistent with the closure plan developed in accordance with the closure requirements for that type of facility. The estimate must equal the maximum cost of closure at any time during the active life of the facility. The owner or operator shall also notify the Secretary in writing that the estimate has been placed in the records to be maintained at the facility.

(2) Until final closure of the facility, the owner or operator must annually adjust the closure cost estimate for inflation, facility expansions, and any other applicable requirements which impact the cost of closure.

(3) The owner or operator must increase the cost estimate and the amount of financial assurance provided for closure if changes to the closure plan or facility conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The Department may approve reduction in the amount of financial assurance provided for closure if the latest cost estimate is significantly less than the maximum cost of the current closure plan. The owner or operator must submit to the Secretary in writing the justification for the reduction of the closure cost estimate and the amount of financial assurance. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

d. Cost Estimate for Post-Closure Care

(1) The owner or operator of a solid waste facility for which post-closure care is required must demonstrate financial assurance for the cost of thirty (30) years of post-closure care. The owner or operator must submit to the Department a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the solid waste facility in compliance with the post-closure plan. This estimate must be based on the most expensive costs of post-closure care during the post-closure care period. The owner or operator must also notify the Department in writing that the estimate has been placed in the records to be maintained at the facility.

(2) During the active life of the solid waste facility and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation and other applicable factors.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided if changes in the post-closure plan or

solid waste facility conditions increase the maximum costs of post-closure care.

(4) The Secretary may approve the reduction of the post-closure cost estimate and the amount of financial assurance provided if the latest cost estimate is significantly less than the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit to the Secretary in writing the justification for the reduction of the post-closure cost estimate. Any changes in the amount of financial assurance must also be placed in the records to be maintained at the facility.

e. Cost Estimate for Corrective Action

(1) An owner or operator of a solid waste facility required to undertake a corrective action program must submit to the Secretary in writing a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must also notify the Secretary that the cost estimate has been placed in the records to be maintained at the facility.

(2) The owner or operator must annually adjust the estimate for inflation and any other applicable factors until the corrective action program is completed.

(3) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided if changes in the corrective action program or facility conditions increase the maximum costs of corrective action.

(4) The Secretary may approve reduction of the amount of the corrective action cost estimate and the amount of financial assurance provided if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must submit to the Secretary in writing the justification for the reduction of the corrective action cost estimate. The owner or operator must also notify the Secretary in writing that the amended amount of financial assurance has been placed in the records to be maintained at the facility.

B. APPLICATION PROCEDURES FOR SANITARY AND INDUSTRIAL LANDFILLS

~~1.~~ **New facilities**

~~a.~~ **Construction**

1. Application

Any person desiring to ~~obtain a permit to~~ construct or operate a sanitary or industrial landfill or cell must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed

facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. ~~Application to Construct a Solid Waste Facility~~ A Solid Waste Management Facility Application, form provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used,

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility,

(3) A description of the proposed monitoring methods,

(4) A description of the proposed methods for controlling noise, litter, odors, insects, and rodents, and

(5) A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment).

d. An engineering report

This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include the following:

(1) Descriptions and specifications of all proposed design features,

(2) A description of the proposed installation methods and procedures,

(3) A schedule of events for construction of the facility,

(4) Proposed design capacity in both tons and cubic yards per day, and projected life expectancy of the facility,

(5) A construction quality assurance plan.

~~This report shall be prepared and signed by a Professional Engineer registered in Delaware and shall include a description of the manner in which quality assurance will be carried out during the construction and installation of all design features.~~

e. A hydrogeological assessment

A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to

identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to points of ground water discharge,

(5) Approximate ground water flow rates and travel times from the facility to points of discharge (including wells and/or surface water).

In addition, delineation of the anticipated maximum elevation of the seasonal high water table shall be provided.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality

Water quality

Stream flow

Fish and wildlife

Plants

Threatened or endangered species

Water uses

Land use

Aesthetics

Traffic

Public health and safety

Cultural, recreational, and natural areas

Historic sites

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or

usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

h. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

i. Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate.

j. Proof of financial responsibility for closure and post-closure care, as described in Section 4.A.11., ~~b and d.~~

k. Proof that the facility meets the siting criteria required by Section 5.A. or 6.A.

l. Any other related reports, data, maps, or information that the Department requires.

~~b. Operation~~

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

~~At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:~~

~~(1) Notification of intent to commence operation.~~

~~(2) Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.~~

2. Construction and Operation

a. The applicant shall not commence construction of the landfill or cell until the Department has issued the solid waste permit required by these regulations.

b. After construction has been completed and prior to the placement of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the landfill or cell was completed in accordance with the engineering report to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a

Professional Engineer registered in Delaware. The permittee shall not place solid waste into the newly constructed landfill or cell until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

a. Any person wishing to ~~obtain a closure permit~~ modify their current permit to allow closure of a facility or part thereof must submit the following to the Department at least 180 days prior to the projected date when wastes will no longer be accepted:

(1) Notification of intent to close,

(2) Closure plan as described in Section 5.J.3 or 6.J.3, as appropriate,

(3) Post-closure care plan describing how the requirements of Section 5.K or 6.K (as appropriate) will be met.

b. If the Department determines that the closure plan and supporting documents are sufficient to ensure closure, it will modify the permit to allow closure to be performed. The owner or operator of the landfill shall not commence closure of the landfill or cell without first obtaining the necessary permit modifications.

c. After closure has been completed, the permittee shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the Construction Quality Assurance Plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell shall not be considered closed until the Department has provided its written notification that the closure has been accomplished in accordance with the solid waste permit and these regulations.

d. Facilities entering the Post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

~~2. Existing facilities~~

~~a. Any person desiring to continue construction or operation of a sanitary or industrial landfill, construction or operation of which was being conducted pursuant to a permit issued under the Delaware Solid Waste Disposal Regulation, must, within six months after the date of enactment of these regulations, submit to the Department a report explaining how the facility will be brought into compliance and a timetable for attaining compliance. The~~

proposed schedule and methods for attaining compliance will be subject to Department approval. The facility must be in compliance with these regulations within six months after the date on which the Department approves the compliance schedule.

b. Any person who, at the time of enactment of these regulations, is in the process of closing a solid waste facility pursuant to a permit issued under the Delaware Solid Waste Disposal Regulation, shall complete closure according to the conditions set forth in that permit.

C. THIS PARAGRAPH RESERVED

C. APPLICATION PROCEDURES FOR DRY WASTE DISPOSAL FACILITIES

1. New facilities

a. Construction

Any person desiring to obtain a permit to construct a dry waste disposal facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:

(1) Application to Construct a Solid Waste Facility, provided by the Department.

(2) Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the proposed activity on the property must also be submitted.

(3) A plan of operation.

This shall include the following:

(a) A description of the facility and of the solid waste handling and disposal procedures that will be used.

(b) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the facility.

(c) A description of the proposed ground water and gas monitoring methods.

(d) A description of the proposed methods for controlling noise, litter, odors, insects, and rodents.

(e) A contingency plan to be implemented in case of emergency.

(4) A hydrogeological assessment.

A hydrogeological investigation must be performed at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to

identify:

- (a) the occurrence and characteristics of the water table aquifer.
- (b) ground water flow directions.
- (c) ambient ground water quality.
- (d) potential pathways of contaminants to points of ground water discharge.

In addition, an evaluation shall be made of the elevation of the seasonal high water table.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

(5) Topographical and site location maps.

This shall include topographical maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, and other maps as necessary, to show:

(a) Elevations of the property, with reference to mean sea level, before commencement of waste disposal at the site (for all new facilities and where available for existing facilities).

(b) Topographic elevations of the property at the time of permit application [if different from (a) above].

(c) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the parcel number of the property; the names of the present owners of the proposed site and of all adjacent lands; a description of the current use of the land; and a description of all title, deed, or usage restrictions affecting the property.

(d) The areas to be used in each sequence of disposal.

(e) The locations of all buildings and structures on the property.

(f) The location of the nearest perennial stream.

(g) The proposed elevations of the site after closure of the facility.

(6) Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.

(7) A conceptual closure plan. This shall address the items listed in Section 8.H.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the costs of closure and post-closure care.

(8) Proof of financial responsibility for closure and post-closure care, as described in Section 4.A.11, b and d.

(9) Any other related reports, data, maps or information that the Department requires.

## b. Operation

A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.

At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:

- (1) Written notification of an intent to commence trial operation, and the date on which the trial operating period will begin.
- (2) Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.

## e. Closure

Any person wishing to obtain a closure permit must submit the following to the Department:

- (1) Notification of intent to close.
- (2) Closure plan as described in Section 8.H.3.
- (3) Closure schedule.

## 2. Existing facilities

a. Any person disposing of dry waste pursuant to an approval letter which is in effect at the time of enactment of these regulations must, within six months after enactment of Section 8, do one of the following:

(1) Submit all of the items listed in Section 4.C.1.a, a report explaining how the facility will be brought into compliance with these regulations, and a timetable for attaining compliance. The compliance report and timetable will be subject to Department approval. The facility must be in compliance with these regulations within six months after the date on which the Department approves the compliance report and timetable.

(2) Submit written notification of intent to close the facility, immediately cease accepting waste, and submit a closure plan consisting of the following:

(a) A description of the methods, procedures, and processes that will be used to close the facility in accordance with the closure performance standard in Sections 8.H.1 and 8.H.4, and a schedule for completion of closure.

(b) A description of the final cover that will be applied, and a discussion of how the final cover will achieve the objectives of Section 8.H.1.

(c) A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from

landfill run-off collection ponds):

(d) A topographical map of the site showing the proposed post-closure elevations with reference to mean sea level.

(e) An estimate of the cost of closing the facility.

(f) A description of the maintenance that will be performed at the site after closure is completed.

(g) A description of the planned uses of the property.

The closure plan will be subject to Department approval. Closure must be carried out in accordance with the approved closure plan.

b. Any person who, at the time of enactment of Section 8 of these regulations, is in the process of closing a facility in accordance with a closure plan that has been approved by the Department, may complete closure in accordance with that plan.

## D. APPLICATION PROCEDURES FOR RESOURCE RECOVERY FACILITIES

## 1. New facilities

## a. Construction and operation

## 1. Application

Any person desiring to obtain a permit to construct and/or [or] operate a resource recovery facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. A Solid Waste Management Facility Application, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the proposed activity on the property must also be submitted.

## c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling and disposal procedures to be used.

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility. This shall include a description of the procedures for facility start up and for scheduled and unscheduled shut down operations.

(3) A description of the solid wastes that will be accepted at the facility, the manner in which recyclable components will be removed from the solid waste stream, the markets for these recyclable materials, and the proposed

disposition of the non-recyclable components and residuals.

(4) A description of the proposed monitoring methods.

(5) A description of the measures that will be used to ensure that unauthorized and unwanted solid wastes are prevented from entering the facility.

(6) A description of the personnel training program, including training that will be provided to ensure compliance with Sections 9.D.2.e and 9.D.2.g of these regulations.

(7) A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, fires, and explosions.

(8) A detailed contingency plan to be implemented in case of an emergency such as a spill, accident, or explosion.

d. An engineering report

This shall include the following:

(1) A drawing or drawings showing the complete layout of the proposed facility.

(2) Mass and energy balances, including calculations and pertinent facts relating to the development of these balances.

(3) Descriptions and specifications of all proposed design features that the engineer has provided to the owner of the facility.

(4) A description of the proposed installation methods and procedures.

(5) A plan for third-party quality assurance for the construction and installation of components of the facility that will be used in the processing, handling, and/or monitoring of solid waste.

(6) A schedule of events for construction of the facility.

(7) Proposed design capacity per day, and life expectancy of the facility.

(8) A description of potential safety hazards and methods of control.

(9) An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.

(10) An identification of possible ground water and surface water discharges.

e. A recycling analysis

This analysis shall consist of the following:

(1) Identification of available and potential markets for recovered recyclables.

(2) An evaluation of the impact that alternative source separation/recyclables recovery programs could have on the facility. If a thermal recovery facility is

the subject of the application, this shall include an engineering analysis of the BTU value of the solid waste before and after recyclables recovery for the proposed life of the project to determine if increases in recycling activities will necessitate changes in facility size and capacity.

f. A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or any testing protocol developed by the Department or by the EPA after the date of enactment of these regulations. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.

g. A hydrogeological assessment, if deemed necessary by the Department

A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.

h. An environmental assessment

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include, but are not necessarily limited to:

Air quality

Water quality

Water uses

Land use

Soil quality

Traffic

Public health and safety

Cultural, recreational, and natural areas

Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

i. Topographical and site location maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as

determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

(2) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(3) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the site boundaries.

j. Proof that all applicable zoning approvals have been obtained and application has been made for all appropriate federal, state, and local environmental permits.

k. A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

l. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

m. Proof that the facility meets the siting criteria required by Section 9.B.

n. Any other related reports, data, maps, or information that the Department requires.

## 2. Construction and operation

a. The applicant shall not commence construction of a new resource recovery facility or operate an existing resource recovery facility until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new resource recovery facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the resource recovery facility was completed in accordance with the engineering report to include the quality assurance plan, construction and material specifications and design drawings. The final report shall be certified correct by the third-party quality assurance engineer, who must be a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

## 3. Closure

Any person desiring to close a resource recovery facility shall, at least 180 days before the date on which the

facility will stop accepting solid waste, submit the following to the Department:

- a. Written notification of intent to close.
- b. Updated closure plan.
- c. Closure schedule
- d. An evaluation of the impact that closing the facility will have on the flow of solid waste in the region serviced by the facility, and a plan for minimizing any disruption in the flow.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

## 2. ~~Existing facilities~~

~~All existing resource recovery facilities must, within six months after enactment of Section 9 of these regulations, do one of the following:~~

- ~~a. Submit written notification of intent to close, a closure plan, and a closure schedule; and implement the closure procedures described in Section 9.E; or~~
- ~~b. Submit a Solid Waste Management Facility Application (provided by the Department) and all of the following:~~

~~(1) Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the resource recovery activity on the property must also be submitted.~~

~~(2) A plan of operation, as described in Section 4.D.1.a(3).~~

~~(3) An engineering report~~

~~This shall include the following:~~

~~(a) A drawing or drawings showing the complete layout of the facility.~~

~~(b) Mass and energy balances, including calculations and pertinent facts relating to the development of these balances.~~

~~(c) Descriptions and specifications of all design features that the engineer has provided to the owner of the facility.~~

~~(d) Design capacity and life expectancy of the facility.~~

~~(e) A description of potential safety hazards and methods of control.~~

~~(f) An analysis of the concept of the facility's expansion at a later date, if and when deemed necessary by the Department.~~

~~(g) An identification of possible ground water and surface water discharges.~~

~~(4) A recycling analysis, as described in Section 4.D.1.a(5).~~

~~(5) A plan for sampling, analysis, and disposition of the ash generated by the facility (for thermal recovery facilities only). The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste or any testing protocol developed by the Department or by the EPA after the date of enactment of these regulations. The plan also shall include a proposal for treatment and/or disposal of the ash. The proposed methods for treatment and/or disposal shall conform to all applicable state and federal regulations.~~

~~(6) A hydrogeological assessment, if deemed necessary by the Department~~

~~A hydrogeological investigation of the site may be required before the Department will issue a permit. The report resulting from this investigation shall be signed by a Professional Geologist registered in Delaware.~~

~~(7) An environmental assessment, as described in Section 4.D.1.a (8).~~

~~(8) Topographical and site location maps, as described in Section 4.D.1.a (9).~~

~~(9) Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.~~

~~(10) A conceptual closure plan. This shall address the items listed in Section 9.E.3 to the extent possible at the time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.~~

~~(11) Proof of financial responsibility for closure, as described in Section 4.A.11.b.~~

~~(12) A report explaining any requirements of Section 9 with which the facility is not in compliance, a description of how the facility will be brought into compliance, and a timetable for attaining compliance. This report and timetable will be subject to Department approval.~~

~~(13) Any other related reports, data, maps, or information that the Department requires.~~

~~The facility must be brought into compliance with these regulations in accordance with the timetable approved by the Department. Any extensions in time for attaining compliance must be approved in writing by the Department.~~

**E. APPLICATION PROCEDURES FOR TRANSFER STATIONS**

**1. New Facilities**

**a. Construction and operation**

**1. Application**

Any person desiring to obtain a permit to construct

and/or [or] operate a transfer station must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by the submission, by the applicant, of the following additional information:

a. ~~Transfer Station A Solid Waste Management Facility Application~~, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's irrevocable permission to conduct the proposed activity on the property must be submitted.

c. A plan of operation

This shall include the following:

(1) A narrative description of the type of facility and of the solid waste handling procedures to be used.

(2) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility.

(3) A description of the proposed methods for controlling noise, litter, odors, insects, rodents, dust, leachate, and facility washdown water.

(4) A description of the methods that will be used to prevent unauthorized wastes from entering the facility.

(5) A contingency plan to be implemented in case of emergency (e.g., a fire, explosion, or spill that threatens public health and safety or the environment.)

d. An engineering report

This shall include the following:

(1) Descriptions, plans, and specifications of all proposed design features.

(2) A description of the proposed installation methods and procedures.

(3) A schedule of events for construction of the facility.

(4) Proposed design capacity in both tons and cubic yards per day.

This report shall be prepared and signed by a Professional Engineer registered in Delaware.

e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation of the proposed site may be required before the Department will issue a permit. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the water table aquifer.

(2) Ground water flow directions.

(3) Ambient ground water quality.

(4) Potential pathways of contaminants to points of ground water discharge.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment.

The environmental assessment shall provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

Air quality  
 Water quality  
 Water uses  
 Land use  
 Soil quality  
 Traffic  
 Public health and safety  
 Cultural, recreational, and natural areas  
 Historic sites  
 Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site maps

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a surveyor registered in Delaware; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions and all easements affecting the proposed permit area.

(2) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(3) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the handling site boundaries.

h. Proof that a state Coastal Zone Permit (if applicable) and all applicable zoning approvals have been obtained and that application has been made for all other appropriate federal, state, and local environmental permits.

i. A conceptual closure plan. This shall address the items listed in Section 10.F.3 to the extent possible at the

time of initial permit application and shall be revised and updated as necessary to reflect changes in plans that will affect the cost of closure.

j. Proof of financial responsibility for closure, as described in Section 4.A.11.b.

k. Proof that the facility meets the siting criteria required by Section 10.B.

l. Any other related reports, data, maps, or information that the Department reasonably requires.

## 2. Construction and operation

a. The applicant shall not commence construction of a new transfer station or operate an existing transfer station until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new transfer station has been completed, and prior to the receipt of solid waste, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the transfer station was completed in accordance with the permit requirements. The final report shall be certified correct by a Professional Engineer registered in Delaware. The permittee shall not commence operations, store or receive solid waste until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

## 3. Closure

Any person desiring to close a transfer station shall, at least 60 days before the date on which the facility will stop accepting waste, submit the following to the Department:

- a. Written notification of intent to close.
- b. Updated closure plan.
- c. Closure schedule.

If the Department approves the closure plan and closure schedule, it will modify the facility's permit to allow closure to take place.

## ~~2. Existing facilities~~

~~All existing transfer stations must, within six months after enactment of Section 10 of these regulations, do one of the following:~~

~~a. Submit the items listed in Section 4.E.1.a above and a report explaining how the facility will be brought into compliance and a timetable for attaining compliance. The proposed methods and schedule for attaining compliance will be subject to Department approval.~~

~~The facility must be in compliance with these regulations within six months after the date on which the Department approves the report and schedule.~~

~~b. Submit written notification of intent to close, a closure plan, and a closure schedule; and implement the~~

~~closure procedures described in Section 10.F.~~

~~F. APPLICATION PROCEDURES FOR FACILITY FOR INFECTIOUS WASTE MANAGEMENT~~

~~1. New facilities~~  
~~a. Construction~~

1. Application

Any person desiring ~~to obtain a permit~~ to construct or operate an infectious waste management facility must submit a letter of intent to the Department. The letter should indicate the projected design and usage of the proposed facility. The letter of intent shall be followed by submission, by the applicant, of the following additional information:

a. ~~Application to Construct a Solid Waste Facility~~ A Solid Waste Management Facility Application, provided by the Department.

b. Proof of ownership of the property. If the applicant does not own the property, a copy of the lease agreement and the owner's ~~irrevocable~~ permission to conduct the proposed activity on the property must also be submitted.

c. A plan of operation

This plan shall include the following:

(1) The source(s) of the infectious waste (generator names and locations);

(2) A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;

(3) A description of the facility where the waste will ~~be sterilized or incinerated~~ be rendered non-infectious, including the name and the exact location of the facility;

(4) A narrative explaining the methods and schedule for operation, modification, use, and maintenance of the various components of the facility;

(5) A description of the processing methods to be used for each type of waste, including schematic drawings (e.g. blueprints, etc.);

(6) A description showing that the facility has developed a validation program which demonstrates the effectiveness of the treatment method by performing an Initial Efficacy Test and Periodic Verification Test(s).

(7) A description of the measures that will be used to ensure that unauthorized and unwanted wastes are prevented from entering the facility;

(8) A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of time of storage;

(9) A description of the alternatives to be used if the processing equipment is inoperable, and the

procedures to be used for the management of the waste if it cannot be promptly processed;

(10) A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required;

(11) A description of the proposed methods for controlling noise, litter, odors, vectors, dust, fires, and explosions;

(12) A contingency plan to be implemented in case of emergency.

In addition, if the proposed facility is an incinerator, the Plan of Operation shall include a plan for sampling, analysis, and disposition of the ash generated in the incinerator. The plan shall include a strategy for ash testing during the test burn phase of construction. Testing shall be in accordance with Delaware's Regulations Governing Hazardous Waste. The plan also shall include a strategy for treating and/or disposing of the ash if it is found to exhibit hazardous waste characteristics. A sanitary landfill in Delaware will not be considered an acceptable disposal facility for ash that exhibits hazardous waste characteristics.

d. An engineering report

This shall include the following:

(1) Descriptions and specifications of all proposed design features.

(2) A description of the proposed installation methods and construction procedures.

(3) A schedule of events for construction of the facility, if deemed necessary by the Department.

(4) Proposed design capacity in both tons and cubic yards per day, and life expectancy of the facility.

(5) Materials and energy balance of the facility.

e. A hydrogeological assessment, if deemed necessary by the Department.

A hydrogeological investigation may be required at the proposed site and approved by the Department before a construction permit will be issued. This investigation shall include a series of test borings and wells, constructed to a depth and in a number sufficient to identify:

(1) The occurrence and characteristics of the unconfined and first confined aquifers,

(2) Ground water flow directions,

(3) Ambient ground water quality,

(4) Potential pathways of contaminants to points of ground water discharge.

In addition, an evaluation shall be made of the

elevation of the seasonal high water table.

This investigation and report shall be signed by a Professional Geologist registered in Delaware.

f. An environmental assessment

An environmental assessment shall be performed to provide a detailed analysis of the potential impact of the proposed facility on the environment. Factors to be considered include:

- Air quality
- Water quality
- Stream flow
- Fish and wildlife
- Plants
- Threatened or endangered species
- Water uses
- Land use
- Aesthetics
- Traffic
- Public health and safety
- Cultural, recreational, and natural areas
- Historic sites
- Social and economic factors.

If the applicant or the Department determines that the proposed facility may cause a threat to human health or the environment, the applicant must provide a written explanation of how he or she plans to mitigate the potential harm.

g. Topographical and site location maps, if deemed necessary by the Department.

This shall include a topographical map or series of maps on a scale satisfactory to the Department but in no case less than one inch equal to 400 feet, showing topographic elevations surveyed with reference to mean sea level, and any necessary narrative descriptions, including but not limited to the following:

(1) The legal boundaries of the property as determined by a survey performed by a registered surveyor; the names of the present owners of the proposed site and of all adjacent lands; and a description of all title, deed, or usage restrictions affecting the proposed permit area.

(2) The boundaries of the facility over the estimated total life of the proposed operation, including the boundaries of land that will be affected in each sequence of disposal activity.

(3) The boundaries of land where solid waste will be stored at any time over the estimated total life of the proposed operation.

(4) The locations and names of all water supply wells or surface water intakes within 1/4 mile of the disposal site boundaries.

h. Proof that all applicable zoning approvals and all appropriate federal, state, and local environmental permits have been obtained.

i. Closure plan that conforms with Section 11.H., as appropriate.

j. Proof of financial responsibility for closure as described in Section 4.A.11,b and d.

k. Proof that the facility meets the siting criteria required by Section 11, Part 1.B.

1. Any other related reports, data, maps, or information that the Department requires.

2. Construction and operation

~~A facility constructed pursuant to a Construction Permit issued under these regulations may operate for a 90-day trial period after construction is complete, provided the Construction Permit is still valid during that period.~~

~~At the end of the trial operating period, the facility may continue to operate only if an Operating Permit has been obtained. To obtain an Operating Permit, the owner or operator must submit the following to the Department prior to entering into the 90-day trial period:~~

~~a. Notification of intent to commence operation.~~

~~b. Revisions or updates of reports or information submitted with the Application to Construct a Solid Waste Facility, if required by the Department.~~

a. The applicant shall not commence construction of a new infectious waste facility or operate an existing infectious waste facility until the applicant has received a permit from the Department in accordance with these regulations.

b. After the construction of a new infectious waste facility has been completed, and prior to the receipt of solid waste or materials for processing, the permittee shall submit a final report for the Department's approval. The final report shall certify that the construction of the facility was completed in accordance with the engineering report. The permittee shall not commence operations or store or receive solid waste or materials to be processed until the Department has provided its written notification that the construction and the final report meet the requirements of the permit and the Delaware Regulations Governing Solid Waste.

3. Closure

Any person wishing to ~~obtain a closure permit~~ close an infectious waste facility must submit the following to the Department:

a. Notification of intent to close.

~~b. Closure requirements to be performed as described~~ A detailed plan for closing the facility so as to achieve the objectives described in Section ~~11 Part 1.J.~~ 11.H.

and as described in the individual permit.

If the Department approves the closure plan, it will modify the facility's permit to allow closure to take place.

~~2. Existing facilities~~

~~a. Any person desiring to continue construction, or continue operation, of an infectious waste facility must, within six months after the date of enactment of these regulations, submit to the Department either an Application to Construct an Infectious Waste Facility, or an Application to Operate an Infectious Waste Facility. Upon receipt of the application, the Department will determine whether any other information is required. While the Department is making a determination on the application, construction or operation may continue under the old permit unless the Department notifies the applicant in writing that construction must cease.~~

~~b. Any person desiring to begin operation of an infectious waste facility which was under construction prior to enactment of these regulations must immediately notify the Department by submission of a notification of intent to operate an infectious waste facility.~~

~~The applicant must also submit to the Department a report explaining how the facility will be brought into compliance and a timetable for attaining compliance.~~

G. APPLICATION PROCEDURES FOR SOLID WASTE TRANSPORTERS

Any person required to obtain a permit to transport solid waste must submit a completed application to the Department. The application shall be on a form prescribed by the Department and shall be accompanied by the appropriate application fee.

Prior to Public Notice of proposed changes to these Regulations which would affect holders of transporter permits, the Department shall attempt, by reasonable means, to individually notify transporter permit holders of such proposed changes and of the date of the upcoming Public Hearing.

~~All persons that are subject to Section 7.B of these regulations and that were engaged in the transportation of solid waste in Delaware before the enactment of Section 7 must submit a completed application and the appropriate application fee within 60 days after the enactment of Section 7.~~

SECTION 5: SANITARY LANDFILLS

(NOTE: This section applies only to landfills that accept household waste.)

A. SITING

1. Sanitary landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All sanitary landfill facilities shall be constructed to at least minimum design requirements as contained in Section 5.B. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. The owner or operator of any proposed sanitary landfill within a 5-mile radius of any airport runway must notify the airport and the Federal Aviation Administration (and provide proof of notification to the Department).

4. No new cell of a ~~new~~ sanitary landfill shall be located:

a. Within the 100-year flood plain **[as delineated by the Federal Emergency Management Agency]**. ~~For the purposes of this section:~~

~~(1) Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters, that are inundated by the 100-year flood.~~

~~(2) 100-year flood means a flood that has a one percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.~~

~~b. Within 200 feet of any state or federal wetland. In an area that ~~causes or contributes~~ [may cause or contribute] to the degradation of [any state or federally regulated] wetlands unless the owner or operator can demonstrate [to the satisfaction of the appropriate wetlands regulatory agency] that:~~

~~(1) there is no [practical alternative to the proposed cell; impact to any regulated wetlands on the site, or]~~

~~(2) the landfill has been designed to minimize impacts on any wetlands; and~~

~~(2) any impact will be mitigated as required.]~~

~~[(3) mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded wetlands.]~~

~~[c. Within 200 feet of any perennial stream. In an area that causes or contributes to the degradation of any perennial stream unless the owner or operator can demonstrate that:~~

~~(1) there is no practical alternative to the proposed cell;~~

~~(2) the landfill has been designed to minimize impacts on any perennial streams; and~~

~~(3) mitigation is done, to the satisfaction of~~

~~the Department, to compensate for any destroyed or degraded perennial streams.]~~

¶ [c]. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.

¶ [d]. Within 10,000 feet of any airport runway currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

¶ [e]. So as to be in conflict with any locally adopted land use plan or zoning requirement.

¶ [f]. Within the wellhead protection area of a public water supply well or well field or a formally designated aquifer resource protection area.

¶ [g]. Within 200 feet of a fault that has had displacement during Holocene time (unless it can be demonstrated that a lesser setback distance would prevent damage to the structural integrity of the landfill unit and be protective of human health and the environment.)

¶ [h]. Within a seismic impact zone unless it can be demonstrated that all containment structures, including liners, leachate collection systems and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

**[For the purposes of this section:**

**(1) Seismic impact zone means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.**

**(2) Maximum horizontal acceleration in lithified earth material means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.**

**(3) Lithified earth material means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete and asphalt or unconsolidated earth materials, soil or regolith lying at or near the earth surface.]**

¶ [i.] In unstable areas, unless engineering measures have been incorporated in the design to insure the integrity of the structural components of the waste facility (including liners, leachate collection systems, run-on /run-off control, capping and anything affecting the containment and/or

possible release of contaminants.) Unstable areas include those of (1) poor foundation conditions (possible subsidence), (2) susceptibility to mass movement or (3) Karst terrane.

j. In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

¶ k. Within 200 feet of the facility [property] boundary unless otherwise approved by the Department.

## B. DESIGN

### 1. General

a. Sanitary landfills shall be planned and designed by a Professional Engineer registered in Delaware. Planning and design of these facilities shall be consistent with the declared purpose and intent and in accordance with the provisions of this regulation and based on empirically derived data and state of the art technology.

### 2. Minimum design requirements

a. All sanitary landfills shall be designed to minimize contaminant releases and to prevent significant adverse impacts on human health or the environment and to achieve the following performance standards:

(1) Ensure that the ~~concentration values listed in Table 1 of this section will not be exceeded in~~ contaminant concentrations do not prevent ~~reasonable~~ **[appropriate]** use of the ground water in the uppermost aquifer at the relevant point of compliance (examples are water supply, potability, stream flow maintenance, etc., as appropriate).

(a) The point of compliance shall be specified by the Department and shall be no more than 150 meters from the landfill cell boundary and shall be located on property owned by the owner of the landfill.

(b) In determining the relevant point of compliance, the Department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the landfill and surrounding land;

(ii) The volume and physical and chemical characteristics of the leachate;

(iii) The quantity, quality, availability and direction of flow of ground water;

(iv) The proximity and withdrawal rate of ground water users;

(v) The availability of alternate drinking water supplies;

(vi) The existing quality of ground

water, including other sources of contamination and their cumulative impacts on ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

(vii) Public health, safety and welfare effects; and

(viii) Practical capability of the landfill owner or operator.

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1 Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

(2) Ensure that surface water quality standards will not be violated (except within designated mixing zones) as a result of contaminant discharges from the landfill.

b. All sanitary landfills shall be designed to have:

(1) A liner and internal leachate collection system which meet the requirements of Sections 5.C. and 5.D. of these regulations respectively. ~~The liner must have a vertical hydraulic conductivity no greater than  $10^{-7}$  cm/sec and consist of either a composite liner system or double synthetic liner system, or natural materials of sufficient thickness to achieve the performance standard.~~

(2) A setback area, including a buffer zone

with appropriate screening,

(3) A gas control system that meets the requirements of Section 5.E.,

(4) A surface water management system that meets the requirements of Section 5.F.,

(5) A ground water monitoring system that meets the requirements of Section 5.G., and

(6) A capping system that meets the requirements of Section 5.H.

C. LINER

1. General provisions

a. An impermeable liner shall be provided at every sanitary landfill to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more stringent liner requirement when it determines that a composite liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (or the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table as measured in the uppermost aquifer beneath the landfill. This [5-foot] requirement may be modified [reduced] for a more rigorous stringent] liner system design which provides enhanced protection of ground water.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [Section 4.B.1.a (4)] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations. ~~Written verification of liner integrity shall be submitted to the Department before commencement of waste disposal operations.~~

e. Qualifications of the construction quality assurance staff (COA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall meet the requirements of the approved Quality Assurance plan and be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. Composite liner

A composite liner must have, as a minimum:

(1) ~~Have~~ A primary (upper) liner which meets the following:

(a) ~~Be~~ Is at least 45 mils thick.

(b) ~~Be~~ Is constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) ~~Be~~ Is made of synthetic material that meets minimum requirements of the ~~most recent edition of the~~ National Sanitation Foundation's publication, "Standard Number 54[-1993], Flexible Membrane Liners" [**for membrane materials covered by this standard, or of other materials of equal or better performance as approved by the Department**].

(d) ~~Be~~ Is chemically resistant to the waste and leachate managed at the facility. The EPA Test Method 9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) ~~Be~~ Is compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) ~~Be~~ Is free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and non-dispersed ingredients.

~~(2) Have a secondary (lower) liner composed of compacted clay at least two feet thick with a hydraulic conductivity no greater than  $10^{-7}$  cm/sec.~~

(2) A secondary (lower) liner composed of:

(a) Compacted clay at least two feet thick with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec, or

(b) An equivalent material [or combination of materials] acceptable to the Department.

b. Natural liner

(1) Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the post-closure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

Grain size

Classification

Compaction

Specific gravity

Hydraulic conductivity

Porosity

pH

Cation exchange capacity

Pinhole test (if required)

Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods given in the most recent edition of EPA publication SW-846, ASTM test procedures, or other tests approved by the Department.

(e) If on-site soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

(1) A double liner system shall meet the following requirements:

(a) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(b) The primary (upper) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 5.C.2.a(1)(b)-(f).

(c) The secondary (lower) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section

5.C.2.a(1)(b)-(f). If natural, it must meet the requirements of Section 5.C.2.b.

(d) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than  ~~$1 \times 10^{-3}$~~   $1 \times 10^{-2}$  cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(e) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department as part of the application package. The system shall be designed to operate without clogging through the post-closure care period of the facility.

(f) The ~~lower~~ upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2 feet of natural material with a permeability no greater than  $10^{-7}$  cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

(2) A double liner system will be required ~~in the following cases:-~~

~~(a) Where landfills are underlain by aquifers which are reasonably expected sources of water supply and/or capable of significant contaminant transport to adjacent surface waters, and~~

~~(b) If leachate recirculation will be performed.~~

3. Liner construction

a. Construction/installation of ~~single synthetic~~ **[composite]** liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and post-closure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall ~~be~~ **either be:**

**(a) two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes, OR**

**(b) the controlling and remaining slopes shall be designed to prevent the head on the liner, excluding sump areas, from exceeding a depth of twelve (12) inches including post settlement conditions.]**

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by the ~~most recent edition of the~~ National Sanitation Foundation's "Standard Number 54[-1993]" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

(a) Field seaming shall provide a dry sealing surface.

(b) Seaming shall not be done when wind conditions prevail.

(c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.

(7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.

(8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

**[(9) The synthetic membrane must be**

**underlain by a secondary liner as described in Section 5.C.2.a(2).]**

b. Construction of natural liner

(1) All lenses, cracks, channels, root holes, or other structural non-uniformities that can increase the saturated hydraulic conductivity above  $1 \times 10^{-7}$  cm/sec shall be removed.

(2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.

(3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.

(4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

c. Construction/installation of double liner

(1) The secondary liner shall be constructed in accordance with Section 5.C.3.b (if it is a natural liner) or Section 5.C.3.a.(1)-(7) (if it is synthetic).

(2) The primary liner shall be constructed in accordance with Section 5.C.3.a.(1) and (3)-(8).

**D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING**

1. General provisions

a. All sanitary landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate monitoring system.

b. The leachate systems shall be constructed, installed, and maintained in accordance with a Department-approved quality assurance plan.

c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the post-closure care period of the facility.

2. Leachate collection

a. Minimum design specifications

(1) The leachate collection system shall be designed to operate without clogging through the post-closure care period of the facility.

(2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.

(3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.

(4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

**[(8) The leachate collection system must be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.]**

b. Construction standards

(1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than  $1 \times 10^{-3}$  [2] cm/sec and a minimum controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods:

Classification

Porosity

Relative density or compaction

Specific gravity

Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

c. Operational procedures

(1) The leachate collection system shall operate automatically, whenever leachate is present in the sump, to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump.

The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Department-approved scheduled maintenance program and more frequently if required.

3. Leachate treatment and disposal

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

(1) Complete treatment on-site with or without direct discharge to surface water,

(2) Pretreatment on-site with discharge to an off-site treatment works for final treatment,

(3) Storage on-site with discharge to an off-site treatment works for complete treatment,

(4) Direct discharge to an off-site treatment works, or

(5) Pretreatment on site with discharge on site.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

(1) The tank shall be placed above ground.

(2) The storage tank shall be designed in accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. On-site complete treatment or pretreatment facilities shall be designed and constructed in accordance

with the following:

(1) The on-site treatment unit shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the on-site treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with the Delaware Regulations Governing Hazardous Waste.

g. Recirculation of leachate may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. At new facilities and expansions of existing facilities, recirculation will be allowed only in areas constructed with a **[composite liner system or a] double liner and leak detection system**. The method of recirculation at all facilities must be approved **[by the Department]** in advance and annually so long as the recirculation continues ~~by the Department~~. Records of leachate collected and recirculated must be kept and reported and any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report.

4. Leachate monitoring

a. The leachate monitoring system shall be capable of measuring the quantity of the flow, ~~preventing the leachate head on the liner from exceeding a depth of 12 inches,~~ and sampling the leachate from each landfill cell. The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly.

b. Leachate monitoring shall be performed according to a Department-approved plan which includes quality control and quality assurance procedures.

c. In addition to the requirement in Section 5.D.4.b above, samples of leachate shall be collected and analyzed from each waste cell; as follows:

(1) monthly, during the active life of a cell, and at an interval specified by the Department after closure of the

cell, for the following parameters:

- pH
- Alkalinity (Alk)
- Chemical Oxygen Demand (COD)
- Biochemical Oxygen Demand (BOD)
- Total Organic Carbon (TOC)
- Specific Conductance (SpC)
- Total Dissolved Solids (TDS)
- Total Iron (Fe)
- Total Manganese (Mn)
- Chloride (Cl)
- Nitrate (NO<sub>3</sub>-N), Nitrite (NO<sub>2</sub>-N), and Ammonia (NH<sub>3</sub>-N) and Total Kjeldahl Nitrogen (TKN)
- Sulfate (SO<sub>4</sub>), and

~~(2) at least semi-annually for parameters listed in Appendix H~~

(2) at an interval specified by the Department for additional parameters specified by the Department.

d. Leachate monitoring results shall be submitted to the Department as part of the annual monitoring report or more frequently as directed by the Department.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for the same parameters listed in Section 5.D.4.c.(1) and any additional parameters as required by the Department. if liquid is discovered within the leak detection system, the owner or operator of the landfill shall notify the Department within five (5) working days of the discovery and test and record for the same parameters listed in Section 5.G.4.e. above.

## E. GAS CONTROL

### 1. General provisions

a. Gas control system shall be installed at all sanitary landfills.

b. The gas control system shall be designed and constructed to:

- (1) Evacuate gas from within the waste to prevent the accumulation of gas on-site or off-site.
- (2) Prevent and control damage to vegetation.
- (3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution. ~~Control malodorous gaseous emissions to the extent that there is no perceivable landfill odor at the property boundary.~~

c. The concentration of landfill gas in facility

structures (except gas recovery system components) and at the facility boundary shall not exceed 25% of the Lower Explosive Limit (LEL).

### 2. Design and construction standards

a. The owner or operator of a sanitary landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

### 3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells at least quarterly and provide analytical results [as required by conditions specified in the facility permit] as part of the annual report.

c. At sanitary landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

### 4. Response Actions

a. If methane gas levels exceeding the limits specified in Section 5.E.1.c paragraph E.1.e. of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the Department.

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health.

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the Department that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

b. For purposes of this section, lower explosive limit means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees C and atmospheric pressure.

**F. SURFACE WATER MANAGEMENT**

**1. General provision**

An owner or operator of a sanitary landfill shall design, construct, and maintain a surface water management system to:

- a. Prevent erosion of the waste and cover,
- b. Prevent the collection of standing water, and
- c. Minimize surface water run-off onto and into

the waste.

**2. Design requirements**

An owner or operator of a sanitary landfill shall include:

a. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm.

b. A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. The system shall be designed to include:

(1) Detention basins to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.

(2) Diversion structures designed to prevent run-off generated within the active areas from moving off site of the lined areas.

**3. Channeling of run-off**

a. Run-off from the active areas within the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Run-off from the unused portion of the active cell(s) that has not been in contact with waste shall be channeled to the detention basins or other approved sedimentation control devices.

c. Until vegetative cover has been established, run-off from closed cells will be directed to the detention basins or other approved sedimentation control devices.

**4. Discharge**

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

**G. GROUND WATER MONITORING AND CORRECTIVE ACTION**

**1. General provision**

Owners or operators of all sanitary landfill facilities shall install maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

**2. Design and construction of monitoring system**

a. The ground water monitoring system shall be

designed by, constructed under the direction of, and attested to by, a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality, both unaffected by (background) and potentially impacted by downgradient contaminant leakage from the facility. The downgradient monitor wells (which are points of compliance for ground water performance standards) must be no further than 150 meters from the edge of the sanitary landfill cell, and on the waste facility property.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

e. Monitoring of surface water, into which ground water flowing from beneath the landfill discharges, may also be required as part of the ground water monitoring program. Parameter analysis may include all those required for the ground water sampling plus any additional parameters or tests the Department deems necessary.

**3. Ground water sampling and analyses**

a. The owner or operator shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling. Samples will be field filtered only where turbidity cannot be controlled by careful well construction, development and sampling and Department approval is obtained.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control

b. Sample parameters

(1) Water levels will be measured prior to sample collection

(2) Ground water samples will be analyzed for the following list of parameters:

pH

Alkalinity (Alk)

Chemical Oxygen Demand (COD)

Total Organic Carbon (TOC)

Specific Conductance (SpC)

Total Dissolved Solids (TDS)

~~Total~~ Iron (Fe)

~~Total~~ Manganese (Mn)

Chloride (Cl)

Nitrate ( $\text{NO}_3\text{N}$ ), ~~Nitrite ( $\text{NO}_2\text{N}$ )~~, and

Ammonia ( $\text{NH}_3\text{N}$ ) and Total Kjeldahl Nitrogen (TKN)

Sulfate ( $\text{SO}_4$ )

Dissolved Oxygen (DO)

Oxidation-Reduction Potential (ORP) or Eh

The parameters listed in Appendix I, Table I when requested by the Department. Any additional parameters specified by the Department. The Department may delete the requirement for any constituents (~~included in Appendix I~~) where appropriate. Such deletions will be based on:

- The results of leachate monitoring (constituent is not a significant constituent of the leachate),
- Local geochemical considerations (immobility in subsurface), and
- Other relevant factors.

Table 1

Antimony	trans-1,4-Dichloro-2-butene
Arsenic	1,1-Dichloroethane; Ethylidene chloride
Barium	1,2-Dichloroethane; Ethylene dichloride
Beryllium	1,1-Dichloroethylene; 1,1-Dichloroethene
Cadmium	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene
Chromium	trans-1,2-Dichloroethylene
Cobalt	1,2-Dichloropropane
Copper	cis-1,3-Dichloropropene
Lead	trans-1,3-Dichloropropene
Nickel	Ethylbenzene
Selenium	2-Hexanone; Methyl butyl ketone
Silver	Methyl bromide; Bromomethane
Thallium	Methyl chloride; Chloromethane

Vanadium	Methylene bromide; Dibromomethane
Zinc	Methylene chloride; Dichloromethane
Acetone	Methyl ethyl ketone; MEK
Acrylonitrile	Methyl iodide; Iodomethane
Benzene	4-Methyl-2-pentanone; Methyl isobutyl ketone
Bromochloromethane	Styrene
Bromodichloromethane	1,1,1,2-Tetrachloroethane
Bromoform; Tribromomethane	1,1,2,2-Tetrachloroethane
Carbon disulfide	Tetrachloroethylene; Tetrachloroethene
Carbon tetrachloride	Toluene
Chlorobenzene	1,1,1-Trichloroethane; Methylchloroform
Chloroethane; Ethyl chloride	1,1,2-Trichloroethane
Chloroform; Trichloromethane	Trichloroethylene
Dibromochloromethane; Chlorodibromomethane	Trichlorofluoromethane; CFC-11
1,2-Dibromo-3-chloropropane; DBCP	1,2,3-Trichloropropane
1,2-Dibromoethane; Ethylene dibromide; EDB	Vinyl acetate
o-Dichlorobenzene; 1,2-Dichlorobenzene	Vinyl chloride
p-Dichlorobenzene; 1,4-Dichlorobenzene	Xylenes

(3) Test methods used to determine the parameters of Section 5.G.3.b.(2) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

c. Monitoring frequency will be at least semi-annual. An alternate frequency may be specified by the Department based on consideration of the following conditions:

- Lithology of the aquifer and unsaturated zone,
- Hydraulic conductivity of the aquifer and unsaturated zone,
- Ground water flow rates,
- Distance and travel time between the waste unit(s) and the downgradient monitor wells and possible points of exposure to any landfill-derived contaminants in wells or receiving surface waters, and
- Resource value of the aquifer.

d. The Department may observe the ground water

sampling conducted by the permittee or his/her designee and may request split samples for analysis.

