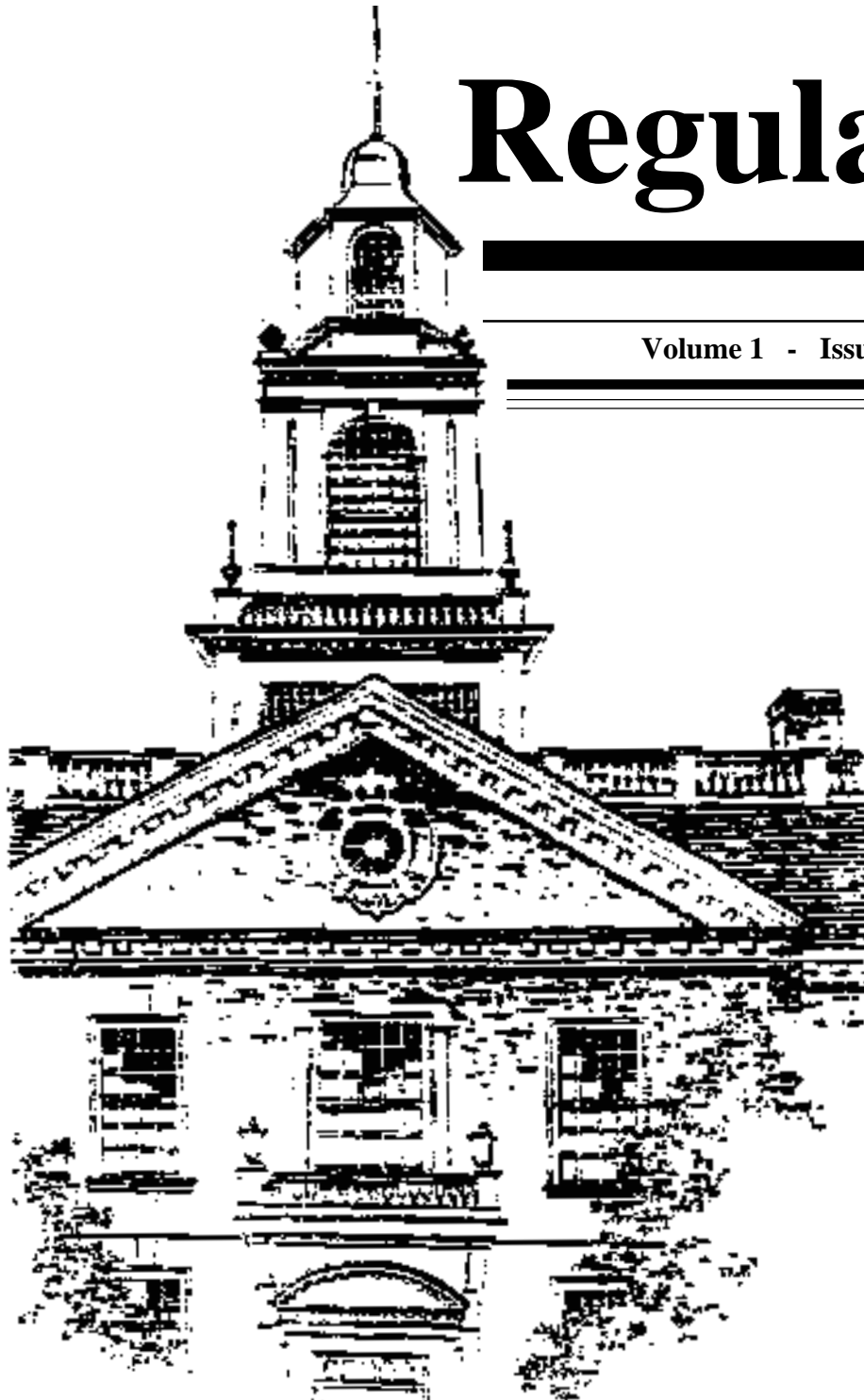

Delaware Register of Regulations



Issue Date: October 1, 1997

Volume 1 - Issue 4

Pages 289 - 450

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Regulations:
 Proposed
Governor
 Appointments
General Notices
Calendar of Events



Pursuant to 29 Del.C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received on or before September 15, 1997.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

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

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

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

Governor's Executive Orders

Governor's Appointments

Attorney General's Opinions in full text

Agency Hearing and Meeting Notices

Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

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

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

SUBSCRIPTION INFORMATION

A yearly subscription for the Delaware Register of Regulations costs \$80.00 per year from January - December, for 12 issues. Single copies are available at a cost of \$7.00 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and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.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file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title.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.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

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

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

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

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

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

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

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

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DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.
FEBRUARY 1	JANUARY 15	4:30 P.M.
MARCH 1	FEBRUARY 15	4:30 P.M.

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Supervisor; **Rochelle Yerkes**, Senior Secretary.

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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.

**BEFORE DELAWARE HEALTH AND
SOCIAL SERVICES**

IN THE MATTER OF: |

REVISION OF |
REGULATION |
CONTAINED IN |
DSSM 8301.3 |

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services has determined that a threat to the public welfare exists if revision of regulations contained in DSSM Section 8000 is not implemented. Failure to do so would tend to promote noncompliance with the requirements of the *A Better Chance* program.

SUMMARY OF PROPOSED REVISIONS:

Removes the A Better Chance program exception with regard to family cap for children conceived while a case is closed due to sanctioning (DSSM 8205.2).

Equated A Better Chance (ABC) sanctions for a parent's failure to cooperate with school officials to ensure compliance with school attendance for dependent children

under age 16 with employment and training sanctions under the grouping of self-sufficiency requirements (DSSM 8301.1.4 and 8304.2).

Reverses the hierarchiacal order in which ABC sanctions are imposed (DSSM 8301.3).

FINDING OF FACT

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof. such petitions must be forwarded by October 31, 1997, to the Director, Division of Social Services, P.O. box 906, New Castle, DE 19720.

This proposed regulation was published in the September 1997 issue of the Register as an Emergency Regulation. The Department is now proposing that the regulation become permanent.

NATURE OF PROPOSED REVISIONS:

8205.2 EXCEPTIONS

The family cap restrictions will not apply in the following cases:

- to an additional child conceived or fathered as a result of incest or sexual assault; or
- to a child who does not reside with his or her parent; or
- to a child that was conceived or fathered in a month the assistance unit (i.e., the entire family) was not receiving ABC. *This does not apply in a case that is closed due to sanctioning.*

8301.1.4 FAILURE TO COMPLY WITH THE CONTRACT AND THE IMPOSITION OF SANCTIONS

Failures to comply with *self-sufficiency requirements are not treated as separate activity violations, but as one component. Accordingly, a person who quits employment without good cause and is sanctioned 1/3, receives a 2/3 sanction for the second violation whether it is for a job quit or noncompliance with employment and training activities or cooperation to ensure compliance with school attendance for dependent children under age 16.*

8301.3 BENEFIT REDUCTION FOR MULTIPLE SANCTION TYPES

The sanctions for failure to meet Contract requirements allow for the possibility of multiple penalties to be imposed at the same time. The hierarchy is as follows:

1. *If in place, the one-third penalty for failing to meet work and training requirements and the one-third penalty for not cooperating with school or agency officials to meet attendance requirements for dependent children under the age of 16 is first imposed by DCIS.

2. If in place, the \$68 sanction for 16 and over teens who fail to meet school attendance requirements and an additional \$68 for their parents who do not cooperate to remedy the situation is imposed next.

3. If in place, the \$50 sanction for failure to meet enhanced family functioning requirements is the last to be imposed by DCIS.*

8304 *SELF-SUFFICIENCY REQUIREMENTS - EMPLOYMENT AND TRAINING, WORK, AND COOPERATION TO ENSURE SCHOOL ATTENDANCE BY DEPENDENTS UNDER AGE 16

DSS expects employable adults to participate in either employment or activities related to finding work (e.g. employment and training activities) for AFDC benefits to continue uninterrupted. Either an employable adult is working or is participating in activities to secure employment. DSS also expects caretakers to cooperate as necessary with school and other officials to ensure satisfactory school attendance by dependent children under age 16. The failure of clients to maintain any of these activities represent sanctionable offenses, which are components of the self-sufficiency requirements.*

8304.1 REQUIREMENTS FOR *SELF-SUFFICIENCY*

Parents are expected to cooperate with school officials and other service providers in helping their child(ren) maintain satisfactory attendance. Penalties can be imposed if parents do not cooperate. Since parents with children under age 16 are expected to exert more influence over their children, and since early school attendance is so important in moving children down the path to self-sufficiency, this requirement is grouped with employment and training and work requirements as part of the overall self-sufficiency requirements, which invoke harsher penalties for noncompliance. (See section 8305 for requirements and sanctions related to cooperation to ensure school attendance by children over the age of 16).

8304.2 SANCTIONS FOR FAILING TO COMPLY WITH*SELF-SUFFICIENCY REQUIREMENTS

Self-sufficiency requirements include those related to employment and training, work, and cooperation with officials to ensure satisfactory school attendance by dependents under age 16.

The penalty for noncompliance with any of the self-sufficiency* requirements be:

- a) for the first offense, a 1/3 reduction in AFDC
- b) for the second offense, a 2/3 reduction in AFDC
- c) for the third offense, a loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause, but who comply with subsequent job search requirements, will be:

a) for a first offense, a 1/3 reduction in AFDC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.

b) for a second offense, a 2/3 reduction in AFDC, to be imposed for a period of two months or until the individual obtains a job of equal or higher pay.

c) for a third offense, a permanent loss of all cash benefits.

The penalty for individuals who quit their jobs without good cause and do not comply with subsequent job search requirements will be loss of all cash benefits for two months *or until the individual obtains a job of equal or higher pay.