4. Data evaluation

a. The owner or operator must establish the background quality for each sampling parameter or constituent. The background quality is that which would be expected with no impact by contaminant releases from the waste cells.

b. The owner or operator must specify in the operating record the methods to be used for statistical evaluation of the monitoring data. These may include:

(1) A tolerance or prediction interval procedure in which a range for each constituent is established from the distribution of the background data and the level of each constituent in each compliance (downgradient) monitor well is compared to the upper tolerance or prediction limit,

(2) A control chart approach that plots concentrations of each constituent versus the background range, or

(3) Any other statistical method chosen to meet the following requirements and approved by the Department:

(a) Appropriate in distribution and number of available data to meet the requirements of the statistical test chosen;

(b) Capable of limiting individual constituent comparisons to Type I error levels less than 0.01 or multiple constituent comparisons to Type I error levels less than 0.05, for each testing period. (This requirement does not apply to tolerance intervals, prediction intervals, or control charts.)

c. If necessary, the statistical analysis method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

d. The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the monitoring program by comparisons using the chosen method of evaluation. This evaluation must be performed within a reasonable period of sampling and analysis - normally within 30 days of obtaining sampling results.

e. If any statistically significant increase occurs, the permittee must:

(1) notify the Department and place the result in the operating record within 14 days, and

(2) assess the probable accuracy and possible risk associated with the finding in the annual report.

f. Performance standards will be established at each site which are intended to provide adequate protection for human health and the environment. The performance standards may be proposed by the permittee, but must be approved by the Department, and shall be incorporated in the facility permit. In general, performance standards will be the maximum contaminant levels (MCLs) for public drinking water. However, the Department may specify performance levels which are more stringent to protect adjacent surface water (and prevent violation of surface water quality standards) or less stringent (where ground water at the site will not threaten existing or reasonably expected sources of drinking water or cause violation of surface water quality standards) as appropriate.

g. The points of compliance at which performance standards must be met must be no more than 150 meters from the edge of the furthest downgradient waste cell and must be on the waste management facility property.

h. If any release of contaminants from the landfill to the groundwater is detected, either by exceedance of background concentrations or violation of a performance standard in the downgradient wells (points of compliance), the owner or operator must:

(1) Notify the Department and place the result in the operating record within 14 days,

(2) Re-sample to confirm the result and/or demonstrate that the result was an error or that the increase was due to a source other than the permitted waste facility within 90 days,

(3) Notify the Department of the result of confirmation within 14 days of availability of the result, and

(4) If a release is confirmed, perform an assessment of corrective measure as described in Section 5.G.6.

5. Reporting

a. The owner or operator will compile and evaluate all ground water data within a reasonable period of time following sampling and analysis. A tabulation of water elevations and quality will be submitted to the Department within 60 days of each sampling event. Reports of any statistically significant increases in downgradient wells or violation of performance standards in wells or streams must be reported to the Department within 14 days as noted above.

b. An annual monitoring report must be submitted by the permittee to the Department which includes the following:

(1) Maps showing the locations of sampling points, water elevations, and ground water flow directions and approximate rates for each sampling period;

(2) Tabulation of all ground water levels and elevations, leachate volumes collected and treated and leachate and water quality data;

(3) Presentation of statistical results and graphs depicting water quality parameter concentrations with time;

(4) Identification of any statistically significant increases in compliance wells and/or exceedances of performance standards;

(5) Confirmation results and conclusions related to the accuracy of these results and/or reasonable explanation for the results;

(6) Recommendations for any changes in the monitoring program including changes in the number, location of sampling points, sampling frequency, parameters or procedures;

(7) An evaluation of the significance of the results including whether they indicate a contaminant release has occurred and any recommendations for corrective measures, if appropriate.

c. In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine readable media in a format mutually acceptable to the Department and the permittee. With the approval of the Department, reports submitted on machine readable media may be substituted for paper reports.

#### 6. Assessment of Corrective Measures

a. An assessment (re-assessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents including those required for leachate, listed in Appendix H, geophysical surveys and/or other measures);

(2) Re-assessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);

(3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases;

(c) Reduce, minimize or prevent the offsite migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives;

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

#### 7. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable), further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards, (i.e. does not represent a significant threat to human health or the environment).

#### 8. Implementation of Corrective Action

a. Based on the schedule established under Section 5.G.6.b. for initiation ~~and remediation~~ of remedial activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance

standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 5.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 5.G.3. and approved by the Department.

## H. CAPPING SYSTEM

### 1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas, promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The capping system shall be in place 180 days following final waste disposal activity unless the Department approves a longer period of time.

c. The capping system shall extend beyond the edge of the lined area.

d. The proposed design of the capping system must be approved by the Department prior to installation.

### 2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least ~~six~~ twelve inches of soil, to attain the final slope and provide a stable base for subsequent system

components. Daily and intermediate cover may be used for this purpose.

b. A low permeability layer to minimize infiltration, that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present. This infiltration control layer must consist of at least the following:

(1) A ~~20~~ 30 mil synthetic geomembrane underlain by a geotextile, or

(2) 24 inches of fine-textured soil with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec.

If the landfill has a synthetic liner system, it must have a synthetic infiltration control layer. Alternative materials that achieve an equivalent performance may be used for the infiltration control layer with prior written approval of the Department.

c. A final cover to provide plant roofing and prevent erosion consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth; and

(2) Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

### 3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete vegetation cover.

## I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

### 1. General

a. Sanitary landfills shall be operated so as to create an aesthetically desirable environment and to prevent

degradation of land, air, surface water, or ground water.

b. Sanitary landfills shall be maintained and operated to conform with the approved Plan of Operation.

2. Details of operation and maintenance

a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

b. Lift depth

The lift depth shall not exceed the limit specified in the Solid Waste permit.

c. Cover

(1) Daily cover

A layer of suitable cover material shall be placed over all solid waste by the end of each working day. This layer shall be of such depth that when compacted it produces a cover layer at least six inches in depth.

(2) Intermediate cover

Any area that receives daily cover and is not expected to receive either additional solid waste or a capping system within six months shall receive intermediate cover consisting of at least six inches of suitable compacted cover material (in addition to the daily cover). Intermediate cover may be required more frequently if deemed necessary by the Department.

(3) Cover material

The soil used as daily and intermediate cover material shall be of such character that it can be compacted to minimize percolation of water through the cover, does not crack excessively when dry, and is free of putrescible materials and large objects.

(4) Alternate cover materials

The Department may approve the use of other materials as daily and intermediate cover if they can be shown to be at least as effective as the required depths of compacted soil at preventing migration of the waste and controlling flies, rodents, and fires.

d. Control of nuisances and hazards

(1) Odor

The operation of the landfill shall not result in odors associated with solid waste being detected off site.

(2) Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

(3) Vectors, dust, fires

The operation of the landfill shall be conducted in a manner which eliminates to the extent possible insect and rodent breeding, dust problems, and fires.

e. Bulky waste

Adequate provision shall be made for the handling and compaction of bulky wastes when such wastes are not excluded from the site. Tires in quantities greater than ten per truckload shall be sliced or shredded before being landfilled.

f. Special solid wastes

The permittee may make provision for the limited disposal of specified special solid wastes. Disposal of these wastes shall be conducted pursuant to a plan submitted to and approved by the Department.

g. Access

Access roads to the point of waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry by the Secretary or his duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

h. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

i. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

j. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Substitute equipment shall be obtained when maintenance or breakdown renders normal operating equipment inoperative for more than 24 hours. All refuse moving equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

k. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

1. Procedures for excluding the receipt of hazardous waste

(a) Owners or operators of all sanitary landfill cells must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and polychlorinated biphenyls (PCB) wastes. This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of the Department ~~under Subtitle C of RCRA~~ if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, regulated hazardous waste means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3 that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing sanitary landfill until the end of the post-closure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, gas control systems, capping systems, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 5, Subsections C, D, E, F, G, and H.

b. Monitoring, testing, or analytical data where required by Section 5, Subsections D, E, F, G, and H.

c. Volume and/or weight of wastes received quarterly.

d. Types of waste received quarterly (industrial waste, asbestos-containing waste, and other wastes which require Department approval prior to being landfilled).

e. Location of any monofilled waste.

f. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste landfilled at the facility;

b. The estimated remaining capacity of the facility, in both tonnage and years;

c. The volumes (or tonnages) and types of specified special solid wastes landfilled at the facility;

d. Leachate quantity and quality data as required in Section 5., ~~Subsection D.4~~, and specified in the Solid Waste permit;

e. Gas monitoring data as required in Section 5., ~~Subsection E.3~~, and specified in the Solid Waste permit;

f. An updated estimate of the cost of closure and post-closure care of the facility, as required in Section 5., ~~Subsection J.3.d~~;

g. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year;

h. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

The permittee must also submit any additional reports specified in the Solid Waste permit.

5. Prohibitions

a. The owner or operator of a sanitary landfill shall not knowingly accept for disposal any hazardous waste. See Section 5.I.2.1.

b. Open burning of any solid waste is prohibited within the active portion of the sanitary landfill.

c. Sanitary landfills are prohibited from accepting bulk or non-containerized liquid waste unless the waste is a household waste other than septic waste.

d. Scavenging is prohibited on any landfill site.

J. CLOSURE

1. General

The owner or operator of a sanitary landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the post-closure escape of solid

waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new sanitary landfill must submit a conceptual closure plan for the facility at the time of initial (~~i.e., construction~~) permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

~~e. An owner or operator of a sanitary landfill must receive a closure permit before commencing closure of a completed landfill or cell. At the time of notification of intent to close, the owner or operator must also submit a closure schedule and a closure plan or revised closure plan.~~

~~c.~~ If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 5., ~~Subsection J.1, a and b~~, it will issue a closure permit ~~modify the solid waste permit to allow closure to take place~~.

d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

3. Closure plan contents

Closure plans for sanitary landfills must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 5., ~~Subsection J.1, a and b~~.

b. A description of the capping system required under Section 5.H. This shall include a description of the system design, the type of material to be used, and a discussion of how the capping system will achieve the objectives of Section 5., ~~Subsection J.1, a and b~~, above.

c. A description of other activities necessary to satisfy the closure performance standard including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the

Department as part of the annual report described in Section 5., ~~Subsection I.4~~.

e. A plan for post-closure care of the facility sufficient to ensure that the standards described in ~~Subsection~~ Section 5.J.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

f. A plan for control and/or recovery of landfill gases.

g. A closure construction quality assurance plan.

4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 5.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction

~~and the final report meet the requirements of the solid waste permit and these regulations, must submit to the Department certification by a professional engineer registered in Delaware that the landfill or cell has been closed in accordance with the specifications in the approved closure plan.~~ The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the ~~closure~~ solid waste permit, the closure plan, and all applicable regulations; or

(2) Determine that the site is not in compliance with the ~~closure~~ solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance, and corrective actions (if required).

#### K. POST-CLOSURE CARE

##### 1. General

a. The owner or operator of a sanitary landfill must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 5.K.2 ~~Subsection K.2~~ below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

##### 2. Minimum post-closure care requirements

Post-closure care shall be in accordance with the post-closure permit and must consist of at least the

following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 5.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control and/or recovery system in accordance with Section 5.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 5.F.

##### 3. Prohibitions

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended post-closure use of the site.

##### 4. Post-closure land use

The owner or operator shall implement the post-closure land use plan approved by the Department.

##### 5. Notice in deed to property

a. The owner of the property on which a sanitary landfill is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used as a solid waste disposal site, and

2. The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or

description clearly specifying the area that was used for disposal.

## SECTION 6: INDUSTRIAL LANDFILLS

(NOTE: This section applies to those landfills that dispose of only industrial ~~and [and/or]~~ dry waste.)

### A. SITING

1. Industrial landfill facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. All industrial landfill facilities shall be constructed to at least minimum design requirements as contained in Section 6., ~~Subsection B.~~ More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.

3. No new cell of an industrial landfill shall be located in an area such that solid waste would at any time be deposited:

a. Within the 100 year flood plain.

b. ~~Within 200 feet of any state or federal wetland. In an area that causes or contributes [may cause or contribute] to the degradation of [any state or federally regulated] wetlands unless the owner or operator can demonstrate [to the satisfaction of the appropriate wetlands regulatory agency] that:~~

~~(1) there is no practical alternative to the proposed cell; [impact to any regulated wetlands on the site, or]~~

~~(2) the landfill has been designed to minimize impacts on any wetlands; and~~

~~[(2) any impact will be mitigated as required.]~~

~~(3) mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded wetlands.~~

e. ~~Within 200 feet of any perennial stream. In an area that causes or contributes to the degradation of any perennial stream unless the owner or operator can demonstrate that:~~

~~(1) there is no practical alternative to the proposed cell;~~

~~(2) the landfill has been designed to minimize impacts on any perennial streams; and~~

~~(3) mitigation is done, to the satisfaction of the Department, to compensate for any destroyed or degraded perennial streams.~~

¶ [c]. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically

exempted from this requirement by the Department.

e [d]. So as to be in conflict with any locally adopted land use plan or zoning requirement.

f. ~~Within~~ [e. Within] the wellhead protection area of a public water supply well or well field.

g [f]. In areas where valuable aquifers would be threatened by contaminant releases, unless viable alternatives have been dismissed and stringent design measures have been incorporated to minimize the possibility and magnitude of releases.

h [g]. Within 200 feet of the facility boundary unless otherwise approved by the Department.

i [h]. In an area that is environmentally unique or valuable.

### B. DESIGN

#### 1. General

Industrial landfills shall be planned and designed by professional engineers registered in Delaware. Planning and design of these facilities shall be consistent with this regulation and based on empirically derived data and state of the art technology.

#### 2. Minimum design requirements

All industrial landfills shall be designed to include at least the following:

a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Department.

b. A liner that meets the requirements of Section 6.C.

c. ~~A leachate collection and disposal~~ Leachate collection, treatment and disposal, and monitoring systems that ~~meets~~ [meet] the requirements of Section 6.D.

d. A gas control system, if deemed necessary by the Department. This system shall meet the requirements of Section 6.E.

e. A surface water management system that meets the requirements of Section 6.F.

f. A ground water monitoring system that meets the requirements of Section 6.G.

g. A capping system that meets the requirements of Section 6.H.

### C. LINER

#### 1. General provisions

a. An impermeable liner shall be provided at all industrial landfills to restrict the migration of leachate from the landfill and to prevent contamination of the underlying ground water.

b. The Department reserves the right to set a more

stringent liner requirement when it determines that a composite single liner is not sufficient to protect human health and the environment.

c. The bottom of the liner (of the secondary liner, in a double liner system) shall be at least five (5) feet above the seasonal high water table, as measured in the uppermost aquifer beneath the landfill. This [5-foot] requirement may be reduced by the Department if a more stringent liner system is used.

d. All liners shall be prepared, constructed, and installed in accordance with a quality assurance plan included in the engineering report [(Section 4.B.1.a (4))] and approved by the Department. For synthetic liners, the plan shall incorporate the manufacturer's recommendations. ~~Written verification of liner integrity shall be submitted to the Department before commencement of waste disposal operations.~~

e. Qualifications of the construction quality assurance staff (COA) and the geosynthetics installer, including master seamers, on-site supervisor, and construction quality control (CQC) personnel, shall be submitted to the Department for review prior to their performing these duties on site.

f. All conformance and destructive samples taken as part of the construction quality assurance plan shall be tested at an independent laboratory which is accredited by the Geosynthetics Institute's Laboratory Accreditation Program (by applicable test method) or other accreditation program acceptable to the Department.

2. Liner characteristics

a. ~~Composite Single synthetic~~ liner

A composite single synthetic liner must have, as a minimum:

(1) A primary (upper) liner which meets the following:

(a) ~~Be Is~~ at least 45 mils thick.

(b) ~~Be Is~~ constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to physical contact with the leachate to which it is exposed, climatic conditions, the stresses of installation, and the stresses of daily operation.

(c) ~~Be Is~~ made of synthetic material that meets minimum requirements of the ~~most recent edition of the~~ National Sanitation Foundation's publication, "Standard Number 54[-1993], Flexible Membrane Liners" **[for membrane materials covered by this standard, or of other materials of equal or better performance as approved by the Department].**

(d) ~~Be Is~~ chemically resistant to the waste and leachate managed at the facility. The EPA Test Method

9090 shall be performed using a solid waste leachate (a synthetic leachate mix approved by the Department may be substituted if existing leachate is not available). The specified physical parameters shall be tested before and after liner exposure. Any significant change in test properties shall be considered to be indicative of incompatibility.

(e) ~~Be Is~~ compounded from first quality virgin materials. No reground or reprocessed materials containing encapsulated scrim shall be used in the manufacturing of the liner.

(f) ~~Be Is~~ free of pinholes, blisters, holes, and contaminants, which include, but are not limited to, wood, paper, metal and non-dispersed ingredients.

(2) A secondary (lower) liner composed of:

(a) Compacted clay at least two feet thick with a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec. or

(b) An equivalent material acceptable to the Department.

b. Natural liner

(1) Use of natural material for liners is restricted to those areas where:

(a) Underlying ground water is not used and is not reasonably expected to be used for water supplies, and

(b) The landfill subbase is subject to compaction and settlement such that a synthetic membrane would not be feasible.

(2) A natural liner must meet the following requirements as a minimum:

(a) It shall consist of compacted clay or equivalent material having a hydraulic conductivity no greater than  $1 \times 10^{-7}$  cm/sec.

(b) The material shall be at least five (5) feet thick, and thicker if necessary to prevent any leachate from migrating through the liner at any time during the active life and through the post-closure care period of the facility.

(c) The material proposed for use shall be tested by ASTM or equivalent methods for the following:

- Grain size
- Classification
- Compaction
- Specific gravity
- Hydraulic conductivity
- Porosity
- pH
- Cation exchange capacity
- Pinhole test (if required)

Mineralogy (if required)

All data shall be submitted to the Department prior to construction.

(d) Testing of the saturated hydraulic conductivity and the effect of leachate on soil hydraulic conductivity shall be performed in accordance with test methods given in the most recent edition of EPA publication SW-846, ASTM test procedures, or other tests approved by the Department.

(e) If on-site soils are to be used as a natural liner, the uppermost five (5) feet of soil shall be excavated and recompacted to ensure homogeneity of the liner, provided, however, that with respect to dredge spoil soils, the excavation and recompaction requirement shall not apply if the applicant can demonstrate that the dredge spoil soils have acceptable characteristics as indicated above.

c. Double liner system

A double liner system shall meet the following requirements:

(1) It shall consist of two single liners separated by a drainage layer containing a leak detection system.

(2) The primary (top) liner shall be a synthetic liner which is at least 30 mils thick and which meets the requirements of Section 6.C.2.a.(1)(b) - (f).(2)-(6).

(3) The secondary (bottom) liner may be either synthetic or natural. If synthetic, it must be at least 30 mils thick and must meet the requirements of Section 6.C.2.a (1)(b) - (f).(2)-(6). If natural, it must meet the requirements of Section 6.C.2.b.

(4) The drainage layer separating the two liners shall consist of at least 12 inches of soil having a hydraulic conductivity greater than  $1 \times 10^{-2}$   ~~$1 \times 10^{-3}$~~  cm/sec based on laboratory and field testing.

Alternate material may be used for the drainage layer with prior written approval of the Department.

(5) The leak detection system shall be capable of detecting and intercepting liquid within the drainage layer and conveying the liquid to a collection sump or monitoring point where the quantity of flow can be measured and the liquid can be sampled. The operator or designer shall calculate the Action Leakage Rate. The proposed Action Leakage Rate and a response plan if the Action Leakage Rate is exceeded shall be submitted to the Department for approval before construction of the liner is permitted. The system shall be designed to operate without clogging through the post-closure care period of the facility.

(6) The upper synthetic liner membrane shall be underlain by either a geosynthetic clay or 2-feet of natural

material with a permeability no greater than  $10^{-7}$  cm/sec.

Alternate liner designs may be used with prior written approval of the Department.

3. Liner construction

a. Construction/installation of ~~single synthetic~~ **[composite]** liner

(1) At least 15 working days prior to installation of the liner, the owner or operator shall notify the Department of the installation date.

(2) The liner shall be installed upon a subbase which meets the following requirements:

(a) It shall be capable of supporting the loads and withstanding the stresses that will be imposed on it through the active life and post-closure care period of the facility and of resisting the pressure gradient above and below the liner caused by settlement, compression, or uplift.

(b) It shall have a smooth surface that is free of all rocks, stones, roots, sharp objects, or debris of any kind.

(c) It shall be certified in writing by the liner installer as an acceptable subbase for the liner. Written certification of acceptability shall be submitted to the Department prior to installation of the liner. However, submittal of written acceptance may proceed incrementally according to installation schedule.

(3) The minimum post-loading slopes of the liner shall ~~be either be:~~

(a) two (2) percent on controlling slopes and one-half (0.5) percent on remaining slopes [, OR

(b) the controlling and remaining slopes shall be designed to prevent the head on the liner, excluding sump areas, from exceeding a depth of twelve (12) inches including post settlement conditions.]

(4) The landfill shall be designed to minimize penetrations through the liner. If a penetration is essential, a liquid-tight seal must be accomplished between the penetrating structure and the synthetic membrane. Compaction of areas adjacent to the penetrating structure shall be to the same density as the surrounding soil to minimize differential settlement. Sharp edges on the penetrating structure must not come in contact with the synthetic material.

(5) Bridging or stressed conditions in the liner shall be avoided with proper slack allowances for shrinkage of the liner during installation and before the placement of a protective soil layer.

(6) Synthetic liners shall have factory and field seams that equal or exceed the strength requirements defined by the ~~most recent edition of the~~ National

Sanitation Foundation's "Standard Number 54[-1993]" for that liner material. All seams must be visually inspected and tested along their entire length for seam continuity using suitable nondestructive techniques. Seams shall also be tested for strength, at a frequency specified in the quality assurance plan. In addition, field seams shall meet the following requirements:

- (a) Field seaming shall provide a dry sealing surface.
- (b) Seaming shall not be done when wind conditions prevail.
- (c) Seams shall be made and bonded in accordance with the supplier's recommended procedures.
- (7) Proper equipment shall be used in placing drainage material over the synthetic liner to avoid stress.
- (8) The synthetic membrane shall be protected from the waste by at least two (2) feet of drainage material incorporating the leachate collection system.

**[(9) The synthetic membrane must be underlain by a secondary liner as described in Section 6.C.2.a(2).]**

- b. Construction of natural liner
  - (1) All lenses, cracks, channels, root holes, or other structural nonuniformities that can increase the saturated hydraulic conductivity above  $1 \times 10^{-7}$  cm/sec shall be removed.
  - (2) Natural liners shall be constructed in lifts not exceeding six (6) inches after compaction to maximize the effectiveness of the compaction throughout the lift thickness. Each lift shall be properly interfaced by scarification between lifts to ensure the bonding.
  - (3) Clods shall be broken up and the material shall be homogenized before compaction of each lift using mixing devices such as pug mills or rotary tillers.
  - (4) The maximum slope of the sidewalls shall not be so great as to preclude effective compaction.

- c. Construction/installation of double liner
  - (1) The secondary liner shall be constructed in accordance with Section 6.C.3.b (if it is a natural liner) or Section 6.C.3.a.(1)-(7) (if it is synthetic).
  - (2) The primary liner shall be constructed in accordance with Section 6.C.3.a.(1) and (3)-(8).

**D. LEACHATE COLLECTION, TREATMENT, DISPOSAL, AND MONITORING**

- 1. General provisions
  - a. All industrial landfills shall be designed and constructed to include a leachate collection system, a leachate treatment and disposal system, and a leachate

- monitoring system.
  - b. The leachate systems shall be constructed, installed, and maintained in accordance with the Department-approved quality assurance plan.
  - c. The owner or operator shall keep and maintain documentation for the quality assurance procedures through the post-closure care period of the facility.

- 2. Leachate collection
  - a. Minimum design specifications
    - (1) The leachate collection system shall be designed to operate without clogging through the post-closure care period of the facility.
    - (2) All elements of the system (pipes, sumps, pumps, etc.) shall be sized according to water balance calculations and shall be capable of handling peak flows.
    - (3) Collection pipes shall be sized and spaced to efficiently remove leachate from the bottom of the waste and the side walls of the cell. The capacity of the mains shall be at least equal to the sum of the capacities of the laterals.
    - (4) The pipes shall be designed to withstand the weight, stresses, and disturbances from the overlying wastes, waste cover materials, equipment operation, and vehicular traffic.

(5) The collection pipes shall be designed to drain by gravity to a sump system. Sumps must function automatically and shall contain a conveyance system for the removal of leachate.

(6) Manholes or cleanout risers shall be located along the perimeter of the leachate collection system. The number and spacing of the manholes shall be sufficient to insure proper maintenance of the system by water jet flushing or an equivalent method.

(7) Innovative leachate collection systems incorporating alternative designs may be used, after approval by the Department, if they are shown to be equivalent to or more effective than the specified design.

**[(8) The leachate collection system must be designed to prevent the leachate head on the liner from exceeding a depth of 12 inches.]**

- b. Construction standards
  - (1) The leachate collection system shall be installed immediately above an impermeable liner and at the bottom of a drainage layer. The drainage layer shall be at least 12 inches thick with a hydraulic conductivity not less than  $1 \times 10^{-2}$   ~~$1 \times 10^{-3}$~~  cm/sec and a minimum post-loading controlling slope of two (2) percent.

Alternate materials may be used for the drainage layer, with prior written approval of the Department.

(2) The following tests shall be performed on the soil proposed for use in the drainage layer, and all data shall be submitted to the Department prior to construction of the drainage layer. These tests shall be performed in accordance with current ASTM, AASHTO, or equivalent methods.

Classification  
Porosity  
Relative density or compaction  
Specific gravity  
Hydraulic conductivity

(3) The leachate collection system and manholes or cleanout risers shall be constructed of materials that can withstand the chemical attack that results from leachates.

c. Operational procedures

(1) The leachate collection system shall operate automatically whenever leachate is present in the sump to remove accumulated leachate.

(2) Inspections shall be conducted weekly to verify proper functioning of the leachate collection system and to detect the presence of leachate in the removal sump. The owner or operator shall keep records on the system to provide sufficient information that the leachate collection system is functional and operating properly. The amount of leachate collected from each cell shall be recorded on a weekly basis.

(3) Collection lines shall be cleaned according to a Department-approved scheduled maintenance program and more frequently if required.

3. Leachate treatment and disposal

a. The leachate treatment and disposal system shall be designed in accordance with one of the following options:

- (1) Complete treatment on-site with or without direct discharge to surface water
- (2) Pretreatment on-site with discharge to an off-site treatment works for final treatment
- (3) Storage on-site with discharge to an off-site treatment works for complete treatment
- (4) Direct discharge to an off-site treatment works

(5) Pretreatment on site with discharge on site.

The permittee must maintain all necessary permits and approvals for leachate storage and discharge activities.

b. Leachate storage prior to treatment shall be within tanks constructed and installed in accordance with the following standards:

- (1) The tank shall be placed above ground.
- (2) The storage tank shall be designed in

accordance with American Petroleum Institute (API), Underwriters Laboratory (UL), or an equivalent standard appropriate to the material being used, and shall be constructed of or lined with material which has a demonstrated chemical resistance to the leachate.

(3) The storage tank area shall have a liner capable of preventing any leachate which may escape from the tank from coming into contact with the underlying soil.

(4) The storage tank area shall be surrounded by a berm, and the bermed area shall have a capacity at least ten percent greater than the capacity of the tank.

(5) All storage tanks shall be equipped with a venting system.

(6) All storage tanks shall be equipped with a high liquid level alarm or warning device. The alarm system shall be wired to the location where assistance will be available to respond to the emergency.

c. On-site complete treatment or pretreatment facilities shall be designed and constructed in accordance with the following:

(1) On-site treatment units shall be designed based on the results of a treatability study, the results of the operations of a pilot plant, or written information documenting the performance of an equivalent leachate treatment system.

(2) On-site treatment units shall be designed and constructed by staging of the units to allow for on-line modification of the treatment system to account for variability of the leachate quality and quantity.

d. For all leachate discharges planned for publicly owned treatment works (POTW), the owner or operator of the landfill shall notify the receiving POTW of intent to discharge leachate into the collection system and shall provide the POTW with analysis of the leachate as required by the POTW.

e. All leachate treatment and disposal systems shall be designed and constructed to control odors.

f. Residuals from the on-site treatment and disposal systems shall be sampled and analyzed for hazardous waste characteristics in accordance with Delaware's Regulations Governing Hazardous Waste.

g. Recirculation of leachate ~~will not be allowed at industrial landfills~~ **[may be allowed, subject to approval by the Department, to accelerate decomposition of the waste. Recirculation will be allowed only in areas constructed with a composite liner system or a double liner system. The method of recirculation must be approved by the Department in advance and annually so long as the recirculation continues. Records of leachate collected and recirculated must be kept and reported and**

any resultant problems reported to the Department and remedied as soon as practicable and included in the annual report].

4. Leachate monitoring

a. ~~The leachate monitoring system shall be capable of measuring the quantity of the flow, preventing the leachate head on the liner from exceeding a depth of 12 inches,~~ and sampling the leachate from each landfill cell. ~~The volume of leachate collected from each cell shall be determined at least monthly and reported quarterly. The leachate monitoring system shall be capable of measuring the flow and sampling the leachate.~~

b. Leachate monitoring of the influent and effluent of the treatment and disposal system shall be performed according to a Department-approved plan which includes quality control and quality assurance procedures.

c. Samples of leachate effluent and influent shall be analyzed as specified by the Department. The parameters to be analyzed will depend on the characteristics of the waste.

d. Leachate monitoring results shall be submitted to the Department as required.

e. For a double liner system, if the Action Leakage Rate of the leak detection system is exceeded, the owner or operator of the landfill shall notify the Department within five (5) working days. The owner or operator shall also sample and analyze the liquid in the leak detection system for parameters required by the Department. if liquid is discovered within the leak detection system, the owner or operator of the landfill shall notify the Department within five (5) working days of the discovery.

**E. GAS CONTROL**

1. General provisions

a. Gas control systems shall be installed at industrial landfills where the materials landfilled would be expected to produce gas through biological activity or reaction.

b. The gas control system shall be designed and constructed to:

- (1) Evacuate gas from within the waste to prevent the accumulation of gas on-site or off-site,
- (2) Prevent and control damage to vegetation,
- (3) Prevent odors from the facility being detectable at the facility property line in sufficient quantities to cause or create a condition of air pollution. Control malodorous gaseous emissions to the extent that there is no perceivable landfill odor at the property boundary

c. The concentration of landfill gas in facility structures (except gas recovery system components) and at

the facility boundary shall not exceed 25% of the lower explosive limit.

2. Design and construction standards

a. The owner or operator of an industrial landfill shall consider both active and passive gas control systems and shall provide an evaluation of the proposed system for Department approval.

b. The owner or operator shall perform an analysis to establish the required spacing of gas control vents to provide an effective system.

c. The gas control system shall be designed to evacuate gas from all levels within the waste.

d. The system shall not interfere with or cause failure of the liner or leachate systems.

3. Monitoring

a. A sufficient number of gas monitoring wells shall be installed to evaluate gas production rates in the landfill.

b. The owner or operator shall sample the gas monitoring wells and provide analytical results as required by conditions specified in the facility permit.

c. At landfills utilizing natural liners, gas monitoring probes must be installed in the soil outside the lined area to evaluate any lateral migration of landfill gas.

d. Emissions from active and passive gas control systems may require a permit from the Air Resources Section of the Division of Air and Waste Management.

**F. SURFACE WATER MANAGEMENT**

1. General provision

An owner or operator of an industrial landfill shall design, construct, and maintain a surface water management system to:

- a. Prevent erosion of the waste and cover,
- b. Prevent the collection of standing water, and
- c. Minimize surface water run-off onto and into the waste.

2. Design requirements

a. The surface water management system shall be designed to control, at a minimum, the run-off from the discharge of a 2-hour, 10-year storm.

b. The system shall be designed to include:

- (1) Detention basins to provide temporary storage of the expected run-off from the design storm with sufficient reserve capacity to contain accumulated precipitation and sediment prior to discharge.
- (2) Diversion structures designed to prevent run-off generated within the active cells from moving off site of the lined areas.

- 3. Channeling of run-off

a. Run-off from the active cell(s) must be channeled to the leachate treatment and disposal system.

b. Run-off from closed cells will be directed to the detention basins or other approved sedimentation control systems.

4. Discharge

Discharge from the detention basins shall be in compliance with all applicable federal and state regulations.

**G. GROUND WATER MONITORING AND CORRECTIVE ACTION**

1. General provision

Owners or operators of all industrial landfill facilities shall maintain and operate a ground water monitoring program to evaluate facility impact upon ground water quality.

2. Design and construction of monitoring system

a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.

b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.

c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.

d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines. Variation from the existing guidelines must be approved by the Department in writing prior to construction.

3. Ground water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

(1) Sample collection, preservation, and transport:

(a) Samples will be collected at low flow rates (<1 l/min) to minimize turbidity of the samples.

(b) Samples will be field filtered only when turbidity exceeds 10 NTU. Repeated sampling of any well where turbidity exceeds 10 NTU is not permitted without Department approval. Approval will only be granted in cases where turbidity cannot be controlled by careful well construction, development and sampling.

(2) Analytical procedures and quality assurance, and

(3) Chain of custody control.

b. Sample constituents

(1) The parameters to be analyzed shall depend upon the characteristics of the waste and shall be specified by the Department.

(2) Test methods used to determine the parameters of Section 6.G.3.b(1) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods." If SW-846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

c. The Department may observe, and may request advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

4. Reporting

a. All ground water, leachate, and gas monitoring shall be conducted on a schedule to be determined by the Department and the results submitted within 60 ~~45~~ days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

(1) ~~Tabulation and graphical presentation~~ of all leachate flow and quality and ground water quality data from current and preceding years,

(2) Graphical presentation of leachate flow and quality and ground water quality data from current and preceding years as required in the operating permit,

(3) Maps showing ground water flow patterns at each time of ground water sampling,

(4) A discussion of the ground water monitoring results, and

(5) Recommendations for future monitoring.

5. Assessment of Corrective Measures

a. An assessment (re-assessment) of corrective measures by the owner or operator is required (within 90 days) of confirmation of a contaminant release or an exceedance of a performance standard. The owner or operator must perform this assessment which must include:

(1) Identification of the nature and extent of the release (which may require construction and sampling of additional wells, analysis for additional constituents

including those required for leachate, geophysical surveys and/or other measures);

(2) Re-assessment of contaminant fate and potential contaminant receptors (wells and/or receiving streams);

(3) Evaluation of feasible corrective measures to:

(a) Prevent exposure to potentially harmful levels of contaminants (exceeding performance standards);

(b) Reduce, minimize or prevent further contaminant releases; and

(c) Reduce, minimize or prevent the offsite migration of contaminants.

(4) The implementability (and time to implement) and costs of the feasible alternatives; and

(5) Recommendations for remedial action.

b. The owner or operator must present the results of the corrective measures assessment, including a proposed remedy, (with a schedule for initiation and completion) for public comment at a public meeting.

#### 6. Selection of Remedy

a. Based on the results of the corrective measures assessment and public meeting, the owner/operator will select a remedial action.

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Control source(s) of contaminant releases so as to reduce or eliminate (to the maximum extent practicable) further releases of contaminants that pose a threat to human health or the environment;

(3) Comply with the site performance standards at the points of compliance (to the extent feasible); and

(4) Comply with standards for the management of wastes.

c. The Department may determine that remediation of a contaminant release is not necessary if the permittee can demonstrate to the satisfaction of the Department (or the Department certifies that it is satisfied) that the ground water is not currently or reasonably expected to be a source of drinking water, will not migrate so as to threaten a source of drinking water or will not cause violation of surface water quality standards (i.e. does not represent a significant threat to human health or the environment).

#### 7. Implementation of Corrective Action

a. Based on the schedule established under Section 6.G.5.b. for initiation and remediation of remedial

activities, the owner or operator must:

(1) Implement the corrective action remedy;

(2) Take any interim measures necessary to ensure protection of human health and the environment (such as replacement of contaminated or imminently threatened water supplies); and

(3) Perform ground water and/or surface water monitoring to demonstrate the effectiveness of the remedy including whether or not compliance is achieved with the performance standards.

b. If the owner or operator determines, based on information obtained after implementation of the remedy has begun or other information that compliance with remediation objectives (including achievement of performance standards) cannot be practically achieved with the remedy selected, the owner or operator must notify the Department and request authorization to proceed with another feasible method consistent with the overall objective of the remedy.

c. If the permittee determines that compliance with remedial action objectives (Section 6.G.7) cannot be practically achieved, the permittee must notify the Department and implement alternate methods to control exposure of humans or the environment to residual contamination and implement alternative control measures.

d. Remedies selected shall be considered complete when:

(1) All actions required to implement the remedy have been achieved; and

(2) The ground water protection standards or alternate requirements agreed upon have been achieved for a period of three years or alternate period approved by the Department.

e. Upon completion of the remedy, the owner or operator must notify the Department that a certification of the remedy has been completed in compliance with the requirement and placed in the operating records. This certification must be signed by a Professional Geologist registered in Delaware.

f. Upon completion of the remedy, the owner or operator will continue ground water monitoring as required by provisions of Section 6.G.3. and approved by the Department.

#### H. CAPPING SYSTEM

1. Requirement for a capping system

a. Upon closure of the landfill or landfill cell the permittee shall install a capping system that will control the emission of gas (if applicable), promote the establishment of vegetative cover, and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout

the post-closure care period.

b. The capping system shall be in place 180 days following final waste disposal activity.

c. The capping system shall extend beyond the edge of the lined area.

## 2. Composition of the capping system

The capping system shall consist of at least the following components:

a. A final grading layer on the waste, consisting of at least six (6) inches of soil, to attain the final slope and provide a stable base for subsequent system components. Daily and intermediate cover may be used for this purpose.

b. An impermeable layer, consisting of at least:

(1) A ~~20~~ 30 mil geomembrane underlain by a geotextile, or

(2) 24 inches of clay at a hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec or depth of equivalent material having a hydraulic conductivity less than  $1 \times 10^{-7}$  cm/sec, such depth to be determined based on the hydraulic conductivity of 24 inches of clay at a hydraulic conductivity of  $1 \times 10^{-7}$  cm/sec.

Alternative materials may be used for the impermeable layer with prior written approval of the Department.

c. A final cover consisting of:

(1) Eighteen (18) inches of soil to provide rooting depth and moisture for plant growth, and

(2) Six (6) inches of topsoil or other material approved by the Department to support the proposed vegetation; or

(3) A suitable layer of alternative material or combination thereof to assure adequate rooting and moisture retention to support the proposed vegetation.

The permittee shall propose a suitable vegetation dependent upon the quality and characteristics of the topsoil and compatible with the intended final use of the facility. Maintenance schedules and application rates for fertilizer and mulch shall also be submitted for approval.

## 3. Final slopes

a. The grades of the final slope shall be constructed in accordance with the following minimum standards:

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the capping system and to insure complete

vegetation cover.

## I. LANDFILL OPERATION AND MAINTENANCE STANDARDS

### 1. General

a. Industrial landfills shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground water.

b. Industrial landfills shall be maintained and operated to conform with the approved Plan of Operation.

### 2. Details of operation and maintenance

#### a. Spreading and compacting

The working face shall be confined to the smallest practical area, as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment to obtain the degree of compaction specified in the Solid Waste permit.

#### b. Cover

Approved cover material shall be applied at a frequency and thickness specified by the Department.

#### c. Control of nuisances and hazards

##### Odor

The operation of the landfill shall not result in odors associated with solid waste being detected off site.

##### Litter

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

##### Dust, fires

The landfill shall be operated in a manner which eliminates, to the extent possible, dust problems and fires.

#### d. Access

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry by the Secretary or his duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

#### e. Salvaging

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

f. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the landfill in accordance with the provisions of these regulations and the plan of operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.

h. Employee health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

The owner or operator of the landfill shall provide suitable shelter, sanitary facilities, and safe drinking water for personnel at the site.

A reliable telephone or radio communication system shall be provided for site personnel.

First aid equipment shall be available at the site.

3. Recordkeeping

The following information must be recorded, as it becomes available, and retained by the owner or operator of any new or existing industrial landfill until the end of the post-closure care period of the landfill:

a. Records demonstrating that liners, leachate control systems, cover, capping system, and all monitoring systems are constructed or installed in accordance with the design criteria required in Section 6, Subsections C, D, E, F, G, and H,

b. Monitoring, testing, or analytical data where required by Section 6, Subsections D, E, F, G, and H,

c. Volume and/or weight of wastes received

~~d. A complete list of transporters utilizing the facility, and~~

e [d]. Any additional records specified by the Department.

4. Reporting

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

a. The volume or tonnage of solid waste landfilled at the facility,

b. The estimated remaining capacity of the

facility, in both tonnage and years,

c. Leachate quantity and quality data as required in Section 6.D.4, and in the Solid Waste permit,

d. Gas monitoring data as required in Section 6.E.3, and in the Solid Waste permit,

e. An updated estimate of the cost of closure and post-closure care for the facility, as required in Section 6.J.3.d,

f. Any intentional or accidental deviations from the approved Plan of Operation, and any unusual situations encountered during the year,

g. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations[.], and

~~h. A list of transporters utilizing the facility during the year covered by the report.~~

The permittee must also submit any additional reports specified in the Solid Waste permit.

In addition to paper copies of reports, the Department may require all or part of any required report to be submitted on machine-readable media in a format [mutually] acceptable to the Department [and the permittee]. With approval of the Department[,] reports submitted on machine-readable media may be substituted for paper reports.

5. Prohibitions

a. Open burning of any solid waste is prohibited within the active portion of the landfill. b. Scavenging is prohibited on any landfill site.

c. No wastes other than those specified in the permit may be disposed of at the facility.

J. CLOSURE

1. General

The owner or operator of an industrial landfill must close the completed landfill or landfill cell in a manner that:

a. Minimizes the need for further maintenance, and

b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

2. Required submittals; notification

a. An owner or operator of a new industrial landfill must submit a conceptual closure plan for the facility at the time of initial (i.e., construction) permit application.

b. At least 180 days prior to the projected date when wastes will no longer be accepted at the landfill or cell, the landfill owner or operator shall submit to the Department written notification of intent to close the facility or cell, a closure plan, and a closure schedule.

~~e. An owner or operator of an industrial landfill must receive a closure permit before commencing closure of a completed landfill or landfill cell. At the time of notification of intent to close, the owner or operator must also submit a closure schedule and a closure plan or revised closure plan.~~

~~c. If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the performance standards described in Section 6.J.1, it will issue a closure permit modify the solid waste permit to allow closure to take place.~~

~~d. The owner or operator shall not commence closure activities before receiving the necessary modifications to the solid waste permit.~~

e. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

### 3. Closure plan contents

The closure plan for an industrial landfill or cell must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close a landfill and each individual cell thereof in accordance with the closure performance standard in Section 6.J.1. ~~Subsection J.1, a and b.~~

b. A description of the capping system required under Section 6.H. This shall include a description of the system design, the type of cover to be used, and a discussion of how the capping system will achieve the objectives of Section 6.J.1. ~~[,] Subsection J.1, a and b above.~~

c. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. An estimate of the cost of closing the facility or cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 6.I.4. ~~Subsection I.4.~~

e. A plan for post-closure care of the facility sufficient to ensure that the standards described in Section J.1. ~~Subsection J.1~~ will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the

post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

f. A plan for control and/or recovery of landfill gases, if appropriate.

g. A topographical map of the site showing the proposed post-closure elevation with reference to mean sea level.

h. A closure construction quality assurance plan.

### 4. Minimum closure requirements

a. The permittee shall notify the Department at least 30 working days prior to commencing closure activities. The Department shall inspect the site, and the permittee shall perform any corrective work which the Department deems necessary.

b. Finished portions of the landfill shall receive a capping system which meets the requirements of Section 6.H.

c. Finished portions of the landfill shall be planted with appropriate vegetation to promote stabilization of the cover.

d. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any significant deviations from the plan or the schedule must be approved by the Department prior to being initiated.

e. Upon closure of an entire landfill, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

f. After closure of the facility, the site shall be returned to an acceptable appearance consistent with the surrounding area and the intended use of the land.

g. When closure of the landfill or landfill cell is completed, the owner or operator shall submit a final report for the Department's approval. The final report shall certify that the closure of the landfill or cell was completed in accordance with the closure plan to include the construction quality assurance plan, construction and material specifications, and design drawings. The final report shall be certified correct by the construction quality assurance engineer, who must be a Professional Engineer registered in Delaware. The landfill or cell will not be considered closed until the Department has provided its written notification that the closure construction and the final report meet the requirements of the solid waste permit and these regulations. ~~must submit to the Department certification by a professional engineer registered in Delaware that the landfill or cell has been closed in accordance with the specifications in the approved closure plan.~~ The Department will inspect the cell or facility and will either:

(1) Issue a letter of approval to certify that the site has been closed in accordance with the closure solid waste permit, the closure plan, and all applicable regulations; or

(2) Determine that the site is not in compliance with the closure solid waste permit, the closure plan, or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

h. Facilities entering the post-closure period will be issued a post-closure permit based upon the approved post-closure plan, monitoring requirements, gas and leachate control, maintenance and corrective actions (if required).