Contract Requirement	Amount/Duration of Sanction	Increase/2 months if not Compliant
Employment & Training	1/3 reduction for 2 months or until compliance whichever is shorter for first offense; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense	Yes
Caretaker Cooperation to ensure School Attendance for children under 16 years	1/3 reduction for 2 months or until compliance whichever is shorter; 2/3 reduction for 2 months or until compliance whichever is shorter for second offense	Yes

Contract Requirement	Amount/Duration of Sanction	Increase/2 months if not Compliant
Keeping a job unless good cause exists to quit the job	If meeting job search requirements, 1/3 reduction for 2 months or until person enters a job of equal or higher pay, whichever is shorter; 2/3 reduction for 2 months or until enters a job of equal or higher pay whichever is shorter for second offense	No
Keeping a job, unless good cause exists to quit the job	If not meeting job search requirements, full loss of benefits until compliance of either meeting job search requirements or person enters a job of equal or higher pay	N/A

Noncompliance with more than one of the self-sufficiency requirements at a point in time will result in a one-third benefit reduction for each sanction.

Example: A person fails to attend the DOL orientation and, prior to a cure, then fails to cooperate with officials to ensure school attendance by his/her 14-year-old child. The resulting sanctions would result in a 2/3 (1/3 + 1/3) loss of cash benefits.*

8304.3 CURING THE SANCTION FOR SELF-SUFFICIENCY REQUIREMENTS

Clients must keep appointments with Employment and Training staff, complete the Employability Development Plan and follow through with the recommendations of the Employment and Training staff for a minimum period of two weeks.// Clients, unless indicated otherwise, must participate in the work attachment model for a minimum period of two weeks.

EXAMPLE: A client fails to keep her initial appointment with Employment and Training staff and is sanctioned . In order to cure this sanction, the client must not only keep her appointment with Employment and Training staff, but must also keep her appointment with DOL staff and follow through with her DOL activity for a minimum period of two weeks before the sanction is considered cured.

8305.1 SANCTIONS FOR UNSATISFACTORY SCHOOL ATTENDANCE

A. CHILDREN UNDER AGE 16, INCLUDING TEEN PARENTS WHO ARE DEPENDENT CHILDREN

The fiscal sanction for failure, without good cause, to meet the school attendance requirements *for a child under 16 are the same as for other self-sufficiency requirements. See Section 8304.2.*

* Denotes modification of or addition to regulation
 // Denotes deletion from existing regulation

FINDING OF FACT

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof.

**DEPARTMENT OF HEALTH & SOCIAL
 SERVICES**

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
 Section 1109 (16 Del.C. 1109)

The Office of Health Facilities Licensing and Certification, Division of Public Health of the Department of Health and Social Services, will hold public hearings to discuss proposed Regulations for Assisted Living Agencies. These proposed regulations describe licensing requirements and procedures, and general and special requirements of agencies desiring to establish, conduct or maintain an Assisted Living Agency in this State. The regulations describe services that must be provided based on a social philosophy of care and that must include oversight, food, shelter, and the provision or coordination of a range of services that promote the quality of life of an individual.

These public hearings will be held on October 28, 1997 at 1:00 P.M in Room 3, Springer Building, Herman Holloway Campus, 1901 North duPont Highway, New Castle, DE 19720, and at 9:00 A.M. October 30, 1997 in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following locations:

Office of Health Facilities Licensing and Certification
 Three Mill Road, Suite 308
 Wilmington, Delaware 19806
 Telephone: 302-577-6666

Office of Health Facilities Licensing and Certification
 Jesse S. Cooper Building
 Federal and Water Streets
 Dover, Delaware 19901
 Phone: 302-739-6610

Anyone wishing to present their oral comments at this hearing should contact Vanette Seals at (302) 577-6666 by October 24, 1997. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by November 3, 1997 to:

Jeffrey Beaman, Hearing Officer
 Division of Public Health
 PO Box 637
 Dover, Delaware 19903

**DELAWARE REGULATIONS FOR ASSISTED
 LIVING AGENCIES**

September 4, 1997

**DELAWARE REGULATIONS
 FOR ASSISTED LIVING**

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STATE OF DELAWARE REGULATIONS FOR
ASSISTED LIVING AGENCIES

Title 16 - Health and Safety

Part II, Chapter 11 Sanatoria, Rest Homes, Nursing Homes, Boarding Homes and Related Institutions.

“Sanatorium, rest home, nursing home, boarding home and related institutions,” within the meaning of this chapter, mean any institution, building or agency in which accommodation is maintained, furnished or offered for any fee, gift, compensation or reward for the care of more than 1 aged, infirm, chronically ill, adult psychiatrically disabled or convalescent person. The word “person” shall not include mother, father, sister, brother, niece, nephew, mother-in-law, father-in-law, sister-in-law or brother-in-law of any individual operating a facility under this chapter.

REGULATIONS

SECTION 63.0 PURPOSE

Assisted Living is a major component of a comprehensive community-based residential long term care continuum that provides the necessary level of services to a dependent elderly or disabled adult in the appropriate environment. The services are provided based on a social philosophy of care and must include oversight, food, shelter, and the provision or coordination of a range of services that promote the quality of life of the individual. The social philosophy of care promotes the consumer’s independence, privacy, dignity and is provided in a homelike environment. These regulations shall be construed to be consistent with this section.

SECTION 63.1 GLOSSARY OF TERMS

63.101 Bounded choice - limits placed on a consumer’s choices as a result of limited consumer capacity, societal norms, and/or available resources. These boundaries include the prevention of imminent danger or harm to self and/or others, and the maintenance of respect for the dignity of others.

63.102 Consumer - a person receiving services in the

assisted living agency.

63.103 Homelike - an environment having the qualities of a home, including privacy, comfortable surroundings supported by the use of residential building materials and furnishings, and the opportunity to modify one’s living area to suit one’s individual preferences. A homelike environment provides consumers with an opportunity for self-expression and encourages interaction with community, family and friends.

63.104 Incapable of making decisions - inability of a consumer, based on a service assessment, to understand his/her own needs for supportive, personal or nursing services; to choose what, if any, services one wants to receive to meet those needs; and to understand the outcome likely to result from that choice. The term refers to the decision and not the content or result of the decision.

63.105 Individual Living Unit - a self-contained dwelling unit which has bathing facilities, living and sleeping space. Sharing by two consumers of an individual living unit shall be permitted solely upon the request and mutual consent of both consumers.

63.106 Managed risk agreement - the process of balancing consumer choice and independence with the health and safety of the consumer and other persons in the assisted living program. If a consumer’s preference or decision places the consumer or others at risk or is likely to lead to adverse consequences, such risks and consequences are discussed with the consumer, and his/her representative if appropriate, the outcome of which becomes a part of the service agreement.

63.107 Representative - a person acting on behalf of the consumer under Delaware law.

63.108 Shared responsibility - the concept that consumers, their representatives if any, and providers of assisted living services share responsibility for planning and decision making affecting the consumer in an assisted living program. To participate fully in shared responsibility, consumers shall be provided with clear and understandable information about the possible consequences of their decision-making.

63.109 Service Agreement - a written document for each consumer which describes what services will be provided, who will provide the services, when the services will be provided, how the services will be provided, how often services will be provided and the expected outcome.

63.110 Service Assessment - a written document for each

consumer developed by the provider which is used to identify what services a consumer needs. This assessment shall be utilized by the provider to determine if services needed by the consumer can be met by the provider.

SECTION 63.2 LICENSING REQUIREMENTS AND PROCEDURES

63.201 License Requirement

No person shall establish, conduct or maintain in this State any assisted living agency for the care of human beings without first obtaining a license from the Department of Health and Social Services.

A. Issuance of Licenses

(1) Annual License. An annual license (12 months) may be renewed yearly if the holder is in full compliance with the provisions of this chapter and the rules and regulations of the Department of Health and Social Services.

(2) Provisional License. A provisional license shall be granted for a term of ninety (90) days only, and shall be granted only to an agency which, although not in full compliance, is nevertheless demonstrating evidence of improvement.

(3) Restricted License. A restricted license shall be granted for a term of ninety (90) days when the agency is not in compliance with the provisions of this chapter, and does not demonstrate evidence of improvement. The holder of a restricted license may not admit consumers to the agency to which the restricted license applies during the period of restriction, but the agency may remain in operation until such license is revoked, expires, becomes annual or provisional.

Restricted licenses may be issued by the Office of Health Facilities Licensing and Certification without advance notice if the Secretary or his/her designee determines that any deficiency immediately and seriously jeopardizes the health or safety of any consumer. The holder of the license may appeal the issuance of the restricted license to the Secretary or his/her designee, however, the restricted license will remain in effect during the pendency of the appeal.

B. Suspension or Revocation of Licenses

The Secretary of the Department of Health and Social Services or his/her designee may suspend or revoke a license issued under this chapter on any of the following grounds:

- (1) Violation of any of the provisions of this chapter or the rules and regulations issued pursuant thereto.
- (2) Permitting, aiding, or abetting the

commission of any illegal act in the agency.

- (3) Conduct or practices detrimental to the welfare of the consumer.

Before any license issued under this chapter is suspended or revoked, thirty (30) days notice shall be given in writing to the holder of the license, during which he/she may appeal for a hearing before the Secretary of the Department of Health and Social Services or his/her designee.

C. Renewal of License after Suspension or Revocation

If and when the conditions upon which the suspension or revocation of a license are based have been corrected and after a proper inspection has been made, a new license may be granted.

63.202 Separate Licenses

A. Separate licenses are required for agencies maintained in separate locations, even though operated under the same management.