**K. POST-CLOSURE CARE**

**1. General**

a. The owner or operator of an industrial landfill must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 6, Subsection K.2 below if it determines that the requirement(s) is/are no longer necessary for the protection of human health and the environment.

c. At any time after the first five years of the post-closure care period, the Department may reduce the length of the post-closure care period or terminate post-closure care if it determines that such care is no longer necessary.

d. Prior to the time that the post-closure care period is due to expire, the Department may extend the post-closure care period if it determines that the extended period is necessary to protect human health and the environment.

e. If at any time during the post-closure care period there is evidence of a contaminant release from the landfill that presents a significant threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.

**2. Minimum post-closure care requirements**

Post-closure care shall be in accordance with the post-closure permit and shall ~~must~~ consist of at least the following:

a. Maintaining the integrity and effectiveness of the capping system, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cap.

b. Reseeding the cover if insufficient vegetation

exists to stabilize the surface.

c. Maintaining and operating the leachate collection and treatment systems until the Department determines that the leachate no longer poses a threat to human health or the environment. The permittee shall submit leachate quantity and quality data to the Department for those parameters and at such frequencies as specified by the Department.

d. Maintaining and operating the ground water monitoring system in accordance with Section 6.G. The permittee shall submit ground water quality data as specified by the Department.

e. Maintaining and monitoring the gas control system in accordance with Section 6.E and the closure plan. The permittee shall submit gas data as specified by the Department.

f. Maintaining and monitoring the surface water management system in accordance with Section 6.F.

**3. Prohibitions**

a. Standing water shall not be allowed on the closed landfill.

b. Open burning shall not be allowed on the closed landfill.

c. Unless approved in advance by the Department, no activity shall be conducted on a closed landfill which will disturb the integrity of the capping system, liner, containment system, or monitoring systems.

d. Access to the closed landfill shall be limited to those persons who are engaging in activities which are compatible with the intended post-closure use of the site.

**4. Post-closure land use**

The owner or operator shall implement the post-closure land use plan approved by the Department.

**5. Notice in deed to property**

a. The owner of the property on which an industrial landfill is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:

1. The land has been used as an industrial waste disposal site, and

2. The use of the land is restricted under this regulation.

b. Included with the notation shall be a map or description clearly specifying the area that was used for disposal.

**SECTION 7: TRANSPORTERS**

**A. GENERAL PROVISIONS** (applicable to all persons

transporting solid waste in Delaware)

1. No person shall transport solid waste, without first having obtained a permit from the Department, unless specifically exempted by these regulations.

~~[1-2]~~ Any vehicle used to transport solid waste shall be so constructed or loaded as to prevent its contents from dropping, sifting, leaking, or otherwise escaping therefrom, in accordance with Title 21, Section 4371, Delaware Code.

~~[2-3]~~ The transporter will be responsible for all costs of cleaning up a discharge of solid waste from the vehicle.

~~[3-4]~~ Compliance with these regulations does not release a transporter from the obligation of complying with any other applicable laws, regulations or ordinances.

a. Additional waste transporter regulations may apply to transporters of special wastes, e.g. infectious waste. Refer to Section 11 of these Regulations, SPECIAL WASTES MANAGEMENT.

~~[4-5]~~ Each vehicle engaged in the used to transport of solid waste and required to have a transporter's permit must carry a copy of the permit in the vehicle. The permit must be presented upon request to any law enforcement officer or any representative of the Department.

## B. PROVISIONS APPLICABLE TO TRANSPORTERS (EXCEPT FOR TRANSPORTERS OF ONLY DRY WASTE) REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

### 1. Applicability

Section 7.B ~~This Subsection (7.B)~~ applies to all transportation activities in Delaware except the following:

a. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

b. Transportation of household waste generated in a Delaware residence and transported by the generator of the household waste. ~~(This exclusion shall not apply to small quantity infectious waste generators as defined in Section 11 Part 1).~~

c. On-site transportation of solid waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the solid waste will not at any time leave the site).

d. Transportation of solid waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste, ~~[petroleum hydrocarbon contaminated soils,]~~ or of waste containing asbestos.)

e. Transportation of dry waste only (this activity

is subject to the provisions of Subsection 7.C).

f. Transportation of solid waste generated on a farm and transported by the generator of the waste (this exclusion shall not apply to the transportation of infectious waste, petroleum-hydrocarbon contaminated soils, or of waste containing asbestos).

### 2. Instruction and Training

All drivers of solid waste transportation vehicles, and all of the transporter's employees who may handle solid waste subject to these regulations, shall receive instruction in how to perform transportation duties in a way that ensures compliance with all applicable regulations and requirements. The instruction shall include, but not necessarily be limited to, the following:

a. Knowledge of current DOT Motor Carrier Safety Regulations.

b. Safe vehicle operations to avoid creating hazards to human health, safety, welfare, or the environment.

c. Knowledge of proper handling procedures for the type of solid waste being transported.

d. Familiarity with the approved accidental discharge containment plan.

e. Familiarity with the conditions of the solid waste transporter's permit.

It shall be the responsibility of the transporter to ensure that all drivers and other employees that may handle solid waste receive instruction as described above as frequently as necessary to maintain a level of knowledge that will ensure safe operation of the vehicle during transportation of the solid waste and proper management of an accidental discharge. A description of the driver training program shall be included with the permit application.

### 3. Vehicle Requirements

a. All vehicles used in the transportation of solid waste shall be operated and maintained so as to be in compliance with all state and federal regulations and not present a hazard to human health or the environment through unsafe vehicle conditions. The permittee is responsible for the operation and maintenance of all vehicles including leased vehicles operated under his/her permit.

b. All vehicles must carry safety and emergency equipment in accordance with applicable DOT regulations to ensure protection of the public and the environment.

c. All vehicles must carry spill containment materials appropriate to the type of solid waste being transported.

d. Each vehicle engaged in the transportation of solid waste must be fully enclosed or covered to prevent the discharge or release of solid waste to the environment.

e. The transporter's name shall be prominently

displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

f. The transporter's permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

#### 4. Proof of Financial Responsibility

~~All persons that are subject to Section 7.B of these regulations and that were permitted to transport solid waste in Delaware before the adoption of this requirement shall be subject to the requirement upon renewal of their permit, or 60 days after adoption of this requirement, whichever is later.~~

Proof of financial responsibility for sudden and accidental discharges shall be maintained by the transporter. This financial responsibility may be established by any one or a combination of the following:

##### a. Automobile liability insurance

(1) For-hire carriers in interstate commerce shall at all times maintain insurance coverage that is in compliance with 49 CFR Part 387 and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(2) Transporters who transport infectious waste, or who transport bulk liquid or bulk gaseous industrial waste, shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$750,000 with MCS-90 endorsement and shall submit a Certificate of Insurance with MCS-90 endorsement demonstrating compliance with this regulation.

(3) All other carriers shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$350,000, and shall submit a Certificate of Insurance demonstrating compliance with this regulation.

b. Self insurance equal to or exceeding the above automobile liability insurance limits, and approved by the Department.

c. Other proof of financial responsibility approved by the Department.

#### 5. Management of Accidental Discharges

a. ~~All transporters of applicants for a permit to transport~~ solid waste shall submit to the Department a plan for the prevention, control, and cleanup of accidental discharges of the solid waste. No permit will be issued to a transporter until such a plan has been submitted to and approved by the Department.

b. A copy of the plan shall be maintained in each vehicle engaged in the transportation of solid waste.

c. All accidental discharges of solid waste from a vehicle shall be immediately and completely remediated. If the solid waste cannot be immediately and completely remediated, or if it has the potential to cause damage to the environment or to public health, the discharge shall be immediately reported to the Department. (Accidental discharges of infectious waste are regulated under Section 11, Part 1)

d. The transporter will be responsible for all costs of remediating a discharge of solid waste from the vehicle.

#### 6. Recordkeeping

The following records must be retained by the transporter for at least three years:

a. The solid waste transporter's permit.

b. Documentation of the training provided to drivers.

c. Insurance documents sufficient to demonstrate compliance with Section 7.B.4 of these regulations.

d. Records of spills or releases of solid waste that exceed five (5) pounds or one (1) cubic foot that occur during the transportation of solid waste in Delaware, and descriptions of the remedial actions taken.

#### 7. Reporting and Documentation

a. Each transporter that picks up and/or deposits solid waste in Delaware shall submit to the Department, on a form prescribed by the Department, an annual report indicating the following:

(1) Types and weights or volumes of solid waste transported in, into, or out of the state.

(2) Weight or volume of solid waste delivered to each destination.

b. Any vehicle transporting solid waste through Delaware shall carry documentation indicating the state in which the solid waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

#### 8. Sub-leases and sub-contractors

Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions:

a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.

b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.

c. The permittee certifies that the sub-leased or

sub-contracted vehicles will comply with all permit conditions.

d. Subcontractors shall carry proof of subcontractor agreement in the vehicle and must present proof to any law enforcement officer or representative of the Department upon request.

### C. PROVISIONS APPLICABLE TO TRANSPORTERS OF ONLY DRY WASTE REQUIRED TO HAVE A SOLID WASTE TRANSPORTER'S PERMIT

#### 1. General

No transporter granted a permit to transport only dry waste under the requirements of this Subsection (7.C.) shall transport any solid waste other than dry waste, as defined in these Regulations, without meeting the additional requirements for transporting such other solid waste contained in these Regulations.

#### 2. Applicability

The remainder of this Subsection (7.C) applies to all transportation activities involving only dry waste in Delaware except the following:

a. Transportation of dry waste by a solid waste transporter permittee having a permit issued under Subsection 7.B of these Regulations.

b. Transportation of source separated materials for reuse or recycling, provided that the materials remain separate throughout the journey and are not recombined for transport.

c. Transportation of dry waste generated in a Delaware residence and transported by the generator of the dry waste. ~~(This exclusion shall not apply to small quantity infectious waste generators as defined in Section 11, Part 1).~~

d. On-site transportation of dry waste (i.e., the point of generation and the point of treatment or disposal are on the same site and the vehicle transporting the dry waste will not at any time leave the site).

e. Transportation of dry waste in a vehicle having a gross vehicle weight less than or equal to 26,000 (twenty-six thousand) pounds. (This exclusion shall not apply to the transportation of infectious waste or of waste containing asbestos.)

#### 3. Vehicle Requirements

a. The transporter's name shall be prominently displayed on both sides of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

b. The transporter's permit number shall be prominently displayed on both sides and the rear of the vehicle in figures at least three inches high and of a color that contrasts with the color of the vehicle.

c. All transporters shall at all times maintain commercial automobile liability insurance with a combined single limit of at least \$350,000, and shall submit a Certificate of Insurance demonstrating compliance with this regulation. All persons that are subject to Section 7.C.3. of these regulations and that were permitted to transport solid waste in Delaware before the adoption of this requirement shall be subject to the requirement upon renewal of their permit, or 60 days after adoption of this requirement, whichever is later.

#### 4. Recordkeeping

The following records must be retained by the transporter for at least three years:

a. The dry waste transporter's permit.

b. The transporter's Annual Report required under Section 7.C.5.

#### 5. Reporting and Documentation

a. Each transporter that picks up and/or deposits dry waste in Delaware shall submit to the Department, on a form prescribed by the Department, an Annual Report indicating the following:

(1) The total estimated weights or volumes of dry waste transported in, into, or out of the state during the year.

(2) The total estimated weight or volume of dry waste delivered to each destination.

b. Any vehicle transporting dry waste through Delaware shall carry documentation indicating the state in which the dry waste was picked up, the date on which it was picked up, and the state in which it will be deposited.

#### 6. Sub-lease and sub-contractors

Sub-leased, and sub-contracted vehicles may be included in a transporter permit, under the following conditions:

a. The vehicles are listed on the permit application or subsequent amendments, with owner and operator of the vehicle identified.

b. The permittee certifies in writing that all information provided in the application or subsequent amendments are applicable to the sub-leased and sub-contracted vehicles, including but not limited to, driver training, vehicle requirements, proof of financial responsibility, management of accidental discharges, recordkeeping, and reporting and documentation.

c. The permittee certifies that the sub-leased or sub-contracted vehicles will comply with all permit conditions.

d. Subcontractors shall carry proof of subcontractor agreement in the vehicle, and must present proof to any law enforcement officer or representative of the

Department upon request.

~~SECTION 8: DRY WASTE DISPOSAL FACILITIES  
RESERVED~~

~~A. SITING~~

~~No new dry waste disposal facility shall be located in an area such that solid waste would at any time be deposited:~~

- ~~1. Within five (5) feet of the seasonal high water table.~~
- ~~2. Within the 100-year flood plain.~~
- ~~3. Within 200 feet of any state or federal wetland.~~
- ~~4. Within 200 feet of any perennial stream.~~
- ~~5. Within one mile of any state or federal wildlife refuge, wildlife area, or park, unless specifically exempted from this requirement by the Department.~~
- ~~6. So as to be in conflict with any locally adopted land use plan or zoning requirement.~~
- ~~7. Within the wellhead protection area of a public water supply well or well field.~~
- ~~8. In an area that is particularly susceptible to environmental degradation.~~

~~B. DESIGN~~

~~1. General~~

~~a. Dry waste disposal facilities shall be planned and designed by Professional Engineers registered in Delaware. Planning and design of these facilities shall be consistent with this regulation and based on empirically derived data and state-of-the-art technology.~~

~~b. All dry waste disposal facilities shall conform to the minimum design requirements listed in Section 8.B.2. More stringent designs will be required where deemed necessary by the Department for the protection of ground water resources.~~

~~2. Minimum design requirements~~

~~All dry waste disposal facilities shall be designed to include at least the following:~~

- ~~a. A setback area, including a buffer zone with appropriate screening, if deemed necessary by the Department.~~
- ~~b. A gas monitoring system that meets the requirements of Section 8.C.~~
- ~~c. A surface water management system that meets the requirements of Section 8.D.~~
- ~~d. A ground water monitoring system that meets the requirements of Section 8.E.~~
- ~~e. Final cover that meets the requirements of Section 8.F.~~

~~C. GAS CONTROL~~

~~1. The owner or operator of a dry waste disposal facility shall monitor the concentration of landfill gas emanating from the solid waste disposal area and shall sample and analyze the gas as required by conditions specified in the facility permit.~~

~~2. If at any time the concentration of landfill gas at the facility boundary or in facility structures is found to exceed 25% of the lower explosive limit, the permittee will be required to submit to the Department design plans for a gas control system capable of evacuating gas from within the waste and preventing the accumulation of gas on site or off site. The design of the system will be subject to Department approval. If the Department determines that the concentration of landfill gas at the site poses a risk to human health or the environment, the permittee will be required to install and operate the gas control system.~~

~~D. SURFACE WATER MANAGEMENT~~

~~1. An owner or operator of a dry waste disposal facility shall design, construct, and maintain a surface water management system to:~~

- ~~a. prevent erosion of the waste and cover~~
- ~~b. prevent the collection of standing water, and~~
- ~~c. minimize surface water run-off onto and into the waste.~~

~~2. The surface water management system shall include such detention basins, diversion structures, and/or other features as necessary to control, at a minimum, the run-off from the discharge of a 2 hour, 10-year storm.~~

~~E. GROUND WATER MONITORING~~

~~1. General provision~~

~~Owners or operators of all dry waste disposal facilities shall maintain and operate a ground water monitoring system to evaluate facility impact upon ground water quality.~~

~~2. Design and construction of monitoring system~~

- ~~a. The ground water monitoring system shall be designed by a Professional Geologist registered in Delaware.~~
- ~~b. The system shall consist of a sufficient number of wells, installed at appropriate locations and depths, to define the ground water flow system and shall be developed in accordance with Departmental requirements to yield ground water samples that are representative of the aquifer water quality.~~
- ~~c. The number, spacing, location, depth, and screened interval of the monitoring wells shall be approved by the Department prior to installation.~~

~~d. All monitoring wells shall be constructed in accordance with the Regulations Governing the Construction of Water Wells and any subsequently approved guidelines.~~

Variation from the existing guidelines must be approved by the Department in writing prior to construction.

### 3. Ground-water sampling

a. The permittee shall submit a ground water sampling plan to the Department at the time of permit application. The sampling plan must include procedures and techniques for:

- (1) Sample collection, preservation, and transport
- (2) Analytical procedures and quality assurance, and
- (3) Chain of custody control

### b. Sample constituents

(1) All facilities shall test for the following parameters:

- (a) Specific conductivity
- (b) Total dissolved solids
- (c) Total organic carbon
- (d) Chloride
- (e) pH
- (f) Chemical oxygen demand
- (g) Total iron
- (h) Any additional parameters specified by the Department

(2) Test methods used to determine the parameters of b(1) shall be those described in the most current legal edition of EPA Publication Number SW-846, "Test Methods for Evaluating Solid Waste—Physical/Chemical Methods." If SW 846 does not contain test methods for a required parameter, that parameter shall be tested according to methods described in the most recent edition of the EPA publication "Methods of Chemical Analysis for Water and Wastes" or of Standard Methods for the Examination of Water and Wastewater.

e. The Department may observe, and may request advance notice of, the ground water sampling conducted by the permittee or his/her designee and may request split samples for analysis.

d. If the Department determines that the ground water monitoring data indicate that ground water contamination has occurred, a remedial action program may be required.

### 4. Reporting

a. All ground water monitoring shall be conducted on a schedule to be determined by the Department and the results submitted within 45 days of sampling.

b. An annual hydrogeologic report will be prepared which shall include:

(1) Tabulation and graphical presentation of all ground water quality data from current and preceding years,

(2) Maps showing ground water flow patterns at each time of ground water sampling,

(3) A discussion of the ground water monitoring results, and

(4) Recommendations for future monitoring.

## F. FINAL COVER

### 1. Requirement for final cover

a. Upon closure of the facility or a portion thereof, the permittee shall apply final cover consistent with the intended post-closure use of the facility and designed to control the emission of gas, promote the establishment of vegetative cover (if applicable), and minimize infiltration and percolation of water into, and prevent erosion of, the waste throughout the post-closure care period.

b. The final cover shall be in place 60 days following final waste disposal activity or 60 days after Department approval of the closure plan, whichever is later.

### 2. Composition of final cover

The final cover shall consist of at least two feet of compacted soil and either:

a. At least six inches of topsoil (or other material approved by the Department) to support vegetation, followed by the application of suitable vegetation, or

b. Other material consistent with the intended use of the land and approved in advance by the Department.

### 3. Final slopes

a. The grades of the final slopes shall be constructed in accordance with the following minimum standards:-

(1) The final grade of the top slope, after allowing for settlement and subsidence, shall be designed to promote run-off;

(2) The final grades of the side slopes shall be, at a maximum, three horizontal to one vertical (3:1).

b. The top and side slopes shall be maintained to prevent erosion of the final cover.

## G. OPERATION AND MAINTENANCE STANDARDS

### 1. General

a. Dry waste disposal facilities shall be operated so as to create an aesthetically desirable environment and to preclude degradation of land, air, surface water, or ground water.

b. Dry waste disposal facilities shall be maintained and operated to conform with the approved plan of operation.

### 2. Details of operation and maintenance

#### a. Spreading and compacting

The working face shall be confined to the smallest

practical area as is consistent with the proper operation of trucks and equipment.

The waste shall be spread in layers and compacted by repeated passes of the compacting equipment.

**b. Cover**

Approved cover material shall be applied at a frequency and thickness specified by the Department.

**c. Control of nuisances and hazards**

**Dust and Odors**

The owner or operator shall undertake suitable measures to control dust and odors wherever and whenever necessary to conform with all applicable air quality regulations.

**Litter**

The scattering of refuse and wind-blown litter shall be controlled by the use of portable fences, natural barriers, or other suitable methods. No refuse or litter shall be allowed to migrate off site.

**Fires**

The facility shall be operated in a manner which minimizes the risk of fires occurring on the site.

**d. Access**

Access to the site shall be limited to those persons authorized to use the site for the disposal of solid waste and to those hours when an attendant is on duty. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

Access to the site by unauthorized persons shall be prevented by the use of barriers, fences and gates, or other suitable means.

**e. Salvaging**

Salvage operations shall be so organized that they will not interfere with the proper disposal of any solid waste. No salvage operation shall be allowed which creates unsightliness, nuisances, health hazards, or potential safety hazards.

**f. Personnel**

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with the permit requirements and operational procedures of the facility and is experienced in landfill development and operation.

**g. Equipment**

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in

accordance with the provisions of these regulations and the Plan of Operation. Waste handling equipment shall be cleaned routinely and maintained in accordance with the manufacturer's recommendations.

**h. Employee health and safety**

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

**3. Recordkeeping**

The following information must be recorded, as it becomes available, and retained by the owner or operator of the facility until the end of the post-closure care period:

- a. Monitoring, testing, or analytical data where required by Section 8, Subsections C, E, or I.
- b. Types and volume or weight of wastes received.
- c. A complete list of haulers utilizing the facility.
- d. Any additional records specified by the Department.

**4. Reporting**

The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form acceptable to the Department and shall describe and summarize all solid waste disposal, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include but not necessarily be limited to the following:

- a. The volume or tonnage of solid waste landfilled at the facility.
- b. The estimated remaining capacity of the facility, in both tonnage and years.
- c. A list of all haulers utilizing the facility during the year covered by the report.
- d. Gas monitoring data as required in Section 8.C, and in the Solid Waste permit.
- e. An updated estimate of the cost of closure and post-closure care for the facility, as required in Section 8.H.3.e.

f. Any intentional or accidental deviations from the approved Plan of Operation.

g. All construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations

The permittee must also submit any additional reports specified in the Solid Waste permit.

**5. Prohibitions**

- a. No wastes other than those specified in the permit may be disposed of at the facility.
- b. Open burning of any solid waste is prohibited

within the active portion of the facility.

e. Scavenging is prohibited on any dry waste disposal site.

## H. CLOSURE

### 1. General

The owner or operator of a completed dry waste disposal facility or cell must close the facility or cell in a manner that:

a. Minimizes the need for further maintenance, and  
 b. Minimizes the post-closure escape of solid waste constituents, leachate, and landfill gases to the surface water, ground water, or atmosphere.

### 2. Required submittals; notification

a. An owner or operator of a dry waste disposal facility must submit a conceptual closure plan for the facility at the time of initial permit application, as required in Section 4.C.1.a(7).

b. At least 180 days prior to the date when wastes will no longer be accepted, the owner or operator shall submit the following to the Department:

- (1) Written notification of intent to close.
- (2) Closure plan.
- (3) Closure schedule.

e. If the Department determines that the closure plan and closure schedule are sufficient to ensure closure in accordance with the standards described in Section 8.H.1, it will issue a closure permit.

d. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator through the post-closure care period of the facility.

### 3. Closure plan contents

The closure plan for a dry waste disposal facility or cell must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the facility or cell in accordance with the closure performance standard in Section 8.H.1.

b. A description of the final cover that will be applied, and a discussion of how the final cover will achieve the objectives of Section 8.H.1.

e. A description of other activities necessary to satisfy the closure performance standard, including, but not limited to, the removal or disposal of all non-landfilled wastes located on site (e.g., wastes from landfill run-off collection ponds).

d. A topographical map of the site showing the proposed post-closure elevations, with reference to mean sea level.

e. An estimate of the cost of closing the facility or

cell and of the cost of post-closure monitoring and maintenance throughout the post-closure care period. These estimates shall be updated yearly and submitted to the Department as part of the annual report described in Section 8.G.4.

f. A plan for post-closure care of the facility or cell sufficient to ensure that the standards described in Subsection I.1 will be met. This will include:

(1) A description of the monitoring and maintenance activities required and the frequency at which these activities will be performed.

(2) The name, address, and telephone number of the person or office to contact about the facility during the post-closure period.

(3) A description of the planned uses of the property during the post-closure period.

g. A plan for control and/or recovery of landfill gases, if appropriate.

### 4. Minimum closure requirements

a. The closure shall be carried out in accordance with the approved closure plan and according to the approved closure schedule. Any deviations from the plan or the schedule must be approved by the Department prior to being initiated.

b. Upon closure of a facility, all non-landfilled wastes located on site shall be removed or disposed of in a manner approved by the Department.

e. When closure is completed, the owner or operator must submit to the Department certification by a Professional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan. The Department will inspect the facility and will either:

(1) Issue a letter indicating that the site has been closed in accordance with the closure plan and all applicable regulations; or

(2) Determine that the site is not in compliance with the closure plan or applicable regulations; identify the areas of deficiency; and require the owner or operator to take the necessary actions to bring the site into compliance.

## I. POST-CLOSURE CARE

### 1. General

a. The owner or operator of a dry waste disposal facility must continue post-closure care for 30 years after the completion of closure.

b. At any time during the post-closure care period the Department may remove one or more of the post-closure care requirements described in Section 8, Subsection I.2 below if it determines that the requirement(s) is/are no

longer necessary for the protection of human health and the environment.

~~e. At any time after the first five years of the post closure care period, the Department may reduce the length of the post closure care period or terminate post closure care if it determines that such care is no longer necessary.~~

~~d. Prior to the time that the post closure care period is due to expire, the Department may extend the post closure care period if it determines that the extended period is necessary to protect human health and the environment.~~

~~e. If at any time during the post closure care period there is evidence of a contaminant release from the landfill that presents a threat to human health or the environment, action to mitigate the threat will be required of the owner or operator of the facility.~~

~~2. Minimum post closure care requirements~~

~~Post closure care must consist of at least the following:~~

~~a. Maintaining the integrity and effectiveness of the final cover, including making repairs as necessary to correct the effects of settling, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cover.~~

~~b. Reseeding the cover if insufficient vegetation exists to stabilize the surface.~~

~~e. Maintaining and operating the ground water monitoring system in accordance with Section 8.E. The permittee shall submit ground water quality data as specified by the Department.~~

~~d. Maintaining and monitoring the gas control system in accordance with Sec. 8.C and the closure plan. The permittee shall submit gas data as specified by the Department.~~

~~e. Maintaining and monitoring the surface water management system in accordance with Sec. 8.D.~~

~~3. Prohibitions~~

~~a. Standing water shall not be allowed on the closed facility or cell.~~

~~b. Open burning shall not be allowed on, or within 100 feet of, a closed disposal area.~~

~~e. Unless approved in advance by the Department, no activity shall be conducted on a closed dry waste disposal facility or cell which will disturb the integrity of the final cover or the monitoring systems.~~

~~d. Access to the closed facility shall be limited to those persons who are engaging in activities which are compatible with the approved post closure use of the site.~~

~~4. Post closure land use~~

~~The owner or operator shall implement the post closure land use plan included in the closure plan~~

~~approved by the Department.~~

~~5. Notice in deed to property~~

~~The owner of the property on which a dry waste disposal facility is located must record a notation on the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that:~~

~~a. the land has been used as a solid waste disposal site, and~~

~~b. the use of the land is restricted under this regulation.~~

~~Included with this notation shall be a map or description clearly specifying the area that was used for disposal.~~

**SECTION 9: RESOURCE RECOVERY FACILITIES**

**A. APPLICABILITY**

This section applies to:

1. Materials recovery facilities, and
2. Thermal recovery facilities.

**B. SITING**

1. Resource recovery facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. No new resource recovery facility shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. Within 1000 feet of any state or federal wildlife refuge, wildlife area, or park.

d. So as to be in conflict with any locally adopted land use plan or zoning requirement.

In addition, any facility that processes municipal solid waste shall not be located within 10,000 feet of any airport currently used by turbojet aircraft or 5,000 feet of any airport runway currently used by piston-type aircraft, unless a waiver is granted by the Federal Aviation Administration.

**C. DESIGN AND CONSTRUCTION**

1. Applicants wishing to construct and operate resource recovery facilities will be encouraged to design the facilities so that they are capable of removing and recycling those materials for which recycling is currently technically and economically feasible. The design should allow for future alteration or upgrading to accomplish removal of additional materials as recycling of these materials becomes feasible.

2. The plans and specifications for a proposed resource recovery facility, ~~or for any addition or alteration to an existing facility~~, shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the Solid Waste Management Facility permit application.

3. Construction and installation activities for new facilities ~~and for expansions or alterations of existing facilities~~ shall be carried out in accordance with a third-party quality assurance plan approved by the Department. Expansions or alterations of existing facilities shall be carried out in accordance with an approved third-party quality assurance plan if deemed necessary by the Department.

4. Minimum design requirements

a. All new resource recovery facilities shall be designed to include the following features, as a minimum:

(1) A setback area with appropriate screening.

(2) A means to detect explosion potential and equipment designed to minimize the impact of explosion (if the solid waste to be handled and the equipment to be used have the potential of causing explosion).

(3) A means for maintaining quality control of recovered materials.

(4) Storage capacity for a minimum of three days of storage (at maximum anticipated loading rates) of incoming solid waste, facility process solid waste residues and effluents, and recovered materials. The storage areas must be within enclosed structures if deemed necessary by the Department.

(5) Tipping floors, sorting pads, and solid waste storage areas constructed of material capable of withstanding heavy vehicle usage and of reducing and controlling runoff.

(6) A completely enclosed unloading area, if deemed necessary by the Department.

(7) Adequate floor drains graded to facilitate washdown and to prevent standing water. Drains shall discharge to a sanitary sewer system, holding tank, or appropriate treatment facility.

(8) Surface water and erosion controls.

(9) An auxiliary power system sized to enable emergency shut down of the facility to occur without causing irreparable damage to the equipment.

(10) Control mechanisms to minimize and contain accidental spillage of reagents, lubricants, or other liquids used as well as residues generated.

(11) A fire detection and protection system capable of detecting, controlling, and extinguishing any fires that may occur as a result of facility operation.

(12) A fence or other security system that will prevent access to the site by unauthorized persons.

(13) A means for weighing or measuring all incoming solid waste, all recyclable materials recovered from the waste, and all residues generated at the facility.

D. OPERATION AND MAINTENANCE STANDARDS

All new and existing resource recovery facilities shall comply with this section.

1. General

a. Facilities shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. All facilities shall be operated and maintained to conform with the approved Plan of Operation submitted at the time of permit application and approved by the Department.

2. Details of operation and maintenance

a. Unloading of solid waste

Unloading of solid waste shall take place only at clearly marked unloading areas.

b. Storage and handling

(1) External storage of solid waste containing garbage is prohibited. No solid waste shall be stored in such a manner that the storage area or the solid waste becomes a nuisance or endangers human health or the environment.

(2) All solid waste passing through the facility must ultimately be recycled or be disposed of at a solid waste facility authorized to accept that type of solid waste.

(3) Solid waste delivered to the facility shall be processed within the time limit specified by the Department.

(4) Non-putrescible recyclable materials may be stored for up to 30 days. The storage period may be increased, with written approval of the Department, if all of the following conditions are met:

(a) there is a demonstrated need to do so (e.g., a market agreement with terms of receipt based on greater than 30 day intervals or volumes that may take longer than 30 days to acquire);

(b) there is sufficient Department approved storage area;

(c) an inventory methodology is used to ensure that the recyclables do not remain on the site for longer than the specified time period; and

(d) the inventory methodology is provided to and approved by the Department before storage begins.

c. Control of nuisances and hazards

Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site.

Air Pollution

The operation of the facility shall comply with 7 Del. Code, Chapter 60, and with the Regulations Governing the Control of Air Pollution.

Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

Fire

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

d. Access

Access roads to the point of solid waste discharge shall be designed, constructed, and maintained so that traffic will flow smoothly and will not be interrupted by inclement weather.

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized to deliver solid waste to the site. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

e. Personnel

Sufficient types and numbers of trained personnel shall be available at the site to insure capability for operation in accordance with these regulations.

The facility shall be operated under the close supervision of an individual who is thoroughly familiar with the requirements and operational procedures of the facility and is experienced in matters of solid waste management.

All thermal recovery facilities shall be operated under the direct supervision of an individual who has successfully completed a training course on use of the specific equipment installed at the facility.

f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All solid waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

All processing equipment shall be operated by persons thoroughly trained in the proper operation of the equipment and shall be maintained in good working order.

h. Disposal of process residues and of solid waste that cannot be processed by the facility

(1) Unless specified otherwise in writing by the Department, all residues generated by the operation of a facility shall, within three days of generation, be disposed of, used, or treated in a manner that is consistent with state and federal regulations.

(2) Unless specified otherwise in writing by the Department, all solid waste that is delivered to the facility but that cannot be processed at the facility shall, within three days of receipt, be removed from the facility for disposal, use, or treatment in a manner that is consistent with state and federal regulations.

3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. Types and weight or volume of solid waste received.

b. Weight or volume of each material recycled or marketed.

c. A record of the commercial solid waste haulers (company name, address, and telephone number) using the facility, and the type and weight or volume of solid waste delivered by each hauler to the facility each day.

d. Process monitoring data.

e. Characterization testing of recyclable materials.

f. Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.

g. Characterization testing of process residues to determine the quality for possible marketing or BTU value.

h. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

i. Documentation of training provided to employees.

j. Fire and safety inspections.

k. Major equipment maintenance.

1. Any additional records specified by the Department.

4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The report shall be on a form prescribed by the Department and shall describe and summarize all solid waste processing, environmental monitoring, and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

(1) Types and weight or volume of solid waste received.

(2) Weight or volume of each material recycled or marketed, and identification of the markets.

(3) Weight or volume of unprocessable solid wastes and of process residues, and location of ultimate disposal of these materials.

(4) A complete list of commercial haulers that delivered solid waste to the facility during the year.

(5) A discussion of the feasibility of recycling materials that are currently being received at the facility but are not being recycled.

(6) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.

(7) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

(8) Results of characterization testing of recyclable materials and process residues.

(9) Any additional information specified by the Department.

b. The permittee shall immediately notify the Department if any of the following occurs:

(1) A shut down that results in solid waste being diverted from the facility.

(2) A fire.

(3) A spill or nonpermitted release.

E. CLOSURE

1. General

When a resource recovery facility ceases accepting solid waste, all of the solid waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

2. Required submittals; notification

a. An owner or operator of a resource recovery facility must submit a conceptual closure plan at the time of initial application for a Solid Waste Management Facility

Permit.

b. At least 180 days prior to the projected date when solid waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section 4.D.1.b. Closure activities shall not commence until the Department has approved the updated closure plan and the closure schedule and has modified the permit to allow closure activities to be carried out.

c. A copy of the closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

3. Closure plan contents

The closure plan for a resource recovery facility must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the facility, including provisions that will be made for the proper disposal of all solid waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 9.D.4.

c. A description of the planned post-closure use of the property.

4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within one year after the date on which the Department issues a modified permit to allow closure.

c. When closure is completed, the owner or operator must submit to the Department certification by a Professional Engineer registered in Delaware that the facility has been closed in accordance with the specifications in the approved closure plan.

d. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

e. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

SECTION 10: TRANSFER STATIONS

A. GENERAL PROVISIONS

1. Applicability

a. This section applies to all solid waste transfer stations in Delaware. Additional requirements may apply to transfer stations handling special solid wastes, such as infectious waste.

b. Compliance with these regulations does not release the owner or operator of a transfer station from the obligation of complying with any other applicable laws, regulations, or ordinances.

## 2. Exclusions

The following types of facilities are not considered to be transfer stations:

a. Facilities that accept only source separated materials for the purpose of recycling those materials.

b. Materials recovery facilities.

c. Small load collection areas located at permitted landfill sites.

d. Individual dumpsters used for waste generated on site (e.g., at shopping centers, apartment complexes or commercial establishments).

e. Compaction equipment being used exclusively for solid waste generated on site (e.g., in office or apartment complexes, industrial facilities, or shopping centers).

## B. SITING

1. Transfer stations shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Transfer stations shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new transfer station shall be located in an area such that solid waste would at any time be handled: a.

Within the 100-year flood plain.

b. Within any state or federal wetland.

c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

## C. DESIGN

### 1. General

The plans and specifications for a proposed transfer station shall be prepared and certified by a Professional Engineer registered in Delaware and shall be submitted as a part of the transfer station permit application.

### 2. Minimum design requirements

All transfer stations shall be designed to include at least the following:

a. A leachate collection and disposal system as described in Section 10.D.

b. A means for weighing or measuring all solid waste handled at the facility.

c. Tipping and loading areas contained within

structures capable of preventing the development of nuisance conditions (e.g., odors, litter, dust, rodents, insects) if these areas will be within 300 feet of a commercial, institutional, or residential structure that is designed for human occupancy and that is in existence at the time of initial permit application. If tipping and loading areas will not be within 300 feet of a structure designed for human occupancy, the permittee shall evaluate the impact to the surrounding area of handling the solid waste in a non-enclosed facility. In addition, the permittee shall evaluate the need for exhaust systems in enclosed areas and shall install such systems if necessary for the protection of human health.

d. A means to prevent vehicles from backing into the pit while unloading.

e. On-site roads designed to accommodate projected traffic flow in a safe and efficient manner.

f. Separate access for passenger vehicles, if both commercial and passenger vehicles are using the facility.

g. A fence or other security system that will prevent access to the site by unauthorized persons.

## D. LEACHATE COLLECTION AND DISPOSAL

1. All transfer stations shall be designed and constructed to include a leachate collection and disposal system that will prevent leachate (including wastewater generated during normal operation such as wash-out and cleaning of equipment, trucks, and floors) from contaminating the soil, surface water, or ground water.

2. The leachate collection and disposal system must be approved in advance by the Department and shall consist of one, or a combination, of the following:

a. Tipping, loading, and unloading areas constructed of impervious material and equipped with drains connected to either:

(1) a sanitary sewer system, or

(2) a corrosion-resistant holding tank.

If the tipping, loading, and unloading areas are not enclosed, the piping and drains to the sewer system or holding tank shall be sized to handle, at a minimum, the run-off that would result from a 2-hour 10-year storm.

b. Containers and compaction units constructed of durable impervious material and equipped with covers that will minimize the entrance of precipitation.

Alternate designs may be used with prior written approval of the Department if the applicant can show that they will prevent leachate from contaminating the soil, surface water, and ground water.

## E. OPERATION AND MAINTENANCE STANDARDS

## 1. General

a. Transfer stations shall be operated in a manner that will preclude degradation of land, air, surface water, or ground water.

b. Transfer stations shall be maintained and operated to conform with the Plan of Operation submitted at the time of permit application and approved by the Department.

## 2. Details of operation and maintenance

## a. Storage of solid waste

Solid waste shall not remain at the transfer station for more than 72 hours without the written approval of the Department. Any solid waste that is to be kept at the site overnight shall be stored in an impervious enclosed structure.

## b. Disposition of solid waste leaving the facility

All solid waste accepted at the transfer station must, upon leaving the transfer station, be delivered to a processing or disposal facility authorized by the Department (or by the appropriate environmental agency, if outside of Delaware) to accept that type of waste.

## c. Control of nuisances and hazards

## Litter

The permittee shall provide for routine maintenance and general cleanliness of the entire site, as well as litter removal along roads approaching the site if accumulations of litter along the approach roads are clearly the result of the operation of the transfer station.

## Vectors

The permittee shall implement a vector control plan to prevent the establishment of habitats for nuisance organisms (e.g., flies, maggots, roaches, rodents, and similar vermin) and to mitigate nuisances and hazards to human health and the environment.

## Air Pollution

The operation of the transfer station shall comply with 7 Del. Code Chapter 60 and the Regulations Governing the Control of Air Pollution.

## Fire

Equipment shall be available on site to control fires, and arrangements shall be made with the local fire protection agency to provide immediate services when needed.

If deemed necessary by the Department, a separate area shall be provided for temporary placement of hot loads received at the facility. The hot load area shall be located away from trees, bushes, and structures, and loads shall be extinguished immediately upon unloading.

## d. Access

Access to the site shall be limited to those times when an attendant is on duty and to those persons authorized

to use the site for the disposal of solid waste. This section shall not be construed to limit right of entry by the Secretary or his/her duly authorized designee pursuant to 7 Del. Code, Section 6024.

## e. Personnel

Sufficient numbers and types of personnel shall be available at the site to insure capability for operation in accordance with these regulations.

## f. Health and safety

Employees at the site shall work under all appropriate health and safety guidelines established by the Occupational Safety and Health Administration.

First aid equipment shall be available at the site.

## g. Equipment

Adequate numbers and types of equipment commensurate with the size of the operation shall be available at the site to insure operation of the facility in accordance with the provisions of these regulations and the plan of operation. All waste handling equipment shall be cleaned routinely and maintained according to the manufacturer's recommendations.

## 3. Recordkeeping

The following information must be recorded in a timely manner and the records retained by the owner or operator for at least three years:

a. A record of the solid waste commercial haulers (company name, address, and telephone number) using the facility and the type and weight or volume of solid waste delivered by each hauler to the transfer station each day.

b. A record of the type and weight or volume of solid waste delivered from the transfer station to its final destination each day.

c. A record of fires, spills, and uncontrolled releases that occur at the facility, and of hot loads received.

d. Fire and safety inspections.

e. Major equipment maintenance.

f. Destination of the solid waste.

## 4. Reporting

a. The permittee shall submit to the Department on an annual basis a report summarizing facility operations for the preceding calendar year. The due date for this annual report will be specified in the facility's permit. The report shall be on a form acceptable to the Department and shall describe and summarize all environmental monitoring and construction activities conducted within the year covered by the report. The report shall include, but not necessarily be limited to, the following:

(1) Type and weight or volume of waste received.

(2) A complete list of commercial haulers that

hauled waste to or from the facility during the year covered by the report.

(3) Destination of the solid waste and the type and weight or volume of waste delivered to the destination.

(4) Descriptions of any intentional or accidental deviations from the approved Plan of Operation.

(5) Descriptions of all construction or corrective work conducted on the site in accordance with approved plans or to achieve compliance with these regulations.

(6) An updated estimate of the cost of closing the facility.

(7) Any additional information specified by the Department.

b. The owner or operator shall notify the Department immediately if either of the following occurs:

(1) A fire that requires the services of a fire protection agency.

(2) A spill or uncontrolled release that may endanger human health or the environment.

5. Prohibitions

a. Solid waste generated outside of the State of Delaware shall not be combined, commingled or aggregated with solid waste that was generated in Delaware and that is required, pursuant to regulations promulgated by the Delaware Solid Waste Authority (DSWA), to be disposed of at a DSWA facility.

b. No liquids, other than those used to disinfect, to suppress dust, or to absorb or cover odors from the solid waste, shall be added to the solid waste.

c. Open burning is prohibited on any transfer station site.

d. Scavenging is prohibited at any transfer station.

**F. CESSATION AND CLOSURE**

1. General

When a transfer station ceases accepting solid waste, all of the waste on site shall be removed and the facility shall be closed in a manner that will eliminate the need for further maintenance at the site.

2. Required submittals; notification

a. An owner or operator of a new transfer station must submit a conceptual closure plan at the time of initial permit application.

b. At least 60 days prior to the date when waste will no longer be accepted at the facility, the owner or operator shall submit to the Department all of the items listed in Section 4.E.1.b. Closure activities shall not commence until the Department has approved the updated closure plan

and the closure schedule and has modified the facility's permit to allow closure activities to be carried out.

c. A copy of the approved closure plan must be maintained at the facility or at some other location designated by the owner or operator until closure has been completed.

3. Closure plan contents

The closure plan for a transfer station must include, as a minimum, the following:

a. A description of the methods, procedures, and processes that will be used to close the transfer station, including provisions that will be made for the proper disposal of all waste that is on the site when operations cease.

b. An estimate of the cost of closing the facility. This estimate shall be updated yearly and submitted to the Department as a part of the annual report described in Section 10.E.4.a (6).

c. A plan for post-closure care of the facility if such care would be necessary to protect human health and the environment.

d. A description of the planned post-closure use of the property.

4. Minimum closure requirements

a. Closure shall be carried out in accordance with the approved closure plan.

b. Closure must be complete within six months after the date on which the Department issues a modified permit to allow closure.

c. When closure has been completed to the satisfaction of the Department, the Department will issue a letter indicating that closure has occurred in accordance with the closure plan.

d. After closure has been completed, the Department may require that the permittee conduct monitoring and/or maintenance activities at the site to prevent or detect and mitigate any adverse environmental or health impacts.

**SECTION 11: SPECIAL WASTES MANAGEMENT**

**PART 1 - Infectious Waste**

**A. GENERAL PROVISIONS**

1. ~~No generator shall engage in the treatment, storage or disposal~~ **[All generators]** of infectious waste ~~without the proper permits from the Department.~~ **[shall obtain an Infectious Waste Identification Number by registering with the Department on a form provided by the Department.]**

‡[2].No person shall engage in the construction, operation, material alteration, or closure of a facility(ies) to be used in the treatment, storage, or disposal ~~operation connected with the management of infectious wastes, nor shall any person enter into the material alteration of a facility, or closure of a solid waste facility managing [of]~~ infectious wastes, unless specifically exempted from the regulations within Section 2.C., without first having obtained the proper permits from the Department.

~~3. Biological liquid wastes which can be directly discharged into a permitted wastewater treatment system are not subject to these regulations.~~

32 [3].All infectious waste must be packaged in accordance with these regulations.

#### B. SITING

1. Infectious waste treatment facilities shall be located only in areas where the potential for degradation of the quality of air, land, and water is minimal.

2. Infectious waste treatment facilities shall be located adjacent to access roads capable of withstanding anticipated load limits.

3. No new infectious waste treatment facility shall be located in an area such that solid waste would at any time be handled:

- a. Within the 100 year flood plain.
- b. Within any state or federal wetland.
- c. So as to be in conflict with any locally adopted land use plan or zoning requirement.

#### C. DEFINITIONS

The following definitions are specific to the management of infectious waste as used in this part. For general definitions relating to other types of solid waste and the management of solid waste, refer to Section 3 of these regulations.