B. A separate license is not required for separate buildings maintained by the same management on the same grounds.

C. A license is not transferable from person to person or from one location to another.

D. The Department of Health and Social Services may grant a waiver of Section 63.202A upon written request of the assisted living provider if the separate locations are located within a reasonably close physical area or development address provided the licensee can demonstrate the ability to meet the requirements set forth in the regulations.

63.203 Inspections

Every assisted living agency for which a license has been issued under this chapter shall be periodically inspected by a representative of the Division of Public Health.

63.204 Application Process

A. All persons or entities applying for a license shall request a licensure application from the Division of Public Health, Office of Health Facilities Licensing and Certification.

B. Applicants shall also submit to the Division of Public Health, Office of Health Facilities Licensing and Certification the following information:

1. the names, addresses and types of facility

owned or managed by the applicant;

2. identity of:

(a) each officer and director of the corporation if the entity is organized as a corporation;

(b) each general partner or managing member if the entity is organized as an unincorporated entity;

(c) the governing body if the entity is government-operated;

(d) proof of not-for-profit status if claiming tax-exempt status; and

(e) any officers/directors, partners, or managing members, or members of a governing body who have a financial interest of 5 percent or more in a licensee's operation or related businesses.

3. disclosure of any officer, director, partner, employee, managing member, or member of the governing body with a felony criminal record; and

4. name of the individual responsible for the management of the assisted living agency.

63.205 The Department of Health and Social Services may adopt, amend, or repeal regulations governing the operation of the agencies defined in Section 1101 of this title and shall establish reasonable standards of equipment, capacity, sanitation, and any other conditions which might influence the health or welfare of the consumers of such agencies.

SECTION 63.3 GENERAL REQUIREMENTS

63.301 All records maintained by the assisted living agency shall at all times be open to inspection by the authorized representatives of the Division of Public Health, Office of Health Facilities Licensing and Certification.

63.302 No policies shall be adopted by the assisted living agency which are in conflict with these regulations.

63.303 The assisted living agency shall establish written policies regarding the rights and responsibilities of consumers, and these policies and procedures shall be made available to authorized representatives of the Division of Public Health.

63.304 The assisted living agency shall develop policies and procedures to prevent cognitively impaired consumers from wandering away from safe areas.

63.305 Each assisted living agency shall provide with the admission agreement to all consumers a complete statement enumerating all charges for services, materials and equipment which shall, or may be, furnished to the consumer during the period of occupancy.

63.306 Each agency shall make known, in writing, the refund and prepayment policy at the time of admission, and in the case of third-party payment, an exact statement of responsibility in the event of retroactive denial.

63.307 The assisted living agency shall arrange for emergency transportation and care.

63.308 Upon the agency's reasonable belief that the medical needs of a consumer exceed the needs addressed in the service agreement, the agency shall promptly discuss and document with the consumer his need for medical assessment and shall document the outcome of that discussion.

SECTION 63.4 CONSUMER APPLICATION AND CONTRACTS

63.401 All information provided by the assisted living agency shall be accurate, precise, easily understood and readable by a consumer, and in compliance with all applicable laws.

63.402 The assisted living agency shall have a written application process and provide clear reasons in writing if an applicant is rejected.

63.403 The assisted living agency shall recommend review of the contract by an attorney or other representative chosen by the consumer.

63.404 The assisted living agency's contract shall:

A. be easily understood and readable by a consumer or his/her representative if the consumer is incapable of making decisions;

B. be signed by the consumer or his/her representative if the consumer is incapable of making decisions;

C. conform to all relevant state and local laws and requirements;

D. cover the following topics:

1. clear and specific occupancy criteria and procedures (admission, transfer, and discharge);

2. rate structure and payment provisions that are clear on:

a. covered and non-covered services;

b. service packages and fee for services;

c. regular and extra fees;

d. fees and payment arrangements for any third-party providers;

e. the provision of at least 60 days notice of any rate increases or fee changes;

f. the minimum notification a consumer or his/her representative if the consumer is incapable of making decisions must furnish when he/she plans to move out of the setting for reasons other than health emergencies (notification requirements may not exceed sixty (60) days);

g. the provisions regarding payment during unavoidable or optional absences (e.g., hospitalization, recuperation in a nursing home, or a vacation);

h. the provision of fair and reasonable billing, payment, and credit policies; and

i. the procedure if consumer can no longer pay for services.

3. division of responsibility between the assisted living agency and the consumer or his/her representative if the consumer is incapable of making decisions (e.g., arranging for or overseeing medical care, purchases of essential or desired supplies, emergencies, monitoring of health, handling of finances);

4. consumer's rights; and

5. explanation of grievance/complaint procedure and appeals process, including information on outside agencies to which appeals may be made.

E. include that the assisted living agency shall not provide services to consumers whose admission is prohibited under 63.505.

63.405 No contract shall be signed before a full assessment of the consumer has been completed and a service agreement, with costs, has been developed. If a deposit is required prior to move-in, the deposit shall be fully refundable if the parties cannot agree on the services and fees upon completion of the assessment.

SECTION 63.5 SERVICE ASSESSMENT

63.501 A consumer seeking entrance shall have an initial service assessment completed by appropriately qualified individuals no more than thirty (30) days prior to admission which shall be reviewed and revised, if appropriate, within fourteen (14) days of admission, and as frequently as needed thereafter. If the consumer requires specialized medical, therapeutic, or nursing services, that component of the assessment must be performed by personnel qualified in that specialty area. Regular assessments shall indicate whether the needs of the consumer are or can be met or arranged for by the assisted living agency.

63.502 The service assessment shall include a medical evaluation completed by a physician within thirty (30) days prior to admission.

63.503 The service assessment tool shall be developed by the assisted living agency and shall include an

evaluation of the physical and psychosocial needs of the consumer.

63.504 This assessment shall be completed by the assisted living agency in conjunction with the consumer or his/her representative if the consumer is incapable of making decisions.

63.505 The assisted living agency shall not admit any consumer who needs services which cannot be provided or arranged for by the assisted living agency. The assisted living agency shall not provide services to consumers who:

1. need 24 hour nursing services whose medical conditions are unstable to the point that they require frequent observation, assessment and intervention by a licensed professional nurse, including unscheduled nursing services, unless the attending physician certifies that despite the presence of this factor, the consumer's needs may be safely met by a service agreement developed by the assisted living agency, the attending physician, a registered nurse, the consumer or his/her representative if the consumer is incapable of making decisions, and other appropriate health care professionals as determined by the consumer's needs;

2. are bedridden for 14 consecutive days unless a physician certifies that despite the presence of this factor, the consumer's needs may be safely met by a service agreement developed by the assisted living agency, the attending physician, a registered nurse, the consumer or his/her representative if the consumer is incapable of making decisions, and other appropriate health care professionals as determined by the consumer's needs;

3. need transfer assistance by more than one person and a mechanical device unless special staffing arrangements have been made to ensure safe care and evacuation;

4. have conditions that exceed program capabilities (to be enumerated on the contract by the assisted living agency); or

5. present a danger to self or others or engage in illegal drug use.

63.506 Assisted living agencies are not intended for persons who require nursing home services that are beyond the capabilities of the assisted living agency. Under certain conditions services may be provided as per 63.505.

SECTION 63.6 SERVICE AGREEMENTS

63.601 A service agreement based on the needs identified in the service assessment shall be developed prior to entrance. The service agreement shall include the scope, frequency, and duration of services and monitoring. The

consumer, or his/her representative if the consumer is incapable of making decisions, shall review the agreement, and determine which services he/she will utilize. The consumer or his/her representative if the consumer is incapable of making decisions and other persons with obligations under the service agreement shall sign the agreement. All persons who sign the agreement will be able to fully comprehend and perform their obligations under the agreement.

63.602 The service agreement must cover the following topics at a minimum:

- A. personal services;
- B. nursing services;
- C. food services;
- D. environmental services including housekeeping, laundry, safety, trash removal;
- E. social/emotional services including those related to cognitive deficits;
- F. financial management services;
- G. transportation services;
- H. individual living unit furnishings; and
- I. notification of family when there is a change in the health status of the consumer.

63.603 The service agreement shall be developed and followed for each consumer consistent with that person's unique physical and psychosocial needs with recognition of his/her capabilities and preferences. Each consumer or his/her representative if the consumer is incapable of making decisions shall be entitled to actively participate in the development of the service agreement.

63.604 The service agreement shall be reviewed upon observation of the provider that the needs of the consumer have changed, or upon the request of the consumer or his/her representative if the consumer is incapable of making decisions, but no less frequently than annually.

63.605 The assisted living agency shall be responsible and accountable for providing the services delineated in the service agreement.

63.606 The service agreement shall be based on the concepts of shared responsibility and consumer choice, including bounded choice.

63.607 Consumers admitted pursuant to 63.505 shall be prohibited from executing managed risk agreements.

63.608 Choices may be included in the managed risk agreement section of the service agreement if:

A. The risks are tolerable to all parties participating in the development of the service agreement;

B. Mutually agreeable action is negotiated;

C. The consumer making the choices or his/her representative is capable of making decisions and understanding the consequences; and

D. The consumer making the choice has the resources (personal or financial) to deal with the consequences.

63.609 Consistent with the philosophy of bounded choice, choice shall be limited to the extent necessary to prevent harm in cases where the choice may result in severe or immediate negative consequences to the consumer or others. Severe or immediate negative consequences shall include but not be limited to serious property damage and significant physical or psychological harm to the consumer making the choice, another consumer, a staff member or a visitor.

63.610 If a managed risk agreement is made a part of the service agreement, it shall:

A. clearly describe the problem, issue or service that is the subject of the managed risk agreement;

B. describe the choices available to the consumer as well as the risks and benefits associated with each choice, the assisted living agency's recommendations or desired outcome, and the consumer's desired preference or the preference that the consumer's representative believes would be the consumer's desired preference if the consumer is incapable of making decisions;

C. indicate the agreed upon option;

D. describe the agreed upon responsibilities of the assisted living agency, the consumer and any third party providers;

E. become a part of the service agreement, be signed separately by the consumer or his/her representative if the consumer is incapable of making decisions, the assisted living agency, and any third party with obligations under the managed risk agreement that the third party is able to fully comprehend and perform; and

F. include a time frame for review.

63.611 The assisted living agency shall make no attempt to use the managed risk portion of the service agreement to abridge a consumer's rights or to avoid liability for harm caused to a consumer by the negligence of the assisted living agency and any such abridgment or disclaimer shall be void.

SECTION 63.7 CONSUMER'S RIGHTS

63.701 Assisted living agencies are required by Title 16

Del.C., Chapter 11, Subchapter II to comply with the provisions of the Rights of Patients covered therein.

Not all of the rights contained in Subchapter II are enumerated in these regulations because not all of the rights are equally relevant for consumers of assisted living services. However, consumers of assisted living services are entitled to all of the rights set forth in Subchapter II, regardless whether they are specifically regulated herein.

63.702 Each consumer shall be treated with consideration, respect and full recognition of their dignity and individuality.

63.703 Each consumer shall receive care, treatment and services which are adequate and appropriate to their needs.

63.704 Each consumer or his/her representative if the consumer is incapable of making decisions, prior to or upon admission, and during their stay, shall receive a written statement of the services provided by the assisted living agency including those required to be offered on an "as-needed" basis.

A. They shall also receive a statement of related charges, including any charges for services not covered under Medicare, Medicaid or the assisted living agency's basic per diem rate.

B. Upon receiving such statement, the consumer or his/her representative if the consumer is incapable of making decisions, shall sign a written receipt which shall be retained by the assisted living agency.

63.705 Each consumer or his/her representative if the consumer is incapable of making decisions shall be entitled to participate in the planning of all of their services including their medical treatment.

63.706 Each consumer's medical care program shall be conducted discreetly and in accordance with the consumer's need for privacy.

A. Other than the representatives of consumers who are incapable of making decisions, persons not directly involved in the provision of care shall not be present during medical examinations, treatment and case discussion, unless requested by the consumer or his/her representative if the consumer is incapable of making decisions.

B. Personal and medical records shall be treated confidentially; shall not be made public without the consent of the consumer or his/her representative if the consumer is incapable of making decisions or a court order and shall not be released to any person inside or outside

the assisted living agency who has no demonstrable need for such records. Authorized representatives of the Department of Health and Social Services with oversight review or inspection responsibilities shall have full access to all personal and medical records.

63.707 Each consumer shall receive from the staff of the assisted living agency a courteous and reasonable response to their requests.

63.708 The assisted living agency shall disclose to each consumer or his/her representative if the consumer is incapable of making decisions the identity of each entity with which it contracts for consumer care services and any ownership interest in any health care facility that it recommends to the consumer.

63.709 Each consumer may associate privately with people and groups of his/her own choice at any reasonable hour.

63.710 Each consumer may send and receive mail promptly and unopened.

63.711 Each consumer shall have 24 hour access to a telephone where he/she may speak privately.

63.712 Each consumer has the right to manage his/her own financial affairs.

A. If, by written request, the assisted living agency manages the consumer's financial affairs, it shall have available for inspection a monthly accounting and shall furnish a quarterly statement upon request to the consumer or a designated representative.

B. The consumer shall have unrestricted access to such accounts at reasonable hours.

63.713 Each consumer has the right of privacy in his/her room, including a door that locks, consistent with the safety needs of the consumer.

63.714 Each consumer has the right, personally, or through others, to present grievances/complaints to the agency's staff or director, to the Division of Services for Aging and Adults with Physical Disabilities, the Ombudsman or to others including the Division of Public Health, Office of Health Facilities Licensing and Certification.

A. The assisted living agency and its staff shall not impose any reprisal, restraint, interference, coercion or discrimination of the consumer as a result of such grievance/complaint or suggestion.

B. The assisted living agency shall report immediately and in writing any alleged violation of any of the provisions of Section 63.7 of these Rules and Regulations to the Ombudsman.

C. The Ombudsman shall consult with the complainant to determine if he/she wishes to pursue an investigation. If the complainant wishes to pursue the matter, the Ombudsman shall work closely with the complainant and the assisted living agency to resolve the matter. In any case, the confidentiality of the complainant shall not be revealed except in accordance with applicable law.

D. On completion of the investigation, the Ombudsman shall report the findings to the complainant and with the complainant's consent to the assisted living agency wherein the complaint originated.

E. If the grievance/complaint is not resolved at the end of the investigation by the Ombudsman, the grievance/complaint findings shall be forwarded to the Division of Public Health, Office of Health Facilities Licensing and Certification for appropriate action after obtaining the consent of the complainant.

F. Nothing in this regulation abrogates any person's duties under the Patient Abuse Law, 16 Del. C §1131 et seq.

63.715 The assisted living agency shall investigate and address all grievances/complaints, verbal or written, made by consumers or their representatives and must document both the existence of the grievance/complaint and the resolution of the grievance/complaint. Records of all such investigations shall be maintained by the assisted living agency for five years for review.

63.716 The assisted living agency shall develop a formal internal grievance/complaint process which protects consumers from reprisal from employees.

63.717 This written grievance/complaint process shall be provided to consumers upon admission to the assisted living agency.

63.718 A consumer shall not be required to perform services for the assisted living agency.

63.719 Each consumer shall have the right to retain and use their personal clothing and possessions where reasonable and shall be entitled to security in their storage and use.

63.720 No consumer shall be transferred or discharged from an assisted living agency except for the following:

A. For medical reasons;

B. For the consumer's own welfare or the welfare of the other consumers;

C. For non-payment of justified charges; or

D. For failure to negotiate a service agreement or managed risk agreement where applicable.

63.721 If good cause for transfer or discharge exists, the consumer shall be given thirty (30) days advance notice of the proposed action and the reasons for the action and may request an impartial hearing. In emergency situations, such notice need not be given.

63.722 If a hearing is requested under Section 63.721, it shall be held within twenty (20) days of the request. The hearing shall be conducted by the Division of Public Health in accordance with Subchapter III of Del.C, Ch. 101 Administrative Procedure's Act. The Deputy Attorney General for the Division of Public Health may attend as legal officer in these hearings.

63.723 If the hearing determines in favor of the consumer, the assisted living agency shall be instructed to comply. If the assisted living agency refuses to comply, this refusal may be grounds for revocation of the license.

63.724 The consumer's rights shall be posted conspicuously in a public place in each assisted living agency.

63.725 Copies of the consumer's rights shall be furnished to the consumer or his/her representative if the consumer is incapable of making decisions, upon admission and promptly following any modification made by the assisted living agency.

63.726 Receipts for the consumer's rights statements signed by the above parties shall be retained in the assisted living agency's files.

SECTION 63.8 QUALITY ASSURANCE

63.801 The assisted living agency shall develop and implement a documented, ongoing quality assurance program that includes an internal monitoring process that tracks performance and measures consumer satisfaction.

63.802 On at least a semi-annual basis, the assisted living agency shall survey each consumer or his/her representative if the consumer is incapable of making decisions regarding their satisfaction with services provided.

A. The assisted living agency shall retain all surveys which shall be reviewed during inspections.

B. The assisted living agency shall maintain documentation which addresses what actions were taken as a result of the surveys.

63.803 The grievance/complaint process shall be incorporated into the quality assurance program.

SECTION 63.9 STAFFING

63.901 A staff of persons sufficient in number and adequately trained, certified or licensed to meet the requirements of the consumers shall be employed.

63.902 The assisted living agency shall develop a staffing plan sufficient in number to meet the needs of the consumers based on the service agreements in effect at any given time.

63.903 The assisted living agency shall maintain staffing records which document what personnel were on duty as well as specific hours worked for each day.

63.904 The assisted living agency shall provide appropriate training to staff to meet the needs of the consumer. The content and attendance of staff training programs shall be documented.

63.905 The assisted living agency shall provide orientation training to all new staff.

63.906 All personnel records, including employment applications, shall be maintained consistent with the assisted living agency policies and applicable state laws.

63.907 Each assisted living agency that is licensed shall have a director who is responsible for the operation of the program.

63.908 The assisted living agency shall provide either onsite or on call supervision 24 hours per day.

63.909 The assisted living agency must be available 24 hours per day to respond if called by the consumer for assistance.

SECTION 63.10 ENVIRONMENT

63.10.1 All accommodations shall comply with applicable federal, state and local building codes including:

- A. Rehabilitation Act of 1973, Section 504;
- B. Fair Housing Amendments Act of 1988; and
- C. Americans with Disabilities Act of 1990.

63.10.2 Kitchens shall be available to consumers either in their individual living unit or in an area readily accessible to each consumer.

63.10.3 Individual living units without kitchens shall have an appropriately designed central kitchen readily accessible to the consumer. The assisted living agency shall establish policies and procedures to ensure that this kitchen is used and maintained in such a way as to provide for the following:

- A. a clean and sanitary environment;
- B. safe storage of food; and
- C. a means to enable hand washing and sanitizing of dishes, utensils and food preparation equipment.

63.10.4 Assisted living agencies that prepare meals to consumers shall meet the State of Delaware Regulations Governing Public Eating Places.

63.10.5 The assisted living agency shall provide a homelike environment in all common areas.

SECTION 63.11 FIRE SAFETY AND EVACUATION PLANS

63.11.1 Fire safety in assisted living agencies shall comply with the adopted Rules and Regulations of the State Fire Prevention Commission. All applications for license or renewal of license must include with the application a letter certifying compliance by the Fire Marshal having jurisdiction. Notification of non-compliance with the Rules and Regulations of the State Fire Prevention Commission shall be grounds for revocation of the license.