"6-LOG REDUCTION" means a 6 decade reduction or a millionth (.000001) survival probability in a microbial population, i.e., a 99.9999% reduction.

"ATCC" means American Type Culture Collection.

"AUTOCLAVE TAPE" means tape that demonstrates an evidentiary visible physical change when subjected to temperatures that will provide evidence of sterilization of materials during treatment in an autoclave or similar device.

"CFU" means colony[-]forming unit.

"CHALLENGE LOADS" means an infectious waste load that has been constructed by composition (i.e., organic content, moisture content, or other physical or chemical composition).

"CLASS 4 ETIOLOGIC AGENTS [AGENT]" means a

pathogenic agent that is extremely hazardous to laboratory personnel or that may cause serious epidemic disease. Class 4 etiologic agents include:~~[ but are not limited to, the agents listed in 47 CFR 72.3.2.(f).~~

~~Class 4 etiologic agents include~~ the following viral agents:

[ ] **Alastrim, Smallpox, Monkey pox, and Whitepox (when used for transmission or animal inoculation experiments).**

[ ] **Hemorrhagic fever agents (including Crimean hemorrhagic fever (Congo), Junin, and Machupo viruses, and others not yet defined).**

[ ] **Herpesvirus simiae (Monkey B virus)**

[ ] **Lassa virus**

[ ] **Marburg virus**

[ ] **Tick-borne encephalitis virus complex (including Absettarov, Hanzalova, HYPH, Kumlunge, Russian spring-summer encephalitis, Kyasanur forest disease, Omsk hemorrhagic fever and Central European encephalitis viruses)**

[ ] **Venezuelan equine encephalitis virus (epidemic strains, when used for transmission or animal inoculation experiments)**

[ ] **Yellow fever virus (wild, when used for transmission or animal inoculation experiments)**

"CONTAINER" means any portable enclosure in which a material is stored, managed or transported.

"CONTAMINATION" means the degradation of naturally occurring water, air or soil quality either directly or indirectly as a result of the transfer of diseased organisms, blood or other matter that may contain disease organisms from one material or object to another.

"ETIOLOGIC AGENTS": see "INFECTIOUS SUBSTANCE" means ~~organisms defined to be etiologic agents (causative agent of a disease/s) in Title 49 of the U.S. Code of Federal Regulations at 173.386 (October 1, 1987 Edition).~~

"GENERATOR" means hospital, in or out patient clinics, laboratories, medical offices, dental offices, nursing homes, and in-patient residential facilities serving persons with diseases which may be transmitted through contact with infectious waste as well as veterinary facilities and research laboratories operating within the State of Delaware.

"INCINERATOR" means any enclosed device used to destroy waste material by using controlled flame combustion.

"INDICATOR MICROORGANISM SPORES" means those microorganism spores listed in Appendix A, Table B of Section 11, Part 1.

"INFECTIOUS SUBSTANCE" (formerly called "ETIOLOGIC AGENTS") ~~is a material as defined in 49~~

CFR 173.134. An infectious substance means a viable microorganism, or its toxin, which causes or may cause disease in humans or animals, and includes ~~those agents listed in 42 CFR 72.3 of the regulations of the Department of Health and Human Services or any other~~ [any] agent that causes or may cause severe, disabling[,] or fatal disease. The terms *infectious substance* and *etiologic agent* are synonymous.

"INFECTIOUS WASTE" means those solid wastes which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. Types of solid wastes designated as infectious include but are not necessarily limited to the following:

1. Biological wastes:

a. Biological liquid wastes means blood and blood products, excretions, exudates, secretions, suctionings and other body fluids including liquid wastes from renal dialysis.

b. Pathological wastes means all human tissues and anatomical remains, including human fetal remains, which emanate from surgery, obstetrical procedures, autopsy, and laboratory procedures.

c. Cultures and stocks of etiologic agents and associated biological wastes means, but is not limited to, specimen cultures, cultures and stocks of infectious substances etiologic agents, and wastes from production of biologicals and serums.

d. Laboratory wastes means those wastes which have come in contact with pathogenic organisms or blood or body fluids. Such wastes include, but are not limited to, disposable materials, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which has come in contact with specimens or cultures which have not been sterilized or rendered noninfectious; or laboratory wastes, including cultures of infectious substances etiologic agents, which pose a substantial threat to health due to their volume and virulence.

e. Animal tissue, bedding and other waste from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

f. Human dialysis waste materials including blood lines and dialysate membranes.

2. Sharps means any discarded article that may cause puncture or cuts. Such wastes include[,] but are not limited to, needles, intravenous (IV) tubing with needles

attached, scalpel blades, glassware and syringes that have been removed from their original sterile containers. For the purpose of these regulations, only sharps from human or animal health care facilities, human or animal research facilities or human or animal pharmaceutical manufacturing facilities shall be regulated as sharps.

3. Discarded Biologicals means serums and vaccines produced by pharmaceutical companies for human or veterinary use. These products may be discarded because of a bad manufacturing lot (i.e., off-specification material that does not pass quality control or that is recalled), out-dating or removal of the product from the market or other reasons. Because of the possible presence of infectious substances etiologic agents in these products, the discarded material constitutes infectious waste.

4. Isolation Wastes means discarded materials contaminated with blood, excretions, exudates and/or secretions from humans ~~who that~~ are isolated to protect others from highly communicable diseases (those diseases identified as caused by Class 4 etiologic agents).

5. Other infectious wastes means any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill of any infectious waste.

"LARGE INCINERATOR" means an incinerator which has a capacity of greater than 1000 pounds per hour.

"LOG KILL" (L) means the difference between the logarithms of viable test microorganisms or indicator microorganism spores before and after treatment.

"MANIFEST" means a tracking document designed to record the movement of solid waste from the generator through its trip with a transporter to an approved off-site treatment or disposal facility.

~~"MOTOR VEHICLE" means a vehicle, machine, tractor, trailer, or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used in transportation or designed for such use.~~

"NONINFECTIOUS" means a state in which potentially harmful microorganisms are absent, free of pathogens.

"RED BAG" means an impermeable, 3-mil polyethylene bag or equivalent, red in color, for the collection, storage, and transport of infectious or regulated medical waste, which meets the following minimum performance requirements:

1. Appearance: opaque, red. Each bag must carry the words "INFECTIOUS WASTE" or "REGULATED MEDICAL WASTE" or "BIOHAZARD" in one-inch (minimum) letters and carry the Biological Hazard Symbol.

2. Dart Impact, F<sub>50</sub>: 100 grams minimum using ASTM D-1709(A).

3. Elmendorf Tear: 380 grams minimum (any direction) using ASTM D 1922.

4. Heavy metals: 100 ppm maximum combined total.

"REGULATED MEDICAL WASTE" means ~~in waste material as defined in 49 CFR 173.134. For the purposes of transportation of infectious waste, the terms "regulated medical waste" and "infectious waste" shall be synonymous.~~ ["infectious waste"].

"SHIPMENT" means that waste which is conveyed by a transporter between a generator and a designated facility or a subsequent transporter.

"SMALL INCINERATOR" means an incinerator which has a capacity equal to or less than 1000 pounds per hour.

"SMALL QUANTITY ~~INFECTIOUS~~ WASTE GENERATOR" means a private practice physician, dentist, veterinarian and any other generator of infectious waste in which three or fewer professionals are in the practice and generates less than 50 pounds per month; or a generator who can demonstrate that their facility generates less than 50 pounds per month of infectious waste.

"STORAGE AREA" means an area designated for the holding of waste for a temporary period, at the end of which time the waste is treated, disposed of, or stored elsewhere.

"TEST MICROORGANISMS" means those microorganisms listed in Appendix A, Table B of Section 11, Part 1.

~~"TRANSPORTATION" means the movement of waste by air, rail, highway, or water.~~

~~"VECTOR" means a living animal, insect or other arthropod which transmits an infectious disease from one host to another.~~

#### D. EXEMPTIONS

The following solid wastes are not to be managed as infectious wastes:

1. Soiled diapers and feminine hygiene items produced by a person not known to have an infectious disease;

2. Wastes contaminated only with organisms which are not pathogenic to humans, and which are managed in accordance with all applicable regulations of the U.S. Department of Agriculture and the Delaware Department of Agriculture and Consumer Services and all other regulations governing this type of waste stream;

3. Food wastes which are pathogenic to humans only through direct ingestion;

4. Any infectious waste contaminated by, co-incinerated with, or mixed with hazardous, radioactive or toxic waste becomes a hazardous, radioactive or toxic waste

and shall then be managed under the appropriate regulations governing those waste types (7 Del. C. Chapter 63, 7 Del. C. Chapter 80 and any applicable federal regulations);

5. Waste consisting of human anatomical remains, including human fetal remains, managed by a licensed funeral director in accordance with 24 Del. C. Chapter 31;

6. Bed linen, instruments, equipment and other reusable items are not wastes until they are discarded. This ~~part section~~ and these regulations apply only to wastes. The regulations do not include the sterilization for disinfection of items that are reused for their original purpose. Therefore, the method of sterilization or disinfection of items prior to reuse is not limited. When reusable items are no longer serviceable and are discarded, they become wastes and subject to these regulations at that time and must be sterilized by steam, incinerated, or otherwise rendered non-infectious; *[[this paragraph is being moved from paragraph J.1 of this part]*

7. Waste generated by Delaware households;

8. Ash from incineration of infectious waste once the incineration process has been completed;

9. Residues from treatment and destruction processes of infectious waste once the waste has been both treated and destroyed;

10. Samples of infectious waste transported off-site by EPA or State-designated enforcement personnel for enforcement purposes are excepted from the requirements of this part during the enforcement proceeding; and

11. Biological liquid wastes which are directly discharged into a permitted wastewater treatment system. *[[this paragraph is being moved from paragraph A.3 of this part]*

#### E. SMALL QUANTITY GENERATOR REQUIREMENTS

##### 2. Small Quantity Generator Exemptions

**[1. Generators of infectious waste who produce less than 50 pounds per month are considered to be Small Quantity Generators.]**

~~1. During the annual renewal of a professional license, it~~  
~~[2. It] is the responsibility of the [Small Quantity Generator to arrange for proper waste disposal. A Small Quantity Generator] generator to provide verification that the conditions of a small quantity generator are met.~~

2. Should the yearly certification show that a practice of three or fewer professionals produces greater than 50 pounds per month then all portions of this regulation apply.

3. It is the responsibility of the generator to secure a means of proper disposal. A small quantity generator shall contract the services of a permitted transporter of infectious

waste, or render the waste non-infectious and non-recognizable; using a process or equipment approved by the Department, prior to disposal.

~~4. Small quantity generators are not required to obtain a permit for storage of infectious waste, exempt from the storage time requirements in Section H.5.c. of this part as long as not more than 25 pounds of infectious waste are stored and so long as storage does not produce conditions that are offensive or harmful to facility personnel or the public welfare.~~

~~5. Small quantity generators are required to file an annual report with the Department which meets the requirements of Section P.6. of this Part or which provides the following information:~~

- ~~(1) Name, address, telephone and generator identification number;~~
- ~~(2) Total quantity in weight of infectious waste generated;~~
- ~~(3) A description of how the waste was rendered non-infectious and non-recognizable prior to disposal; and~~
- ~~(4) Signature of the person completing the report.~~

**[It is the responsibility of the Small Quantity Generator to arrange for proper waste disposal. A Small Quantity Generator shall contract the services of a permitted transporter of infectious waste, or render the waste non-infectious and non-recognizable using a process or equipment approved by the Department, prior to disposal.]**

**[3.]** Requirements to submit manifest tracking documents shall apply to either the ~~small quantity generator~~; **[Small Quantity Generator]** or the transporter contracted by the generator for disposal of the infectious waste. The transporter who consolidates and transports infectious waste may elect to complete a consolidated manifest for the ~~small quantity generators~~ **[Small Quantity Generators]** that he or she services. In this event, the transporter assumes responsibility for the MANIFEST REQUIREMENTS, Section 11, Part 1,  $\Theta$  [P], of these Regulations, which would ~~other~~ otherwise apply to the generators of the wastes.-

**[4. Small Quantity Generators are exempt from the storage time requirements in Section H.5.c of this part as long as not more than 50 pounds of infectious waste are stored and so long as storage [ is protective of human health and the environment.]**

**5. Small Quantity Generators are exempt from the requirement to file an annual report to the Department. However, they are responsible for maintaining records of infectious waste disposal for a period of at least three years. Documentation shall include:**

- a. A description of how the waste was rendered

**non-infectious and non-recognizable, and**

**b. Copies of receipts or manifests for wastes managed by a permitted transporter of infectious waste.]**

**F. PERMIT REQUIREMENTS**

1. All application permit requirements found in Section 4.A.2 through 4.A.11 shall be performed unless specifically exempted within this part of the regulations.

Permit requirements specific to all infectious waste are as follows:

2. Any person required to have a permit for activities that will occur in the management of infectious waste shall apply for a permit in accordance with Section 4.F. of these regulations and ~~Regulations No. 2 and No. 29~~ **[the appropriate sections]** of the ~~Regulations Governing Air Pollution Control, Delaware Regulations Governing the Control of Air Pollution.~~ No activity shall occur prior to receipt of a permit issued by the Department. all permits required by the Department. This application must include the following required information:

- a. The name and location of the generator of the waste;
- b. A description of the origin and content of the waste, its containerization and the expected volume and frequency of waste disposal at the facility;
- c. A description of the facility where the waste will be rendered noninfectious prior to disposal, including its name and the exact location of the facility;
- d. A description of the processing methods to be used for each type of waste, including schematic drawings (e.g. blueprints, etc.);
- e. A description of the containers to be used for the storage during the collection and during the movement within the facility, including the total length of storage;
- f. A description of the alternatives to be used should the processing equipment become inoperable, and the procedures should storage of the waste become necessary resulting from the lack of prompt processing;
- g. A description of the handling and safety measures that will be employed for each type of waste, including personal protection and safety as well as modifications to the operational safety plan that are required to meet the best available technology;
- h. A description of the monitoring and quality assurance program will be required for all methods used to render the waste noninfectious;
- i. A description of modifications to an existing processing facility that are required to process the waste, including schematic drawings.

- 2. Within six months after the enactment of these

~~regulations, owners/operators of existing facilities shall submit an application in accordance with these regulations to the Department requesting a permit to operate an infectious waste facility.~~

3. A new or revised operation plan for treatment, storage and/or disposal of infectious waste shall be submitted to the Department whenever there is an increase of more than 15 percent over a three calendar month average in the maximum quantity of infectious waste receiving treatment, storage or disposal per month by the facility or when changes are otherwise made in an existing operation plan.

~~4. Within thirty days of the effective date of these regulations, all generators must register with the Department.~~

#### G. PROHIBITIONS

1. Infectious waste may not be disposed at a sanitary landfill unless the waste has been rendered noninfectious and non-recognizable. (In the case of extracted teeth, sterilization followed by landfilling would be acceptable).

2. Compactors, grinders or similar devices may not be used by a generator to reduce the volume of infectious waste until after the waste has been rendered noninfectious, or unless the device is part of an approved treatment process which renders the waste non-infectious.

3. Infectious wastes shall not be sent to a recycling facility.

4. Waste consisting of human anatomical remains, including human fetal remains, may not be disposed of at sanitary landfills. The remains must be incinerated, cremated or interred in accordance with 24 Del. C. Chapter 31.

5. Trans-chutes shall not be used to transfer infectious waste between locations where it is contained.

#### H. PACKAGING, LABELING, AND STORAGE REQUIREMENTS FOR INFECTIOUS WASTE

##### 1. Responsibility for packaging and labeling.

The generator of infectious waste shall not submit for transport, storage, treatment or disposal any waste which is not packaged in accord with ~~Sections 11 Part 1 G and 11 Part 1, K.~~ this part. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part. ~~and 11 Part 1, K.~~ Contractors or other agents may provide services to the generator, including packaging and labeling of infectious waste; however, no contract or other relationship shall relieve the generator of the responsibility for packaging and labeling the infectious waste as required by these

regulations.

~~b. Section 11 Part 1, G does not apply to infectious waste that has been incinerated or sterilized under this article if the waste or ash residue from the waste is stored separately from other waste.~~

~~2. Packaging Requirements prior to storage, treatment, transport or disposal.~~

All infectious waste shall be packaged as follows before it is stored, treated, transported or disposed of:

##### a. Infectious wastes, other than sharps:

(1) Waste shall be contained in two (one bag inside the other) ~~impermeable, plastic bags each sealed separately.~~ Each bag must have a minimum thickness of 3 mil. Each bag must also carry the word biohazard and the ~~universal Biological Hazard Symbol, or the words infectious waste.~~ RED BAGS. The bags shall be individually tied or sealed. As a bag or other container becomes full, it must be immediately sealed, packaged, labeled and managed as described in this part.

(2) All bags containing infectious waste shall be red in color. Waste contained in red bags shall be considered infectious waste and managed as infectious waste.

(3) Bags shall be sealed by lapping the gathered open end and binding with tape or closing device such that no liquid can leak.

(4) In addition to the plastic bag containers described in this section, all infectious wastes ~~that are transported must be packaged as described in 49 CFR 173.197, even when that transport is wholly within the boundaries of the State.~~ must be enclosed in a double-walled corrugated fiberboard box or equivalent rigid container before it is transported beyond the site of generation. ~~The box or container must meet the standards of 49 CFR 178.210, October 1, 1987 Edition, for a classified strength of at least a 200 pound test and be class DOT-12B60.~~

##### b. Sharps

Sharps shall be contained in leakproof, rigid, puncture-resistant containers that are tightly lidded. As soon as the first sharp is placed in an empty container, the container shall be labeled with the word "SHARPS", and the Biological Hazard Symbol.

##### 3. Labeling requirements.

All infectious waste shall be labeled immediately after packaging. ~~A~~ The labels shall be securely attached to the outer layer of packaging and be clearly legible. The label may be a tag securely affixed to the package. Indelible ink shall be used to complete the information on the labels, and the labels shall be at least three inches by five inches in size.

a. The following information shall be included on

label one:

(1) The name, address and business telephone number of the generator,

(2) "Infectious" or "Regulated Medical Waste" in large print,

(3) "Pathological Waste," if pathological waste is included in the contents, and

(4) The name, address and business telephone number of the ~~all~~ haulers or other persons to whose control the infectious waste will be ~~was~~ transferred.

b. The following shall be included on label two: the Biological Hazard Symbol. The label shall be not less than three by five inches.

4. ~~Etiological agents. Infectious substances~~

All infectious substances that are transported must be packaged as described in [49 CFR 173.196, [October 1, 1996], Edition,] even when that transport is wholly within the boundaries of the State.

~~All etiological agents, as defined in 49CFR173.386, October 1, 1987, Edition, that are transported must be packaged as described in 49CFR173.387, October 1, 1987, Edition, and labeled as described in 49CFR173.388, October 1, 1987, Edition, even when that transport is wholly within the boundaries of the State.~~

5. Storage of infectious waste

a. Infectious waste shall be contained in a manner that:

(1) Affords protection from vectors, rain and wind,

(2) Prevents the spread of infectious agents,

(3) Does not provide a breeding place or food source for insects or rodents, and

(4) Prevents the leakage of waste from the storage bag or container.

b. Infectious waste shall be placed in separate containers from other waste at the point of origin in the producing facility.

c. Infectious waste may not be stored at the waste producing facility for more than the following periods of time:

(1) Up to fourteen days at room temperature (18 to 28 degrees Celsius, 65 to 82 degrees Fahrenheit) or up to 45 days in a refrigerator (2 to 7 degrees Celsius, 36 to 44 degrees Fahrenheit) for all types of infectious waste, so long as it does not produce conditions that are offensive or harmful to facility personnel or the public welfare.

(2) Ninety days in a freezer (-20 to -18 degrees Celsius, -4 to -1 degrees Fahrenheit) not used for food or patient related items.

(3) Exemption. Sharps which are disposed in

a container specifically designed for sharps and which is sealed so as to prevent leaks when it is full, are exempt from the time limit on storage.

~~d. Infectious waste other than sharps shall be packaged in accord with Section 11 Part 1 G.2 and shall be contained in one of the following ways:~~

~~(1) Two disposable polyethylene bags, or equivalent material approved by the Department, both bags equaling a cumulative total of at least 6 mils for on-site storage. The bags shall be individually tied.~~

~~(2) Leakproof, rigid, puncture resistant containers that are tightly lidded.~~

~~e. Sharps shall be contained in leakproof, rigid, puncture resistant containers that are tightly lidded.~~

~~f. Bags used for containment of infectious waste shall be in compliance with Section 11 Part 1 G.2 and red in color and conspicuously labeled with one of the following:~~

~~(1) The words "infectious waste."~~

~~(2) The word "biohazard" and the universal biohazard symbol.~~

g. A container used for the storage of infectious waste may not be reused unless one of the following applies:

(1) It has been decontaminated utilizing a Department-approved decontamination procedure; or

(2) The surface of the container has been protected from direct contact with infectious waste.

h. Reusable containers for infectious waste shall be thoroughly washed and decontaminated by a method approved by the Department of Health and Social Services or the Department each time they are emptied, unless the surfaces of the containers have been completely protected from contamination by disposable liners, bags or other devices removed with the waste. Approved methods of decontamination include, but are not limited to, agitation to remove visible soil combined with one of the following procedures:

(1) All parts of the container shall come in contact with hot water of at least 82 degrees C (180 degrees F) for a minimum of 15 seconds.

(2) All parts of the container shall come in contact with chemical sanitizer by rinsing with or immersion in one of the following for a minimum of 3 minutes:

(a) Hypochlorite solution (500 ppm available chlorine),

(b) Phenolic solution (500 ppm active agent),

(c) Iodophor solution (100 ppm available iodine), or

(d) Quaternary ammonium solution (400 ppm active agent).

(3) Reusable pails, drums, dumpsters or bins used for containment of infectious waste shall not be used for containment of waste to be disposed of as noninfectious waste or for other purposes except after being decontaminated by procedures as described in ~~Section 44 Part 1 G.5.h.~~ this paragraph.

i. Containment of infectious waste shall be in an area separate from other wastes. Areas used for the containment of infectious waste shall be secured so as to deny access to unauthorized persons and shall be marked with prominent warning signs and the biohazard symbol on, or adjacent to, the exterior of entry doors, gates or lids. Wording of warning signs shall be in English, "CAUTION --INFECTIOUS WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT". Warning signs shall be readily legible during daylight from a distance of at least 25 feet.

#### I. MANAGEMENT OF SPILLS ~~OF INFECTIOUS WASTE~~

Spill containment and cleanup kit. All infectious waste management facilities are required to keep a small containment and cleanup kit within one hundred feet of any area where infectious wastes are managed. The facility shall maintain and implement a plan that provides the means of decontamination of any person having had bodily contact with infectious waste while transporting the waste to the treatment or disposal site or while handling or disposing of the waste at the site.

#### J. CLOSURE REQUIREMENT

When a facility that has been used for infectious waste management is to cease operations involving infectious wastes, it shall be thoroughly cleaned and disinfected. All waste shall be disposed of in accord with these regulations, and items of equipment shall be disinfected. (Note: Due to the variability in the type of infectious waste facilities, the Department will specify individual closure requirements in the permit issued to the facility.)

#### K. METHODS OF TREATMENT AND DISPOSAL

1. All treatment of infectious waste must utilize a method that will render the waste non-infectious.

2. All pathological waste must be incinerated, cremated or interred in accordance with 24 Del. C. Chapter 31. Other disposal methods are not acceptable for this type of waste. This requirement does not prohibit the disposal of certain specified wastes in a permitted wastewater treatment system (see Section D.11 of this part). ~~(See General Provisions) in a sanitary sewer. (In the case of extracted~~

~~teeth, sterilization followed by landfilling would be acceptable).~~

#### L. RECORDKEEPING AND REPORTING REQUIREMENTS

All ~~generators and~~ waste management or treatment facilities that manage infectious waste shall maintain, for a period of three years, the following records and assure that they are accurate and current:

1. A list containing the names of all individuals responsible for the management of infection control for the facility, their address, their phone numbers and the periods covering their assignment of this duty.

2. The date, persons involved and short description of events in each spill of infectious wastes.

3. A notebook or file containing the policies and procedures of the facilities for dealing with infectious wastes.

4. A log of all special training received by persons involved in the management of infectious waste.

5. A log of infectious waste generated at the site or received from off-site, including the amount, the date of generation, receipt dates, and the date of shipment.

6. Anyone that sterilizes or incinerates infectious waste shall maintain a log indicating the method of monitoring the waste as well as a verification that it has been rendered noninfectious.

7. The operator of a facility that incinerates infectious waste shall submit to the Department, at least annually during the life of the facility, a chemical analysis of composite samples of the ash residue. Parameters that are to be monitored will be specified in the permit.

#### M. EVIDENCE OF EFFECTIVENESS OF TREATMENT

1. Treatment of infectious waste must be conducted in a manner which:

a. Eliminates the infectious potential of the waste. A treatment process eliminates the infectious potential of infectious waste if the owner or operator of a treatment unit demonstrates that an Initial Efficacy Test and Periodic Verification Test(s) have been completed successfully.

(1) Successful completion of an Initial Efficacy Test is demonstrated by a 6-log reduction/kill of test microorganisms. For a thermal unit that maintains the integrity of container, a 6-log kill of indicator microorganism spores may be used as an alternative test.

(2) Successful completion of a Periodic Verification Test is demonstrated by:

(a) a 6-log kill of test microorganisms or indicator microorganism spores as provided in Subsection

11, Part 1, L.1.a; or

(b) a minimum 3-log kill of indicator microorganism spores that have been correlated with a 6-log kill of test microorganism; or

(c) an alternate method submitted to and approved by the Department.

b. Disposes treatment residues in accordance with these regulations.

c. Provides for quality assurance programs that must include, at a minimum, a written plan that:

(1) Designates responsibility to personnel.

(2) Describes parameters that must be monitored to insure effectiveness of the treatment process.

(3) Identifies monitoring devices.

(4) Ensures that monitoring devices are operating properly.

(5) Establishes appropriate ranges for operating parameters.

(6) Identifies Person(s) who shall collect and organize data for inclusion in operating records.

(7) Identifies Person(s) who shall evaluate any discrepancies or problems.

(8) Identifies Person(s) who shall propose actions to correct problems identified, and

(9) Identifies Person(s) who shall assess actions taken and document improvement.

d. Provides for periodic biological testing, where appropriate, that demonstrates proper treatment of the waste.

e. Provides for assurances that clearly demonstrate that infectious waste has been properly treated; and

f. Is in compliance with all federal, state and local laws and regulations pertaining to environmental protection.

## 2. Initial Efficacy Test.

a. The manufacturer, owner, or operator of a treatment unit shall conduct an Initial Efficacy Test, pursuant to Appendix A of this Section, for each model prior to its operation. If significant mechanical changes are made to a treatment unit, the Initial Efficacy Test must be repeated. The treatment units are considered to be the same model if they:

(1) Are manufactured by same company,

(2) Have the same company name, and

(3) Have no significant mechanical changes.

b. The Initial Efficacy Test shall be conducted using option 1, 2 or 3 as described in Appendix A of this Section, using the challenge loads listed in Table C of Appendix A, or by an equivalent procedure that meets the requirements of the Initial Efficacy Test and has been

approved by the Department. If any of the challenge loads fails the Initial Efficacy Test, the operating conditions must be revised and the Initial Efficacy Test must be repeated for all challenge loads. The Initial Efficacy Test must also meet the requirements of this Section.

### c. Composition of challenge loads

(1) For treatment units designed to treat all types of infectious wastes, all three types of challenge loads must be used in conducting the Initial Efficacy Test. The three (3) types of challenge loads represent infectious waste with a high moisture content, low moisture content and high organic content. The quantity of each challenge load must equal 100% of the maximum capacity of the treatment unit. Each challenge load must consist of a minimum 5% (by weight) of each of the following categories: blood/broth cultures, fibers, metals, sharps, plastics, pathological waste, glass, non-woven fibers, and bottles of liquids. Table C of Appendix A contains the moisture and organic content requirements that must be met in each type of challenge load.

(2) For treatment units designed to treat select categories of infectious waste (e. g., sharps treatment unit), modification in the composition of the challenge load(s) may be used if approved by the Department in writing.

d. The Initial Efficacy Test must be conducted under the same operating conditions under which the treatment unit operates on a day-to-day basis. The feed rate for the treatment unit must remain constant throughout the Initial Efficacy Test. This feed rate must never be exceeded during the operation of the treatment unit.

e. The Initial Efficacy Test must be performed so that:

(1) Each container of the test microorganisms and/or indicator microorganism spores is placed in the load to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container(s) of test microorganisms and/or indicator microorganism spores within a sharps container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the challenge loads.

(2) Test microorganisms and/or indicator microorganisms must be cultured and enumerated in accordance with instructions provided by the supplier of microorganisms and Standard Methods for the Examination of Water and Wastewater.

f. A Document of Initial Efficacy Test must be retained in the treatment facility, and made available during normal business hours for inspection and photocopying by an authorized representative of the Department. The

Document of Initial Efficacy Test must include at the minimum:

(1) A detailed description of the test procedures used, including all test data generated, with descriptions of data handling, and interpretation of final test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

3. Periodic Verification Test(s)

a. The effectiveness of the treatment unit shall be verified by conducting Periodic Verification Test(s) which must be carried out in accordance with this Subsection.

b. Periodic Verification Test(s) must be conducted quarterly or more frequently if required by the permit or recommended by the manufacturer.

c. The manufacturer, owner, or operator of a treatment unit must perform Periodic Verification Test(s) that satisfy at least one (1) of the following:

(1) Passing the Initial Efficacy Test by using option 1, 2 or 3 of appendix A of this part (whichever is applicable). The three challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganisms must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1). For example, an autoclave may use option 3 (e. g., demonstrate at a minimum the destruction of one million *Bacillus stearothermophilus* spores) to meet the Periodic Verification Test requirement. In the case of an incinerator a stainless steel pipe with threaded ends and removable caps lined with ceramic insulation may be used to contain a glass culture vial with a *Bacillus subtilis* spores strip. The pipe with the spore strips may be placed in the load of infectious waste for the Periodic Verification Test. After the treatment, the pipe with the spore strips may be recovered and the spores may be cultured to assess whether, at a minimum, one million spores have been destroyed to meet the Periodic Verification Test(s) requirement.

(2) Correlating the log kill (L) of the test microorganisms in the Initial Efficacy Test to an equivalent log kill (T) of indicator microorganism spores in accordance

with Appendix B. The equivalent log kill (T) of indicator microorganism spores must be used for all subsequent Periodic Verification Tests. The correlation must be done with three challenge loads identified in Table C of Appendix A (See Subsection 11, Part 1, L.3.d below for further requirements).

(3) Submitting to and obtaining written approval by the Department for a procedure that is equivalent to Subsection 11, Part 1, L.3.c.(1) and (2). Examples of alternatives include, but are not limited to, use of another indicator microorganism, or measurement of disinfectant concentrations in the treated residue. For incinerators only, an example of an alternative is visually inspecting the ash from each load of treated infectious waste to ensure that all infectious waste within the load is completely combusted. The approval of an alternative by the Department may require more frequent testing and/or monitoring of the treatment unit.

d. If correlation is being used for the Periodic Verification Test, (i. e., the correlation of log kill (L) of the test microorganisms with equivalent log kill (T) of the indicator microorganism spores) the following procedures apply:

(1) At a minimum, an initial population of one million indicator microorganism spores per gram of waste solids in each challenge load must be used.

(2) The fraction of surviving indicator microorganism spores that correlates to a log kill (L) of six (6) for each test microorganism must be used for future Periodic Verification Test(s). [For example, if a log kill (L) of four (4) for the indicator microorganism spores per gram of waste solids is achieved during this demonstration, then a population of 10,000 of indicator microorganism spores must be used in future Periodic Verification Test(s).] Challenge loads described in Appendix A, Table C, do not need to be used. The test microorganism or indicator microorganism spores must be placed in a representative load in accordance with Subsection 11, Part 1, L.2.e.(1).

(3) An equivalent log kill (T) of at least three (3) for the indicator microorganism spores must be achieved to ensure that all test microorganisms are destroyed.

(4) Test microorganisms and/or indicator microorganism spores must be cultured and enumerated in accordance with instructions provided by the supplier of the microorganisms and Standard Methods for the Examination of Water and Wastewater.

(5) The Periodic Verification Test and Initial Efficacy Test may be run concurrently to verify the correlation.

e. If a load of infectious waste fails a Periodic

Verification Test, the Periodic Verification Test(s) must be repeated. The operator shall implement the quality assurance program and contact the manufacturer. If applicable, identify and correct the exact problem(s) until the unit can eliminate the infectious potential of the infectious waste. If the operating parameters are altered another Initial Efficacy Test must be performed to demonstrate the effectiveness of the unit and, if applicable, another Periodic Verification Test correlation, pursuant to Subsection 11, Part 1, L.3.c must be repeated. Loads of infectious waste that were processed prior to receiving the results showing a failure of Periodic Verification Test are considered treated. A second Periodic Verification Test must be run immediately after the first Periodic Verification Test indicates failure. The second Periodic Verification Test is to determine whether or not the treatment unit is eliminating the infectious potential of the waste. After the second Periodic Verification Test shows a failure of the treatment unit, any waste processed after the first detection of failure is considered infectious waste and must be managed accordingly.

f. Results of the Periodic Verification Test(s) must be received, verified and made available for inspection by the Department within 2 weeks of when the test was conducted. When a Periodic Verification Test is used to confirm the failure of a treatment unit, the results of the Periodic Verification Test(s) must be made available in accordance with the requirements of subsection h below.

g. A Document of Correlating Periodic Verification Demonstration must be prepared by and retained for at least three (3) years at the treatment facility during normal business hours for inspection by the Department. The Document of Periodic Verification Demonstration must include, at a minimum:

(1) A detailed description of the test procedures used and the correlation between the log kill (L) of the test microorganisms and the equivalent log kill (T) of the indicator microorganism spores. An evaluation of the test results must include all test data generated, a description of data handling, and a presentation and interpretation of test results.

(2) A detailed description and verification of the operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose, and feed rates).

(3) A description of quality assurance/quality control procedures and practices for the culture, storage and preparation of test and/or indicator microorganisms (including, but not limited to, organism history, source, stock culture maintenance, and enumeration procedures). The

purity of the test microorganisms and/or indicator microorganism spores must be certified by a commercial or clinical laboratory.

h. Records of Periodic Verification Test(s) must be prepared and retained for at least three (3) years at the treatment facility, and made available at the treatment facility during normal business hours for inspection by the Department. These records will include, at the minimum:

(1) The date(s) on which the Periodic Verification Test(s) were performed.

(2) Operating parameters (e. g., temperature, pressure, retention times, chemical concentrations, irradiation dose and feed rates).

(3) Test protocols.

(4) Evaluation of test results.

(5) The name(s), date, signature(s) and title(s) of Person(s) conducting the Periodic Verification Test(s).

i. Periodic Verification Test(s) must be conducted under the same operating conditions under which the treatment unit operates on day-to-day basis. The feed rate for the treatment unit is the maximum feed rate at which the unit operates on day-to-day basis. The feed rate must remain constant throughout the Periodic Verification Test(s). This feed rate must never be exceeded during the operation of the treatment unit.

**N. TRANSPORTATION**

All transporters of infectious waste must be in compliance with all applicable federal and state regulations and codes.

**1. Temperature Control and Storage Period**

The transporter must deliver infectious waste to a disposal facility within 15 days from collection from the generation facility.

a. Infectious waste shall be transported in a manner that:

(1) Affords protection from vectors, rain and wind,

(2) Prevents the spread of infectious agents,

(3) Does not provide a breeding place or food source for vectors, and

(4) Prevents leakage of waste from the storage bags or other containers.

b. Infectious waste shall be transported to off-site processing or disposal facilities in a manner consistent with ~~Section 11 Part 1 G~~ of these regulations.

c. Motor Vehicles for transporting infectious waste shall be:

~~(1)~~ noncompaction type vehicles.

~~(a)~~ Surfaces of vehicles that have been in

direct physical contact with infectious waste, because of a leak in a container or because of some other reason, shall be decontaminated as soon as possible after unloading. Surfaces of vehicles that have not been in direct physical contact with infectious waste shall be decontaminated weekly.

2. Packaging, Labeling and Placards

a. No person shall transport or receive for transport any infectious waste that is not packaged and labeled in accord with these regulations.

b. Any vehicle holding infectious waste in transport shall have a warning sign in bold letters, a minimum of 4 inches in height and in a color that contrasts the color of the vehicle, that indicates the cargo is infectious waste.

c. Vehicle access door labeling:

(1) Transporters in interstate commerce must comply with one of the following labeling options:

(a) The access doors to the cargo area of the vehicle must meet the requirement for intrastate transporters of infectious waste, as described in ~~paragraph 11.M.2.c.(2)~~ Section N.2.c.(2) of this part; or

(b) The access doors to the cargo area of the vehicle must comply with the labeling requirements of the state of origin of the infectious waste or the labeling requirements of the state of destination of the infectious waste. Examples of the labeling must be submitted to and approved by the Department prior to transport of the infectious waste through Delaware.

(2) Transporters in intrastate commerce: The access doors to the cargo area of the vehicle must bear a sign with the words INFECTIOUS WASTE in bold, four inch letters. Such sign must be easily readable from a distance of 25 feet. The access doors to the cargo area of the vehicle must additionally bear a sign with the universal biological hazard symbol with minimum symbol dimension of six inches, and with the word BIOHAZARD in bold letters at least one inch in height. The symbol must be easily recognizable from a distance of 25 feet.

3. Management of Spills of Infectious Waste

a. Spill containment and cleanup kit.

All infectious waste transportation vehicles are required to keep within the vehicle the containment and cleanup kit specified in the permit. The vehicle shall be equipped with a written plan, approved by the Department, that provides the means of decontamination of a release of infectious waste while transporting the waste to the treatment or disposal site or while handling the waste at the site. The driver shall be trained by the employer to implement this plan.

b. As required in 7 Del. C. Chapter 60, the Department is to be notified immediately of all spills.

4. Loading and Unloading

Persons manually loading or unloading containers of infectious waste on or from transport vehicles shall ~~be required~~ to wear protective gloves or clothing, as appropriate.

O. STERILIZATION

1. Application

The requirements of this part apply to all persons that steam sterilize infectious waste.

2. Performance Standards

All persons that steam sterilize infectious waste shall maintain the following level of operational performance at all times:

a. Operational temperature and detention.

Whenever infectious wastes are treated in a steam sterilizer, all the waste shall be subjected to a temperature of not less than 250 degrees Fahrenheit for 90 minutes at 15 pounds per square inch of gauge pressure or not less than 272 degrees Fahrenheit for 45 minutes at 27 pounds per square inch of gauge pressure. Other combinations of operational temperatures, pressure and time may be used if the installed equipment has been proved to achieve a reliable and complete kill of all microorganisms in waste at capacity. Complete and thorough testing shall be fully documented, including tests of the capacity of kill *B. stearothermophilus*.

b. Operational controls and records.

(1) Each package of waste to be steam sterilized shall have autoclave tape attached that will indicate if the sterilization temperature has been reached and waste will not be considered satisfactorily sterilized if the indicator fails to indicate that the temperature was reached during the process.

(2) Steam sterilization units shall be evaluated for effectiveness with spores of *B. stearothermophilus* no less than once every 40 hours of operation or once per month, whichever is more often.

(3) A log shall be kept at each sterilization unit that is complete for the proceeding three year period. The log shall record the date, time, temperature, pressure, type of waste, type of container(s), closure on container(s), pattern of loading, water content, operator of each usage; the type and approximate amount of waste treated; the post-sterilization reading of the temperature sensitive tape; the dates and results of calibration; and the results of effectiveness testing with *B. stearothermophilus*.

(4) Infectious waste shall not be compacted or

subjected to violent mechanical stress before sterilization; however, after it is fully sterilized it may be compacted in a closed container.

3. Compliance with Other Parts of these Regulations

In general, sterilizer facilities shall comply with all other parts of these regulations. The site of the sterilizer facility is a storage facility and must comply with those regulations. Spills or the opening in an emergency of any infectious waste package, shall comply with the regulations pertaining to spills.

4. Off-Site Operations

Any person who operates off-site facilities for the sterilization of infectious waste shall operate those facilities in compliance with a plan approved by the Department. The plan shall address in detail practices, procedures and precautions in the unloading, preparation and sterilizer loading of the waste.

P. MANIFEST REQUIREMENTS

1. A generator of infectious waste shall complete a manifest before shipping, or causing the shipment of, infectious waste off site. The manifest shall consist of a multicopy form provided by the Department or equivalent approved in writing by the Department.

2. No person shall accept custody of infectious waste unless the waste is packaged in accordance with the requirements of ~~Section 11, Part 1, G, Section H of this part~~ and is accompanied by a properly completed manifest which complies with the requirements of Section P of this part. ~~this subsection.~~ Upon accepting custody of infectious waste, the transporter shall sign and date the manifest. After the manifest has been signed and dated by both the generator and the transporter, the generator shall retain one copy of the form. The transporter shall keep the remaining four copies until the waste is delivered to the infectious waste facility. ~~Upon accepting custody of the infectious waste, the infectious waste management facility shall sign and date the manifest. After the manifest has been signed and dated by the infectious waste management facility, the transporter shall retain a copy of the form and the infectious waste management facility shall send a copy of the form to the generator. Upon ultimate disposal the infectious waste management facility shall send a signed and dated copy of the form to the Department.~~

3. The operator of an infectious waste management facility may accept custody of infectious waste only if the waste is accompanied by a manifest which complies with the requirements of Section P of this part. ~~the subsection.~~ Upon accepting the waste, the operator of the infectious waste management facility shall sign and date the manifest, give

one copy to the transporter, and keep the remaining three copies. ~~After the waste has been treated or disposed of in accordance with the requirements of the section, the~~ The operator shall:

a. Sign and date the remaining three copies of the manifest certifying that the waste ~~has been so treated or disposed of;~~ will be treated and/or handled in accordance with all applicable regulations and facility permits.

When multiple consignments are received and disposed as a batch, a cover letter with a list of manifest numbers, date received, date rendered non-infectious, certification of disposal, signature and date may be substituted for individual certification on each manifest. The cover letter must be mailed to the State with manifests attached. The generator copy of these manifests may use a date and signature stamp in lieu of original signature.

b. Send one copy of the manifest to the generator no later than fifteen calendar days from the date on which the waste was treated or disposed of;

c. Send one copy of the manifest to the Department; and

d. Keep the remaining copy.

4. Any generator of infectious waste who does not receive a copy of the manifest signed by the operator of the infectious waste management facility within fifteen calendar days of the date of shipment shall immediately contact the transporter and the facility to determine the status of the shipment. If, within twenty days of the date of shipment, the generator still has not received a signed copy of the manifest from the infectious waste management facility, the generator shall notify the Department in writing. The notification shall include a legible copy of the manifest as signed by the generator and transporter, a description of the efforts made by the generator to locate the shipment, and the results of those efforts.

5. Copies of the manifest shall be retained by all parties for at least three years.

6. Each generator of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to, the following:

a. A description of infectious waste generated and transported off site for treatment and disposal;

b. The total weight of infectious waste generated and transported off site for treatment and disposal;

c. The names and addresses of persons engaged by the generator to transport infectious waste off site;

d. The names and locations of the infectious waste management facilities with which the generator contracted for the treatment and/or disposal of infectious waste.

7. Each transporter of infectious waste shall submit an annual report on a form provided by the Department, summarizing the information from all manifests completed during the preceding calendar year. This report shall be submitted to the Department within ninety days after the end of the calendar year. The information contained in the report shall include, but not be limited to the following:

a. A description of infectious waste transported off site for treatment and disposal;

b. The total weight of infectious waste transported off site for treatment and disposal;

c. The names and addresses of generators contracting with the transporter to transport infectious waste off site.

d. The names and locations of the infectious waste management facilities where the transporter deposited the infectious waste for treatment and /or disposal.

#### SECTION 11, PART 1 APPENDIX A

##### Initial Efficacy Test Procedures

The manufacturer, owner, or operator of an infectious waste treatment unit must carry out an Initial Efficacy Test by using Option 1, 2, or, 3 below, as appropriate for the type of unit, or other procedures, if approved in advance by the Department.

##### 1. Option 1

This option consists of two (2) Phases:

a. Phase 1: Determining the dilution of each test microorganism from the treatment unit for each challenge load (Types A through C) identified in Table C of this Appendix.

(1) Prepare and sterilize by autoclaving two (2) challenge loads of Type A as identified in Table C. Reserve one challenge load for Phase 2.

(2) Process each test microorganism in separate runs through the treatment unit. Prior to each run, determine the number of viable test microorganisms in each container, in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(3) Process each challenge load within thirty (30) minutes after introducing the container of test

microorganism into the treatment unit. The container of test microorganisms and the challenge loads must be processed together without the physical and/or chemical agents designed to kill the test microorganisms. For example, in treatment units that use chemical disinfectant(s), an equal volume of liquid (e. g., sterile saline solution (0.9%, volume/ volume), phosphate buffer solution, or tap water) must be substituted in place of the chemical disinfectant(s).

(4) Obtain at least five (5) representative grab samples from the processed residue of each challenge load in accordance with Test Methods for Evaluating Solid Waste Physical/Chemical Methods (SW-846). The number of viable test microorganisms in each grab sample must be determined in accordance with applicable manufacturer's recommendations and Standard Methods for the Examination of Water and Wastewater.

(5) Calculate the effect of dilution for the treatment unit as follows:

$$SA = \text{Log } N_0A - \text{Log } N1A: \text{ where } \text{Log } N1A \geq 6$$

where:SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A.

$N_0A$  is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit for challenge load Type A.

$N1A$  is the number of viable test microorganisms (CFU/gram of waste solids) remaining in the processed residue for challenge load Type A.