63.11.2 The assisted living agency shall develop an evacuation plan for each consumer in the event of an emergency.

63.11.3 The assisted living agency shall be responsible to have adequate staff to meet the evacuation plan needs of each consumer at any given time.

SECTION 63.12 RECORDS

63.12.1 The assisted living agency shall be responsible for maintaining appropriate records for each consumer. These records shall document the implementation of the service agreement for each consumer. Clinical records for consumers shall conform to professional standards for medical records.

63.12.2 Records shall be available at all times to legally authorized persons; otherwise such records shall be held

confidential. The consent of the consumer or his/her representative if the consumer is incapable of making decisions shall be obtained before any personal information is released from his/her records as authorized by these regulations or Delaware law.

63.12.3 The assisted living agency records shall be retained for a minimum of five (5) years before being destroyed.

DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code, Section 407(a) (3 **Del.C.** 407(a))

The Department proposed these regulations pursuant to 3 **Del.C.** 407(a). The proposed regulations contain the following general sections: Definitions, Aquaculture Registration, General Aquaculture Permits, Restricted Aquaculture Permits, Aquaculture Stock Certification, Aquaculture Broodstock, Identification and Certification, Inspection of Premises, enforcement, Future considerations, Fe Fishing, Aquaculture facility Protection, and Civil Penalties. these regulations are intended to more clearly define the role of the Department in the Delaware aquaculture industry. the porposed regulations will be considered at a public hearing scheduled for November 12, 1997, at 1:00 p.m. at the Delaware Department of Agruculture building. Copies of the proposed regulations may be obtained from the State Veterinarian's office. Comments may be submitted in writing to the State Veterinarian, on or before 4:00 p.m. on November 11, 1997, and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

DELAWARE DEPARTMENT OF AGRICULTURE AQUACULTURE REGULATIONS

AUTHORITY

These regulations are promulgated under the authority of Section 407, Chapter 4, Title 3 of the Delaware Code.

PURPOSE

The purpose of these regulations is to encourage the orderly development of an aquaculture industry in Delaware, while ensuring that aquaculture operations do

not adversely impact upon the State's wild stocks of fish by introducing any non-indigenous species that harbor disease or parasites or are capable of surviving and adversely competing with indigenous plant or animal species.

I. DEFINITIONS

As used in these regulations:

(1) "Aquaculture means the controlled propagation, growth, harvest, and subsequent commerce in cultured aquatic stock by an aquaculturist.

(2) "Aquaculturist" means an individual, partnership or corporation involved in the production of cultured aquatic stock or parts thereof.

(3) "Aquaculture Facility" means any water system and associated infrastructures capable of holding and/or producing cultured aquatic stock.

(4) "Aquatic Organism" means an animal or plant of any species or hybrid thereof, and includes gametes, seeds, eggs, sperm, larvae, juvenile and adult stages, any one of which is required to be in water during that stage of its life.

(5) "Aquaculture Registration" means the formal registration by application to the Department of Agriculture of an aquaculture facility by a person, partnership, or corporation.

(6) "Broodstock" means sexually mature aquatic organisms, either domesticated or wild, used to propagate cultured aquatic stock.

(7) "Closed System" means an aquaculture facility or system with discharges that do not connect in any way to the waters of the State prior to filtration or percolation in order to prevent cultured aquatic stock from escaping.

(8) "Cultured Aquatic Stock" means privately owned aquatic organisms, lawfully acquired, held and grown in a registered aquaculture facility.

(9) "Department" (DDA) means the Delaware Department of Agriculture or its authorized representative.

(10) "DNREC" means the Department of Natural Resources and Environmental Control.

(11) "Domesticated" means to be trained, adapted and/or bred to live in a human controlled environment and be of use to man.

(12) "Fee Fishing" means removing cultured aquatic stock from a registered aquaculture facility in a sportsmanlike manner for payment of a fee.

(13) "Fee Fishing Operation" means a registered aquaculture facility where a person may fish for cultured aquatic stock for a fee.

(14) "Finfish", "Food fish", "Game fish" and "Bait fish" mean those animals so defined in Chapter 906, Title 7, Delaware Code Annotated.

(15) "General Aquaculture Permit" means written authorization from DNREC to conduct aquaculture that is not subject to DNREC inspection and approval prior to receiving possession of aquatic organisms subject to permit.

(16) "Native Species" means any species or hybrid thereof of any plant or animal that naturally occurs in the waters of the State.

(17) "Non-Native Species" means any species or hybrid thereof of any plant or animal that does not occur naturally in the waters of the State.

(18) "Naturalized Species" means any species or hybrid thereof of any plant or animal which has been introduced to the Waters of this State and has become established by reproducing in the Waters of this State.

(19) "Open System" means an aquaculture facility with a water discharge that connects to the waters of this state without being screened, filtered or percolated prior to discharge to prevent cultured aquatic stock from escaping.

(20) "Registered Aquaculture Facility" means an aquaculture facility that has a valid aquaculture registration issued by the Department of Agriculture.

(21) "Restricted Aquaculture Permit" means written authorization from DNREC to conduct aquaculture that is subject to DNREC inspection and approval prior to receiving possession of aquatic organisms subject to permit.

(22) "Waters of the State" means all the tidal waters under the jurisdiction of the State where the lunar tide regularly ebbs and flows and all non-tidal waters under the jurisdiction of this State except for man made ponds where there is no natural outlet of water to any ditch, stream, river, etc. that eventually may lead to tidal water. Waters in aquacultural facilities are not included.

(23) "Wild" means an animal or plant that is not trained, adapted and/or bred to live in a human controlled environment.

II. AQUACULTURE REGISTRATION

A. All producers of cultured aquatic stock with an anticipated or realized gross annual revenue in excess of \$2,500 must register with the Department of Agriculture. Producers with lower rates of revenue that deal with species regulated by the Department of Natural Resources and Environmental Control (i.e., game fish in a fee fishing operation) must register with the Department of Agriculture and obtain the appropriate possession permits from DNREC.

The registration of all qualifying aquaculture facilities will allow the Department to generate and maintain a list of all active aquaculture facilities in the state as prescribed by the Delaware Aquaculture Act.

III. GENERAL AQUACULTURE PERMIT

A. The Department of Agriculture will prepare a list, and update it yearly, listing those commonly kept aquaculture species for which permits are not needed and those species which require additional permits from DNREC. Requests for propagation of other species will be handled on a case by case basis by DNREC.

B. DNREC shall issue a general aquaculture permit for the propagation, production, possession and disposition of cultured aquatic stock, including Black crappie, *Pomoxis nigromaculatus*; white crappie, *Pomoxis annularis*; striped bass, *Morone saxatilis*; white perch, *Morone americana*; walleye, *Stizostedion edion*; northern pike, *Esox lucius*; chain pickerel, *Esox niger*; Muskellunge, *Esox masquinongy*; tiger muskellunge, *Esox lucius x Esox masquinongy*; rock bass *Ambloplites rufostris*; salmon and trout except Pacific salmon, *Salmonidae* (family); sunfishes, *levomis* spp.; channel catfish, *Ictalurus punctatus*; yellow perch, *Perca flavescens*; and other food fish included in Subsection 906(28), 7 Del. Code. Size limits and/or creel limits shall be waived. There will be no restrictions on their disposition, on provided none are stocked into the waters of this State without appraisal from DNREC. Upon registering a facility culturing of these species, the registrant will be supplied a general aquacultural permit by DDA.

IV. RESTRICTED AQUACULTURE PERMITS

The possession and disposition of certain species, those listed in Section III, are strictly regulated under these regulations. When a facility is to be used to grow restricted species it then must have DNREC approval.

Any aquaculture facility involving shellfish shall contact the Department of Natural Resources and Environmental Control, Fisheries Section, for pertinent regulations for shellfish culture.

All non-native species of shellfish and Finfish capable of surviving in the waters of the State may be imported into the State provided prior written authorization is granted by DNREC.

Any non-native species authorized to be in the State shall be contained in a DNREC approved facility.

Species of Finfish or shellfish may be added to or deleted from the restricted species categories by mutual consent of Department of Agriculture and DNREC.

A) PROHIBITED SPECIES

DNREC shall not issue any aquaculture permits for

walking catfish, Claries backtracks.

B) RESTRICTED SPECIES

1) Black bass - *Micro-oterus* spp.

(a) No wild black bass shall in any way be made part of, or used for, an aquaculture facility or co-mingled with any domesticated black bass raised in an aquaculture facility except as authorized under Section V, Broodstock, of these regulations.

(b) Any black bass sold by an aquaculturist would have to be accompanied by a manifest which indicates where the black bass were reared, the size and number of black bass contained in the shipment and the buyer of the black bass.

(c) The sale of Large and Smallmouth bass for any purpose, including, but not limited to, stocking or consumption, shall be legal for any registered and permitted aquaculture operation as of June 1, 1996.

2) Grass Carp - *Ctenopharyngodon idella*

A certificate of triploidy from the U.S. Fish and Wildlife Service is required from their authorized point of origin. An Aquacultural facility must be a closed system approved by DNREC and any distribution for stocking in this State must have site approval in advance by DNREC.

3) Hybrid striped bass - *Morone saxatilis* x *Morone*-spp. and white bass, *morone chrysous*

Size limits and/or creel limits shall be waived.

An aquacultural facility must be a DNREC approved closed system. There are no restrictions on their disposition except they may not be released into any open system.

4) Eels - *Anauilla rostrata*

Eels are restricted until a fishery management plan for eels is approved by the Atlantic States Marine Fisheries Commission. Eels less than six (6) inches in length shall not be in an aquacultural facility unless documentation of their origin is approved by DNREC.

5) DNREC and the DDA shall provide copies of all aquacultural permits and registrations to each other.

C) UNRESTRICTED SPECIES

Minnnows and shiners, *Cyprinidae* (family); killifish, *Fundulus* spp.; anchovy, *Anchoa* spp.; sand lance, *Ammodytes* spp.; mullet, *Mugilidae* (family); do not require an aquaculture permit from DNREC.

V. STOCK CERTIFICATION Fish Health

A) All non-aquarium trade shipments of cultured aquatic stock into the State shall be accompanied by documentation of origin which describes the species involved and the name and address of the original source. It must also include the name and address of additional premises where the shipment has been held for more than

a twenty-four hour period. Certificates of health must also be included when local facilities for their procurement exist and their preparation is practical. If a shipment will not be accompanied by a certificate of health, before shipment enters the State a written or oral authorization must be obtained from the Department of Agriculture. All incoming international shipments must be accompanied by a valid health certificate or be held in a Department of Agriculture approved closed system until the State Veterinarian is satisfied of the shipment's health status and authorizes its distribution.

As with other commodity groups, when the State Veterinarian is made aware of a particular disease condition affecting cultured aquatic stock, and the presence of which could have adverse effects on Delaware aquaculture species, he will, in a timely manner, alert Delaware aquaculturists by way of a memo or appearance at an industry group meeting.

Commercially grown aquacultural species in the State of Delaware are considered in the same class with livestock and poultry and, therefore, in the case of a serious contagious or infectious disease, would be subject to quarantine, testing or destruction under Delaware Code, Title 3, subsection 7107.

B) To the extent practical, species with demonstrated genetic characteristics inappropriate to Delaware should be prevented from entering the waters of the State. Specifically striped bass from races which have sinking eggs should not be brought into Delaware.

VI. BROODSTOCK

Broodstock for aquaculture facilities may be obtained as follows:

A) By propagation of existing broodstock and maturation of the offspring.

B) By purchase from a legal aquaculture facility.

C) By legal sportfishing or commercial harvest methods authorized in the Delaware Code and DNREC regulations.

D) Through the use of a collecting permit issued by DNREC, which authorizes the collecting of specified species by methods that otherwise would be illegal, in consideration of the broodstock availability needs of the aquaculture industry.

E) Broodstock acquired under (A) and (B) above may

be bought, sold, traded and transported at any time as stated in IV Fish Health. Wild game fish, as defined in Subsection 906 (3) 7, Delaware Code, obtained under C and (D) above must be marked (i.e. fin clipped) upon capture and shall not be bartered, sold or traded. However such broodfish may be transported out of State with written authorization from DNREC. Interstate transport or sale of commercially harvested wild food fish as broodstock may be permitted providing DDA and DNREC are notified at least 48 hours in advance.

VII. IDENTIFICATION AND CERTIFICATION.

A) Except as provided in Section IV above, any aquatic organisms that have been produced in aquacultural facilities and are being transported for sale or distribution to another shall be accompanied by a bill of sale or bill of lading. Any aquatic organisms being transported by, or for, an aquaculturist and not for sale or distribution to another shall be accompanied by a copy of the valid aquacultural permit issued by DNREC.

B) Any label, bill of sale or bill of lading shall contain the name and address of the receiver and the identity of the aquatic organisms by species, total weight or number.

VIII. INSPECTION OF PREMISES

Upon the proper completion of the Department's Aquaculture Registration Application, and verification of approval of all, if any, requirements from the Department of Natural Resources and Environmental Control, an appointment will be made with the aquaculturist for an on-site visitation by a representative of The Department. Department personnel may inspect any aquacultural facility for verification of registration.

A. PRE START-UP INSPECTION

It will be illegal to begin any aquaculture operation without being registered with the Department of Agriculture. The registration shall be signed by the owner, agreeing to abide by the aquaculture regulations and signed by a Department representative certifying the facility as having met the requirements of all applicable laws and regulations. The registration will be valid for 5 years. The owner of an aquaculture facility shall renew the registration of the facility in the event of any change in ownership or a significant change in operations.

B. RIGHT TO RE-INSPECT

At any time during the five year period for which a facility is registered, any authorized employee of the

Department, after determining there is probable cause that there has been a violation of the laws or regulations pertaining to aquaculture facilities, may at any reasonable time, re-inspect the facility. During the re-inspection the Department's representative may search and/or examine the aquaculture facility in the presence of any occupant to determine compliance with the provisions of the Delaware Aquaculture Act, as well as any ensuing regulations.

IX. ENFORCEMENT

The DNREC and the DDA shall have joint responsibility to develop a practical enforcement policy to protect cultured aquatic stock from theft and to minimize the poaching of any wild fishes by, or on behalf of aquaculturists.

A. Suspension or Revocation of Registration

The Department, may, after due notice, suspend or revoke the registration of any aquaculturist whose operation does not comply with the requirements of the aquaculture regulations promulgated by the Department. A person affected by such suspension or revocation may request a hearing before the Department. The hearing shall be informal, and the technical rules of evidence shall not apply. A hearing shall be held within 30 days after the request. Within 30 days after the hearing, the Department shall affirm, withdraw, or modify its action by an order based upon the record of the hearing. An appeal from that order may be taken to the Superior Court within 30 days of the suspension or revocation order. If no request for a hearing is made within 30 days of the suspension or revocation order, the suspension or revocation will be effective, and the registration is suspended or revoked. All fines and penalties for violations of this subsection shall be paid to the Department and deposited in the General Fund account of the State.

X. FUTURE CONSIDERATIONS

The Department of Agriculture may amend and make such rules and regulations as it deems advisable to aid in carrying out the purposes of these regulations and relative to the enforcement thereof.

XI. FEE FISHING

The owner(s) of a fee fishing operation must apply to the Department to register that operation as an aquaculture facility. Within such a facility, registered as a fee fishing operation with the Department, it shall be lawful for any person to fish, without being licensed to fish in this State. The fee fishing operation shall meet with the following

requirements, subject to inspection and approval by the Department of Natural Resources and Environmental Control, prior to the Department's approving the registration:

1. The fee fishing operation shall be a closed system.
2. The fee fishing operation shall not contain any wild finfish.

A. INSPECTION

When authorized by the owner of a fee fishing operation, it shall be lawful for a person to take and/or possess those species or hybrids thereof permitted by species name by the DNREC without regard to any seasonal restrictions, size limits or creel limits.

Unless otherwise authorized, it shall be unlawful for any person to possess any cultured aquatic stock that remain alive after legally taking them from a fee fishing operation. Any person who lawfully takes and has fish in his possession from a fee fishing operation, registered as such with the Department, is exempt from any seasonal restrictions, size limits and/or creel limits on that particular species of fish, provided that person has in his possession a valid receipt issued by the owner or the owner's agent of the fee fishing operation.

Any person in possession of cultured aquatic stock lawfully taken from a fee fishing operation shall be issued a receipt for same by the owner or owner's agent of that fee fishing operation. This receipt shall include the name and address of the fee fishing operation, the date the cultured aquatic stock was taken, the identification and number of each species of cultured aquatic stock taken, and the signature of the person to whom the receipt is issued. This receipt shall remain in the possession of the person who took the cultured aquatic stock from the fee fishing operation until that person enters his or her personal abode or temporary or transient place of lodging. The owner or owner's agent of the fee fishing operation shall maintain a copy of each receipt for a period up to one year from the date of issuance.

XII. Aquaculture Facility Protection

It shall be unlawful for any person, without the written consent of the owner, to remove, destroy or release cultured aquatic stock from a registered aquaculture facility or introduce any toxic substance directly or indirectly into the waters of a registered aquaculture facility.

XIII. Civil Penalties

In addition to proceeding under any other remedy available by law or in equity for a violation of a provision of this act or a rule or regulation adopted thereunder, or any order issued pursuant to, the Secretary of the Department may hold an administrative hearing for the purpose of determining whether or not there should be a revocation of the aquaculture registration number issued by the Department.

No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge.

Any person who interferes with the Department of Agriculture in the enforcement of these regulations as determined by an administrative hearing, shall be assessed a civil penalty of up to \$500. In determining the amount of the penalty, the Secretary of the Department shall consider the appropriateness of such penalty to the gravity of the violation. Whenever the Secretary finds the violation occurred despite the exercise of due care or did not cause significant harm to property or the environment, the Secretary may issue a warning in lieu of assessing a penalty.

In cases of inability to collect such civil penalty or failure of any person to pay all, or such portion of such penalty as the Secretary may determine, the Secretary shall refer the matter to the Attorney Generals Office of the State of Delaware who shall recover such amount by action in the appropriate court.

DEPARTMENT OF HEALTH & SOCIAL SERVICES

Statutory Authority: 16 Delaware code, Section 122(c)(3) (16 **Del.C.** 122(c)(3))

Delaware Health and Social Services is considering revising certain regulations contained in Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act, Section 403, 8 USC 1613, the 1993 Mickey Leland Childhood Hunger Relief Act, the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 104-204, Title 38, United States Code, and DSSM sections 4006 and 4012. The Department will receive comments and consider whether or not to adopt or modify the proposed regulations.