If  $\text{Log } N1A$  is less than 6, then the number of viable test microorganisms introduced into the treatment unit must be increased and steps (1) through (6) in Phase 1 must be repeated until  $\text{Log } N1A \geq 6$ .  $N_0A$  is the inoculum size for challenge load Type A in Phase 2 below.

(6) Repeat steps (1) through (5) in Phase 1 for challenge loads of infectious waste for Type B and C identified in Table C of this Appendix to determine the effect of dilution (SB and SC respectively).

b. Phase 2: Determining the log kill of each test microorganism in each challenge load (Type A through C) identified in Table C of this Appendix.

(1) Using the inoculum size ( $N_0A$ ) determined in Phase 1 above, repeat Phase 1 steps (1) through (5) under the same operating parameters, except that the physical and/or chemical agents designed to kill the test microorganisms must be used.

(2) Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after the treatment

from the log of the viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0A - SA - \text{Log } N_2A^3 6$$

where:LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

$N_0A$  is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum for challenge load Type A as determined in Phase 1 above.

SA is the log of the number of viable test microorganisms (CFU/gram of waste solids) that were not recovered after processing challenge load Type A in Phase 1 above.

$N_2A$  is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

(3) Repeat steps (1) and (2) in Phase 2 for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

2. Option 2:

a. Place one microbiological indicator assay containing one of the test microorganisms at numbers greater than one million in a sealed container that remains intact during the treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s). The vial(s) must contain the test microorganisms.

b. Place the container of test microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0 - \text{Log } N_2A^3 6$$

where:LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

$N_0$  is the number of viable test microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

$N_2A$  is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge

loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC respectively).

3. Option 3:

a. Place one microbiological indicator assay containing at least one million spores of one of the indicator microorganisms listed in Table B of this Appendix, in a sealed container that remains intact during treatment. The inside diameter of the container must be no larger than required to contain the assay vial(s).

b. Place the container of the indicator microorganisms within a Type A challenge load as identified in Table C of this Appendix.

c. Process the load.

d. Calculate the effectiveness of the treatment unit by subtracting the log of viable cells after treatment from log of viable cells introduced into the treatment unit as inoculum, as follows:

$$LA = \text{Log } N_0 - \text{Log } N_2A^3 6$$

where:LA is the log kill of the test microorganisms (CFU/gram of waste solids) after treatment in challenge load Type A.

$N_0$  is the number of viable indicator microorganisms (CFU/gram of waste solids) introduced into the treatment unit as the inoculum.

$N_2A$  is the log of the number of viable test microorganisms (CFU/gram of waste solids) remaining in the treated residue for challenge load Type A.

e. Repeat steps a through d in this option for challenge loads Types B and C identified in Table C of this Appendix to determine the effectiveness of the treatment unit (LB and LC, respectively).

APPENDIX A: TABLES

TABLE A: Test Microorganisms

- a. Staphylococcus aureus (ATCC 6538)
- b. Pseudomonas aeruginosa (ATCC 15442)
- c. Candida albicans (ATCC 18804)
- d. Trichophyton mentagrophytes (ATCC 9533)
- e. MS-2 Bacteriophage (ATCC 15597-B1)
- f. Mycobacterium smegmatis (ATCC 14468)

TABLE B: Indicator Microorganisms

- a. Bacillus subtilis (ATCC 19659)
- b. Bacillus stearothermophilus (ATCC 7953)
- c. Bacillus pumilus (ATCC 27142)

TABLE C: Challenge Loads

This Table identifies the three types of challenge loads of infectious waste that must be used as a part of Initial Efficacy Test and Periodic Verification Test(s).

## COMPOSITION OF CHALLENGE LOADS % (w/w)

Type	A	B	C
Moisture	5	350	----
Organic	----	----	370

## APPENDIX B

## Correlating Periodic Verification Procedures

1. Use a certified microbiological indicator assay containing the test microorganisms and indicator microorganism spores.

2. Place the test microorganisms and indicator microorganism spores into sealed containers that remain intact during treatment.

3. Place a container of the test microorganisms and indicator microorganism spores in each challenge load (as described in Appendix A, Table C) to simulate the worst case scenario (i. e., that part of load that is the most difficult to treat). For example, the worst case scenario for an autoclave would be to place the container of test microorganisms and indicator microorganism spores within a sharp container that must in turn be deposited in a plastic biohazard bag that is then located centrally within the treatment unit.

4. Determine the effectiveness of the treatment unit by calculating the log kill (L) of the test microorganisms in accordance with Option 2 of Appendix A. The equivalent kill (T) of the indicator microorganism spores is calculated by subtracting the log of viable cells after treatment from the log of viable cells introduced into the treatment unit as inoculum as follows:

$$TA = \text{Log } N_0 - \text{Log } N_2A^3$$

where: TA is the equivalent log kill of the viable indicator microorganisms (CFU/gram of waste solids) after treatment in the challenge load Type A.

$N_0$  is the number of viable indicator microorganism spores (CFU/gram of waste solids) introduced into the treatment unit as the inoculum (36).

$N_2A$  is the number of viable indicator microorganisms (CFU/gram of waste solids) remaining after treatment in challenge load Type A.

5. Repeat steps 1 through 4 for challenge loads Types B and C identified in Table C of Appendix A to determine

the correlation between the log kill of the test microorganisms and equivalent kill of the indicator microorganism spores (LB and LC, respectively).

## SECTION 11: SPECIAL WASTES MANAGEMENT

## Part 2 - Municipal Solid Waste Ash

## A. GENERAL PROVISIONS

1. Municipal solid waste (MSW) ash is considered a hazardous waste, as defined in the Delaware Regulations Governing Hazardous Waste (DRGHW), unless the generator of the ash can demonstrate that the ash is not a hazardous waste. In order to make such a demonstration, the owner or operator of the generating facility must show that the ash does not exhibit the Toxicity Characteristic (TC) as described in DRGHW, §261.24. Any person desiring to make such a demonstration shall develop and implement a sampling and analysis plan designed to provide reliable information on the chemical properties of the ash. The plan shall be submitted to the Solid Waste Management Branch as a part of the facility's application for a Solid Waste Facility permit. The facility will not be permitted to operate until the Department has approved the plan.

2. The sampling and analysis plan shall include the following:

a. A detailed description of the sampling protocol (how and where samples will be collected, how many samples will be collected, how samples will be composited, how samples will be handled and stored, etc.)

b. A description of the analyses that will be performed on the samples.

c. A description of the procedures that will be used to ensure the quality of the sampling and analysis data.

3. The owner or operator of a facility in Delaware desiring to process MSW ash generated in another state must first receive written approval from the Department to accept MSW ash from that generator. To receive such an approval a person must:

a. Demonstrate, to the Department's satisfaction, that the ash does not exceed the levels specified in the TC; and

b. Develop, and receive Department approval of, a plan for sampling and analysis of the incoming MSW ash.

## B. SAMPLING

1. This subsection describes the minimum amount of sampling that the Department deems appropriate for MSW ash generated by facilities that meet the following two assumptions:

a. The waste feed prior to incineration is not

segregated by type of generator, and

b. The ash generated is not separated by size during storage or disposal.

If either of these two assumptions is not valid, then a facility-specific sampling and analysis program shall be designed by knowledgeable personnel and shall be implemented after receiving Department approval.

2. The sampling strategy shall be sufficient to enable the facility owner or operator to assess the properties of the ash and to ascertain its variability over time.

3. The sampling strategy shall provide for reassessment of the ash at least quarterly, in accordance with a Department-approved schedule. In determining how often to recharacterize the ash, the generator shall consider all facility-specific and external factors that could cause the ash properties to vary. These factors include:

a. Changes in the composition of the waste (e.g., new types of industries moving into the area, institution of recycling programs in the collection area, seasonal changes affecting population or waste composition).

b. Changes in plant design (e.g., addition of dry scrubber, addition of quench tank).

c. Significant changes in plant operating conditions (e.g., increase in combustion time or temperature, change in lime utilization rate).

4. The sampling strategy shall include the following steps:

a. Determine the most convenient location for sampling. In situations where the sampling can be conducted either from transport vehicles or from the waste conveyance device, the Department recommends sampling from the transport vehicle (i.e. dump truck, barge).

b. Construct a sampling device (trough, bucket, shovel, thief, etc.) to be used to gather a grab sample of the entire depth of the hopper, pile, or truck load, or the entire width of the belt conveyor, drag chain flight, or vibrating conveyor. ASTM standards for sampling unconsolidated waste materials from trucks may be used for guidance if the ash is to be sampled from trucks.

c. If a conveyor is to be the sample location, collect the entire width of the conveyor at a fixed point each hour for eight (8) hours. If trucks are to be sampled, randomly select eight trucks to sample during the eight-hour period. In certain situations, where fewer than eight truckloads are generated, a different schedule may be necessary (e.g., less than one truck per hour). Composite all samples for the period into an eight-hour composite. Containerize, label, and set aside for further processing.

d. Collect a second eight-hour composite during

the course of the work day. The second composite should be collected during a different shift from the first composite.

e. For an initial waste characterization, collect samples each day for a minimum of one week's operation (i.e., fourteen composite samples).

### C. ANALYSIS

1. Each composite sample shall be tested, using Method 1311 [Toxicity Characteristic Leaching Procedure (TCLP)], and the results analyzed, to determine whether the ash passes or fails the TC as defined in the DRGHW, § 261.24.

2. All testing shall be performed following the specific procedures described in "Test Methods for Evaluating Solid Waste" (SW-846).

3. The testing shall be performed by an independent laboratory.

4. In lieu of TCLP, testing for total concentration of constituents (i.e., the contaminants listed in DRGHW, §261.24, Table 1) may be performed. If no constituent is present at a concentration exceeding the TC regulatory limit, the waste may be considered non-hazardous. However, if the concentration of any constituent exceeds the TC regulatory limit, TCLP must be performed to determine whether the waste is hazardous.

5. If it has been demonstrated that none of the organic constituents listed in DRGHW, §261.24, Table 1, is present in the ash at a detectable level, the ash need not be routinely tested for the organics.

### D. QUALITY ASSURANCE AND QUALITY CONTROL

The sampling and analysis plan shall include:

1. A detailed description of the steps that will be taken to ensure quality control, and

2. A provision for appointing a knowledgeable person to oversee the sampling and analysis program to ensure that all procedures are followed.

### E. DATA EVALUATION

The following approach shall be used in evaluating the data to determine whether the ash passes or fails the TC (see SW-846, Chapter Nine, Tables 9-1 and 9-2 for statistical formulas to use in making the calculations):

1. Determine the mean TC concentration ( $\bar{x}$ ) of the fourteen eight-hour composite samples for each regulated analyte (equation 2a of Table 9-1).

2. Determine the standard deviation(s) of the data employed to calculate the mean (i.e., the individual composite results) (equation 3a and 4 of Table 9-1).

3. Determine the upper bound of the 90 percent (one-sided) confidence interval for the mean for each analyte (equation 6 of Table 9-1).

4. If the upper bound of the interval is below the applicable regulatory threshold for all analytes listed in DRGHW, §261.24, then the waste passes the TC. If the upper bound of the interval is above the applicable regulatory threshold for any analyte listed in DRGHW, §261.24, then the waste fails the TC.

#### SECTION 12: SEVERABILITY

If any provision of these regulations, or the application of any provision of these regulations to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of these regulations, shall not be affected thereby.

### DEPARTMENT OF PUBLIC SAFETY ALCOHOLIC BEVERAGE CONTROL COMMISSION

Statutory Authority: 4 Delaware Code,  
Section 304(a)(1) (4 **Del.C.** 304(a)(1))

#### ORDER

Following notice published in the Register of Regulations, the News Journal, and Delaware State News and a public hearing, the Delaware Alcoholic Beverage Control Commission makes the following findings pursuant to 29 Del. C. § 10118.

#### SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

The Commission conducted a public hearing on the proposed amendments to Rule 29 on January 26, 1999. At the public hearing, licensees made suggestions for improving the proposed Rule 29. Representatives of the retail and wholesale segments of the alcohol industry indicated that daily price changes to a toll-free telephone number would pose a hardship to small retailers by causing them to continuously check to see whether price changes had been made. At least one licensee suggested that the Rule should allow only weekly changes in prices.

The written comments from NKS proposed that the 3 day hold in Rule 29.3(a) on the availability of a new product should be deleted from the Rule as inconsistent with the Commission's desire to eliminate any type of "hold" in Rule 29.

#### FINDINGS OF FACT

1. The public was given notice and an opportunity to

provide the Commission with comments in writing and by oral testimony on the proposed amendments to Rule 29 pursuant to the Administrative Procedures Act.

2. The Commission met on February 18, 1999 at a public meeting to consider verbal and written comments concerning proposed Rule 29.

3. The Commission agreed it should consider incorporating some of the verbal and written suggestions.

4. The Commission voted 4-0 not to approve the proposed Rule 29 in its original version.

5. The Commission determined that at least some of the proposed changes to the Rule were substantive changes requiring re-notice of the Rule.

#### DECISION

The Commission will re-notice a revised proposal containing substantive changes.

#### ALCOHOLIC BEVERAGE CONTROL COMMISSION

Adam L. Balick, Chairman  
George J. Coyle, Commissioner  
Ruth D. Morris, Commissioner  
Robert G. Medd, Commissioner

**\* PLEASE NOTE: THE PROPOSED RULE 29 WAS PUBLISHED IN VOLUME 2, ISSUE 7 PAGE 1216 OF THE REGISTER. THE REPROPOSAL IS PUBLISHED IN THIS ISSUE OF THE REGISTER AT PAGE 1538.**

### DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

**DIVISION OF FAMILY SERVICES**  
**OFFICE OF CHILD CARE LICENSING**  
Statutory Authority: 31 Delaware Code,  
Chapter 3 (31 **Del.C.** Ch. 3)

IN THE MATTER OF:

**Revision of Requirements for Residential  
Child Care Facilities, Transitional Living  
Programs and Day Treatment Programs**

Pursuant to Title 31, Chapter 3, Subchapter II, Subsections 341 through 344, the Delaware Department of Services for Children, Youth and Their Families, Division of Family Services hereby issues this order promulgating the rules for Residential Child Care Facilities, and Day Treatment Programs. Following notice and a public hearing

held on January 13, 1998 on the proposed rules, the Department makes the following findings and conclusions.:

#### SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Department posted public notice of the proposed rules in the Register of Regulations and in the News Journal and the Delaware State News.

2. The Department received both written comments during the comment period and oral comments during the public hearing. The comments focused on the Assistance of Medication section of the rules, the qualifications of a teacher in an on-grounds education program, the differentiating between oral PRN's and Chemical Restraint and smoking on grounds by children and staff. All the comments ere received from members of the work group which established the rules. No comments were received from the general public. The work goup was comprised of the licensees regulated by the current rules and other parties with an interest in residential child care and day treatment programs.

#### FINDINGS OF FACT

3. The public was given notice and an opportunity to provide the Board with comments in writing and by oral testimony on the proposed rules. The comments received are summarized in paragraph #2.

4. The Department found that the issues raised during the public comment period warranted further research and revision by the work group. The Department researched other states rules and gathered information from recognized experts on these issues. The Department subsequently met with the small goups who raised the conserns. The proposed rules were revised.

5. The revisions were presented to the entire rule revision work group on August 25, 1998. The work group approved the changes.

#### CONCLUSIONS

6. The propsed Delacare: Requirements for Residential Child Care Facilities and Day Treatment Programs were promulgated by the Department of Services in accordance with its statutory authority as set forth in Title 31, Chapter 3, Subchapter II, Subsections 341 through 344.

7. The Department concludes that the adoption of the proposed regulations, as set forth in the attached copy, should be made in the best interest of protecting the health, safety and well-being of the children who reside in residential child care facilities or receive care in day treatment programs.

8. Therefore on January 5, 1999, Thomas P. Eichler,

Secretary of the Department of Services for Children, Youth and Their Families and Kathryn J. WAY, Director of the Division of Family Services adopted the proposed rules, Delacare: Requirements for Residential Child Care Facilities and Day Treatment Programs.

9 The effective date of the rules is May 1, 1999.

Thomas P. Eichler  
Secretary

#### NOTICE OF RESCISSION AND PROMULGATION

The Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following licensing requirements for residential child care facilities and day treatment programs as authorized in the Delaware Code, Title 31, Subchapter II, Subsections 341 - 344. All previous rules, regulations and standards pertaining to such facilities are null and void. These requirements shall take effect on May 1, 1999.

Thomas P. Eichler, Secretary  
Department of Services for Children, Youth and Their Families

Kathryn J. Way, Director  
Division of Family Services

#### FOREWORD

The need for protecting children receiving care outside their homes was recognized by the Delaware General Assembly as early as 1915. Since 1953, Delaware has required residential child care facilities to be licensed as authorized in the Delaware Code, Title 31, Subchapter II, Subsections 341-344. The licensing law defines the type of facilities that are to be regulated by the State, and gives the authority to "prescribe reasonable standards" and license such facilities to the Division of Family Services. The purpose of the law is to protect the health, safety and well-being of the children who in residential child facilities or receive care in day treatment programs. Licensing of these facilities is a preventive function which has its purpose setting requirements which must be met in order for a facility to be able to operate.

In the developing the current revision of licensing requirements, the Division of Family Services sought the advice and assistance of knowledgeable person representative of the fields of residential child care, day treatment and child welfare. The new requirements, now under the title of **Delacare: Requirements for Residential Child Care Facilities and Day Treatment Programs**, were primarily drawn from the licensing requirements from other

states, accreditation guidelines and the best thinking of the practitioners in the State of Delaware.

The requirements are divided into eleven chapters. The first three chapters contain the requirements which must be met by all licensees. The fourth chapter contains the requirements for any facility which provides 24-hour care for children. The remaining chapters contain additional requirements for facilities providing specialized services. Through this design, the Division has attempted to define specific requirements rather than broad standards so that compliance may be measured more accurately and consistently.

The Division appreciates the contributions of all the individuals in the development of these requirements and asks for their continued support in working together to provide better care services to children in child care.

The following individuals participated in the work group which developed of **Delacare: Requirements for Residential Child Care Facilities and Day Treatment Programs**:

**Janet Carter Harold Gazan Pauline Koch Nicholas Scalera**

Project Manager Consultant Former Administrator Consultant Administrator

Sarah Callahan, Division of Child Mental Health  
 John Carver, Division of Child Mental Health  
 Dave Casto, Division of Child Mental Health  
 Joseph Dell'Olio, Child Inc.  
 Jeanne Dunn, Division of Child Mental Health  
 Jonnie Green, AID in Dover  
 Doris Griffin, YWCA of Delaware  
 Greg Harrison, Au Clair School Inc.  
 Christine Hill, Office of Child Care Licensing  
 Fritz Jones, Catholic Charities  
 Michael Kopp, Elizabeth Murphey School  
 Tim McFeely, North East Treatment Centers  
 Penny McPherson, Grace Cottage/First Corrections  
 Mary Moor, Division of Child Mental Health  
 Tom Olsen, Division of Child Mental Health  
 Mary Pauer, Cedars Academy  
 Nancy Plerhoples, Division of Youth Rehab Svcs.  
 Eileen Poorten, Bayard House  
 Michael Preston, Archway Programs  
 Dennis Reardon, AuClair School Inc.  
 Deborah Richardson, Child Inc.  
 Valeree Roach, DE Day Treatment for Young Children  
 Howard Sims, DGS Day Treatment  
 Bill Tulloch, Stepping Stones  
 Tom Voxmonsky, Snowden Cottage/ARC

Beverly Williams, AID in Dover, Inc.

**\* PLEASE NOTE: THE TABLE OF CONTENTS IS NOT BEING PUBLISHED DUE TO SPACE CONSTRAINTS.**

Delacare Requirements for Residential Child Care Facilities  
 And Day Treatment Programs

CHAPTER 1. LEGAL AUTHORITY, PURPOSE, AND DEFINITIONS

Legal Base

1.01 The legal authority for these licensing Requirements is in the Delaware Code, Title 31, Chapter 3, Paragraphs 341-344.

Purpose

1.02 These provisions shall be known as the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs. These Requirements are designed to protect the health, safety and well-being of children who are placed in residential child care facilities or are enrolled in day treatment programs.

Definitions of Regulated Services

1.03 "Day Treatment Program" means any program that provides highly structured, intensive, non-residential services for fewer than 24 hours each day to children who have either:

- a. Behavioral dysfunctions;
- b. Developmental, emotional, mental or physical impairments; or
- c. Chemical dependencies.

Licensed residential child care facilities operating an educational program for residents and day students shall be exempted from being a day treatment program when more than 50 percent of the students in that educational program are residents of the facility.

1.04 "Residential Child Care Facility" means any facility that provides out-of-home, 24-hour care, protection and supervision for children who have either: behavioral dysfunctions; developmental, emotional, mental or physical impairments; or chemical dependencies.

Residential Child Care Facility includes, but is not limited to, the following:

- a. "Parenting Adolescent Facility" means a residential child care facility for adolescent parents caring for their own child(ren).
- b. "Secure Residential Care Facility" means a

residential child care facility that is authorized to use locked doors, both exterior and interior, as the means of preventing a child from leaving the building(s) without authorization.

c. "Shelter Care Facility" means a residential child care facility that provides temporary or emergency care for children for a period of time that does not exceed 30 consecutive calendar days, except as provided for in Requirement 6.04.

d. "Transitional Care Facility" means a residential child care facility that provides care for 12 or fewer adolescents for the purpose of preparing them to live as self-sufficient adults.

~~A [Psychiatric hospital or a] foster home or a psychiatric hospital~~ in which children have been placed by a licensed or authorized child placing agency are not residential child care facilities.

#### Definition of Terms

1.05 "Adventure Activity Program" means a facility or program whose primary purpose is to engage the children in a course of activities of a hazardous or risk-laden nature. The activity may involve strenuous exercise or physical exertion. It includes high rope challenge courses, wilderness trekking, rock climbing and rappelling, as well as a travel camp of more than 120 consecutive hours' duration involving traveling through more than one state.

1.06 "Aversive Conditioning" means the involuntary, time-limited and reasonable use of a technique or procedure that applies an undesirable, noxious or painful stimulus to a child in order to suppress the specific behavior that is potentially harmful to the child or others, for the purpose of behavior management.

1.07 "Behavior Management" means those principles and methods employed by a licensee:

- a. To help a child achieve positive behavior; and
- b. To address and correct a child's inappropriate behavior in a constructive and safe manner, in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security and the child's service plan.

1.08 "Chemical Restraint" means the involuntary, unplanned and emergency application of a psychotropic drug to restrict the function or movement of a child for the purpose of behavior management. The planned and routine application of a prescribed psychotropic drug is not a chemical restraint.

1.09 "Chief Administrator" means the person designated

by the licensee, or by its governing body, as having day-to-day responsibility for the overall administration and operation of a facility or program and for assuring the care, treatment, safety, and protection of children.

1.10 "Child" means any of the following:

- a. A person who has not reached 18 years of age.
- b. A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25.

1.11 "Department" means the Delaware Department of Services for Children, Youth and Their Families.

1.12 "Direct Care Supervisor" means a person who is assigned responsibility by a licensee for the supervision of one or more direct care workers.

1.13 "Direct Care Worker" means a person designated by a licensee to provide direct care of children.

1.14 "Division" means the Division of Family Services within the Department.

1.15 "Employee" means any person who is employed by a licensee ~~and~~ [or] any person under contract with a licensee, excluding vendors that do not provide direct services to children.

1.16 "Exclusion" means the involuntary, time-limited removal of a child six years of age or older from this or her environment through the use of non-violent physical intervention and restricting that child in an unlocked room under continuous monitoring and preventing his or her egress, for the purpose of behavior management.

1.17 "Facility" means a residential child care facility.

1.18 "Governing Body" means the person or group of persons with ultimate responsibility for and authority over the operation of a facility or program.

1.19 "Immediately" means an action that is or must be taken without any considerable loss of time.

1.20 "Least Restrictive Treatment" means an intervention method that is the least intrusive into, and least disruptive of, the child's life, and that represents the least departure from normal patterns of living that can be effective in meeting the child's needs.

1.21 "License" means the Division's granting of authority through a written provisional or regular certification to a facility or a program to operate under

applicable State law (s).

1.22 “Licensee” means the legally responsible entity for a licensed facility or program.

1.23 “Living Unit” means a designated area or space in which a group of children reside or receive care.

1.24 “Locked Isolation” means the involuntary and time-limited confinement of a child in a locked room for the purpose of behavior management.

1.25 “Mechanical Restraint” means the involuntary, time-limited and reasonable use of any device in order to restrict a child’s movement or functions or the ability to use his or her hands, arms, or legs, for the purpose of behavior management.

1.26 **[“Medical Consultant” means a person licensed as a Registered Nurse or Physician in Delaware and assigned responsibility for overseeing the assistance with medication.]**

[1.27] “Non-violent physical intervention strategies” means the non-punitive, age- appropriate, time-limited and reasonable application of physical holding or other physical interventions that are required:

- a. To restrict the movement or function of a child for the purpose of preventing harm to the child or to others; or,
- b. To prevent the destruction of property when the child fails to respond to non-physical intervention techniques.

~~[1.27]~~ 1.28] “Parent” means a birth or adoptive parent, legal guardian or any other person having responsibility for, or [legal] custody of, a child.

~~[1.28]~~ 1.29] “Placing Agency” means an organization, either publicly or privately operated, that is legally authorized to place a child in a facility or to refer a child to a program.

~~[1.29]~~ 1.30] “Positive Reinforcement” means an action that, when systematically and regularly applied following the desired behavior of a child, makes it more likely that the desired behavior will recur.

~~[1.30]~~ 1.31] “Program” means a Day Treatment Program when it is used alone without an adjective.

~~[1.31]~~ 1.32] “Psychotropic Drug” means a drug or substance that alters the chemical balance of neurotransmitters in the central nervous system.

~~[1.32]~~ 1.33] “Record” means the individual file established and maintained for a child.

~~[1.33]~~ 1.34] “Requirements” means the Delaware Requirements for Residential Child Care Facilities and Day Treatment Programs or a portion thereof.

~~[1.34]~~ 1.35] “Restrictive Procedure” means the involuntary, non-punitive, age-appropriate, time-limited and reasonable use of any action, device, drug or technique that is designed to restrain or restrict a child’s movement, function or mobility for the purpose of:

- a. Reducing serious maladaptive behavior of a child;
- b. Preventing a child from harming either himself or herself, or others;
- c. Preventing the destruction of property; or
- d. Controlling maladaptive behavior when the child has failed to respond to other less restrictive means of behavior management.

Restrictive procedures are aversive conditioning, chemical restraint, exclusion, locked isolation, and mechanical restraint. Non-violent physical intervention strategies and time-out techniques are not restrictive procedures.

~~[1.35]~~ 1.36] “Service Plan” means a written, prescribed plan that specifies the basis for a child’s admission to a facility or program, the techniques to be used to address his or her treatment needs, or goals for family reunification and permanency planning. The plan shall identify the persons responsible for developing and implementing the plan, and the time frames for carrying out the plan while the child is residing in a facility or participating in a program.

~~[1.36]~~ 1.37] “Service Supervisor” means a person who is assigned responsibility by a licensee for the supervision of one or more service workers.

~~[1.37]~~ 1.38] “Service Worker” means a person designated by a licensee to coordinate, develop and implement the service plan for a child.

1.39 **“Teacher” means a person designated by the licensee to directly provide education services to children.]**

~~[1.40]~~ ~~1.38]~~ “Time-Out Technique” means the time-limited removal of a child from his or her immediate environment or the time-limited prohibition of a child to participate in an activity, as specified in Requirements ~~[3.78,]~~ 3.79 [and,] 3.80 [and 3.81.]

~~[1.41]~~ ~~1.39]~~ “Treatment” means the various services that are designed, developed, and implemented by a licensee to

ameliorate the various educational, health care, medical, psychological, social or other needs of a child.

~~1.40~~ **1.42]** “Volunteer” means any person who provides an unpaid service or support to a facility or program for more than 40 hours in a calendar year, and whose primary role or function involves having direct contact with children. The term “volunteer” shall include student interns.

## CHAPTER 2. LICENSING PROCESS AND PROCEDURES

### License Required to Operate

2.01 An agency, corporation, partnership or individual shall not operate or maintain a residential child care facility or day treatment program unless issued a license to do so by the Division.

#### Authority to Inspect

2.02 An applicant or licensee shall allow access to the premises by any authorized representative of the Division, of another state agency, or any local building, fire or health agency for the purpose of determining compliance with applicable provisions of these requirements. On-site inspections may be conducted without prior notice.

2.03 An applicant or licensee shall permit any authorized representative of the Division access to information, files and records relevant to determining compliance with applicable provisions of these requirements **[and to interview any employee, volunteer, and child]**.

#### Issuance of License

2.04 To qualify for a license, an applicant or licensee shall demonstrate to the satisfaction of the Division that it is in full or substantial compliance with applicable provisions of these requirements.

2.05 A license shall be issued only to a facility or program for which application is made and for the address shown on the application. A license shall state the maximum number ~~[and age range of children]~~ who may be served in a facility or program at any time.

#### Posting of License

2.06 A licensee shall post its current license to operate a facility or program in a place conspicuous to the public.

#### License for Each Separate Facility or Program

2.07 A facility or program that operates in two or more

buildings at the same site shall have the option of applying for a single license for all buildings at the site, or for a separate license for each building at the site.

2.08 A license shall not be transferable, assignable or subject to sale.

#### Nullification of License

2.09 When a facility or program is sold, leased, or discontinued, or the operation has moved to a new location, or when the license has been revoked, the current license immediately shall become null and void.

#### ~~[Regular Annual]~~ License

2.10 ~~[A An regular annual]~~ license is issued when the Division determines that an applicant or licensee is in full compliance with applicable provisions of these requirements.

2.11 ~~[A An regular annual]~~ license is effective for one year from the date of issuance, unless it is:

- a. Modified to a provisional license;
- b. Is revoked; or
- c. Surrendered prior to the expiration date.

#### Provisional License

2.12 A provisional license may be issued for a period of time not to exceed six months from the date of issuance when the Division determines that an applicant or licensee is in substantial, but not full, compliance with applicable provisions of these requirements, provided that:

- a. There is no serious risk to the health, safety, or well-being of children; and
- b. An applicant or licensee has submitted to the Division and the Division has approved a written corrective action plan.

2.13 The Division may issue as many consecutive provisional licenses as it deems necessary. However, an applicant or licensee shall not operate pursuant to provisional licenses for more than 12 consecutive months.

#### Replacing a Provisional License with a Regular License

2.14 A provisional license may be replaced with ~~fa~~ **regular an annual** license when the Division determines that an applicant or licensee has corrected all violations in advance of the expiration date of the provisional license and has come into full compliance with applicable provisions of these requirements.

#### Procedures for Initial Licensure

2.15 An applicant shall apply for an initial license on a form provided and in a manner prescribed by the Division.

2.16 Upon receipt of a completed application, a Division representative shall:

a. Provide assistance to aid the applicant in complying with applicable provisions of these requirements;

b. Review the application, confer with the applicant, and inspect the facility or program to determine whether the applicant has fully complied with applicable provisions of these requirements;

c. Make a recommendation to the Division regarding the issuance of a license. If a license is granted, the applicant shall initially be issued a provisional license for six months. ~~At An annual regular~~ license shall be issued when the facility or program fully meets applicable provisions of these requirements; ~~and~~ **[or]**

d. If a license is denied, notify the applicant in writing of the reason(s) for denial and set forth the applicant's rights to an appeal from the decision.

2.17 The expiration date of the first regular license and each subsequent renewal of ~~at an regular annual~~ license shall be **[at]** one year **[intervals]** from the initial date of issuance.

#### Procedures for License Renewal

2.18 A licensee shall submit a written request to the Division to seek a license renewal application form at least 90 calendar days before the expiration date of the facility's or program's ~~regular~~ license.

2.19 A licensee shall submit a completed application for a ~~regular~~ license renewal to the Division at least 60 calendar days before expiration of its current ~~regular~~ license.

2.20 When a licensee makes timely and sufficient application for renewal of a regular license, the existing license shall not expire until a decision on the renewal application is made by the Division.

2.21 A provisional license may be renewed when the Division determines that a licensee has demonstrated good faith efforts to achieve compliance but requires additional time to achieve full compliance with applicable provisions of these requirements.

#### Terms of a License

2.22 The license shall contain the following:

a. Status of the license: ~~regular annual~~, provisional or extension;

b. Effective date of the license;

c. Expiration date of the license;

d. The maximum number of children who may be served at one time; and

e. The applicable type of regulated service for which authorization to operate has been granted.

2.23 A licensee shall operate a facility or program within the terms of its license.

#### Changes Affecting License

2.24 The Division shall determine whether to modify a current license or to require the licensee to submit an application for a new license when any of the following changes occur:

a. A change of ownership or sponsorship;

b. A change of location;

c. A change in the name of the facility or program;

d. A change in the applicable type of regulated service authorized; or

e. A change in child population capacity.

#### Denial, Revocation or Refusing to Renew a License

2.25 The Division may deny, revoke or refuse to renew a license for good cause, including but not limited to the following:

a. Substantial or willful failure to comply with applicable provisions of State law(s) or of these requirements;

b. Violation of the terms or conditions of its license;

c. Fraud or misrepresentation of facts in obtaining a license; or

d. Engaging in any activity, policy, practice or employee conduct that adversely affects or is deemed by the Division to be detrimental to the education, health, safety, treatment needs or well-being of children, or that otherwise demonstrates unfitness by the chief administrator or by any employees to operate a facility or program.

#### Appeal

2.26 If the Division denies, revokes, or refuses to renew a license, the Division shall notify the applicant or licensee in writing at least 10 ~~consecutive calendar working~~ days prior to taking such action, and shall specify the applicant's or licensee's entitlement to appeal from the decision and to request an administrative hearing.

2.27 The Division shall notify the applicant or licensee in writing of the findings of its investigation and of the

reasons for the denial, revocation or refusal to renew a license, before taking such action.

2.28 If a written or verbal request for a hearing is received by the Division within the 10 ~~calendar day period working days~~, the Division shall ensure that a hearing is held within 30 ~~consecutive calendar working~~ days from the date the request is received.

2.29 The hearing officer shall have had no previous involvement in the matter prompting the hearing.

2.30 If a licensee files an appeal in a timely manner, its existing license shall remain in effect until an official written decision has been rendered subsequent to the hearing, except that the Division shall have the authority to suspend the license immediately whenever the health, safety or well-being of children in care is in imminent danger or jeopardy.

2.31 If an applicant or licensee does not file an appeal from the decision and does not request a hearing, the action to revoke, deny or refuse to renew a license shall take effect 30 ~~consecutive calendar working~~ days after the receipt of the notice. However, if the health or safety of children in care is in jeopardy, ~~the modification~~, revocation, denial or refusal to renew shall be effective immediately upon the issuance of a written notice by the Division.

**Order to Suspend a License**

2.32 If the health, safety or well-being of children in care is in jeopardy or imminent danger, the Division may immediately suspend the license upon issuance of a written suspension order. The order shall state the reason(s) for the suspension. Within 10 ~~consecutive calendar working~~ days of the issuance of the suspension order the Division Director, or his or her designee shall hold ~~a conference an~~ **informal hearing** with the licensee or his or her representative(s).

**Rule Variance**

2.33 Upon the written request of an applicant or a licensee, the Division may grant a variance from any of these requirements if the licensee has documented to the satisfaction of the Division that the intent of the specific requirement will be satisfactorily achieved in a manner other than that prescribed by the requirement.

2.34 The Division shall render its decision on the request in writing, including the conditions for which the variance is granted, and shall send a signed copy of the decision to the applicant or licensee. A copy of the decision shall be

maintained on file by the Division and the licensee.

2.35 The variance may be time-limited or may remain in effect for as long as the licensee continues to maintain the health, care, safety, protection, supervision, and needed services of children.

2.36 The Division shall monitor the licensee's compliance with the variance. If the licensee fails to comply with the variance, the Division shall initiate necessary enforcement action.

**CHAPTER 3. GENERAL PROVISIONS**

**Part I. Administration**

**Notification of ~~Changes~~ Division]**

3.01 A licensee shall notify the Division in writing at least 90 consecutive calendar days before any of the following changes occur:

- a. A change of ownership or sponsorship;
- b. A change of location;
- c. A change in the name of the facility or program;
- d. A change in the applicable type of regulated service being provided;
- e. A change in child population capacity; or
- f. The anticipated closing of the facility or program.

**[3.02 A licensee shall notify the Division within one working day of any of the following occur:**

- a. A fire requiring the services of a fire company;**
- b. Death of a child;**
- c. Injury of a child requiring either in-patient or out-patient treatment.]**

**Governing Body**

~~3.02~~ **3.03]** A licensee shall have an identifiable functioning governing body. The governing body shall designate a person to function as the chief administrator of the facility or program.

**Chief Administrator Responsibilities**

~~[3.03~~ **3.04]** A licensee shall delineate in writing the job responsibilities and functions of the chief administrator. The chief administrator shall adopt and implement a chain of command that ensures the proper and effective supervision and monitoring of employees and volunteers.

**Facility or Program Description of Services**

~~[3.04~~ **3.05]** A licensee shall develop, adopt, follow and

maintain on file a current written description of the facility's or program's:

a. Admission policies governing the age, specific characteristics, and treatment or service needs of children accepted for care; and

b. Services provided to children and their families, including those provided directly by the licensee or arranged through another source.

~~3.05~~ **3.06** A licensee shall make available to the public a brochure or other generic written description of its mission, policies and the types of services offered by the facility or program.

#### Maintenance of Children's Records

~~3.06~~ **3.07** A licensee shall develop, adopt, follow and maintain on file on the premises written procedures governing the maintenance and security of records of children in care. These procedures shall:

a. Assure that records are stored in a secure manner; and

b. Assure confidentiality of and prevent unauthorized access to such records.

#### Administrative Records

~~3.07~~ **3.08** A licensee shall develop, adopt, follow and maintain on file on the premises up-to-date administrative records containing the following:

a. Organizational chart;

b. Name and position of persons authorized to sign agreements and to submit official documentation to the appropriate government agency; and

c. Written standard operating procedures.

#### Insurance Coverage

~~3.08~~ **3.09** A licensee shall secure and maintain on file written documentation of appropriate motor vehicle, fire and comprehensive general liability insurance, as required by State law(s).

#### Fund Raising and Publicity

~~3.09~~ **3.10** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the use of children in fund raising or publicity activities. Such policies shall ensure that any involvement of a child in such activities respects the child's dignity, preserves his or her confidentiality and has been authorized by the child's parent(s) or legal guardian in a signed parental consent statement.

#### Research

~~3.10~~ **3.11** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the participation of children in bona fide research projects, which shall embrace the following criteria:

a. The goal(s) of the research are sound, achievable, and feasible;

b. The research design is scientifically valid and appropriate to the goal(s) of the research; and

c. The results of the proposed research will contribute significantly to the body of existing information on the subject.

~~3.11~~ **3.12** The policies and procedures governing approved research projects shall:

a. Safeguard the privacy and protect the identity of and confidential information about children participating in research or follow-up studies;

b. Preserve the confidentiality of children and their families;

c. Ensure that the child's participation in the approved research project is voluntary; and

d. Ensure that the parent(s) or legal guardian of a child participating in the research project has signed an informed consent statement, which the licensee shall maintain on file.

#### Part II . Personnel

##### Personnel Policies and Procedures

~~3.12~~ **3.13** A licensee shall develop, adopt, follow and maintain on file written personnel policies and procedures governing the recruitment, screening, hiring, supervision, training, evaluation, promotion, and disciplining of employees and volunteers.

##### Personnel; General Qualifications

~~3.13~~ **3.14** A licensee shall employ only those persons who:

a. Have an understanding of and respect for children and their needs and have an understanding of and respect for a child's family and culture; and

b. Are physically and emotionally capable of performing activities related to providing child care, which include the ability to supervise children's activities, to support children's physical, intellectual, social and emotional growth, to deal with emergencies in a calm manner, and to carry out methods of behavior management, as stipulated in these requirements.

~~[Grandparent Provision]~~

~~3.14~~ **3.15]** An employee who was approved in accordance with personnel qualification requirements in existence prior to the date on which these requirements became effective shall be deemed qualified for the same position at that facility or program.

#### Chief Administrator Qualifications

~~3.15~~ **3.16]** A chief administrator, at the time of appointment, shall be at least 21 years of age and shall possess one of the following:

a. A master's degree in social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, a human behavioral science, public administration or a related field, and three years of full-time work experience in child welfare, human services or a related field, at least two years of which shall have been in an administrative or supervisory capacity; or

b. A bachelor's degree in social work, sociology, psychology, guidance and counseling, education, business administration, criminal justice, a human behavioral science, public administration or a related field, and four years of post-bachelor's degree full-time work experience in child welfare, human services or a related field, at least two years of which shall have been in an administrative or supervisory capacity.

#### Direct Care Supervisor Qualifications

~~3.16~~ **3.17]** A direct care supervisor, at the time of appointment, shall be at least 21 years of age and shall possess at least one of the following:

a. A bachelor's degree ~~[from an accredited college]~~ and one year of full-time work experience in a child care facility or program;

b. ~~Two years of college education~~ **An associate degree or a minimum of 48 credit hours from an accredited college]** and two years of full-time work experience in a child care facility or program; or

c. A high school diploma or equivalent and three years of full-time work experience in a child care facility or program.

#### Direct Care Worker Qualifications

~~3.17~~ **3.18]** A direct care worker, at the time of appointment, shall be at least 21 years of age and shall possess a high school diploma or an equivalent.

#### Service Supervisor Qualifications

~~3.18~~ **3.19]** A service supervisor, at the time of appointment, shall be at least 21 years of age and shall possess at least one of the following:

a. A master's degree in social work, sociology, psychology, criminal justice, education, guidance and counseling, human behavioral science or a related field and at least two years of full-time work experience in child welfare, social work, human services, teaching, counseling or a related field, at least one year of which shall have been in a supervisory capacity; or

b. A bachelor's degree in social work, sociology, psychology, criminal justice, education, guidance and counseling, human behavioral science or a related field and at least four years of full-time work experience in child welfare, social work, human services, teaching, counseling or a related field, at least two years of which shall have been in a supervisory capacity.

#### Service Worker Qualifications

~~3.19~~ **3.20]** A service worker, at the time of appointment, shall be at least 21 years of age and shall possess a bachelor's degree in social work, sociology, psychology, criminal justice, education, guidance and counseling, a human behavioral science or a related field and at least two years of full-time work experience in child welfare, human services, teaching, counseling or a related field.

#### Administrative Oversight and Supervisor-to-Staff Ratios

~~3.20~~ **3.21]** The chief administrator shall ensure that there are a sufficient number of administrative, supervisory, social service, educational, recreational, direct care, and support employees or volunteers to perform the functions prescribed by these requirements and to provide for the care, needs, protection and supervision of children. The ratio of direct care workers to children during off-grounds activities or excursions shall be the same as the ratios of direct care workers to children that are required during on-grounds activities.

~~3.21~~ **3.22]** A licensee shall have either:

a. A full-time chief administrator; or

b. If its licensed capacity is fewer than 13 children, a part-time chief administrator and a full-time service supervisor.

~~3.22~~ **3.23]** A licensee shall ensure that a designated employee is in charge on the premises at all times when children are present.

~~3.23~~ **3.24]** A licensee shall have a ratio of one service supervisor for every ten service workers or fraction thereof. A full-time chief administrator may also serve as the service supervisor when there are three or fewer service workers.

~~3.24~~ **[3.25]** A licensee shall have a ratio of one direct care

supervisor for every ten direct care workers or fraction thereof. A full-time chief administrator may also serve as the direct care supervisor when there are three or fewer direct care workers.

#### Orientation and Training of Employees and Volunteers

~~3.25~~ **3.26]** A licensee shall ensure that all new employees and volunteers participate in an orientation that includes the purpose, policies and procedures of the facility or program, the employee's role and responsibilities and the requirements to report allegations of child abuse or neglect.

~~3.26~~ **3.27]** A licensee shall ensure that each new employee, volunteer, or any current employee or volunteer whose job function changes, and whose primary role or function requires interaction with children, receives at least 15 hours of planned training preceding the assumption of his or her work assignment on an independent basis. The training shall include instruction in:

- a. Carrying out job responsibilities;
- b. The licensee's purpose, policies and procedures, including those governing behavior management, crisis management and safety;
- c. Emergency procedures and the location of emergency exits and emergency equipment, including first aid kits;
- d. The role of employees and volunteers in client service delivery and the protection of children;
- e. The Delaware child abuse and neglect law(s) and regulations; and
- f. The provisions of these licensing requirements.

This requirement shall not apply to licensed professionals under contract with the licensee.

~~3.27~~ **3.28]** A licensee shall ensure that each employee and volunteer whose primary role or function requires interaction with children and who works 24 or more hours a week receives at least 40 hours of training annually, including the 15 hours of training provided pursuant to rule ~~3.26~~ **3.27]**. This training shall cover subject matters designed to maintain, improve or enhance the employee's knowledge of or skills in carrying out his or her job responsibilities, including:

- a. Instruction in administering cardiopulmonary resuscitation (CPR) and first aid, including the location of first aid kits. A licensee providing care to children below six years of age shall include training in pediatric first aid and pediatric CPR;
- ~~b. cardiopulmonary resuscitation;~~
- c. Cultural sensitivity; and
- d. Behavior management policies and procedures.

~~3.28~~ **3.29]** A licensee shall ensure that any employee or

volunteer whose primary role or function requires interaction with children and who works fewer than 24 hours a week receives at least 20 hours of training annually, including the 15 hours of training provided pursuant to Requirement ~~3.26~~ **3.27]**. The five hours of training not related to Requirement ~~3.26~~ **3.27]** shall be in subject matters identified in Requirement ~~3.28~~ **3.27]**.