The proposed regulations:

- Align cash assistance lump sum policy with the corresponding food stamp policy (DSSM 4006 and 4012).
- Exempt from adverse action notice when DSS mail is returned with no forwarding address. (DSSM 9020.4)
- Prohibit noncitizens who are lawfully admitted to the U. S. for legal permanent residence on or after August 22, 1997, from receiving Food Stamps for five years. (DSSM 9030)
- Allow households to provide the Social Security Number of a newborn at its next recertification or within six months, whichever is later. (DSSM 9210.3 and 9314.6)
- Exclude the value of one bona fide funeral agreement per household member up to \$1,500 in equity value. (DSSM 9404)
- Require Standard Utility Allowances be utilized instead of actual utility costs. (DSSM 9507)
- Restrict households with no record of regular child support payments to a 3 month certification period and those with a payment record to 6 months. (DSSM 9615)
- Revise the treatment of educational income. (DSSM 9404, 9503, 9504, 9506)
- Exclude allowances paid to children of Vietnam veterans who are born with spina bifida as income and resources for food stamp purposes. (DSSM 9404 and 9506)
- Make any failure to comply with another program's requirements, regardless of intent, subject to the Riverside Rule for purposes of food stamp benefit calculation. (DSSM 9709).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services,

P.O. Box 906, New Castle, DE, by October 30, 1997, at one of the Division of Social Services' offices listed above.

The action concerning the determination of whether to adopt the proposed regulations will be based upon the results of Department and Division staff analysis and the

consideration of the written materials filed by other interested persons.

Current Policy

4006 Excluded Income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in AFDC and GA:

- The value of USDA donated foods.
- The value of food stamps.
- Foster care payments made on behalf of foster children residing in the home.
- Payments made directly to a third party on behalf of a recipient.

EXAMPLE: A friend pays a recipient's electric bill. The payment is made directly to the electric company. This payment is not considered as income to the assistance unit.

- Earnings received by children under the Summer Youth Program of the Job Training Partnership Act of 1982 for a period not to exceed six (6) months.
- A cash payment made to the AFDC unit responsible for household bills by a non-unit member for his or her share of the common household expenses.
- Any bona fide loan including loans for current living expenses. The following criteria must be met to ensure that the loan is bona fide:

1. Written agreement between the client and the individual or establishment engaged in the business of making loans to repay the money within a specified time.

2. If the loan is obtained from an individual or establishment not normally engaged in the business of making loans, obtain one of the following:

- a. Borrower's acknowledgement of obligation to repay; or
- b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
- c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.

Proposed policy

4006 Excluded Income

The following kinds of income are disregarded in determining financial eligibility and grant amounts in AFDC and GA:

- The value of USDA donated foods.
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- a. Borrower's acknowledgement of obligation to repay; or
- b. Borrower's expressed intent to repay either by pledging real or personal property or anticipated income; or
- c. A written statement detailing borrower's plans to repay the loan when future anticipated income is received.

Money received in the form of a non-recurring lump sum payment is excluded as a resource in the month received and counted as a resource in subsequent months, unless

specifically excluded from consideration as a resource by other federal law or regulations.

Current Policy

4012 Lump Sums

A period of ineligibility results when a member of an AFDC assistance unit receives non-recurring lump sum income that exceeds the State standard of need after deducting applicable disregards. To determine the number of months the period of ineligibility covers:

1. Add the lump sum plus other income budgeted in the month the lump sum was received; and

Divide the sum by the State standard of need for the family size. (The family size includes all persons whose needs are taken into account in determining eligibility and the amount of the grant.)

Income left from the calculation is income in the first month following the period of ineligibility. Ineligibility begins the month the lump sum is received. Assistance paid to the unit in the month the lump sum is received is an overpayment and must be recovered. Examples of lump sums include, but are not limited to, gifts, lottery winnings, inheritances, and personal injury claims. Income tax refunds are exempt from the lump sum provisions and are treated as available resources.

EXAMPLE: An AFDC family of four receives a \$2,000 lump sum on May 25th. The family has \$150 of budgetable income in the month that the lump sum is received.

\$2,000	lump sum
<u>+150</u>	other income
\$2,150	total income

\$2,150 divided by \$407 (AFDC standard for four people) = five with \$28 remaining.

This family is ineligible for five months. May is the first month of ineligibility caused by receipt of a lump sum. A \$257 overpayment exists for May. The remaining \$28 will be budgeted as unearned income in the month following the period of ineligibility.

The family applies in October and the family has no income.

\$407 Standard of need for a family of four
 -28 Remaining income from the lump sum
 \$379 Maximum grant for October

4012.1 Lump sums - shortening the period of ineligibility

The period of ineligibility that results from receipt of lump sum income can be shortened if:

1. The applicable standard of need is increased by agency policy. To determine the remaining period of ineligibility, subtract the amount that equals the original standard of need multiplied by the number of months completed in the period of ineligibility from the total lump sum. Divide the remainder by the increased standard.

EXAMPLE: Total lump sum \$1,500
 Original Standard \$265
 Increased Standard \$270

Number of months completed - 4

$\$265 \times 4 = \1060 $\$1,500 - \$1060 = \$440$ $\$440$
 divided by $\$270 =$ with $\$170$ remainder

The remaining period of ineligibility is one (1) months; $\$170$ is counted as unearned income in the first month following the period of ineligibility.

2) The lump sum is paid to a child and held in an irrevocable trust established by a court of law until the child is 18. In this case no period of ineligibility is established.

NOTE: A trust established after the lump sum is received by the individual is treated as a lump sum.

3) The lump sum is used to pay for medical expenses of a member of the assistance unit. To qualify medical expenses must be:

- a. expenses that are covered by Medicaid,
- or
- b. expenses for psychiatric treatment

These expenses are used to offset the amount of the lump sum. Verification that the expenses were incurred and paid is required.

4012.2 Lump sum ineligibility and new unit members

A person who is not a member of the unit when the lump sum is received, but later lives in the home with the ineligible family, is not affected by the period of ineligibility. This person may receive assistance if otherwise eligible.

EXAMPLE: A woman and three of her children receive AFDC. In June they receive lump sum income and are found ineligible for 12 months. In August, the woman gives birth to a child. This child is determined eligible for AFDC and can receive payments. The mother is made payee for the grant.

To determine the grant amount for the new member, first determine the standard of need for the disqualified family. Deduct this standard from the household's gross income. The remainder applies as unearned income to the needs of the new member. In the above example if the family's income is $\$500$, the child will receive a monthly grant of $\$108$.

$\$500$ - gross income
 $\underline{-407}$ - AFDC standard of need
 $\$93$ - Income applied to the new member's needs

$\$201$ - standard of need
 $\underline{-93}$ - income
 $\$108$ - grant

4012.3 Personal injury settlements and lump sums

When a client has been injured due to the negligence of a third party and has received medical assistance under Title XIX (Medicaid) as a result of that injury, Title XIX has a prior claim on any settlement that is made for medical care costs.

When a settlement has been made, any amount not subject to a prior claim by Title XIX will be treated as a lump sum. (See DSSM Section 4012.)

Proposed Policy

4012 ~~Lump Sums~~

~~A period of ineligibility results when a member of an AFDC assistance unit receives non-recurring lump sum income that exceeds the State standard of need after deducting applicable disregards. To determine the number of months the period of ineligibility covers:~~

1. ~~Add the lump sum plus other income budgeted in the month the lump sum was received; and~~

2. Divide the sum by the State standard of need for the family size. (The family size includes all persons whose needs are taken into account in determining eligibility and the amount of the grant.)

Income left from the calculation is income in the first month following the period of ineligibility. Ineligibility begins the month the lump sum is received. Assistance paid to the unit in the month the lump sum is received is an overpayment and must be recovered. Examples of lump sums include, but are not limited to, gifts, lottery winnings, inheritances, and personal injury claims. Income tax refunds are exempt from the lump sum provisions and are treated as available resources.

EXAMPLE: An AFDC family of four receives a \$2,000 lump sum on May 25th. The family has \$150 of budgetable income in the month that the lump sum is received.

~~\$2,000~~ lump sum
~~+150~~ other income
~~\$2,150~~ total income

~~\$2,150~~ divided by ~~\$407~~ (AFDC standard for four people) = ~~five~~ with ~~\$28~~ remaining.

This family is ineligible for five months. May is the first month of ineligibility caused by receipt of a lump sum. A \$257 overpayment exists for May. The remaining \$28 will be budgeted as unearned income in the month following the period of ineligibility.

The family applies in October and the family has no income.

~~\$407~~ Standard of need for a family of four
~~-28~~ Remaining income from the lump sum
~~\$379~~ Maximum grant for October

4012.1 Lump sums - shortening the period of ineligibility

The period of ineligibility that results from receipt of lump sum income can be shortened if:

1. The applicable standard of need is increased by agency policy. To determine the remaining period of ineligibility, subtract the amount that equals the original standard of need multiplied by the number of months completed in the period of ineligibility from the total lump sum.

Divide the remainder by the increased standard:

EXAMPLE: Total lump sum \$1,500

Original Standard \$265
 Increased Standard \$270
 Number of months completed - 4

~~\$265 x 4 = \$1060~~ ~~-\$1,500 = \$1060~~ = ~~\$440~~ ~~-\$440~~
 divided by ~~\$270 = 1~~ with ~~\$170~~ remainder

The remaining period of ineligibility is one (1) months; \$170 is counted as unearned income in the first month following the period of ineligibility.

2) The lump sum is paid to a child and held in an irrevocable trust established by a court of law until the child is 18. In this case no period of ineligibility is established.

NOTE: A trust established after the lump sum is received by the individual is treated as a lump sum.

3. The lump sum is used to pay for medical expenses of a member of the assistance unit. To qualify medical expenses must be:
 a. expenses that are covered by Medicaid, or
 b. expenses for psychiatric treatment

These expenses are used to offset the amount of the lump sum. Verification that the expenses were incurred and paid is required.

4012.2 Lump sum ineligibility and new unit members

A person who is not a member of the unit when the lump sum is received, but later lives in the home with the ineligible family, is not affected by the period of ineligibility. This person may receive assistance if otherwise eligible.

EXAMPLE: A woman and three of her children receive AFDC. In June they receive lump sum income and are found ineligible for 12 months. In August, the woman gives birth to a child. This child is determined eligible for AFDC and can receive payments. The mother is made payee for the grant.