~~3.29~~ **3.30]** The licensee shall permit licensed professional employees, ~~[such as including but not limited to]~~ physicians, psychologists, and nurses, to apply hours of continuing education units (CEUs) earned each year towards the hourly requirements specified in Requirements ~~3.27 and~~ **3.28 [and 3.29]**. A licensee shall maintain on file written documentation of compliance with this requirement.

~~3.30~~ **3.31]** A licensee shall maintain on file written materials documenting the delivery of orientation and training for all employees and volunteers.

#### Personnel Records

~~3.31~~ **3.32]** A licensee shall develop, adopt and maintain on file a personnel record for every employee and volunteer.

~~3.32~~ **3.33]** The personnel record shall contain the following:

- a. Employment application;
- b. Name, **[current]** address and phone number of the employee;
- c. Verification of education where specified by these requirements;
- d. Documentation of training received prior to and during employment at the facility or program;
- e. Work history;
- f. Three references from persons who are unrelated to the employee or volunteer, one of which shall be from any previous employer;
- g. For job applicants who have worked with an agency that provides care or services to children, one of the three references required in Requirement ~~3.32.f~~ **3.33.f]** shall be from the prior child care employer;
- h. Any health verification, as specified in Requirements ~~3.150~~ **3.153]** and ~~3.151~~ **3.154]**;
- i. Verification of completed criminal history record information check and child abuse registry information check;
- j. Verification of receipt by the employee or volunteer of his or her current job description;
- k. An annual employee performance evaluation; and
- l. Employee disciplinary actions and history.

## Job Descriptions for Employees

~~3.33~~ **3.34**] A licensee shall maintain on file a current written job description for every employee and for every volunteer who works more than 24 hours a week.

~~3.34~~ **3.35**] A licensee shall ensure that an employee's and volunteer's permanent or temporary assignment and functions shall be consistent with his or her respective current written job description.

## Use of Volunteers

~~3.35~~ **3.36**] A licensee shall develop, adopt, follow and maintain on file policies and procedures governing the qualifications and use of volunteers. The qualifications shall be appropriate to the duties they perform.

~~3.36~~ **3.37**] A licensee shall assign designated employees to supervise volunteers.

## Child Abuse and Neglect

~~3.37~~ **3.38**] A licensee shall provide each employee or volunteer who has contact with children written information governing the reporting provisions of the Delaware child abuse and neglect law(s) and regulations, and shall maintain on file written documentation of their receipt of this information.

~~3.38~~ **3.39**] A licensee shall not discourage, inhibit, penalize or otherwise impede any employee or volunteer from reporting any suspected or alleged incident of child abuse or neglect.

~~3.39~~ **3.40**] A licensee shall develop, adopt, follow and maintain on file written policies and procedures for handling any incident of suspected child abuse or neglect. The policies and procedures shall contain provisions specifying that:

a. The licensee immediately shall take appropriate remedial action to protect children from harm;

b. The licensee shall take appropriate long-term corrective action to eliminate the factors or circumstances that may have caused or may have otherwise resulted in a continuing risk of abuse or neglect to children;

c. Any employee or volunteer involved in an incident of alleged child abuse or neglect shall be removed or suspended from having direct contact with any child, or shall be reassigned to other duties that do not involve having contact with children until the investigation of the incident has been completed;

d. The licensee shall take appropriate disciplinary action against any employee or volunteer who committed an act of child abuse or neglect.

## Part III. Children's Services and Activities

## Admission

~~3.40~~ **3.41**] A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing a child's admission to a facility or program. The policies and procedures shall be made available to those persons considering admission of a child to a facility or program and shall include:

a. Age range of children served;

b. Gender of children served;

c. Presenting problems and treatment needs of children served;

d. Materials, documents and reports required, including a child's social, education, medical evaluation and histories;

e. A description of the types of treatment services provided; and

f. The identifying information about a child to be recorded at the time of admission or as a part of the pre-admission process. Such information shall include the child's name, birth date, gender, religious preferences, race or ethnicity, names, addresses, telephone numbers of parent(s) or legal guardian, other service workers or contact persons, the referring agency, if applicable, known medical history and allergies, date of admission, and a brief social history, including the presenting problems.

~~3.41~~ **3.42**] When a licensee refuses the admission of a child, the licensee shall provide the child's parent(s), legal guardian and the referring agency with a written explanation of the reasons for refusal, if requested.

~~3.42~~ **3.43**] A licensee shall ensure that the child, his or her parent(s), legal guardian, and the referring agency and any other appropriate party, are provided a reasonable opportunity to participate in the facility's or program's admission process.

~~3.43~~ **3.44**] Where involvement of the child's parent in the admission process is neither possible nor desirable, the licensee shall record the reasons for exclusion in the admission records.

~~3.44~~ **3.45**] A licensee shall not admit a child into care until an admission evaluation has been completed.

~~3.45~~ **3.46**] In an emergency admission, a licensee shall complete Requirements ~~3.42,~~ 3.43 ~~and,~~ 3.44 ~~and~~ **3.45** within five consecutive business days.

~~3.46~~ **3.47**] A licensee shall develop, adopt, follow and maintain on file a written admission agreement with the

parent(s), legal guardian or the referring agency. The admission agreement shall be signed by all parties and include:

- a. The basis for admission;
- b. The service or treatment goals;
- c. The specific services or treatment to be provided;
- d. The religious orientation and practices of the child;
- e. The roles and responsibilities of the licensee and all persons and agencies involved with the child and his or her family;
- f. Authorization to provide services to the child;
- g. Authorization to provide or obtain routine medical care for the child;
- h. Authorization to provide emergency medical or surgical care for the child; and
- i. Authorization to enable the child to participate in recreational and out-of-state activities.

#### Information Provided to Children and Their Parents

~~3.47~~ **3.48** A licensee shall provide to children and their parent(s) or legal guardian, or upon request to the referring agency the following:

- a. Operational rules of the facility or program;
- b. Policies governing visiting, telephone use, and other forms of communication with family, friends, and other persons important to the child;
- c. Religious orientation and practices observed by the licensee;
- d. A description of services and activities provided;
- e. A description of the licensee's behavior management policies and procedures;
- f. Grievance policies and procedures;
- g. Name of the child's service worker;
- h. Information on how to obtain a copy of these requirements, and on reporting any suspected violations of these requirements; and
- i. The child's service plan.

#### Service Plan

~~3.48~~ **3.49** A licensee shall develop, adopt, follow and maintain on file a written service plan for each child admitted into a facility or program.

~~3.49~~ **3.50** A licensee shall complete the service plan within 30 consecutive calendar days of a child's admission and shall update the plan at least every 90 consecutive calendar days thereafter.

~~3.50~~ **3.51** A licensee shall afford the child, his or her parent(s) or legal guardian, and the referring agency an opportunity to be involved in the development of the service plan unless there is written documentation justifying the non-participation of any such parties.

#### Permission to Have Contact with Designated Persons

~~3.51~~ **3.52** A licensee shall allow a child's parent(s) or legal guardian, attorney, clergy, authorized representative of the referring agency, or a Division representative, to be permitted to have telephone, mail and in-person contact and to confer in private with any child.

#### Education

~~3.52~~ **3.53** A licensee shall ensure that each school-age child receives an appropriate education, in accordance with applicable federal and State law(s) and regulations. Education shall be provided either in a public or private school, or in an approved on-grounds school operated by the licensee.

~~3.53~~ **3.54** A licensee shall ensure that every school-age child attends either an on-grounds or community-based educational program that has been approved by the appropriate Delaware authorities.

~~3.54~~ **3.55** If a licensee chooses to provide an educational program directly, the licensee shall ensure that such ~~[education [educational]~~ programs comply with the following:

a. ~~[Teachers shall possess valid teaching certificates appropriate to the age of the children they teach; One teacher for every 20 children or faction thereof shall be responsible for implementing the educational program;]~~

**[b.] Teachers shall be at least 21 years of age and shall possess a bachelor degree in the subject area of instruction or a bachelor degree in education appropriate to age and educational needs of the children in the program;**

**c. Employees meeting at a minimum the qualifications of Direct Care Worker may assist in the on-grounds educational program provided that they work under the supervision of an employee meeting the qualifications for Teacher;**

**d.]** The educational program operates on at least as many calendar days and clock hours as are required by State law(s) and regulations;

**e.]** A core curriculum that is appropriate to the population to be served is followed;

**f.]** Special education services are provided or arranged by the licensee for each child whose special education needs have been identified and as appropriate in collaboration with the child's school district; and

**g.]** Appropriate written records shall be maintained on file for each child that reflect the use of a uniform grading system and a process for transfer and release of these records

to and from other schools or facilities.

~~[3.55]~~ **3.56]** If a licensee chooses not to provide an educational program directly, the licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the assignment of any child to an educational program.

~~[3.56]~~ **3.57]** A licensee shall provide appropriate space and supervision for quiet study after school hours.

~~[3.57]~~ **3.58]** A licensee shall ensure the each child has access to necessary educational references and other resource materials.

~~[3.58]~~ **3.59]** A licensee shall ensure that adolescent children receive career preparation services, life skills training, and employment counseling unless such services, training and counseling are being provided in their regular or special education school program. Such services, training and counseling shall be appropriate to the age and capabilities of the child.

#### Work and Employment

~~[3.59]~~ **3.60]** A licensee shall not engage a child in any work assignment unless the assignment offers the child a constructive experience, in accordance with the child's age, capabilities and service plan.

~~[3.60]~~ **3.61]** For any adolescent who is legally not obliged to attend school, a licensee shall ensure that the child is either gainfully employed or enrolled in a training program geared to the acquisition of suitable employment or necessary life skills appropriate to the child's level of functioning.

#### Children's Recreation, Physical Exercise and Leisure Time Activities

~~[3.61]~~ **3.62]** A licensee shall develop, adopt, follow and maintain on file written policies and procedures ensuring developmentally appropriate recreation, physical exercise and leisure time activities both on and off the premises, including planned trips and excursions. The policies and procedures shall contain provisions requiring:

- a. A list of the types of activities to be offered to children both on and off the premises;
- b. A balanced mixture of planned recreation, physical exercise and leisure time activities, so that children have a reasonable choice of alternatives in which to participate;
- c. Opportunities for both individual and group activities; and
- d. A written schedule of monthly planned recreation,

physical exercise and leisure time activities be developed and posted **[monthly]** in a conspicuous and readily accessible location on the premises, and be maintained on file for at least 90 consecutive calendar days.

~~[3.62]~~ **3.63]** A licensee shall ensure that reasonable precautions and safeguards are utilized to prevent or minimize the risk of serious injury or harm to children.

~~[3.63]~~ **3.64]** A licensee shall ensure that children utilize only bathing, biking, boating, camping, canoeing, hiking, kayaking, sailing, swimming, water skiing, white water rafting or other sporting or recreation areas or facilities that are in compliance with applicable provisions of federal, state, county and municipal law(s), regulations and ordinances.

~~[3.64]~~ **3.65]** A licensee shall not threaten, coerce or intimidate a child to participate or engage in any recreation, physical exercise or leisure time activity, but may require a child to attend while not participating in the activity.

~~[3.65]~~ **3.66]** A licensee shall ensure that staff provide adequate and appropriate supervision of children engaging in recreation, physical exercise or leisure time activities and shall offer instruction, guidance and support to assist a child in learning to do so in a safe manner.

~~[3.66]~~ **3.67]** A licensee shall not permit children to engage or participate in high-risk activities unless:

- a. the licensee complies with applicable provisions governing such activities, as specified in Chapter 10; or
- b. The licensee utilizes an existing high adventure activity provider that is certified or approved by an appropriate governmental or private accrediting agency and that assumes responsibility for safety precautions and risk reductions.

~~[3.67]~~ **3.68]** A licensee shall prohibit children from participating in bungee jumping, hang gliding, parachute jumping, parasailing, and riding in airborne gliders.

#### Religion and Culture

~~[3.68]~~ **3.69]** A licensee shall respect the religious preference of the child and his or her parent(s) or legal guardian.

~~[3.69]~~ **3.70]** A licensee shall ensure that each child is afforded opportunities to attend religious services or activities in his or her religious faith of choice. A licensee shall directly arrange for or ensure that other reasonable means are provided for the transportation of a child to services or activities that are off site.

~~3.70~~ **3.71]** A licensee that has a particular religious or denominational orientation shall provide a written description of its orientation or beliefs to the child and to the child's parent(s) or legal guardian prior to the child's admission, or within seven consecutive calendar days following the admission of the child.

~~3.71~~ **3.72]** A licensee shall not require or coerce children to participate in religious services or activities, shall not discipline, discriminate against, or deny privileges to any child who chooses not to participate, and shall not reward any child who chooses to participate.

~~3.72~~ **3.73]** A licensee shall recognize and take into account the racial, cultural, ethnic and religious backgrounds of children when planning various activities or religious services.

#### Behavior Management

~~3.73~~ **3.74]** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the behavior management of children. The policies and procedures shall delineate the approved methods of behavior management techniques that are to be used to assist children in developing self control, self direction, self esteem, and acceptable patterns of social behavior. The policies and procedures shall include the concepts and application of least restrictive [**effective**] treatment and positive reinforcements. The policies and procedures shall prohibit:

- a. The delegation of responsibility for the control or supervision of children to other children;
- b. The use of corporal punishment or the threat of corporal punishment inflicted in any way on a child's body, including but not limited to shaking, biting, pinching, slapping, hitting or spanking;
- c. The use of any form of forced physical exercise or activity or work assignment that produces pain or discomfort;
- d. The use of verbal abuse, including humiliation, profanity, ridicule, or other forms of degradation;
- e. The withholding of any meal;
- f. The use of group punishments for misbehaviors of a child or a group of children unless the policies and procedures clearly prescribe the specific circumstances and safeguards under which such would be authorized;
- g. The denial of essential services, including medical or dental care;
- h. The denial of visits or communications with family;
- i. The denial of shelter, appropriate clothing, bedding, or any other essential personal needs;
- j. The denial of access to a toilet or bathing accommodations;
- k. The denial of access to a telephone [**to contact**

**individuals defined in 3.52];**

- l. The use of excessive force or inappropriate physical force;
- m. The use of restrictive procedures unless authorized by the Division and in compliance with the requirements of Chapter 9;
- n. The exploitation of a child; and
- o. The denial of sleep or needed rest.

~~3.74~~ **3.75]** A licensee shall disseminate copies of the behavior management policies and procedures to all employees and children within 10 consecutive calendar days of employment or admission, respectively, and shall make copies available to the parent(s), legal guardian or the referring agency.

~~3.75~~ **3.76]** A licensee shall ensure that all employees and volunteers who have regular contact with children receive a copy of the policies and procedures.

#### Documentation Requirements

~~3.76~~ **3.77]** A licensee shall develop, adopt, follow and maintain on written file policies and procedures governing the accurate and timely recording of each incident in which a time-out technique or a non-violent physical intervention strategy is used. Such policies and procedures shall ensure that the identity of the child, the date, time, place, and circumstances of, and the name of the employee or volunteer who administered the time-out technique or the non-violent physical intervention strategy is recorded. The nature of the technique or strategy and the elapsed time used shall also be recorded.

~~3.77~~ **3.78]** A licensee shall ensure that the chief administrator or his or her designee reviews the documentation on a weekly basis.

#### Time-Out Techniques

~~3.78~~ **3.79]** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the use of appropriate time-out techniques. The policies and procedures shall require that appropriate time-out techniques may be used only:

- a. For a child six years of age or older, except as noted in Requirement ~~3.80~~ **3.81];**
- b. When a child's behavior is judged by the employee to be disruptive to the child's ability to learn from the activity, to participate appropriately in the activity, or to function appropriately with other children engaged in an activity; and
- c. For a duration of time that shall not exceed 60 consecutive minutes. If there are more than 25 time-outs for

an individual child or a cumulative total of four hours spent in time-out within any consecutive 24-hour period, a licensee shall ensure that:

1. A review is conducted by the chief administrator or his or her designee to determine the suitability of the child to remain in placement in the facility or program, or whether modifications to the child's service plan are warranted; and
2. Appropriate action is taken in response to the findings of the review.

~~[3.79]~~ **3.80]** A licensee shall ensure that:

- a. At least one employee has been designated to be responsible for making visual contact with the child **[no less frequently than]** every 30 ~~[consecutive]~~ minutes;
- b. The child does not spend the time-out period in a closet, a bathroom or an unfinished basement or attic; and
- c. The child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has re-gained control.

~~[3.80]~~ **3.81]** A licensee shall ensure that any use of a Time-Out Technique for a child below six years of age is:

- a. Limited to a period of time not to exceed one minute for each year of the child's age; and
- b. Employed as a supplement to, not a substitute for, other developmentally appropriate, positive methods of behavior management.

**Non-Violent Physical Intervention Strategies**

~~[3.81]~~ **3.82]** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the appropriate use of non-violent physical intervention strategies. These policies and procedures shall require that non-violent physical intervention strategies may be used only:

- a. When a child is out of control and could physically harm himself or herself or others;
- b. To prevent the destruction of property when the child fails to respond to non-physical behavior management interventions;
- c. For a duration of time that shall not exceed 15 consecutive minutes, without written documentation on attempts made to release the child from the hold if more than 15 minutes is required. A licensee shall ensure that a child is released from a physical intervention strategy as soon as he or she gains control, or before 15 consecutive minutes have elapsed, whichever occurs first; and
- d. By employees or volunteers who have been specifically trained in its use and authorized to apply such strategies.

~~[3.82]~~ **3.83]** A licensee shall not permit the application of a

non-violent physical intervention strategy if a child has a documented physical condition that would contraindicate its use, unless a licensed physician has previously and specifically authorized its use in writing. Such documentation shall be maintained on file.

~~[3.83]~~ **3.84]** Whenever the provisions of Requirement ~~[3.81]~~ **3.82]** have been exceeded, a licensee shall ensure that:

- a. A review is conducted by the chief administrator or his or her designee to determine the suitability of the child to remain in placement in the facility or program, or whether modifications to the child's service plan are warranted;
- b. Written documentation of the review is forwarded to the Division; and
- c. Appropriate action is taken in response to the findings of the review.

~~[3.84]~~ **3.85]** A licensee shall prohibit employees from intentionally utilizing any of the following practices:

- a. Pulling a child's hair;
- b. Pinching a child's skin;
- c. Twisting a child's arm or leg in a way that would cause pain or injury to the child;
- d. Kneeling or sitting on the chest of a child;
- e. Placing a choke hold on a child;
- f. Bending back a child's finger(s);
- g. Shoving or pushing a child into the wall, floor or other stationary object; or
- h. Allowing another child or other children to assist in the application of a physical intervention strategy.

**Children's Grievance Procedure**

~~[3.85]~~ **3.86]** A ~~[licensee licensee]~~ shall develop, adopt, follow and maintain on file written policies and procedures governing the handling of grievances by children. The policies and procedures shall:

- a. Be written in clear and simple language;
- b. Be communicated to children in an age or developmentally appropriate manner;
- c. Be posted in an area easily accessible to children and their parent(s) and legal guardian;
- d. Ensure that any grievance shall be investigated by an objective employee who is not the subject of the grievance; and
- e. Require continuous monitoring by the licensee of any grievance to assure there is no retaliation against the child.

~~[3.86]~~ **3.87]** A licensee shall not take or threaten to take any punitive or other retaliatory action against a child who utilizes the grievance procedure.

**Part IV. Physical Plant**

## Premises and Equipment

~~3.87~~ **3.88]** A licensee shall ensure that the facility's or program's premises and equipment accessible to or used by children are free from any danger to their health, safety and well-being.

~~3.88~~ **3.89]** A licensee shall maintain on file written documentation that the buildings and premises of the facility or program conform to all applicable State and local fire, health and construction laws, ordinances and regulations.

~~3.89~~ **3.90]** A licensee shall ensure that porches, elevated walkways and elevated play areas of more than two feet in height shall have barriers to prevent falls.

~~3.90~~ **3.91]** A licensee shall ensure that all indoor and outdoor areas, toilets, wash basins, tubs, sinks, and showers are maintained in an operable, safe and sanitary manner.

~~3.91~~ **3.92]** A licensee shall utilize approved products and procedures in accordance with labeled instructions to ensure that the premises are protected from insect infestation.

~~3.92~~ **3.93]** A licensee shall ensure that all premises used by children are rodent free.

## Kitchen and Food Storage

~~3.93~~ **3.94]** A licensee shall ensure that kitchens are provided with the necessary operable equipment for the preparation, storage, serving and clean-up of all meals for all of the children and employees regularly served by such kitchens. A licensee that does not prepare food on the premises and that utilizes ~~single~~ **single**-service (disposable) dishes, pots, pans and utensils shall not be governed by this Requirement and Requirements ~~3.94, 3.95, 3.98, 3.100 and 3.102, 3.95, 3.96, 3.99, 3.101 and 3.103.~~

~~3.94~~ **3.95]** A licensee shall ensure that a kitchen or food preparation area has a hand washing sink within the food preparation area and separate from the sink used for food preparation and dish washing.]

~~3.95~~ **3.96]** A licensee with a licensed capacity of 12 or fewer children shall ensure that:

a. A mechanical dishwasher is used **[for the cleaning and sanitizing of all dishes, pots, pans and utensils after each meal];** or

b. Dishes, pots, pans and utensils are manually washed and rinsed after each meal in a sanitary manner using a two-compartment sink. When dishes, pots, pans and utensils are manually washed, a chlorinated detergent is used; and dishes, pots, pans and utensils, are immersed in

warm water for a duration of time that is at least one minute. The water is to contain a sanitizing solution that is self-made, consisting of one teaspoon of household bleach to one gallon of water, or an appropriate commercial sanitizing solution that is used in accordance with labeled instructions.

c. All dishes, pots, pans and utensils are air dried.

~~3.95~~ **3.97]** A licensee with a licensed capacity of 13 or more children shall ensure that:

a. A mechanical dishwasher is used for the cleaning and sanitizing of all dishes, pots, pans and utensils after each meal; and

b. The dishwasher is capable of sanitizing at the proper time, temperature and pressure ratio, and that dishes, pots, pans and utensils are washed in accordance with manufacturer's instructions.

~~3.96~~ **3.98]** A licensee shall ensure that all food service equipment and utensils are constructed of material that is nontoxic, easily cleanable and maintained in good repair.

~~3.97~~ **3.99]** A licensee shall ensure that all food services equipment, eating and drinking utensils, counter-tops and other food contact areas are thoroughly cleaned and sanitized after each use.

**3.98]** A licensee shall ensure that a kitchen or food preparation area has a hand washing sink within the food preparation area and separate from the sink used for food preparation and dish washing.]

~~3.99~~ **3.100]** A licensee shall ensure that the floor, walls and counter-top surfaces of the kitchen are made of cleanable materials and impervious to water to the level of splash.

~~3.100~~ **3.101]** A licensee shall ensure that the kitchen has a cook stove and oven with an appropriately vented hood that is maintained in a safe and operable condition.

~~3.101~~ **3.102]** A licensee shall ensure that the kitchen is so constructed or supervised as to limit access by children when necessary.

~~3.102~~ **3.103]** A licensee shall ensure that food preparation areas and appliances, dishes, pots, pans, and utensils in which food was prepared or served are cleaned following each meal.

~~3.103~~ **3.104]** A licensee shall ensure that all ~~potentially hazardous~~ **potentially hazardous** foods **[subject to spoilage]** are stored at temperatures that will protect against spoilage. This means that:

a. All refrigerated foods are to be kept cold at ~~40~~ **41** degrees Fahrenheit or below.

b. All frozen foods are to be kept at 0 degrees Fahrenheit or below.

c. All hot foods are to be kept at 140 degrees Fahrenheit or above, except during periods that are necessary for preparation and serving.

d. Refrigerators and freezers shall be equipped with ~~approved thermometers.~~ **accurate, easily readable thermometers located in the warmest part of the refrigerator or freezer.]**

~~[3.104~~ **3.105]** A licensee shall ensure that:

a. All food storage areas are clean, dry and free of food particles, dust and dirt;

b. All packaged food items and can goods are stored at least six inches above the floor in sealed or closed containers that are labeled; ~~[and]~~

c. All dishes, pots, pans and utensils are stored in a clean and dry place; **and**

**d. All paper goods are stored at least six inches above the floor.]**

#### Water Supply and Sewage Disposal

~~[3.105~~ **3.106]** A licensee shall maintain on file written documentation that the building's water supply and sewage disposal system are in compliance with applicable State laws and regulations of the Delaware Division of Public Health and the Delaware Department of Natural Resources and Environmental Control, respectively.

~~[3.106~~ **3.107]** A licensee shall ensure that hot tap water does not exceed 120 degrees Fahrenheit at all outlets accessible to children, and that cold or tempered water are also provided.

#### Garbage and Refuse

~~[3.107~~ **3.108]** A licensee shall ensure that:

a. Garbage is stored **[outside]** in watertight containers with tight-fitting covers that are insect and rodent proof;

b. Garbage and refuse are removed from the premises at intervals of at least once a week; and

c. Garbage and refuse are contained in an area that is separate from any outdoor recreation areas.

#### Lighting

~~[3.108~~ **3.109]** A licensee shall ensure that kitchens and all rooms used by children, including bedrooms, dining rooms, recreation rooms and classrooms, are suitably lighted for safety and comfort, with a minimum of 30 foot candles of light. All other areas shall have a minimum of 10 foot candles of light.

~~[3.109~~ **3.110]** A licensee shall ensure that all lights located over, by or within food preparation, serving and

storage areas shall have safety shields or light covers.

~~[3.110~~ **3.111]** A licensee shall ensure that all corridors are illuminated during night-time hours.

~~[3.111~~ **3.112]** During night-time hours, a licensee shall provide for exterior lighting of the building(s), parking areas, pedestrian walkways or other premises subject to use by children, employees and volunteers.

#### Heating

~~[3.112~~ **3.113]** A licensee shall ensure that a minimum temperature of 68 degrees Fahrenheit is maintained at floor level in all rooms occupied by children.

~~[3.113~~ **3.114]** A licensee shall ensure that all working fireplaces, pipes, and electric space heaters accessible to children are protected by screens, guards, insulation or any other suitable, non-combustible protective device. All radiators accessible to children below six years of age shall be protected by screens, guards, insulation or any other suitable, non-combustible protective device.

~~[3.114~~ **3.115]** Portable fuel burning or wood burning heating appliance shall be prohibited.

#### Lead Paint and Asbestos

~~[3.115~~ **3.116]** A licensee shall not use lead paint on the interior or exterior surfaces of any building used by children or on any furniture, toys or other equipment used by children.

~~[3.116~~ **3.117]** A licensee that accepts children who are under six years of age, mentally retarded or severely emotionally disturbed shall ensure that the premises are free of lead paint hazards and shall maintain on file documentation that the premises have been tested and found to be free from lead paint hazards.

~~[3.117~~ **3.118]** A licensee shall not use spray coatings containing asbestos on any interior or exterior portion of buildings or on any equipment used therein.

#### Toilet and Bathing

~~[3.118~~ **3.119]** A licensee shall ensure that toilets, showers, sinks, and bathing facilities and other toilet accessories are provided for children and:

a. Allow for individual privacy unless this privacy is in conflict with toilet training or needed supervision; and

b. Are maintained in a safe and sanitary manner.

~~3.119~~ 3.120] A licensee shall ensure that bathroom surfaces subject to splash shall be cleanable and impervious to water.

~~3.120~~ 3.121] A licensee shall ensure that bathroom floors, showers, and bathtubs have slip-proof surfaces. Glass shower doors shall be marked for safety.

~~3.121~~ 3.122] A licensee shall ensure that bathrooms are equipped with openable windows or mechanical ventilation systems to the outside.

#### Ventilation

~~3.122~~ 3.123] A licensee shall ensure that each habitable room has direct outside ventilation by means of windows, louvers, air conditioning or mechanical ventilation.

~~3.123~~ 3.124] A licensee shall ensure that:

a. Each door, operable window and other opening to the outside is equipped with insect screening in good repair and not less than 16 mesh to the inch, unless the facility is air conditioned and provided that it does not conflict with applicable fire safety requirements; and

b. This screening can be readily removed in emergencies.

~~3.124~~ 3.125] A licensee shall ensure that ventilation outlets are maintained in a clean and sanitary manner, and kept free from obstructions.

~~3.125~~ 3.126] A licensee shall ensure that all floor or window fans accessible to children have a protective grill, screen or other protective covering.

#### Storage

~~3.126~~ 3.127] A licensee shall provide areas with sufficient space for storing all supplies and equipment in a safe and sanitary manner.

~~3.127~~ 3.128] A licensee shall ensure that all poisonous and toxic materials are stored in accordance with the following:

a. All poisonous and toxic materials shall be prominently and distinctly labeled for easy identification as to contents;

b. All poisonous and toxic materials shall be stored so as to not contaminate food or constitute a hazard to children, employees and volunteers;

c. All poisonous and toxic materials shall be stored in a secure and locked room with access only by authorized employees, except those products that are required for routine cleaning and maintenance; and

d. All flammable liquids, gasoline, or kerosene shall

not be stored on the premises except in a manner and place that has been authorized in writing by the Office of the Fire Marshal.

#### Furnishings and Maintenance

~~3.128~~ 3.129] A licensee shall ensure that buildings are furnished with comfortable, clean furniture in good repair and appropriate to the age, size and capabilities of children.

~~3.129~~ 3.130] A licensee shall ensure that the premises are maintained and cleaned in a scheduled or routine manner.

~~3.130~~ 3.131] A licensee shall ensure that all cleaning equipment, including mops and buckets, are cleaned and stored in an area separate and distinct from the kitchen and food preparation, serving and storage areas. Kitchen and bathroom sinks shall not be utilized for cleaning mops, emptying mop buckets, or for any other purpose not connected with food preparation or the cleaning of dishes, pots, pans and utensils.

**[3.132 A facility licensed to care for 13 or more children shall have a service sink.]**

#### Outdoor Recreation Area

~~3.131~~ 3.133] A licensee shall maintain or have access to an outdoor recreation area with at least 50 square feet for each child for the maximum number of children who will use the outdoor recreation area at one time.

~~3.132~~ 3.134] When a licensee is not able to comply with Requirement ~~3.131~~ 3.133], the licensee shall provide a minimum of 700 square feet of open, accessible indoor play space suitable for large muscle activity, group and individual sports conducive to indoor facilities and other forms of recreation activities.

~~3.133~~ 3.135] A licensee shall ensure that all outdoor recreation areas are free from hazards and have adequate drainage.

~~3.134~~ 3.136] A licensee shall ensure that all areas determined to be unsafe including steep grades, cliffs, open pits, swimming pools, high voltage boosters, or high speed roads or highways shall be fenced off or have a natural barrier to protect children.

~~3.135~~ 3.137] A licensee shall ensure that its outdoor recreation program area has age-appropriate equipment for vigorous play, large muscle activity, physical exercise and group sports. Such equipment shall be maintained in a

clean, safe, and operable condition and shall be free of hazards.

Swimming

~~[3.136]~~ **3.138** A licensee that operates and utilizes an above-ground or in-ground swimming pool on its premises for use by children shall ensure that:

a. The pool fully complies with applicable swimming pool construction, sanitation, water ~~[purity]~~ **quality standards**, water temperature, recreational bathing and life saving provisions of federal, state, county and municipal law(s), regulations and ordinances;

b. The pool is maintained in a clean, safe, and sanitary manner;

c. **[The pool water shall be sufficiently clear to allow that all areas of the pool including the drain and bottom markings are clearly visible.**

~~e. d].~~ At least one employee who has secured a valid lifesaving or life-guard certificate issued by an appropriate governmental or private certifying agency is assigned to monitor the pool whenever children are present;

~~[d e].~~ The employee(s) assigned to monitor bathers and swimmers using the pool is located in a position out of the water where he or she can clearly observe all bathers and swimmers; and

~~[e f].~~ The pool is secured ~~[and when]~~ not utilized by children~~[. during night time hours.]~~

**[3.139 A licensee shall ensure that the following lifesaving equipment is provided:**

- a. A whistle;
- b. An assist pole or other appropriate reaching device;
- c. A ring buoy or other appropriate throwing assist device that has a rope attached to it;
- d. A backboard that has appropriate rigid cervical collars and a minimum of six straps;
- e. A first aid kit; and a rescue tube.]

Access to Telephone

~~[3.137]~~ **3.140** A licensee shall ensure that each building used by children has at least one working telephone that is directly available for immediate access or that is connected to an operating central telephone system.

~~[3.138]~~ **3.141** A licensee shall ensure that the licensee's telephone number is clearly posted and available to children, their parent(s) or legal guardian, and the general public.

~~[3.139]~~ **3.142** A licensee shall provide children reasonable access to a pay or free telephone.

~~[3.140]~~ **3.143** A licensee shall provide children reasonable privacy for telephone use.

~~[3.141]~~ **3.144** A licensee shall not charge children for telephone calls to their Division case manager or the Department rights representative.

Emergency Procedures

~~[3.142]~~ **3.145** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the handling of emergencies, including:

- a. Accident;
- b. Bomb threat;
- c. Fire;
- d. Flooding;
- e. Medical;
- f. Missing child;
- g. Power outage; or
- h. Severe weather conditions.

~~[3.143]~~ **3.146** The policies and procedures shall include:

- a. An emergency evacuation plan;
- b. Instructions and telephone numbers for contacting ambulance, emergency medical response team, fire, hospital, poison control center, police, and other emergency services;
- c. Location and use of first aid kits; and
- d. Roster and telephone numbers of employees to be contacted during an emergency.

~~[3.144]~~ **3.147** A licensee shall post its emergency evacuation plan and diagram depicting all exits in a conspicuous location on each floor of a building.

~~[3.145]~~ **3.148** A licensee shall ensure that each newly admitted child is provided an orientation regarding emergency procedures and the location of all exits within 48 hours of admission.

Emergency Evacuation Drills

~~[3.146]~~ **3.149** A licensee shall conduct at least four emergency evacuation drills annually and maintain on file a record of each drill. Two of these drills shall include evacuations, unless the Division, in writing, has determined that an evacuation is clinically contraindicated. Where a licensee utilizes two or more employee shifts, there shall be at least four emergency evacuation drills conducted annually for each shift.

~~[3.147]~~ **3.150** Emergency evacuation drills shall include all persons on the premises, including employees, volunteers, children and visitors.

## Firearms and Other Weapons

~~3.148~~ **3.151]** A licensee shall prohibit the storage or use of any firearms or other weapons on the grounds of the facility or program or in any building used by children.

## Power Equipment

~~3.149~~ **3.152]** A licensee shall ensure that power-driven equipment shall be appropriately shielded and maintained in good repair. Children shall be permitted to use such equipment only when it is age appropriate and only under the direct supervision of an employee.

## Part V. Health

## Employee and Volunteer Health

~~3.150~~ **3.153]** Prior to employing any person or accepting any volunteer, a licensee shall secure and maintain on file written documentation certifying and verifying that the prospective employee and volunteer has had a general physical examination within 12 months prior to the date of employment. The examination shall include a medically accepted procedure for screening for tuberculosis.

~~3.151~~ **3.154]** To be eligible to work in the facility or program, an employee or volunteer shall be:

- a. Free from tuberculosis; and
- b. Verified every three years thereafter as being free from tuberculosis.

~~3.152~~ **3.155]** If a licensee determines that the prospective employee or volunteer has not had a general physical examination within 12 consecutive calendar months prior to the anticipated date of employment or volunteer work, or if a licensee is unable to document that such an examination was completed, a licensee shall require the prospective employee or volunteer, as a condition of employment, to have such a general physical examination, as specified in Requirements ~~3.150~~ **3.153]** and ~~3.151~~ **3.154]**, within three consecutive calendar months of the date of employment or volunteer work.

## Child Health

~~3.153~~ **3.156]** A licensee shall secure from and maintain on file written documentation of each child's current immunizations, as required by the Delaware Division of Public Health.

~~3.154~~ **3.157]** If a licensee cannot obtain written documentation of immunization for a child, the licensee shall:

- a. Coordinate with the child's parent(s), legal

guardian, or referring agency for the provision of required immunizations; and

- b. Ensure that the child is immunized within 30 consecutive calendar days of admission, unless a statement from a physician indicating that immunizations are contraindicated is included in the child's health record.

## Child's Health Records

~~3.155~~ **3.158]** A licensee shall maintain on file a written health record for each child that includes information on:

- a. All available past medical history;
- b. Inventory and assessment of medications in use at the time of admission;
- c. All immunizations;
- d. All medications dispensed;
- e. Medical consents and releases of the child's parent(s) or legal guardian;
- f. All medical, dental, psychological or psychiatric examinations; and
- g. All medical treatment currently being provided.

~~3.156~~ **3.159]** A licensee shall ensure that child health records are available to employees for emergency use.

## Administration or Assistance With Self-Administration of Medication

~~3.157~~ **3.160]** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the use, administration or assistance with the self-administration of medications, prescription and non-prescription, to children. The policies and procedures shall:

- a. Identify those employees who may administer or assist with the self-administration of medications, in accordance with applicable State law(s) and regulations;
- b. Prohibit the administration of psychotropic medications unless a physician determines that such medication is clinically indicated;
- c. Prohibit the administration of psychotropic medications for disciplinary purposes, for the convenience of an employee, or as a substitute for appropriate treatment services;
- d. Require that an informed, written consent of the child's parent(s) or legal guardian is secured and maintained on file prior to the administration of any psychotropic medication;
- e. Provide for a means of recording in writing the administration of all medications. Such records shall include the identity of the child, the date and time the medication was administered, and the identity of the employee who administered or assisted in the self-administration of the medication; and

f. Ensure that any known prescribed medication previously taken by a child is not changed, altered or failed to be dispensed without first consulting with a physician.

~~[3.158]~~ **3.161]** A licensee shall develop, adopt, follow and maintain on file a written schedule for each child receiving prescribed medications.

~~[3.159]~~ **3.162]** A licensee shall ensure that all medications are contained in the original container, properly labeled and stored in a secure locked area or as needed, in a locked refrigerated area. Keys to the secure area shall be safeguarded and kept out of the reach of children.

**[3.163 Effective one year following the adoption of these requirements, a licensee admitting children prescribed psychotropic medication and/or children prescribed medication for chronic illness, such as diabetes or asthma, shall ensure that each of these children receive a minimum of one hour per month of Medical Consultant services. The Medical Consultant services shall include:**

**a. Review of administration of the child’s medication, including determination of problems in adherence or administration and development of corrective action plans.**

**b. Assessment and monitoring of the child with regard to the impact of their medication, including whether the medication is having its desired effects and whether the child is suffering from undesired side-effects.**

**c. Provide liaison between the licensee and the child’s physician(s).**

**d. Provide employees with instruction in the expected outcomes from each child’s medication regime and the possible side-effects of that medication regime.]**

**Handwashing**

~~[3.160]~~ **3.164]** A licensee shall ensure that handwashing procedures follow the recommendations of the US Centers for Disease Control and Prevention to prevent the spread of illness. Hands shall be scrubbed for a minimum of 10 seconds using soap and warm running water.

~~[3.161]~~ **3.165]** A licensee shall ensure that employees and children wash their hands at least at the following times and whenever hands are contaminated with body fluids:

- a. Before any food service activity including food preparation, food serving, table setting and tableware handling;
- b. After toileting;
- c. After changing diapers;
- d. After assisting a child with toileting or nose wiping,

or after cleaning from a child’s having vomited;

- e. Before eating meals or snacks; or
- f. After handling pets or other animals.

~~[3.162]~~ **3.166]** A licensee shall ensure that soap and toilet paper are available at all times. Paper towels or individual clean cloth towels shall be available for each child. If cloth towels are used, a licensee shall ensure that they are washed or replaced daily.

~~[3.163]~~ **3.167]** A licensee shall ensure that rest equipment, cribs, beds, mats and bedding are age-appropriate and assigned to one individual child for his or her exclusive use. All bedding shall be cleaned weekly or when soiled or wet, and shall not be assigned to another child until it has been cleaned and sanitized.

**Universal Precautions**

~~[3.164]~~ **3.168]** A licensee shall employ universal precautions for protection from disease and infection. Spills of body fluids (i.e., blood, eye discharge, feces, injury or tissue discharges, nasal discharge, saliva, or urine) shall be cleaned up immediately, as follows:

- a. Spills of vomit, urine, or feces on any surface including floors, walls, bathroom fixtures, table tops, furniture, diaper-changing tables, the area shall be cleaned and disinfected;
- b. Spills of blood or blood-containing body fluids and injury and tissue discharges, the area shall be cleaned and disinfected. Nonporous disposable gloves shall be used in these situations unless the amount of blood or body fluids is so small that it can easily be contained by the material used for cleaning without coming into contact with the person doing the cleaning;
- c. Persons involved in cleaning contaminated surfaces shall avoid exposure of open skin sores or mucous membranes to blood or blood-containing body fluids and injury or tissue discharges by using nonporous disposable gloves to protect hands when cleaning contaminated surfaces;
- d. Blood-contaminated material and diapers shall be disposed of in a plastic bag with a secure tie; and
- e. Mops shall be cleaned, rinsed, disinfected, wrung dry and hung to dry.

**Disinfectant Solution**

~~[3.165]~~ **3.169]** A licensee shall use a disinfectant solution for disinfecting areas that have been contaminated by body fluids. The disinfectant solution shall be **[a commercially prepared spill kit or]** self-made consisting of one-fourth cup of household bleach to each gallon of water, which shall be prepared daily, labeled, and placed in a bottle or a plastic

container that is sealed with a cap and stored out of reach of children.

#### Diapering and Sanitation

~~3.166~~ **3.170]** A licensee shall ensure that a diaper-changing area is:

- a. Separate from food preparation and serving areas;
- b. Easily accessible to a handwashing sink; and
- c. Surfaces used for diaper-changing are non-absorbent and washable, and are disinfected between use by different children or protected by a disposable covering discarded after each use.

~~3.167~~ **3.171]** A licensee shall:

- a. Use cloth diapers or disposable diapers;
- b. Place non-disposable soiled diapers and training pants without rinsing into a separate leakproof plastic bag, labeled with the child's name, before transporting to a laundry or laundering;
- c. Place soiled disposable diapers into a cleanable, covered container with a leakproof liner;
- d. Use disposable towels, disposable wipes, or clean, reusable towels laundered between use for different children;
- e. Immediately wash his or her hands after diapering or helping a child with toileting; and
- f. Immediately wash the hands of a child after toileting.

~~3.168~~ **3.172]** A licensee shall use toilet training chairs only in an area separate from food preparation areas and in an area that ensures a child's privacy while permitting supervision.

~~3.169~~ **3.173]** A licensee shall disinfect toilet training equipment after each use.

#### Infant Care

~~3.170~~ **3.174]** A licensee shall ensure that feeding bottles, nipples, and pacifiers are cleaned and disinfected after each use or when dropped on the floor or ground.

~~3.171~~ **3.175]** A licensee shall ensure that toys that are mouthed by infants or children are cleaned and disinfected after each use and stored between use in a clean container.

#### Emergency Medical Services

~~3.172~~ **3.176]** A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing medical emergencies. These policies and procedures shall require that at least:

- a. One employee is on duty who is qualified to

administer first aid and cardiopulmonary resuscitation; and

- b. One fully equipped first aid kit is placed in each building used by children, and in any indoor recreation area.

#### First Aid Kit

~~3.173~~ **3.177]** A licensee shall ensure that first aid kits are readily available and contain the following:

- a. Nonporous disposable gloves;
- b. Scissors;
- c. Tweezers;
- d. Safety pins;
- e. Thermometer;
- f. Current American Academy of Pediatrics or American Red Cross first aid book or an equivalent first aid guide;
- g. Emergency telephone numbers;
- h. Self-adhesive bandages of various sizes;
- i. Bandage tape;
- j. Sterile gauze pads;
- k. Flexible roller gauze;
- l. Triangular bandages; and
- m. Antiseptic ~~[wipe wipes]~~.

#### Illness, Injury or Death

~~3.174~~ **3.178]** A licensee shall notify the child's parent(s) or legal guardian and the referring agency of any serious illness, incident involving serious bodily injury or any severe psychiatric episode of a child requiring ~~[either in or out patient]~~ hospitalization.

~~3.175~~ **3.179]** A licensee shall immediately notify the child's parent(s) or legal guardian and the referring agency, the Division and the medical examiner in the event of the death of a child.

#### Nutrition

~~3.176~~ **3.180]** A licensee shall ensure that all children are provided nutritionally balanced meals and snacks, and portions suitable to the size and age of the child in care, in accordance with the Recommended Dietary Allowances of the National Research Council or its equivalent.

~~3.177~~ **3.181]** A licensee shall ensure that a written menu is posted on a daily basis in a conspicuous location on the premises. Any change or substitution to the menu shall be noted and considered as part of the original menu. Menus shall be maintained on file and made accessible for review for at least six months.

~~3.178~~ **3.182]** A licensee shall ensure that meals and snacks are served in accordance with the following schedule

based upon the number of hours that a child is present at the facility or program:

- a. Two to four hours - one snack;
- b. Four to six hours - one meal and one snack;
- c. Six to 10 hours - two meals and one snack, or one meal and two snacks, based upon the arrival of the child; or
- d. Ten hours or more - three meals and two snacks.

~~[3.179]~~ **3.183** A licensee shall ensure that alternate meals and snacks are provided for children on special diets when prescribed by a physician **[or required by religious beliefs]**.

Pets

~~[3.180]~~ **3.184** A licensee shall ensure that animals or household pets are free from disease and cared for in a safe and sanitary manner.

~~[3.181]~~ **3.185** A licensee shall secure and maintain on file written documentation of rabies and other vaccinations of pets, as required by State law(s), regulations or local ordinances.

Use of Alcohol, Tobacco and Illegal Drugs

**[3.186]** A licensee shall prohibit the use of tobacco by children.

~~[3.182]~~ **3.187** A licensee shall prohibit all use of tobacco by employees, volunteers ~~for children~~ and visitors in any building used by children ~~[and on the grounds of the facility by children. and in the presence of children.]~~

~~[3.183]~~ **3.188** A licensee shall prohibit all use of alcohol and illegal drugs by employees, volunteers, children and visitors in any building or on the premises used by children and in the presence of children.

~~[3.184]~~ **3.189** A licensee shall prohibit all use of alcohol, tobacco and illegal drugs by employees, volunteers, children and visitors in any vehicle owned, leased or provided by the licensee and utilized for transporting children.

~~[3.185]~~ **3.190** In vehicles owned by employees or volunteers, a licensee shall prohibit all use of alcohol, tobacco and illegal drugs by employees, volunteers, children and visitors while transporting children.

**[3.191]** A licensee shall prohibit the purchase of alcohol, tobacco and illegal drugs for children by employees and volunteers.]

Part VI. Transportation

~~[3.186]~~ **3.192** A licensee that chooses to provide for the

transportation of children to or from the premises, or in connection with an authorized activity, shall ensure that transportation is provided, in accordance with the provisions of these requirements.

~~[3.187]~~ **3.193** A licensee shall maintain on file a photocopy or other written record of the following documents for every motor vehicle used by the licensee to transport children **[and every driver who transports children]**:

- a. A valid motor vehicle license;
- b. A current motor vehicle registration; and
- c. A current motor vehicle insurance coverage contract.

~~[3.188]~~ **3.194** A licensee shall ensure that the driver of any motor vehicle used to transport children enrolled in a facility or program has a valid driver's license to operate the specific type of motor vehicle used to transport children.

~~[3.189]~~ **3.195** A licensee that chooses to transport non-ambulatory children with disabilities shall ensure that the following additional equipment is provided for all vehicles except automobiles used for transporting children:

- a. A ramp device to permit entry and exit of a child;
- b. A fastening system for wheelchairs that secures the chair to the vehicle floor; and
- c. Adequate aisle space that does not impede access to the exit door.

~~[3.190]~~ **3.196** A licensee shall ensure that all vehicles used to transport children:

- a. Are maintained in a clean and safe condition;
- b. Are equipped with a triangular red portable reflector device;
- c. Are equipped with a fully stocked first aid kit located on the inside of the vehicle;
- d. Have seats and back rests that are securely fastened;
- e. Have all seats facing sideways or backward securely locked in place; and
- f. Have an operable heater capable of maintaining a temperature of 60 degrees Fahrenheit.

~~[3.191]~~ **3.197** A licensee shall ensure that the following safety procedures are followed:

- a. An employee or volunteer is always present when a child is in the vehicle;
- b. All children are secured in a car seat that is appropriate for their age and that complies with applicable provisions of federal and state law(s) or regulations;
- c. Children who are not in a car seat are using **[individual]** seat belts; and
- d. When transporting more than four children below

six years of age, that there is one adult, in addition to the driver, in the vehicle.

#### CHAPTER 4: RESIDENTIAL CHILD CARE FACILITY

##### Part I. Administration

###### Authorization to Operate a Facility

4.01 As a condition for being authorized by the Division to operate a facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1 through 3.

##### Part II. Personnel

###### Staff-to-Child Ratios During ~~[Daylight]~~ Hours ~~[When Children are Awake]~~

4.02 During ~~[daylight]~~ hours ~~[when children are awake]~~, a building with a licensed capacity of 12 or fewer children shall have no fewer than one direct care worker on duty on the premises when children are present. When no children are present, there shall be one employee who can be reached by telephone.

4.03 During ~~[daylight]~~ hours ~~[when children are awake]~~, a building with a licensed capacity of 13 children or more, shall have one direct care worker on duty on the premises for every 10 children or fraction thereof when children are present. When no children are present, there shall be one employee who can be reached by telephone.

###### Staff-to-Child Ratios During ~~[Night-Time]~~ Hours ~~[When Children are Sleeping]~~

4.04 During ~~[night-time]~~ hours ~~[when children are sleeping]~~, a building with a licensed capacity of 12 or fewer children, all of whom are of the same gender, shall have one direct care worker on duty on the premises when children are present. The direct care worker shall be in the area where children sleep or in any area within close proximity to the area(s) where children sleep. The direct care worker shall not be required to be awake. An additional employee shall be on call and available to reach the building, when called, within 30 consecutive minutes. If the building is co-educational, the direct care worker shall be on duty and awake.

4.05 During ~~[night-time]~~ hours ~~[when children are sleeping]~~, a building with a licensed capacity of 13 children

or more, shall have one direct care worker on duty on the premises and awake for each 16 children or fraction thereof, when children are present. The direct care worker shall be in the area where children sleep or in any area within close proximity to the area(s) where children sleep. An additional employee shall be on call and available to reach the facility, when called, within 30 consecutive minutes.

##### Recreation

4.06 A facility with a licensed capacity of 13 children or more shall designate one full-time employee to plan, coordinate and lead recreational, physical exercise and leisure time activities for children.

##### Part III. Children's Services and Activities

###### Visitation with Children

4.07 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing visits between children and their parent(s), legal guardian, relatives and friends, both at the facility, at the children's own homes and at other suitable locations. These policies and procedures shall address the days and hours of visits, frequency of visits permitted, any exceptions governing whom the child may visit, and whom to contact to arrange for special accommodations in the event of hardship or emergencies and shall be consistent with applicable State law(s), regulations or court orders.

4.08 A facility shall explain the policies and guidelines to the child and his or her parent(s) or legal guardian.

4.09 A facility shall provide accommodations within the buildings to enable visits with children to be conducted in reasonable privacy, except where the service plan indicates that visits are to be directly supervised, or when the facility has reason to believe that a particular visitor would not be in the best interest of the child.

4.10 A facility shall not deny or restrict children's visits in the facility with their parent(s), legal guardian, relatives or friends based upon a child's behavior or infraction of these requirements, unless specified in the child's service plan.

###### Facility Visits or Tours

4.11 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing visits to or tours within the facility by volunteers, ~~[members of the facility's governing board]~~, advisory committees or councils, public officials, the media and members of the public-at-large who are not related to children in care. The

policies and procedures shall address:

a. The process by which such persons shall be required to seek and secure prior written approval to visit or tour the facility;

b. The purpose and extent of such visits or tours;

c. The days, hours, frequency and duration of any such visits or tours;

d. The circumstances and conditions under which such persons may visit or tour, including a requirement that such visits or tours be supervised by employees;

e. Precautions to protect the health, safety and well-being and to prevent risk or harm to children in care;

f. Requirements designed to protect the privacy rights of children in care; and

g. Conditions to ensure that such visits or tours do not:

- Cause a major or serious disruption of services or treatment to children;

- Interfere with the implementation of the child's service plan;

- Intimidate or embarrass children or employees;

- Seriously interfere with or disrupt program operations.

#### Overnight Visits Away from Facility

4.12 A facility shall include in the visitation policies and procedures provisions for verifying the identity of any visitor(s) not known to the facility and for securing prior to the visit pertinent information about the location of the overnight visit and the adult(s) responsible for the child's care during the visit.

#### Sending and Receiving Mail

4.13 A facility shall not deny or restrict a child's right to send and receive mail without censorship and without limiting the amount of mail a child sends or receives, except when:

a. The facility has reason to believe that a child's mail may contain unauthorized, injurious or illegal materials;

b. A court order restricts this right; or

c. A facility has reason to believe that a particular child's mail may present a security risk.

4.14 A facility shall ensure that each child has reasonable access to writing materials and postage.

#### Children's Money

4.15 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing the handling and management of children's money. These policies and procedures shall include provisions on:

a. The conditions under which a child may possess his or her own money;

b. The management of individual monetary accounts, ensuring that there is an accurate, individual accounting of all monies belonging to a child, including the receipting and disbursing of all monies;

c. Prohibiting a facility from requiring a child to assume responsibility for the cost of his or her own care and treatment, except for the reasonable reimbursement of costs required to pay for purposeful damage to the facility or to the property of another person by a child; and

d. Allowing or facilitating opportunities for a child to earn an allowance or to earn money through work assignments.

#### Sleep

4.16 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing the time to be set aside for uninterrupted daily sleep for each child. The policies and procedures shall ensure that each child is given the opportunity for at least eight hours of uninterrupted rest on a daily basis, unless the service plan or health needs of the child indicate otherwise.

#### Clothing and Other Personal Belongings

4.17 A facility shall ensure that each child has adequate, clean, and seasonally appropriate clothing.

4.18 A facility shall permit a child to bring clothing and other personal belongings to the facility, unless prohibited by the facility's policies and procedures.

4.19 A facility shall make adequate provisions for storing a child's clothing and other personal belongings while the child is enrolled, so that clothing used by a child does not come into contact with clothing used by another child.

4.20 A facility shall permit a child to take with him or her all clothing and other personal belongings identified as his or hers at the time of discharge.

#### Nutrition

4.21 A facility shall provide at least three nutritiously balanced meals for each child on a daily basis at regular times, with not more than 14 hours between the evening meal and breakfast.

## Discharge and Aftercare Plans

4.22 A facility shall develop, adopt, follow and maintain on file written policies and procedures governing discharge and aftercare planning. The policies and procedures shall include:

- a. The roles and responsibilities of the child's parent(s) or legal guardian, the referring agency, and the facility;
- b. The handling of an emergency discharge of a child that ensures the immediate notification of his or her parent(s) or legal guardian, or the referring agency;
- c. The involvement of the child in developing the discharge and aftercare plan, consistent with the child's ability to understand the plan and process; and
- d. The contents of the discharge report, which shall include the name, address[,] telephone number of the person or agency to whom the child was discharged. In addition, the report shall include a summary of the services provided to the child while in care, goals specified within the service plan that have been achieved, service needs that remain to be addressed, and recommendations for appropriate follow-up services.

The discharge report shall be completed within 30 consecutive calendar days of the child's discharge.

4.23 A facility that discharges a child under circumstances that are not consistent with the child's service plan shall **[also]** document in writing the following in the discharge report:

- a. The circumstances leading to the unplanned discharge;
- b. The actions taken by the facility and other parties; and
- c. The reason for the actions taken.

## Part IV. Physical Plant

## Living Unit Space

4.24 A facility shall ensure that the living unit(s) – ~~[areas where children live]~~ -- have designated space for daily living activities, including dining, recreation, indoor activities and areas where children may visit with their parent(s), legal guardian, relatives and friends.

4.25 A facility shall ensure that a dining area is provided which shall be maintained in a clean manner, be well-lighted and ventilated. The licensee shall ensure that dining room tables and chairs or benches are sturdy and appropriate for the sizes and ages of the children in care.

## Toilet and Bathing

4.26 A facility shall ensure that there are toilet and bathing accommodations that meet the following specifications:

- a. For every eight residents, there shall be at least one flush toilet, wash basin, and bathtub or shower;
- b. These toileting and bathing facilities shall not be located more than one floor from any bedroom; and
- c. Bathrooms shall have at least one mirror fastened to the wall at an age appropriate height.

## Bedroom Accommodations

4.27 A facility shall ensure that any bedroom used by children includes:

- a. A designated area for sleeping;
- b. A floor area of at least 70 square feet in a single-occupancy bedroom and at least 50 square feet in a multiple-occupancy bedroom, excluding closet space;
- c. Sufficient space for beds to be at least three feet apart at the head, foot, and sides. Bunk beds shall be at least five feet apart at the head, foot and sides;
- d. No more than four children for sleeping per room;
- e. A door that may be closed;
- f. **[A direct source of natural light;]**  
**[f g].** A window covering to ensure privacy; and  
**[g h].** Lights with safety covers or shields.

4.28 A facility shall ensure that each child is provided with:

- a. A bed;
- b. A cleanable, fire retarding mattress;
- c. Clean bed linens on at least a weekly basis **[every seven calendar days, or more often if needed];**
- d. A pillow; and
- e. Blanket(s) appropriate for season and weather.

4.29 A facility shall use cots or portable beds in an emergency only and for no longer than a period of 72 hours.

4.30 A facility shall ensure that there are no more than two tiers when bunk beds are used. In addition, the facility shall ensure that the distance between the top bunk mattress and ceiling is of sufficient height to enable the child to sit upright in bed without his or her head touching the ceiling.

4.31 ~~[A facility shall ensure that bed linens are changed at least every seven calendar days, or more often, if needed.]~~

~~4.32]~~ A facility shall provide and locate in the bedroom for each child a chest of drawers, a bureau, or other bedroom furniture for the storage of clothing and other personal belongings.

~~[4.33 4.32]~~ A facility shall not permit a child to share the

same bed with any other child.

**[4.34 4.33]** A facility shall ensure that a child of five years of age or older may occupy a bedroom only with members of the same sex.

#### Part V. Health

##### Personal Care and Hygiene

**[4.35 4.34]** A facility shall develop, adopt, follow and maintain on file written policies and procedures that ensure that:

- a. Children will receive guidance and instruction in personal care and hygiene appropriate to their age, gender, race and culture;
- b. Children follow personal care and good hygiene practices; and
- c. All necessary hygiene supplies, towels, washcloths and toiletries are provided to children in harmony with their age, gender, race and culture.

**[4.36 4.35]** A facility shall develop, adopt, follow and maintain on file written policies and procedures governing preventative, routine and emergency dental and medical care, including provisions for effective coordination of such dental and medical care with those responsible for the child's aftercare. The policies and procedures shall include:

- a. Periodic appraisal of the general health of each child;
- b. Initial and continuing health screening procedures;
- c. Emergency procedures;
- d. Maintenance of health records;
- e. Arrangements with a licensed physician(s) and dentist(s) to provide needed care; and
- f. Availability of medical care on a 24-hours-a-day, seven-days-a-week basis.

**[4.37 4.36]** A facility shall ensure that children receive timely, competent care when they are ill and continue to receive necessary follow-up care.

##### Medical and Dental Care

**[4.38 4.37]** If a facility cannot document that each child has received a complete physical examination within 12 consecutive calendar months before admission to the facility, the facility shall arrange for the child to have a new physical examination, to be completed within 45 consecutive calendar days after admission.

**[4.39 4.38]** A facility shall ensure that every child receives a physical examination no later than 12 consecutive calendar months after his or her previous physical examination and

once a year thereafter.

**[4.40 4.39]** A facility shall ensure that, upon admission, a child is asked if he or she has any physical illnesses or injuries. If a child shows symptoms of illness or injury, the facility shall arrange for the child to be examined immediately by a licensed physician or by a licensed nurse practitioner. The facility shall document the results of this procedure in writing and maintain them on file in the child's record.

**[4.41 4.40]** A facility shall ensure that a child receives necessary medical care throughout the year.

**[4.42 4.41]** A facility shall ensure that every child over three years of age receives a dental examination annually.

**[4.43 4.42]** A facility shall ensure that a child receives necessary, non-cosmetic dental care throughout the year.

**[4.44 4.43]** A facility shall make provisions for a child to receive any needed eyeglasses, hearing aids, prosthetic devices or other corrective devices, as medically indicated by a licensed physician.

##### Prenatal Care for Pregnant Adolescents

**[4.45 4.44]** A facility caring for a pregnant adolescent shall ensure that:

- a. All pregnant adolescents receive comprehensive prenatal care, including:
  1. Monthly visits to an obstetrician or certified nurse mid-wife during the first 28 weeks of gestation;
  2. Biweekly visits to an obstetrician or certified nurse mid-wife from the 29<sup>th</sup> to the 36<sup>th</sup> week of gestation;
  3. Weekly visits to an obstetrician or certified nurse mid-wife from the 36<sup>th</sup> week of gestation until delivery; and
  4. Participation in a child birth class provided by a registered nurse or child birth educator.

b. Arrangements for the delivery of the child are made by the end of the second trimester, or in situations wherein the adolescent is already pregnant beyond the second trimester upon admission to the facility, arrangements shall be made within 15 consecutive calendar days of the adolescent's admission to the facility;

c. A system is established to provide background medical information on the pregnant adolescent to the hospital identified for delivery or at the birthing center identified for delivery;

d. Delivery arrangements are clearly recorded in the adolescent's medical record to which employees are to have access in an emergency; and

e. Pregnant adolescents receive a dental examination within three consecutive calendar months of admission, and that needed non-cosmetic dental care is provided.

## CHAPTER 5. SECURE RESIDENTIAL CHILD CARE FACILITY

### Authorization to Operate a Secure Residential Care Facility

5.01 As a condition for being authorized by the Division to operate a secure residential care facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

### Admission

5.02 A facility shall only admit a child who has been adjudicated [**delinquent**] by a court of law or placed by the Delaware Division of Child Mental Health Services or any other in-state or out-of-state governmental agency.

### Security Measures

5.03 A facility shall develop, adopt, follow and maintain on file a written statement identifying the specific security measures employed at the facility, and the basis for using these measures.

### Definition

5.04 For purposes of this Chapter only, "automatic fail-safe system" means a combination of a mechanical and an electronic system that automatically unlocks all resident room doors and other doors required for building egress purposes in the event of either a power failure or a fire.

### Staff-to-Child Ratios

5.05 A facility that is equipped with an automatic fail-safe system that allows full and free egress from all individual rooms and buildings in the event of a power failure or fire shall have at least one direct care [**worker**] on duty and on the premises for every five children or fraction thereof, during [**daylight**] hours [**when children are awake**], and shall have at least one direct care worker awake and on duty on the premises for every 10 children or fraction thereof during [**night-time**] hours [**when children are sleeping**]. There shall always be a minimum of two direct care workers awake and on duty when children are present during night-time hours.

5.06 A facility that is not equipped with an automatic

fail-safe system shall have at least one direct care worker on duty on the premises for every four children or fraction thereof, when children are present during [**daylight**] hours [**when children are awake**], and shall have at least one direct care worker awake and on duty on the premises for every six children or fraction thereof when children are present during [**night-time**] hours [**when children are sleeping**]. There shall always be a minimum of two direct care workers awake and on duty when children are present during [**night-time**] hours [**when children are sleeping**].

5.07 A facility shall assign direct care workers to cover no more than one living unit at the same time.

5.08 A facility shall have at least one additional employee immediately available at all times to assist on-duty employees in an emergency.

### Outdoor Recreation Area

5.09 A facility shall ensure that the outdoor recreation area is enclosed with a suitable security fence.

### Exemptions

5.10 A secure residential care facility shall be exempt from the following requirements:

- a. That portion of Requirement [~~3.69~~ 3.70] regarding participation in off-site religious services or activities.
- b. Requirements 4.02 through 4.05 regarding staff-to-child ratios.

## CHAPTER 6. SHELTER CARE FACILITY

### Authorization to Operate a Shelter Care Facility

6.01 As a condition for being authorized by the Division to operate a shelter care facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

### Staff-to-Child Ratios

6.02 During [**daylight**] hours [**when the children are awake**], a facility shall provide at least one direct care worker on duty on the premises for every five children, or fraction thereof, when children are present. During [**night-time**] hours [**when the children are sleeping**], a facility shall provide at least one direct care worker awake and on duty on the premises for every 10 children, or fraction thereof, when children are present.

### Health Care

6.03 A facility shall either:

a. Secure written documentation that a child has received a complete physical examination within the 12 consecutive calendar months prior to his or her admission to the shelter care facility; or

b. Provide or arrange for the provision of a complete physical examination within seven consecutive calendar days of a child's admission to the shelter care facility.

**Duration of Placement**

6.04 A facility shall provide care to children for a period of time that is not to exceed 30 consecutive calendar days, unless:

a. There is documentation in the child's service plan that clearly justifies a longer placement; or

b. There is evidence that a strict adherence to the 30-day limit would require the child's release to another short-term placement, in which case the child may remain in the shelter care facility until a more permanent or long-term placement has been identified, or not later than 60 consecutive calendar days, whichever occurs first.

**Exemptions**

6.05 A shelter care facility shall be exempt from the following requirements:

a. Requirement ~~[3.153]~~ 3.156 regarding written documentation of a child's current immunizations;

b. Requirement[3.157] regarding obtaining necessary immunizations within 30 consecutive calendar days of admission; and

c. Requirement ~~[3.155]~~ 3.158 regarding the essential health records to be maintained on file. If the items listed in Requirement ~~[3.155]~~ 3.158 are available, they shall be kept on file by the facility.

**CHAPTER 7. TRANSITIONAL CARE FACILITY**

**Authorization to Operate a Transitional Care Facility**

7.01 As a condition for being authorized by the Division to operate a transitional care facility, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

**Admission**

7.02 A facility shall admit children who:

a. Have reached the age of 16 or older;

b. Have demonstrated a level of maturity that will enable them to be involved in some community activities,

including education or employment; and

c. Require minimum guidance or supervision.

7.03 A facility shall accept a child into care only after a current comprehensive admission evaluation has been completed in accordance with Requirement ~~[3.40]~~ 3.41 and only when the evaluation indicates that preparation for self-sufficiency or independent living is the primary goal for the child.

7.04 At the time of admission, a facility shall enter into a written agreement with each child. The agreement shall include:

a. A delineation of the respective roles and responsibilities of the facility, the child, and other involved parties;

b. A description of the rules governing the conduct and consequences of inappropriate behavior of the child while in care;

c. A statement of any financial arrangements related to placement, in accordance with Requirement 4.15; and

d. The approval signature of the child and the signature of a representative of the facility.

**Service Plan**

7.05 In addition to the provisions of Requirements ~~[3.48,]~~ 3.49 ~~[and,]~~ 3.50 ~~[and 3.51]~~, a facility shall ensure that the service plan includes:

a. The type and frequency of supervision needed;

b. The respective roles and responsibilities of the facility, the child and other involved parties;

c. The time-frames and methods to be used to gradually reduce dependency while appropriately increasing personal responsibility;

d. Identification of all persons responsible for the implementation of the plan;

e. The life skills the youth will need to acquire before discharge;

f. The criteria for achieving a successful discharge; and

g. The preliminary plan for discharge and aftercare, in accordance with Requirements 4.22 and 4.23.

**Activity Schedule**

7.06 A facility shall assist each child to develop and follow a written activity schedule that includes:

a. Life skills training and practice appropriate to achieving independent living;

b. Household chores to be completed by children in care;

c. Employment, job skill training or educational activities;

- d. Leisure-time or recreational activities; and
- e. Contacts with employees, volunteers or community people.

#### Staff Coverage

7.07 A facility shall develop, adopt and follow written policies and procedures governing the type and frequency of employee supervision provided for each child. The policies and procedures shall:

- a. Contain criteria for determining the type and frequency of employee supervision. The criteria shall be based on an assessment of each child's maturity, suitability and readiness for responsibly and safely handling various degrees of responsibility and independence; and
- b. Delineate a mechanism by which a child can communicate with a facility for information, assistance or guidance, or to express a concern or need that the child cannot resolve alone.

#### Exemptions

7.08 A transitional care facility shall be exempt from the following requirements:

- a. Requirements ~~[3.131 3.133]~~ through ~~[3.135 3.137]~~ regarding the outdoor recreation area.
- b. Requirements ~~[3.153 3.156]~~ and ~~[3.154 3.157]~~ regarding child immunizations.
- c. Requirements 4.02 through 4.05 regarding staff-to-child ratios.
- d. Requirement ~~[4.15—e 4.15c]~~, regarding the prohibition that a child pay for his or her own care and treatment.

## CHAPTER 8. DAY TREATMENT PROGRAMS

### Authorization to Operate a Day Treatment Program

8.01 As a condition for being authorized by the Division to operate a day treatment program, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2 and 3.

8.02 If a day treatment program chooses to use any form of restrictive procedure as defined by Requirement ~~[1.34 1.35]~~, the day treatment program shall secure prior written authorization from the Division and shall comply with the Requirements of Chapter 9.

### Health Appraisal

8.03 A program shall ensure that within one month following admission, there shall be on file an

age-appropriate health appraisal conducted within 12 consecutive calendar months prior to admission for each child enrolled. Health appraisals shall be certified by a licensed physician or nurse practitioner and shall be updated annually. The health appraisal shall include:

- a. A health history;
- b. A physician's examination;
- c. Recommendations regarding restrictions or modifications of the child's activities, diet or care;
- d. Prescriptions for medication or recommendations regarding medications; and
- e. Documentation of the immunization status.

### Activities

8.04 The program shall ensure that all children are provided activities and physical exercise or routines that are developmentally and age-appropriate.

8.05 The program shall ensure that children under six years of age are provided with opportunities for rest after the noon meal. The rest area shall be adequately lighted to allow for visual supervision at all times.

### Indoor Space

8.06 A program shall have at least 35 square feet of usable indoor space per child, exclusive of toilet rooms, kitchen areas, eating areas, isolation rooms, offices, storage spaces, hallways, closets and gymnasiums.

### Sleeping Accommodations

8.07 A program shall ensure that each child under six years of age who is present during scheduled rest time possesses age-appropriate, clean rest equipment and bedding, and that equipment and bedding are safely maintained for the exclusive use of that child. ~~[Disposal Disposable]~~ bedding shall be acceptable as an alternative to maintaining rest equipment for the exclusive use of that child.

### Toilet Facilities

8.08 A program shall have enclosed toilet rooms inside the building on the same floor that houses the recreation or play areas.

8.09 A program serving children between two and five years of age shall maintain a sink and toilet ratio in accordance with the following table:

**No. of Children Number of Toilets Number of Sinks Ratios**

1-15	1	1	1/15
16 - 35	2	2	1/17.5
36 - 100	3-5	3-5	1/20
Over 100			1/25

8.10 A program serving children between six and 18 years of age shall have one sink and toilet for every 25 children, or fraction thereof, based upon licensed capacity. A urinal shall be counted as one-half of a toilet, provided that the population served includes a significant number of males and that at least two flush toilets are available and accessible to both males and females.

**Staff-to-Child Ratios**

8.11 A program shall maintain the following direct care worker to child ratios for each age group when children are present: ~~during daylight hours~~

Age of child	Minimum direct care worker to child ratio
0-5	1:4
6-12	1:6
13+	1:10

8.12 A program shall ensure that at least two employees are present and on duty on the premises at all times when children are present, regardless of the number of children.

**Day Treatment Agreement**

~~8.14~~ **8.13** A program shall develop, adopt, follow and maintain on file a written day treatment agreement. The agreement shall be completed prior to the child's admission and shall be signed by the licensee ~~[or his or her designee]~~, the child, if appropriate, the child's parent(s) or legal guardian and the referring agency and shall include:

- a. A description of the respective expectations, roles and responsibilities of the program, child, family and other involved parties;
- b. Specification of the hours of operation, arrangements for service of meals, equipment to be provided by the family, transportation arrangements and visitation policies;
- c. Specification of the behavior management policy, the release policy and the procedures for handling child and parent complaints; and
- d. Specification of grounds for termination of enrollment.

**Release of Children**

~~8.15~~ **8.14** A program shall develop, adopt, follow and

maintain on file written policies and procedures governing the release of children. Such policies and procedures shall require that a copy is given to all parents, employees, volunteers and children and shall include provisions:

- a. To ensure documentation of the release of the child to an authorized person, agency or public school bus service;
- b. For the emergency release of children. When a parent calls the program requesting emergency release of the child, the program shall verify the identity of the parent prior to releasing the child;
- c. Regarding the release of the child to a person not known to the licensee. A program shall verify the identity of any person not known to employees prior to the release of a child and shall retain verification for at least 24 hours;
- d. To be followed when a person not authorized to receive a child requests release of a child. A program shall ensure that a child is released only to his or her parent(s), legal guardian or other person authorized by the parent(s) to receive a child; and
- e. To be followed when a person showing clear signs of drug or alcohol impairment requests release of a child.

**Handling of Sick Children**

~~8.16~~ **8.15** A program shall have a separate area where children who are exhibiting symptoms of illness that require isolation from the group may be cared for until they can be released to their parent(s) or legal guardian or are diagnosed by a licensed physician or nurse as posing no risk to themselves or others. The area shall not be located in the kitchen or toilet areas.

**Child Accident and Injury**

~~8.17~~ **8.16** A licensee shall ensure that a child who is injured by an accident or fall is provided with necessary first aid treatment, or is taken to an emergency medical treatment center, and that the parent(s) or legal guardian is immediately notified.

**CHAPTER 9. RESTRICTIVE PROCEDURES**

**Authorization to Use Restrictive Procedures**

9.01 As a condition for being authorized by the Division to implement restrictive procedures, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, and 3.

9.02 A licensee shall not utilize or administer a restrictive procedure on any child below six years of age.

Policies and Procedures Governing the Appropriate Use of Restrictive Procedures

9.03 A licensee shall develop, adopt, follow and maintain on file written policies and procedures governing the appropriate use of each type of restrictive procedure to be employed. The policies and procedures shall:

- a. Identify the types of behavior or conditions for which restrictive procedures are to be permitted;
- b. Document that the licensee's use of restrictive procedures are in accordance with established, accepted clinical practice and is age-appropriate;
- c. Delineate the name, position and qualifications of the employees who have direct responsibility for applying and for supervising the application of restrictive procedures;
- d. Restrict the use of these procedures only by designated and authorized employees who have been given prior training in how to administer and supervise the application of such procedures;
- e. Require that an application of a restrictive procedure is done in concert with the current service plan for that child, taking into account the child's developmental and medical needs;
- f. Require that a legal, informed written consent from the parent(s) or legal guardian of a child is obtained prior to the application of any restrictive procedure, except in emergency situations, in which case, the policies and procedures shall outline safeguards for the use of a restrictive procedure in such a circumstance;
- g. Require that these procedures may only be employed as ancillary techniques to accompany positive reinforcement techniques;
- h. Require that a technique may only be employed when its use outweighs the risk of harm accompanying its use;
- i. Indicate time limitations and other restrictions on the use of each form of restrictive procedure;
- j. Require that a technique may only be employed when it is the least restrictive means to address the behavior that necessitated its use;
- k. Require that the chief administrator or his or her designee provides administrative oversight of each use of a restrictive procedure to ensure that these procedures are humanely and appropriately applied; and
- l. Require that a written record of each application of a restrictive procedure be maintained. The record shall contain: the name of the child; the identity of the employee(s) who administered the procedure; the date, time and duration of the procedure; the circumstances surrounding the use of the procedure; and a description of the child's demeanor.

Human Rights Committee

9.04 A licensee shall establish a Human Rights Committee of at least five adult individuals of known reputation, two of whom shall be professionally knowledgeable or experienced in the theory and ethical application of various treatment techniques used to address behavioral problems. The Human Rights Committee shall include members from the licensee and external to the licensee or its parent organization. A majority of Committee members shall be external to the licensee or its parent organization, and one member of the Committee shall be either a licensed mental health professional, a licensed physician, a licensed clinical psychologist, or a clinical social worker. The Committee shall meet at least on a quarterly basis.

9.05 The Human Rights Committee shall be responsible for:

- a. Determining that children in care are receiving humane and proper treatment;
- b. Reviewing and making recommendations regarding the licensee's policies and procedures governing the use of restrictive procedures;
- c. Reviewing the restrictive procedures records and advising the Chief Administrator accordingly;
- d. Recording and maintaining on file written minutes of all of its meetings, and providing the Chief Administrator with a copy of these minutes;
- e. Making inquiries into any allegations of abusive techniques or the misuse of restrictive procedures. A report of the inquiry shall be provided by the Committee to the Chief Administrator and sent to the Division;
- f. Monitoring the qualifications and training of employees who have been given responsibility for administering restrictive procedures and to make recommendations to the Chief Administrator accordingly; and
- g. Reviewing and making recommendations on individual treatment plans that include the application of some form of restrictive procedures.

9.06 An emergency application of a restrictive procedure may occur for a specific child without the prior review of the Human Rights Committee, but only when the situation is deemed to be an emergency.

Orientation and Training

9.07 In addition to complying with Requirements ~~{3.25}~~ [3.26] through ~~{3.30}~~ [3.31], a licensee shall ensure that employees authorized to apply a restrictive procedure also receive orientation and training on:

- a. The various types of restrictive procedures;
- b. The acceptable way to administer and supervise the application of restrictive procedures;

c. The possible side effects of psychotropic medications; and

d. The policies and procedures governing the appropriate use of restrictive procedures.

#### Application of Restrictive Procedures

9.08 A child who is having a restrictive procedure applied shall be under continuous monitoring and observation to prevent the child from harming himself or herself, or others. A child shall be given an opportunity for a minimum of 10 consecutive minutes of release within each two consecutive hours of the application of a restrictive procedure for the purpose of moving about or exercising, and shall be permitted to go to a toilet, when requested, or be given the opportunity to go to a toilet at least once every two consecutive hours.

9.09 A licensee shall not authorize or permit restrictive procedures to be used in a punitive, retributive, harsh or abusive manner, nor for the convenience of staff or as a substitute for other less restrictive, appropriate means of social treatment or intervention.

9.10 A licensee shall ensure that any allegation(s) of an inappropriate or abusive application of a restrictive procedure is brought to the attention of the Human Rights Committee promptly.

9.11 A licensee shall ensure that the Human Rights Committee initiates an investigation of any allegation(s) of an inappropriate or abusive application of a restrictive procedure within two consecutive business days of having received the allegation(s).

9.12 A licensee shall use the least restrictive **[effective]** form of restrictive procedure necessary to control a child's dangerous, violent, or seriously disruptive behavior.

9.13 A licensee shall ensure that employees immediately release a child from a prescribed restrictive procedure when the situation necessitating its need no longer exists or when the maximum time allowed for use of such a procedure has expired, whichever occurs first.

#### Exclusion

9.14 A licensee shall utilize exclusion only:

a. For a prescribed duration of time that shall not exceed 60 consecutive minutes; and

b. If there are more than 10 exclusions for an individual child or a cumulative total of six hours within any consecutive 24-hour period, a licensee shall ensure that:

1. A review is conducted by the chief

administrator, or his or her designee, to determine the suitability of the child to remain in placement, or whether modifications to the child's service plan are warranted; and

2. Appropriate action is taken in response to the findings of the review.

9.15 A licensee shall ensure that:

a. At least one employee is responsible for providing continuous monitoring of the child;

b. The child is not excluded in a closet, bathroom or unfinished basement or attic; and

c. The child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has re-gained control.

#### Locked Isolation

9.16 A licensee shall utilize locked isolation only:

a. When a child's behavior is so violent or disruptive as to present a high risk of physical or emotional harm to the child or others;

b. When other less restrictive and less punitive physical interventions have been applied without success; and

c. For a duration of time that does not exceed two consecutive hours or a total of six non-consecutive hours within any 24-hour period.

9.17 A licensee shall ensure that:

a. There is a ~~minimum~~ **maximum** length of time for placement when a child is isolated in a locked room;

b. The application of locked isolation is prohibited for non-violent or non-assaultive offenses or behaviors or for practices designed to prevent children from running away, to seclude a child who is ill, to punish a child for stealing, cursing or failing to comply with house rules, or to facilitate supervision for the convenience of employees; and

c. The child is re-introduced to the group in a sensitive and non-punitive manner as soon as he or she has re-gained control.

9.18 A licensee shall ensure that a child placed in locked isolation is not in possession of belts, matches, weapons or any other potentially harmful object or material that could present a risk of harm to a child.

9.19 A licensee shall ensure that an employee who is assigned to monitor a child placed in locked isolation shall have no other immediate responsibility and shall:

a. Be in visual and auditory contact with the child at all times;

b. Ensure that all personal needs of the child are met;

c. Ensure that a child has access to toilet facilities, as needed; and

d. Ensure that the child receives the same number and frequency of meals and snacks provided to other children in the facility or program.

9.20 A licensee shall utilize locked isolation only:

a. For a prescribed duration of time that shall not exceed 60 consecutive minutes unless authorized by the chief administrator, or his or her designee, and then the locked isolation shall not exceed 120 consecutive minutes; and

b. If a child is in locked isolation for a cumulative total of six cumulative hours within a 24-hour period, the licensee shall ensure that:

1. A review is conducted by the chief administrator or his or her designee to determine the suitability of the child to remain in placement, or whether modifications to the child's service plan are warranted; and

2. Appropriate action is taken in response to the finding of the review.

9.21 A licensee shall ensure that the child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has regained control.

9.22 A licensee shall ensure that any room to be used for locked isolation has:

a. At least 75 square feet and a ceiling height of at least eight feet;

b. A safety glass window, mirror or camera that allows for full observation of the locked isolation room;

c. No hardware or furnishings that obstruct observing the child at all times;

d. Installed hardware, equipment and furnishings that do not present a physical hazard or a suicide risk;

e. Installed either the means for natural or mechanical ventilation to provide ventilation at a level deemed appropriate to maintain the child's health and well-being;

f. The capacity to maintain a temperature of at least 68 degrees Fahrenheit; and

g. A minimum of 10 foot-candles of light in all areas of the room.

#### Chemical Restraint

9.23 A licensee shall ensure that each administration of chemical restraint is prescribed by a licensed physician who has personally reviewed the child's health records and has examined the child at the time of the episode.

9.24 A licensee shall not allow the use of a physician's standing order (ProReNata) for purposes of authorizing the application of a chemical restraint.

9.25 A licensee shall ensure that any application of a

chemical restraint, whether administered orally or by intramuscular injection, is administered only by a licensed nurse or by a licensed physician.

9.26 When a child requires chemical restraint on more than six occasions in any 30 consecutive calendar-day period, the chief administrator, or his or her designee, shall determine the appropriateness of the child's continued placement in the facility or program.

9.27 A licensee shall not administer a chemical restraint as a punishment, for the convenience of employees, or as a substitute for a treatment program.

9.28 A licensee shall ensure that:

a. The initial administration of a chemical restraint does not exceed 24 consecutive hours in duration;

b. Only a licensed physician who has reviewed the child's health records and who has examined the child may authorize the application of an additional chemical restraint and then only for an additional consecutive 24-hour period and only upon determining that the continuance of chemical restraint on an emergency basis is clinically necessary and appropriate;

c. Employees regularly monitor the child under chemical restraint, observe the child's condition or state and immediately advise the prescribing physician of any observed side effects; and

d. A written record of the child's receipt of a chemical restraint and his or her condition, including any observed side effects, is maintained in the child's health records.

#### Mechanical Restraint

9.29 A licensee shall utilize a mechanical restraint only:

a. When a child's behavior is so violent or disruptive as to present a high risk of physical harm to the ~~adolescent~~ **child** or others;

b. Other less restrictive and less intrusive physical interventions have been applied without success;

c. When transporting a child to or from a court hearing or other circumstances requiring that truancy prevention be exercised and that no other means of prevention is appropriate;

d. For a duration of time that shall not exceed two consecutive hours or a total of four consecutive hours within any consecutive 24-hour period or that is utilized more than four times within a consecutive five-day period. An exception to this is allowed only for purposes of transporting a child to or from a court hearing or other off-premises location wherein truancy prevention is required; and

e. Employees utilizing the restraint have received training in properly applying it.

9.30 A licensee shall ensure that:

- a. The child being mechanically restrained is protected and handled by an employee in a safe manner designed to avoid injury or pain in applying the restraint;
- b. Only one child is mechanically restrained in the same room or area at the same time, unless being transported in a vehicle to and from a court hearing;
- c. An employee maintains visual contact with the child at all times while the mechanical restraint is being applied;
- d. An employee inspects the child's wrists, arms, or legs every 15 consecutive minutes to prevent injury or circulation problems from occurring, and attempts to release each limb every 60 consecutive minutes for a duration of 10 consecutive minutes; and
- e. The restrained child has reasonable access to toilet facilities and to all scheduled meals while restraints are being applied.

9.31 A licensee shall prohibit the use of the following mechanical restraints:

- a. Papoose boards.
- b. Ropes.

## CHAPTER 10. ADVENTURE ACTIVITY PROGRAM

### Authorization To Provide Adventure Activity Program

10.01 As a condition for being authorized by the Division to involve children in an Adventure Activity Program, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, and 3.

### Policies and Procedures

10.02 A licensee shall develop, adopt, follow and maintain on file written policies and procedures that contain:

- a. A comprehensive description of the various types of adventure activities in which the licensee plans to involve children, including the specific destinations for each day, routes to be followed whether by highway, trail or waterway, and the modes of transportation to be used;
- b. Safety rules that are to be used by employees, volunteers and children when engaged in each of the types of adventure activities that are described in this Chapter;
- c. Recognized standards of safety pertaining to each of the specified adventure activities to be utilized;
- d. Criteria based on recognized standards for employees and volunteers who are responsible for leading, instructing and supervising children engaged in any of the adventure activities to be utilized;
- e. Descriptions of appropriate safety equipment and

clothing, such as safety glasses or goggles, helmets, gloves, special shoes and outdoor clothing that are required to be used for adventure activities;

f. Procedures to be employed to ensure that the environment is protected and any waste materials or trash are appropriately disposed of;

g. Instructions for posting itineraries, preparing for emergency medical services, and notifying, at agreed upon times, the licensee's main office when the adventure activity takes place in a location or locations that are remote from the main premises of the licensee;

h. Guidelines to ensure that adventure activities include opportunities for problem-solving, developing a positive self-image, and developing an appreciation for the natural environment and conservation;

i. Guidelines to ensure that adventure activities are followed by opportunities for reflection and life application;

j. Guidelines to ensure that participation is conducted within the boundaries of the child's capabilities, dignity and respect for self-determination;

k. Procedures to ensure that necessary potable water, nutritious food, appropriate clothing, shelter, rest and other essentials are available and planned for;

l. Procedures for obtaining signed consent forms from a child's parent(s), legal guardian or referring agency; and

m. Procedures that ensure the reporting to the Division of any fatalities or any accidents resulting in the hospitalization of a child.

### Safety/Risk Management Committee

10.03 A licensee shall establish a Safety/Risk Management Committee consisting of representatives of management, employees, and individuals with experience and expertise in adventure activities. This Committee shall review the licensee's policies and procedures governing adventure activities and monitor risk management and safety practices employed in the various adventure activities, and advise the licensee's chief administrator of any revisions, omissions or additions that are deemed necessary and appropriate. The Committee shall review any accident that may occur and the circumstances surrounding the accident and send written findings and recommendations to the licensee's chief administrator [**and to the Division**].

### Staff Qualifications

10.04 A licensee shall ensure that employees and volunteers who have responsibility for a particular adventure activity are qualified and experienced in the specific adventure activity. If certification is required, such as is for swimming and certain other aquatic activities, such employees or volunteers shall have current certification.

10.05 An aquatic supervisor shall be an adult who has satisfactorily completed the training and certification requirements for a water safety instructor that are equivalent to those adopted by the American Red Cross for water safety.

#### Staff-to-Child Ratios

10.06 A licensee shall ensure that the ratio of employees and volunteers to children is in conformity with standards for the specified adventure activity being applied and that have been recognized by a national accrediting or other recognized organization.

10.07 A licensee shall ensure that an aquatic supervisor or water safety instructor is on duty at each aquatic activity. The aquatic supervisor shall be responsible for the enforcement of the licensee's safety rules, policies and procedures governing aquatic activities, including swimming, boating, canoeing, kayaking, water skiing and white water rafting.

#### Away From Campus Adventure Activities

10.08 A licensee shall maintain on file at the licensee's administrative office a list of all children, employees, and volunteers who participate in an adventure activity that occurs away from the premises of the licensee.

10.09 A licensee shall ensure that a fully stocked First Aid kit that is adventure activity- appropriate and readily available accompanies the employee who is the lead person for the away-from-campus adventure activity.

10.10 A licensee shall develop, adopt, follow and maintain on file:

- a. A written copy of its itinerary and pre-established check-in times; and
- b. The names of children, employees and volunteers participating in an adventure activity that involves out-of-state travel or within-state travel of more than 48 consecutive hours duration.

The licensee shall send a copy of the itinerary to the Division at least 15 consecutive calendar days prior to departing on the adventure activity and shall provide the child's parent(s), legal guardian or referring agency with a copy of the itinerary.

#### Equipment

10.11 A licensee shall ensure that any equipment and gear that is to be used in connection with a specified adventure activity is appropriate to the activity, certified if required, in good repair, in operable condition, and age-and body-size appropriate.

10.12 A licensee shall ensure that all ropes and paraphernalia used in connection with rope rock climbing, rappelling, high and low ropes courses or other adventure activities in which ropes are used are approved by the Union of International Alpine Association (UIAA), or an equivalent certifying organization, and have been inspected by employees responsible for supervising the adventure activity before engaging children in the activity.

10.13 A ~~licensee~~ licensee shall ensure that all participants are appropriately equipped, clothed, and wearing safety gear, such as a helmet, goggles, safety belt, life jacket or a flotation device, that is appropriate to the adventure activity in which a child is engaged.

#### Natural Swimming Area Life Saving Equipment

10.14 A licensee shall clearly delineate the areas for swimmers and non-swimmers in any natural swimming area used by children, such as a lake, river, bay, ocean or gulf.

10.15 A licensee shall ensure that lifesaving equipment is provided at each permanent swimming area and shall be placed so it is immediately available in case of an emergency. The following equipment shall be available:

- a. A whistle or other audible signal device for each employee on duty;
- b. An assist pole or other appropriate reaching device;
- c. A ring buoy or other appropriate throwing assist device that has a rope attached to it which is of sufficient length for the area;
- d. A backboard that has appropriate rigid cervical collars and a minimum of six straps;
- e. A first aid kit; and
- f. A rescue tube.

10.16 A licensee shall ensure that lifesaving equipment is provided for all other aquatic activities and is placed so that it is immediately available in case of an emergency. At a minimum, the equipment shall include:

- a. A whistle or other audible signal device;
- b. A throwing assist device; and
- c. A first aid kit.

#### Aquatic Procedures

10.17 A licensee shall ensure that before engaging in any aquatic activity, each child shall be classified by the aquatic supervisor according to swimming ability in one of two classifications: swimmer and non-swimmer.

10.18 A licensee shall not permit a child to participate in an aquatic activity that requires higher skills than the child's swimming classification, except during formal instruction.

10.19 A licensee shall establish and enforce a method, such as the buddy system, for supervising children who are involved in an aquatic activity. The system used shall include procedures for check-in, check-out, and the periodic accounting for the whereabouts of each child by an employee of the licensee. A licensee shall ensure that an accounting of the number of swimmers is conducted at least once every 10 consecutive minutes.

10.20 A licensee shall develop, adopt, follow and maintain on file a written aquatic emergency plan, for each aquatic activity. The plan shall include:

- a. Rescue procedures and frequency of drills;
- b. Child accountability;
- c. Prompt evacuation; and
- d. Notification of outside emergency services.

10.21 A licensee shall ensure that swimming at sites other than a waterfront or pool that is on the premises of the licensee is supervised by an aquatic supervisor who shall be assisted by one aquatic observer for every 10 children, or fraction thereof, in the water.

10.22 A licensee shall ensure that the buddy system is used and that buddy checks are conducted every five minutes whenever swimming is permitted at non-permanent sites.

10.23 A licensee shall not conduct or permit swimming programs during periods of darkness. This provision does not prohibit the use of swimming pools that have underwater and deck lighting that provides unrestricted vision.

10.24 A licensee shall ensure that headfirst diving occurs only in designated areas and only in water that is five feet deep or more.

10.25 A licensee shall adhere to the following table to determine minimum diving area depths and distances from the end of the board or platform:

	Water Depth	Distance
Competitive Swim/Classes	5 feet	10 feet
Platform less than two feet above water	8 feet	10 feet
Board two feet or less above water	10 feet	15 feet
Board more than two feet above water	15 feet	20 feet

#### Watercraft and Water-Skiing Activities

10.26 A licensee shall conduct watercraft activities only during daylight hours.

10.27 A licensee shall provide an appropriately sized, coast guard-approved, personal flotation device for each

occupant of a watercraft and ensure that such a device is worn by every occupant of a watercraft.

10.28 A licensee shall ensure that an appropriately sized, coast guard-approved, personal flotation device shall be worn by any water-skier, by any participant in a sailing activity, or by any participant of a white water adventure activity.

10.29 A licensee shall not use personal flotation devices of kapok construction.

10.30 A licensee shall not permit a non-swimmer to board a sailboat unless accompanied by an adult swimmer.

10.31 A licensee shall ensure that the aquatic supervisor or an adult aquatic observer has immediate access to a watercraft with which to provide emergency assistance on the permanent swimming site.

10.32 A licensee shall ensure that a watercraft docking area is not adjacent to a swimming area, and that a swimming area is not used for the launching or dropping off of water-skiers.

10.33 A licensee shall ensure that, when a watercraft has a rated capacity, the capacity is observed and when a watercraft does not have a rated capacity, all occupants wear an appropriately sized, coast guard-approved personal flotation device. This provision does not apply when the non-rated watercraft is a canoe being used by one or two advanced swimmers during formal instruction.

## CHAPTER 11. PARENTING ADOLESCENT FACILITY

### Authorization to Operate a Residential Facility for Parenting Adolescents

11.01 As a condition for being authorized by the Division to operate a residential facility for parenting adolescents, a licensee shall make application to and have been determined by the Division to be in full compliance with the Requirements of this Chapter, in addition to the Requirements of Chapters 1, 2, 3 and 4.

### Definition

11.02 For purposes of this chapter only, "Adolescent" means a child who is parenting a child.

### Direct Care Worker Qualifications for a Parenting Adolescent Facility

11.03 A direct care worker, at the time of appointment,

shall possess at least:

- a. One year of work experience in a child care facility or program; and
- b. Fifteen hours of training in early childhood development.

#### Staff-to-Child Ratios

11.04 A facility shall maintain the following staff-to-child ratios when adolescents and their children are present:

- a. During ~~[daylight]~~ hours **[when children are awake]**, one direct care worker on duty and awake on the premises for a combined total of every eight adolescents and their children below three years of age, or fraction thereof;
- b. During ~~[night-time]~~ hours **[when children are sleeping]**, one direct care worker on duty on the premises for a combined total of every ten adolescents and their children below three years of age, or fraction thereof. The direct care worker shall not be required to be awake;
- c. When two direct care workers are required by the ratios during ~~[night-time]~~ hours **[when children are sleeping]**, at least one direct care worker shall be required to be awake; and
- d. A facility shall not allow more than a combined total of 12 adolescents and their children below three years of age to reside in the facility at the same time.

#### One Adolescent Caring for another Adolescent's Child

11.05 A facility may permit an adolescent in residence to care for the child of another adolescent in residence only if the following conditions are met:

- a. The adolescent who is assuming the care of another adolescent's child cares for no more than one other child in addition to her own at any time;
- b. The adolescents discuss the expectations of the caregiver, including duration of child care, the child's nutritional and toileting needs, and whether the mother will make arrangements for compensation or exchange of baby-sitting; and
- c. The arrangement is reviewed and approved by the chief administrator or his or her designee.

#### Service Plan

11.06 The service plan shall include:

- a. An assessment of the child's health, nutritional, medical, and developmental needs;
- b. An assessment of the interest of the child's father, and the role that he is to have with the child and with the child's mother;
- c. An assessment of the interests of the grandparents and the role that they are to have with the child and with the child's mother; and

- d. Self-sufficiency goals for the adolescent mother, including child care and level of understanding of her child's developmental needs, food preparation skills, budgeting and money management, and job readiness.

#### Adoption Counseling Services

11.07 A facility shall provide adoption counseling if the adolescent expresses an interest in surrendering her child for adoption. The counseling shall include:

- a. An explanation of adoption;
- b. The types of adoptions available;
- c. The processes involved in surrendering a child for adoption; and
- d. The provision of a list of agencies licensed to provide these services.

#### Stimulation of Young Children

11.08 A facility shall ensure that all infants are held and spoken to and placed in a position to observe activities when they are awake at some point during the day.

11.09 A facility shall ensure that all infants under seven months of age are held throughout all bottle feedings, and older infants if they are incapable of holding a bottle on their own.

11.10 A facility shall ensure that all infants have access to age-appropriate toys and are provided opportunity for visual and sound stimulation.

11.11 A facility shall ensure that, when an adolescent mother is in school or is working, her infant is appropriately cared for, either in a licensed child care center or licensed family child care home, or in the facility.

11.12 A facility shall ensure that all children under 18 months of age are engaged in at least four of the following activities with their mothers for at least a total of 45 cumulative minutes each day:

- a. Sensory activities, such as the use of crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable toys or equipment;
- b. Language activities, such as the use of picture books, toy telephones, audio equipment with age appropriate music or sounds, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable items;
- c. Manipulative activities, such as the use of squeeze toys, grip toys, sorting and stacking toys, three or four piece inlay type puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable age appropriate play equipment;

d. Building activities, such as the use of building blocks, toy cars, figures of animals and people, nesting toys, and other comparable toys or equipment;

e. Large muscle activities, such as the use of low climbers, slides, riding or rocking toys, foam or plastic balls, gym mats, play tunnels, or other comparable play equipment; and

f. Music activities such, as the use of rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes, drums, xylophones, piano, or other comparable equipment or toys.

11.13 A facility shall ensure that all children 18 months of age or older are engaged in at least four of the following activities with their mother for at least one cumulative hour each day:

a. Language activities, such as being read to from a book, playing with flannel boards and telling a story or having the child tell the story, pictures, identification or classification, puppets, audio-visual equipment, or other comparable equipment or toys;

b. Science and math related activities, such as planting or gardening, playing with sand or the use of a sand table, fish or small animal care, and other comparable activities;

c. Manipulative activities, such as the use of puzzles, pegs and a pegboard, lacing boards, table top building toys, dominoes, and other age appropriate comparable toys and equipment;

d. Building activities, such as the use of unit blocks, transportation toys, farm animals, play people, age appropriate, child size work bench or other household equipment;

e. Art activities, such as the use of crayons, tempera paint, large brushes and newsprint, finger paint, construction paper, past or glue, blunt scissors, collage materials, non-toxic felt-tip markers, clay or playdough, or other comparable play equipment or toys; and

f. Music activities, such as the use of rhythm sticks, drums, cymbals, bells, tape recorder, piano, or other comparable equipment.

#### Medical Care for Children of Parenting Adolescents

11.14 A facility shall ensure adolescents use only prescription and non-prescription medication that is authorized by a licensed physician or a licensed nurse practitioner for themselves and for their children.

11.15 A facility shall ensure that adolescents follow the advice of a licensed physician regarding the health care of the adolescent's child.

11.16 A facility shall ensure that an adolescent obtains for her infant:

a. A physical examination at the age of one month, and again by no later than the age of two-and-one-half months;

b. Immunizations as required by the Delaware Division of Public Health; and

c. Between three-and-one-half and four months of age, a physical examination and periodically thereafter as recommended by the infant's attending physician or medical clinic.

#### Discharge and Aftercare Plans

11.17 A facility shall include in the discharge and aftercare plan specific information regarding the status of the adolescent's child and health care, immunization, and medical needs that the child may require; and an assessment of the adolescent's ability to parent the child and to follow-up appropriately on the child's aftercare plan.

#### Toys and Equipment

11.18 A facility shall ensure that all toys and equipment to be used by children are sturdy, of safe construction, non-toxic and free of hazards. A facility shall use a choker tube to ensure that all parts of all toys used by children under three years of age are large enough so that they cannot be swallowed by the child.

11.19 A facility shall provide an age-appropriate-sized crib for each infant or child, but may allow an infant to sleep in a playpen or on a mat during daytime hours. A facility shall ensure that:

a. Crib and playpen slats are no more than 2.3 inches apart;

b. The top rails of the crib or playpen are at least 19 inches above the mattress;

c. Any locks or latches on the dropside of a crib are safe from accidental release;

d. The mattresses used in all cribs and playpens ~~fits~~ **fit**] snugly;

e. Each infant has sheets, blankets and other coverings for his or her exclusive use;

f. Wet or soiled or damaged sheets, mattress, blankets or other coverings are immediately replaced;

g. All sheets and blankets are laundered at least once a week, or if soiled, are laundered before next use;

h. Cribs and playpens are free of hazards and an excessive number of toys; and

i. Beds or cribs not used solely for a specific infant shall have linens and blankets replaced with clean linens and blankets before each use by a different infant.

## Premises

11.20 A facility shall provide:

- a. A separate bedroom with at least 100 square feet for the adolescent and her child, and an additional 50 square feet for each additional child;
- b. Sufficient space to accommodate tables, high chairs, chairs for adolescents and their children, and on duty staff to eat meals together; and
- c. Sufficient locked or secure storage space that can accommodate the personal belongings of the adolescent and her child(ren) which is reasonably accessible to the adolescent.

11.21 A facility shall ensure that all rooms used by children or infants are accessible to employees, including bedrooms.

11.22 A facility shall ensure that all buildings and grounds are maintained in a safe and sanitary manner.

11.23 A facility shall ensure that:

- a. There are no poisonous plants accessible to children;
- b. All corrosive agents, insecticides, bleach products, detergents, furniture polish, any products under pressure in an aerosol spray can, or any toxic substances are stored in a locked cabinet or closet and are not accessible to infants or young children;
- c. All furniture and equipment used by the adolescents or their children, whether used indoors or outdoors, are of sturdy and safe construction; and
- d. Non-permanent safety barriers, such as safety gates, are installed in a manner that will prevent infants and young children from falling down stairways, or ramps, or from gaining access to balconies or porches or elevated play areas.

## VIOLENT CRIMES COMPENATION BOARD

Statutory Authority: 11 Delaware Code,  
Section 9004(4) (11 Del.C. 9004(4))

BEFORE THE DELAWARE VIOLENT CRIMES  
COMPENSATION BOARD IN RE:  
PROPOSAL TO REMOVE RULE XXVI

Pursuant to the guidelines in 29 Del. c. Section 10118 (a) (1) (7), the Delaware Violent Crimes Compensation Board ("Board") hereby issues this Order. Following notice and a public hearing held on November 24, 1998 on the proposal to remove Rule XXVI, Mental Suffering Awards,

the Board makes the following Findings and Conclusions:

### Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposal.
2. The Board expressed its desire to remove Rule XXVI due to a revision in 11 Del. c. 90 Section 9005(1).

### Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the removal of Rule XXVI. The written comments and oral testimony are described in paragraph 1.
4. The Board finds that the removal of Rule XXVI will represent the purpose and intent of 11 Del. c. 9001 et. seq.
5. The Board finds that the removal of Rule XXVI will have no adverse impact on the public.
6. The Board finds that the proposal is well written and describes its intent to remove Rule XXVI.

### Conclusion

7. The proposed removal of Rule XXVI was promulgated by the Board in accordance with the statutory duties and authority as set forth in 11 Del. c. Section 9001 et. seq. and, in particular, 11 Del. c. Section 9004(4).
8. The Board deems this amendment necessary and expedient to the full and official performance of its duties under 11 Del. c. Section 9001 et. seq.
9. The Board concludes that the removal of Rule XXVI will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the proposal to remove Rule XXVI pursuant to 11 Del. c. Section 9004(4) and the guidelines of 29 Del. c. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This amended rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be 10 days from the date of publication in the Register of Regulations.
13. Attached hereto and incorporated herein this Order is Rule XXVI marked as exhibit A that will be removed by the Board 10 days from the date of publication in the Register of Regulations.

Thomas W. Castaldi, Chairman  
Saxton C. Lambertson, V. Chairman  
Leah W. Betts, Board Member

V. Lynn Gregory, Board Member  
Stephen L. Manista, Board Member

**APPROVED AS TO FORM:**

Rosemary Killian  
Deputy Attorney General

**REMOVE THE FOLLOWING RULE FROM THE VCCB  
RULES & REGULATIONS.**

**RULE XXVI - MENTAL SUFFERING AWARD**

~~Maximum award for mental suffering is set at \$2,500.00. Clarification of this motion is that over the past two years there has been a substantial increase in claims. The Board feels it is necessary to cap mental suffering awards at \$2,500.00 to insure an equitable distribution of funds for all victims, and to initiate a uniformity and consistency in awarding mental suffering claims with emphasis on counseling and rehabilitation.~~

~~This rule shall apply to crimes that occurred before February 11, 1992. Revised October 17, 1991.~~

JUSTIFICATION: THIS RULE IS OFFICIALLY REMOVED FROM THE VCCB RULES & REGULATIONS, AS MENTAL SUFFERING AWARDS ARE PROHIBITED BY STATUTE EFFECTIVE 02/11/92.

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**BEFORE THE DELAWARE VIOLENT CRIMES  
COMPENSATION BOARD IN RE:  
PROPOSAL TO REMOVE RULE XXVIII**

Pursuant to the guidelines in 29 Del. c. Section 10118 (a) (1) (7), the Delaware Violent Crimes Compensation Board ("Board") hereby issues this Order. Following notice and a public hearing held on November 24, 1998 on the proposal to remove Rule XXVIII, Mental Health Counseling Awards, the Board makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposal.
2. The Board expressed its desire to remove Rule XXVIII due to an administrative procedural change.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the removal of Rule XXVIII. The written comments and oral testimony are described in paragraph 1.

4. The Board finds that the removal of Rule XXVIII will represent the purpose and intent of 11 Del. c. 9001 et. seq.

5. The Board finds that the removal of Rule XXVIII will have no adverse impact on the public.

6. The Board finds that the proposal is well written and describes its intent to remove Rule XXVIII.

**Conclusion**

7. The proposed removal of Rule XXVIII was promulgated by the Board in accordance with the statutory duties and authority as set forth in 11 Del. c. Section 9001 et. seq. and, in particular, 11 Del. C. Section 9004(4).

8. The Board deems this amendment necessary and expedient to the full and official performance of its duties under 11 Del. c. Section 9001 et. seq.

9. The Board concludes that the removal of Rule XXVIII will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts the proposal to remove Rule XXVIII pursuant to 11 Del. c. Section 9004(4) and the guidelines of 29 Del.C. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This amended Rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be 10 days from the date of publication in the Register of Regulations.

13. Attached hereto and incorporated herein this Order is Rule XXVIII marked as exhibit A that will be removed by the Board 10 days from the date of publication in the Register of Regulations.

Thomas W. Castaldi, Chairman  
Saxton C. Lambertson, V. Chairman  
Leah W. Betts, Board Member  
V. Lynn Gregory, Board Member  
Stephen L. Manista, Board Member

**APPROVED AS TO FORM:**

Rosemary Killian  
Deputy Attorney General

**REMOVE THE FOLLOWING RULE FROM THE VCCB  
RULES & REGULATIONS.**

**RULE XXVIII - MENTAL HEALTH COUNSELING  
AWARD**

~~(A) In the event of a claim for costs associated with mental health counseling, the Board may, following initial~~

~~review of the case, award counseling not to exceed three (3) months in duration and a total cost of \$1,250.00.~~

~~(B) In the event that additional counseling will be required beyond the period provided for in Section (A), the claimant must submit a request to the Board prior to the expiration of the initial award. Failure to submit such request in a timely fashion may, at the Board's discretion, result in the denial of such request and refusal to make payment for treatment in excess of the initial award. Any request for a mental health counseling award shall be accompanied by an evaluation and treatment plan including, but not limited to:~~

~~(1) A determination that the need for counseling resulted directly from the crime in question rather than a previously existing condition; and~~

~~(2) A statement or certification that the treatment will address only crime-related injuries.~~

~~(C) The Board, at its discretion, may require production of any documents it deems necessary to its determination of a request for a mental health counseling award.~~

JUSTIFICATION: THIS RULE IS OFFICIALLY REMOVED FROM THE VCCB RULES & REGULATIONS, AS THE VCCB COMMISSIONERS MOVED TO MODIFY MENTAL HEALTH COUNSELING PROCEDURES ON 08/01/96.

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BEFORE THE DELAWARE VIOLENT CRIMES  
COMPENSATION BOARD IN RE:  
PROPOSED AMENDMENT OF RULE XXIX

Pursuant to the guidelines in 29 Del. C. Section 10118 (a) (1) (7), the Delaware Violent Crimes Compensation Board ("Board") hereby issues this Order. Following notice and a public hearing held on November 24, 1998 on the proposed amendment of Rule XXIX on Mental Health Practitioner Qualifications/Licensure, the Board makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposed amendment.

2. The Board expressed its desire to amend Rule XXIX to illuminate the class of mental health practitioners who may perform psychological assessments for child and adult psychological assessments.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the amendment of Rule XXIX. The written

comments and oral testimony are described in paragraph 1.

4. The Board finds that the amendment of Rule XXIX will clearly define the class of mental health practitioners who may perform psychological assessments on child and adult victims of crime for the Violent Crimes Compensation Board.

5. The Board finds that the amendment will have no adverse impact on the public.

6. The Board finds that the amendment is well written and describes its intent to amend Rule XXIX to illuminate the class of mental health practitioners who may perform psychological assessments for child and adult victims of crime.

**Conclusion**

7. The proposed amendment was promulgated by the Board in accord with the statutory duties and authority as set forth in 11 Del. C. Section 9001 et. seq. and, in particular, 11 Del. c. Section 9004(4).

8. The Board deems this amendment necessary and expedient to the full and official performance of its duties under 11 Del. c. Section 9001 et. seq.

9. The Board concludes that the amendment of Rule XXIX will be in the best interests of the citizens of the State of Delaware.

10. The Board therefore adopts this amendment of Rule XXIX pursuant to 11 Del. c. Section 9004 (4) and the guidelines of 29 Del. c. Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).

11. This amended Rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be 10 days from the date of publication in the Register of Regulations.

13. Attached hereto and incorporated herein this order is the amended Rule XXIX marked as exhibit A and executed simultaneously by the Board 10 days from the date of publication in the Register of Regulations.

Thomas W. Castaldi, Chairman  
Saxton C. Lambertson, V. Chairman  
Leah W. Betts, Board Member  
V. Lynn Gregory, Board Member  
Stephen L. Manista, Board Member

APPROVED AS TO FORM:  
Rosemary Killian  
Deputy Attorney General

**AMEND THE FOLLOWING RULE IN THE VCCB  
RULES & REGULATIONS.**

To be eligible for crime victim's compensation for mental health counseling treatment, within and without the State of Delaware, ~~treatment must be provided by a practitioner possessing an advanced degree in an applied mental health discipline~~ a practitioner possessing an advanced degree in an applied mental health discipline must provide treatment. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.

~~To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, services must be provided by a licensed mental health practitioner. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.~~

To be eligible for crime victim's compensation for adult psychological assessments, within and without the State of Delaware, a licensed psychologist or a licensed psychiatrist must perform the assessment unless waived by the Board.

To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.

To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, a licensed mental health practitioner must provide services. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits is: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.

Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.

~~The Violent Crimes Compensation Board may consider payment for services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in paragraph two, sentence two. Claims for payment of services rendered by an unlicensed practitioner will be decided on a case-by-case basis by the Violent Crimes Compensation Board.~~

The Violent Crimes Compensation Board may consider payment for mental health counseling services rendered by

an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in paragraph one, sentence two. The Violent Crimes Compensation Board will decide claims for payment of services rendered by an unlicensed practitioner on a case-by-case basis.

JUSTIFICATION: THE AMENDMENTS TO RULE XXIX CLARIFY THE TYPES OF MENTAL HEALTH PROVIDERS THAT MAY PERFORM PSYCHOLOGICAL ASSESSMENTS ON ADULT AND CHILD VICTIMS.

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BEFORE THE DELAWARE VIOLENT CRIMES  
COMPENSATION BOARD IN RE:  
PROPOSED ADDITION OF NEW RULE XXX

Pursuant to the guidelines in 29 Del. c. Section 10118(a)(1)(7), the Delaware Violent Crimes Compensation Board ("Board") hereby issues this Order. Following notice and a public hearing held on November 24, 1998 on the proposed addition of Rule XXX, Child Counseling and Assessment Program (CCAP), the Board makes the following Findings and Conclusions:

**Summary of Evidence and Information Submitted**

1. The Board did not receive written evidence or information pertaining to the proposed Rule.
2. The Board expressed its desire to add Rule XXX to set a regulatory payment fee for psychological assessments and short-term counseling for child victims of crime.

**Findings of Fact**

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on Rule XXX. The written comments and oral testimony are described in paragraph 1.
4. The Board finds that Rule XXX will establish payment regulations for psychological assessments and short-term counseling needs of child victims of crime.
5. The Board finds that Rule XXX will have no adverse impact on the public.
6. The Board finds that the Rule is well written and describes its intent to add Rule XXX to set a regulatory payment fee for psychological assessments and short-term counseling for child victims of crime.

**Conclusion**

7. The proposed Rule was promulgated by the Board

in accordance with the statutory duties and authority as set forth in 11 Del. c. Section 9001 et. seq. and, in particular, 11 Del. c. Section 9004(4).

8. The Board deems this Rule addition necessary and expedient to the full and official performance

11. This new Rule replaces in its entirety any former rule or regulation heretofore promulgated by the Board.

12. The effective date of this Order shall be 10 days from the date of publication in the Register of Regulations.

13. Attached hereto and incorporated herein this Order is Rule XXX marked as exhibit A and executed simultaneously by the Board 10 days from the date of publication in the Register of Regulations.

Thomas W. Castaldi, Chairman  
Saxton C. Lambertson, V. Chairman  
Leah W. Betts, Board Member  
V. Lynn Gregory, Board Member  
Stephen L. Manista, Board Member

APPROVED AS TO FORM:

Rosemary Killian  
Deputy Attorney General

ADD THE FOLLOWING RULE IN THE VCCB RULES & REGULATIONS.

VCCB Rule XXX. Child Victim Counseling & Assessment Program (CCAP) Provisions

For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling.

JUSTIFICATION: THIS NEW RULE FULFILLS THE REQUIREMENTS OF SENATE BILL 417, SIGNED BY GOVERNOR THOMAS R. CARPER ON JULY 17, 1998. THE LAW REQUIRES THE VCCB TO DETERMINE A MAXIMUM AMOUNT TO BE PAID FOR PSYCHOLOGICAL ASSESSMENTS AND/OR SHORT-TERM COUNSELING (11 Del. C. 90, section 9020(c). " ... the Board shall only provide compensation sufficient to total the maximum amount provided for in the Board's rules and regulations."

STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
DOVER

**EXECUTIVE ORDER  
NUMBER FIFTY-EIGHT**

TO: HEADS OF ALL STATE DEPARTMENTS AND AGENCIES

RE: CREATING THE DELAWARE YEAR 2000 CONTINGENCY PLANNING AND COORDINATING COUNCIL.

WHEREAS, the Year 2000 ("Y2K") challenge is the result of computer and other automated systems that represent the year by only using the last two digits of a year and thus fail to properly recognize dates beyond the year 1999;

WHEREAS, many computer and automated systems must properly recognize the date and year in order to operate effectively and the inability to do so could result in system failures;

WHEREAS, computers and automated systems worldwide are potentially effected by the Y2K challenge;

WHEREAS, the Y2K challenge could effect not only computers, computer software, and networks, but also mechanical equipment, building control systems, and many of the services we rely on to perform our daily tasks;

WHEREAS, there is a need to promote awareness of the Y2K challenge to all Delaware public and private entities and to underscore the need to implement solutions;

WHEREAS, in an effort to ensure that State services suffer minimal interruptions, I have previously directed State agencies, departments, boards, and commissions to assess and correct Y2K problems and have charged the Office of Information Systems with responsibility for assisting, coordinating and encouraging the efforts of individual agencies to address technical issues surrounding their Y2K preparedness;

WHEREAS, given the persuasiveness and complex nature of the challenge, it is not reasonable to assume that every potential problem will be identified and addressed and the potential exists that essential services could be effected;

WHEREAS, it is important that essential services suffer minimal disruption and, to that end, contingency planning efforts for agencies providing essential services must be coordinated; and

WHEREAS, this Administration is committed to ensuring that the safety, health, and welfare of the citizens of Delaware shall not be jeopardized by Y2K problems.

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby declare and order the following:

1. The Delaware Year 2000 Contingency Planning and Coordinating Council (the "Council") is hereby established. It shall consist of members appointed by the Governor representing agencies and entities providing essential services to the citizens of this State.

2. The Chairperson shall be appointed by the Governor from

among members of the Council and shall serve at the pleasure of the Governor. 3. The terms of the members of the Council shall be at the pleasure of the Governor.

4. The Delaware Year 2000 Contingency Planning and Coordinating Council will

be action-oriented and, to that end, its duties shall include:

a) requiring all stakeholder agencies to submit written contingency plans to the Council by June 30, 1999, for review and consideration;

b) coordinating contingency planning efforts associated with possible disruptions in essential services resulting from Y2K problems;

c) engaging in a public awareness campaign regarding Y2K problems to ensure the public is aware of any potential problems and the appropriate and necessary response to such problems; and

d) submitting to the Governor and the Secretary (the "Secretary") of the Department of Public Safety by September 1, 1999, a statewide contingency plan that will effectively coordinate the specific efforts of each agency and entity providing essential services to the citizens of this State; and

e) ensuring the successful implementation of the statewide contingency plan to the extent necessary.

5. The Council may establish subcommittees under the leadership of Council members to conduct the activities of the Council.

6. The Council shall issue reports and provide assistance as the Governor or Secretary shall require or request.

7. The Council shall be staffed by the Department of Public Safety and the Office of Information Systems.

Approved this 19th day of January, 1999

Thomas R. Carper  
Governor

Attest:

Edward J. Freel  
Secretary of State

**DELAWARE RIVER  
BASIN COMMISSION**

**P.O. Box 7360  
West Trenton**

Notice of Determination Regarding the Assimilative Capacity of the Tidal Delaware River for Toxic Pollutants; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice of Commission determination and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on a determination that the assimilative capacity of the tidal Delaware River is being exceeded for certain toxic pollutants. This determination will authorize the Executive Director to establish wasteload allocations for specific point- source discharges of these pollutants.

DATES: The public hearings are scheduled as follows:

May 3, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

May 5, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m. as long as there are people present wishing to testify; and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

May 11, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

ADDRESSES: The May 3, 1999 hearing will be held in the Second Floor Auditorium of the Carvel State Building, 820 North French Street, Wilmington, Delaware.

The May 5, 1999 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The May 11, 1999 hearing Will be held in the Jefferson Room of the Holiday Inn at 400 Arch Street, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin

Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883-9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

On October 23, 1996 the Delaware River Basin Commission amended its Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants, and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to the tidal Delaware River.

Specifically, water quality criteria for selected toxic pollutants were incorporated in the Comprehensive Plan and Article 3 of the Water Code and Water Quality Regulations as stream quality objectives. Article 4 of the Water Quality Regulations was amended to include policies and procedures to be used to establish wasteload allocations for those discharges containing pollutants which exceed the stream quality objectives and impact the designated uses of the river following a Commission determination that the assimilative capacity of a zone of the Delaware River is exceeded. These amendments provided a mechanism for identifying toxic pollutants which impair aquatic life and human health, and developing uniform and equitable wasteload allocations for those NPDES discharges to the tidal Delaware River which contribute to their impairment. The permitting authorities of the Basin states will utilize allocations developed by the Commission to establish effluent limitations for NPDES permittees in their jurisdiction, as appropriate.

The subject of the hearings is a proposed determination by the Commission that the assimilative capacity of the tidal Delaware River (Trenton, NJ to the head of Delaware Bay) is being exceeded for 1,2 - dichloroethane, tetrachloroethene, chronic toxicity and acute toxicity. These parameters were selected based upon their mass loading to the estuary, minimal interaction with estuary sediments, and the availability of calibrated and validated water quality models that could be used to develop the wasteload allocations. This determination will authorize the Executive Director to establish wasteload allocations for continuous point source discharges pursuant to Sections 4.30.7A. 1. and 4.30.7B.2.c. of the Commission's Water Quality Regulations.

Seventy-six continuous point source discharges were considered in each of the wasteload allocation exercises, although the number included in any allocation varied from 10 to 55. The procedure used to develop the wasteload allocations is called Equal Marginal Percent Reduction or EMPR. EMPR is a two step process in which a discharge is

First considered independently of all other discharges to the estuary. In this step called the Baseline Analysis, each discharge must meet stream quality objectives in and of itself. In the second step called Multiple Discharge Analysis, the cumulative impact of all discharges, discharging at the baseline loading established during step one, is evaluated against the stream quality objectives. If the analysis indicates that an objective is exceeded, then the baseline loads of all discharges significantly contributing to the violation are reduced by an equal percentage until the stream quality objective is met.

For 1,2 - dichloroethane, 11 of 51 discharges were adjusted from their initial loading in order to meet the stream quality objectives. For tetrachloroethene, seven of 40 discharges were adjusted in order to meet the stream quality objectives. For chronic toxicity, ten of the 55 discharges were adjusted during the baseline analysis portion of the wasteload allocation. The multiple discharge analysis portion of the procedure will not be implemented for chronic toxicity so that additional data on the relationship between the concentration of specific chemicals and toxicity of both wastewater and ambient samples can be obtained. This portion will be deferred until Phase 2 of the Total Maximum Daily Load (TMDL) is completed.

For acute toxicity, eight of the ten discharges evaluated were reduced from their initial wasteload allocation concentration during the baseline analysis portion of the allocation. As with chronic toxicity, the multiple discharge analysis which will determine the total surface area of the estuary assigned to mixing areas will be deferred until Phase 2 of the TMDL is completed.

In accordance with Section 4.30.7B.2.c.5) of the Commission's Water Quality Regulations, a document entitled Wasteload Allocations for Volatile Organics and Toxicity: Phase 1 TMDLs for Toxic Pollutants in the Delaware River Estuary has been prepared which describes the process used to develop wasteload allocations for continuous point source discharges as part of Phase 1 of a Total Maximum Daily Load for selected toxic pollutants for the tidal Delaware River. This document is available on the Commission's web site at [www.state.nj.us/drbc](http://www.state.nj.us/drbc), or by contacting Christopher Roberts, Public Information Officer, at (609) 883-9500 ext. 205.

The following supporting documents describing the mathematical models used in the process are also available from the Commission:

Calibration and Validation of a Water Quality Model for Volatile Organics and Chronic Toxicity in the Delaware River Estuary.

Calibration and Validation of the DYNHYD5 Hydrodynamic Model for the Delaware River Estuary.

Development of a Tidal Version of the CORMIX Models for Application to Discharges in the Delaware Estuary.

Copies of these documents may be obtained by contacting Christopher Roberts, Public Information Officer at (609) 883-9500, extension 205.

Persons wishing to testify are requested to notify the Secretary in advance. Written comments on the proposed determination should also be submitted to the Secretary.

Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman  
Secretary  
February 9, 1999

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**DELAWARE HEALTH CARE  
COMMISSION**

**DELAWARE HEALTH INFORMATION  
NETWORK**

Public Notice

Please Take Notice, pursuant to 29 Del.C. Chapter 101 and 16 Del.C. § 9925, that the Delaware Health Information Network has proposed regulations for the governance and administration of the Board of the Delaware Health Information Network. The regulations will describe the Board's organization and general rules of procedure. A public hearing will be held on the proposed regulations on Monday, March 22, at 3:00 p.m. in Downes Lecture Hall of the Delaware Technical and Community College, Terry Campus Conference Center, Dover, Delaware. The Delaware Health Care Commission will receive and consider input in writing from any person the proposed regulations. Written comments should be submitted in care of Judith Chaconas, Delaware Health Care Commission, Delaware Health Information Network, 150 William Penn Street, Ground Floor, Dover, DE 19901. Final date to submit written comments shall be March 31, 1999 by 4:30 p.m. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judith Chaconas at the above address or by calling (302) 739-6906. This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DEPARTMENT OF EDUCATION**

The State Board of Education will hold its monthly meeting on Thursday, March 18, 1999 at 11:00 a.m.

**DEPARTMENT OF HEALTH AND  
SOCIAL SERVICES**

**MANDATORY PRE-EMPLOYMENT CRIMINAL  
HISTORY RECORD CHECKS  
AND DRUG TESTING REGULATIONS**

As Authorized by Title 16 Del. Code Sections 1141-1142

PUBLIC NOTICE

Delaware Health & Social Services (DHSS), in

compliance with Senate Bill 13 passed in the 140<sup>th</sup> General Assembly, has prepared draft regulations governing mandatory pre-employment criminal history record checks and drug testing for persons seeking to work in nursing homes or other facilities licensed under Title 16 Del. Code, Chapter 11. These requirements also apply to persons referred for placement in such facilities by temporary agencies.

The regulations lay out the responsibilities of employers, applicants, and DHSS. They contain a listing of the types of crimes, conviction for which disqualifies an individual from working in nursing homes or other facilities licensed under Title 16 Del. Code, Chapter 11.

INVITATION FOR PUBLIC COMMENT

*Public hearings* will be held as follows:

Tuesday, March 23, 1999, 10 am – noon  
The Chapel, Herman Holloway Campus  
Delaware Health & Social Services  
1901 N. DuPont Highway  
New Castle, DE

Thursday, March 25, 1999, 1 pm – 3 pm  
University of Delaware Kent County Center\*  
69 Transportation Circle  
Dover

[\*Traveling on Rt. 13 south, when you come to the split, follow "Rt. 113 for beaches" to the left. DelDot's Admin. Bldg. is a short way up on the right. The UD Kent County Center is in the same complex as DelDot's Administration Bldg.]

For clarifications or additional directions to either location, please call Barbara Baker at 577-4950

*Written comments* are also invited on these proposed new regulations and should be sent to the following address:

Linda Barnett  
Division of Management Services  
Delaware Health & Social Services  
Herman Holloway Campus  
1901 N. DuPont Highway  
New Castle, DE 19720

Such comments must be received by April 1, 1999.

**DIVISION OF SOCIAL SERVICES**

## PUBLIC NOTICE

Medicaid / Medical Assistance Program

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and with 42CFR §447.205, and under the authority of Title 31 of the Delaware Code, Chapter 5, Section 505, the Delaware Department of Health and Social Services (DHSS) / Division of Social Services / Medicaid Program is amending its durable medical equipment and general policy provider manual(s).

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, Medical Assistance Programs, Division of Social Services, P.O. Box 906, New Castle, DE 19720 by March 31, 1999.

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**DIVISION OF SOCIAL SERVICES**

## PUBLIC NOTICE

Delaware Health and Social Services is proposing changes to regulations contained in the Division of Social Services Manual Section 9018, 9060, and 9068. These changes are initiated pursuant to 29 Delaware Code Section 10114 and its authority as prescribed by 31 Delaware Code Section 512. Written materials and suggestions by interested persons for related to this proposal must be forwarded by March 31, 1999, to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

## COMMENT PERIOD

Any person who wishes to make petitions for reconsideration or revision thereof, such petitions must be forwarded by March 31, 1999 to the Director, Division of Social Services, P. O. Box 906, New Castle, DE 19720.

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**DEPARTMENT OF INSURANCE**

Notice of Public Hearing

Insurance Commissioner Donna Lee Williams hereby gives notice that a public hearing will be held on Tuesday, March 23, 1999 at 10:00 a.m. in the 2<sup>nd</sup> 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

insurance industry and the general public on the proposed revisions to Insurance Department Regulation 41, Medicare Supplement Insurance Minimum Standards.

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, March 19, 1999 and should be addressed to Fred A. Townsend, III, 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, March 19, 1999.

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**DEPARTMENT OF NATURAL  
RESOURCES AND  
ENVIRONMENTAL CONTROL**  
**DIVISION OF AIR & WASTE MANAGEMENT**  
**AIR QUALITY MANAGEMENT SECTION**

## REGISTER NOTICE

## 1. TITLE OF THE REGULATIONS:

**REGULATION NO. 25 - "REQUIREMENTS FOR PRECONSTRUCTION REVIEW" OF THE STATE OF DELAWARE REGULATIONS GOVERNING THE CONTROL OF AIR POLLUTION**

## 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Department is proposing to amend Regulation No. 25 to correct deficiencies identified by the EPA in an April 3, 1998 Federal Register rulemaking (Volume 63, Number 64, pages 16433 - 16435) and to clarify existing provisions of the regulation. The corrections to noted deficiencies include the public participation procedures for nonattainment new source review (NSR) permits, and the criteria to claim emission reductions to be used as the offset requirement for new major sources or major modifications to existing major sources of volatile organic compounds or nitrogen oxides emissions. The federal requirements for these provisions are found at 40 CFR Part 51 Subpart I, "Review of New Sources and Modifications."

## 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Delaware Code, Chapter 60

## 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

## 6. NOTICE OF PUBLIC COMMENT:

The public comment period for this proposed revision will extend to, at least, March 30, 1999. Interested parties may submit comments in writing during this time frame to: Leslie Andersen, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Tuesday, March 23, 1999 beginning at 6:00 p.m. at the DNREC Richardson & Robbins Building in Dover, DE.

## 7. PREPARED BY:

Leslie C. Andersen (302) 323-4542, February 10, 1999

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### DIVISION OF AIR & WASTE MANAGEMENT AIR QUALITY MANAGEMENT SECTION

#### REGISTER NOTICE

## 1. TITLE OF THE REGULATIONS:

**Amendment to Regulation 31 and its plan for implementation**

## 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To amend Regulation 31 (Inspection and Maintenance Program) as follows:

1. To extend the new model year exemption for the exhaust idle test from 3 years to 5 years.

2. To revise the procedure of the exhaust idle test for model year vehicles 1981 and newer, whereby the new procedure would test vehicles at an engine speed of normal idle and 2500 rpms, and;

3. To amend Section 3 (c) (1) of the Regulation to specify the VMAS<sup>TM</sup> dynamometer procedure as the method of evaluating the I/M program.

4. To add a new section to the regulation, titled Clean Screening whose provisions would allow exempting vehicles normally required to be tested for exhaust and evaporative emissions when those vehicles are at an inspection facility and the wait time for vehicles at the end of the testing queue is 90 minutes or greater. The new section describes the model years eligible for the "clean screen exemption". The clean screen exemption is given to vehicles categorized by model and model year that have passed vehicle exhaust emissions inspections in the State of Colorado.

To amend the Plan for Implementation of Regulation 31 as follows:

To revise the performance standard modeling to reflect the change in the new idle test procedure

## 3. POSSIBLE TERMS OF THE AGENCY ACTION:

N/A

## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

- 7 Del. C. Section 6010
- Clean Air Act Amendments of 1990

## 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

## 6. NOTICE OF PUBLIC COMMENT:

Public Hearing is on April 13, 1999, 6 PM, Richardson and Robbins Auditorium, 89 Kings Highway, Dover

## PREPARED BY:

Philip A. Wheeler 739-4791, 2/24/99

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### DEPARTMENT OF PUBLIC SAFETY ALCOHOLIC BEVERAGE CONTROL COMMISSION

In compliance with 29 Del.C. section 10115, the Commission submits the following:

## 1. TITLE OF THE REGULATIONS:

Rules of the Delaware Alcoholic Beverage Control Commission

## 2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Delaware Alcoholic Beverage Control Commission is proposing to amend Rule 29. The rule as amended provides non-discriminatory procedures for timely notification of prices, post-offs, and quantity discounts of alcoholic liquor offered for sale by Delaware wholesalers to Delaware retailers and governs related practices.

## 3. POSSIBLE TERMS OF THE AGENCY ACTION:

None.

## 4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

4 Del.C. Chp. 3

## 5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

## 6. NOTICE OF PUBLIC COMMENT:

A public hearing on the proposed amendment to Rule 29 will be held on April 1, 1999 at 9:00 a.m. in the third floor conference room of the Commission, Carvel State Building, 820 North French Street, Wilmington, Delaware. Written comments may be submitted any time prior to April 1, 1999 to Donald J. Bowman, Sr., Director, Delaware Alcoholic Beverage Control Commission, 820 North French Street, Wilmington, Delaware, 19801. For copies of the proposed regulation, the public should call Joanne Episcopo at (302) 577-5222.

**DELAWARE RIVER  
BASIN COMMISSION**

**P.O. Box 7360  
West Trenton**

Commission, P.O. Box 7360, West Trenton, New Jersey  
08628. Telephone (609) 883-9500 ext. 203.

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Notice of Determination Regarding the Assimilative Capacity of the Tidal Delaware River for Toxic Pollutants; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice of Commission determination and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on a determination that the assimilative capacity of the tidal Delaware River is being exceeded for certain toxic pollutants. This determination will authorize the Executive Director to establish wasteload allocations for specific point- source discharges of these pollutants.

DATES: The public hearings are scheduled as follows:

May 3, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

May 5, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m. as long as there are people present wishing to testify; and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

May 11, 1999 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

ADDRESSES: The May 3, 1999 hearing will be held in the Second Floor Auditorium of the Carvel State Building , 820 North French Street, Wilmington, Delaware.

The May 5, 1999 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

The May 11, 1999 hearing Will be held in the Jefferson Room of the Holiday Inn at 400 Arch Street, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin

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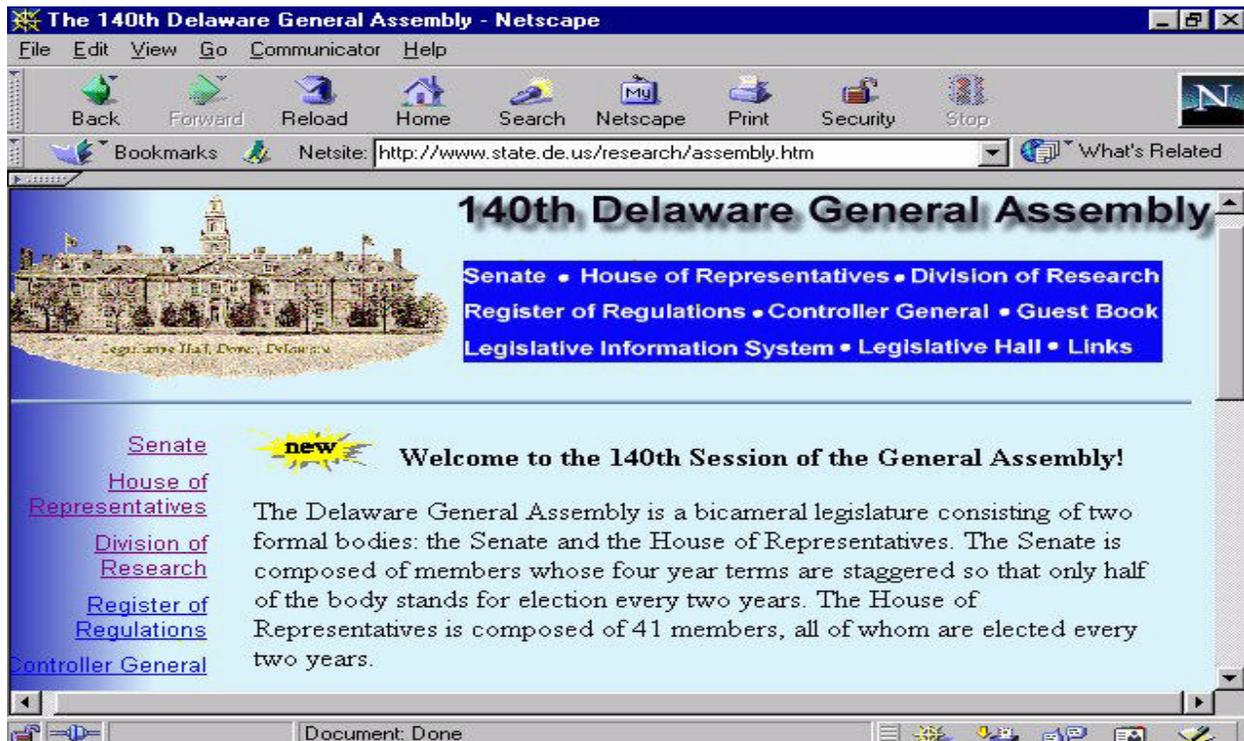
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