To determine the grant amount for the new member, first determine the standard of need for the disqualified family. Deduct this standard from the household's gross income. The remainder applies as unearned income to the needs of the new member. In the above example if the family's income is \$500, the child will receive a monthly grant of \$108.

~~\$500~~ -- gross income
~~-407~~ -- AFDC standard of need
~~\$93~~ -- Income applied to the new member's needs

PROPOSED REGULATIONS

~~\$201 -- standard of need
-93 -- income
\$108 -- grant~~

4012.3 Personal injury settlements and lump sums

~~When a client has been injured due to the negligence of a third party and has received medical assistance under Title XIX (Medicaid) as a result of that injury, Title XIX has a prior claim on any settlement that is made for medical care costs.~~

~~When a settlement has been made, any amount not subject to a prior claim by Title XIX will be treated as a lump sum. (See DSSM Section 4012.)~~

Current policy

9020.4 Exceptions from notice

Do not provide individual notices of adverse action when:

1) The State initiates a mass change (see DSSM 9806);

2) The Division determines, based on reliable information, that all members of a household have died or that the household has moved from the project area;

Proposed policy

9020.4 Exceptions from notice

Do not provide individual notices of adverse action when:

1) The State initiates a mass change (see DSSM 9806);

2) The Division determines, based on reliable information, that all members of a household have died or that the household has moved from the project area; or DSS mail has been returned by the post office indicating no known forwarding address;

Current policy

9030.1 Citizens and Qualified Aliens

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

- Aliens who are lawfully admitted for permanent

residence who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act. Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter.

Proposed policy

9030.1 Citizens and Qualified Aliens

The following residents of the United States are eligible to participate in the Food Stamp Program without limitations based on their citizenship/alienage status:

4. Aliens residing in the U.S. before August 22, 1996, who are lawfully admitted for permanent residence and who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act. Beginning January 1, 1997, any quarter in which the alien received any Federal means-tested benefits does not count as a qualifying quarter.

Note: For aliens entering the U.S. on or after August 22, 1996:

Aliens who are lawfully admitted to the U. S. for legal permanent residence on or after August 22, 1996, cannot participate in the Food Stamp Program for five years even if they have or can be credited with 40 quarters of coverage.

Current policy - N/A

9210.2 Obtaining SSN's for Food Stamp Household Members

Proposed policy

9210.2 Obtaining SSN's for Food Stamp Household Members

If the household is unable to provide proof of application for a SSN for a newborn, the household must provide the SSN or proof of application at its next recertification or within 6 months following the month the baby is born, whichever is later. If the household is unable to provide a SSN or proof of application at its next recertification within 6 months following the baby's birth,

DSS shall determine if the good cause provisions of DSSM 9210.4 apply.

Current policy

9314.5 Special procedures for expediting service

2) Social Security Numbers - Those household members unable to provide the required SSN's or who do not have one prior to the first full month of participation will be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in DSSM 9210.

Proposed policy

9314.5 Special procedures for expediting service

2) Social Security Numbers - Those household members unable to provide the required SSN's or who do not have one prior to the second full month of participation will be allowed to continue to participate only if they satisfy the good cause requirements with respect to SSN's specified in DSSM 9210, except that households with a newborn may have up to six months following the month the baby was born to provide an SSN or proof of application for the newborn.

Current policy

9404 Resources Excluded For Food Stamp Purposes

In determining the resources of a household, only the following will be excluded:

2. Household goods, personal effects, one burial plot per household member, and the cash value of life insurance policies. The cash value of pension plans or funds will be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) will not be excluded.

Proposed policy

9404 Resources Excluded For Food Stamp Purposes

In determining the resources of a household, only the following will be excluded:

2. Household goods, personal effects, the cash value of life insurance policies, one burial plot per household member, and the value of one bona fide funeral agreement per household member, provided that the agreement does not exceed \$1,500 in equity value. If the equity value of the funeral agreement exceeds \$1,500, the value above \$1,500 is counted as a resource. The cash value of pension plans or funds will be excluded, except that Keogh plans which involve no contractual relationship with individuals who are not household members and individual retirement accounts (IRA's) will not be excluded.

NEW

19. Allowances paid to children of Vietnam veterans who are born with spina bifida are excluded from income and resources for food stamp purposes. (P.L. 104-204). These monthly allowances (\$200, \$700, or \$1,200) are based on the degree of disability suffered by the child.

Current policy

9503 Earned Income

6. Work study earnings, excluding those paid under Title IV of the Higher Education Act. When Work Study earnings fluctuate, subtract exclusions from the income as it is received monthly and count as income only when the amount subject to exclusion has been exhausted.

For example:

Tuition = \$570 / quarter
 Work Study Earnings = 1st month \$180;
 2nd month \$340;
 3rd month \$410

	Work Study Earnings	Amount Excluded	Exclusion Balance	Earnings Counted
Month #1	\$180	\$180	\$390	\$ 0
Month #2	\$340	\$340	\$ 50	\$ 0
Month #3	\$410	\$ 50	\$ 0	\$360
TOTAL	\$930	\$570	N/A	\$360

Proposed policy

9503 Earned Income

6. Educational assistance which has a work requirement (such as work study, assistantship or

fellowship with a work requirement) in excess of the amount excluded under DSSM 9506).

Current policy

9504 Unearned Income

Unearned income includes, but is not limited to:

4. Scholarships, education grants, fellowships, deferred payment loans for educational benefits, veteran's educational benefits and the like in excess of amount excluded.

Proposed policy

9504 Unearned Income

Unearned income includes, but is not limited to:

4. Scholarships, education grants, deferred payment loans for educational benefits, veteran's educational benefits and the like, other than educational assistance with a work requirement, in excess of amount excluded.

Current policy

9506 Income Exclusions

Educational loans on which payment is deferred, grants, scholarships, fellowships, veterans' educational benefits, and the like awarded to a household member enrolled at a recognized institution of post-secondary education, at a school for the handicapped, in a vocational education program, or in a program that provides for completion of a secondary school diploma or obtaining the equivalent thereof, to the extent that they are either used or made available by the school, institution, program, or other grantor for tuition and mandatory school fees at an institution of post secondary education, including correspondence schools at that level or a school at any level for the physically or mentally handicapped.

Mandatory fees are those charged all students, those charged to all students within a certain curriculum, and/or the rental or purchase of any equipment, materials, and supplies related to the pursuit of the course or study involved. For example, uniforms, lab fees, or equipment

charged to all students to enroll in a chemistry course would be excluded.

For the purpose of this provision, institution of post-secondary education means any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, provided that the institution is legally authorized or recognized by the state to provide a program of training to prepare students for gainful employment. Origination fees and insurance premiums on student loans are excludable charges. Only the amount of the loan after these charges have been excluded is to be considered income.

D. All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Federal deferred payment educational loans, to the extent that they provide income assistance beyond that used for tuition and mandatory school fees set forth in paragraph (C), are not excludable under this provision. Refer to DSSM 9401 for determining how to treat loans as resources.

E. Non-federal reimbursements or allowances to students for specific education expenses such as travel or books, but not allowances for normal living expenses, such as food, rent, or clothing. Portions of a general grant or scholarship

must be specifically earmarked by the grantor for education expenses rather than for living expenses to be excludable as a reimbursement.

No portion of any Federal educational grant, scholarship, fellowship, veteran's educational benefit and the like to the extent it provides income assistance beyond that used for tuition and mandatory school fees as set forth in DSSM 9506 (C) will be considered excludable under this provision.

No portion of any non-Federal (State, local or private) educational grant, scholarship, fellowship, veteran's educational benefit, and the like that is provided for living expenses will be considered excludable under this provision. Thus, to be excludable, such assistance must be specifically earmarked by the Grantor for education expenses, (such as travel or books), but not for living expenses, (such as food, rent, or clothing).

Proposed policy

9506 Income Exclusions

C. Educational assistance, including grants, scholarships, fellowships, work study, educational loans on which payment is deferred, veterans' educational benefits and the like.

To be excluded, the educational assistance listed above must be:

- A. Awarded to a household member enrolled at a:
1. Recognized institution of post-secondary education*.
 2. School for the handicapped.
 3. Vocational education program.
 4. Vocational or technical school, or
 5. Program that provides for obtaining a secondary school diploma or the equivalent;

*Means any public or private educational institution which normally requires a high school diploma or equivalency certificate for enrollment or admits persons who are beyond the age of compulsory school attendance for that State. The institution must be authorized to provide an educational program beyond secondary education or provides a program of training to prepare students for gainful employment, including correspondence schools at that level.

B. Used for or identified (earmarked) by the institution, school, program, or other grantor for the following allowable expenses:

1. Tuition.
2. Mandatory school fees, including the rental or purchase of any equipment, material, and supplies related to the pursuit of the course of study involved.
3. Books.
4. Supplies.
5. Transportation.
6. Miscellaneous personal expenses, other than the normal living expenses of room and board, of the student incidental to attending a school, institution, or program.
7. Dependent care (amounts excluded cannot be excluded under the income dependent care deduction under DSSM 9507), and
8. Origination fees and insurance premiums on educational loans.

Exclusions based on use for the allowable expenses listed above must be incurred or anticipated for the period the educational income is intended to cover regardless of when the educational income is actually received. If a student uses other income sources to pay for allowable educational expenses in months before the educational income is received, the exclusions to cover the expenses shall be allowed when the educational income is received. When the amounts used for allowable expenses are more than amounts earmarked by the institution, school, program or other grantor, an exclusion shall be allowed for amounts used over the earmarked amounts. Exclusions based on use shall be subtracted from unearned educational income first when possible, and the remainder, if any, shall be excluded from earned educational income.

An individual's total educational income exclusions cannot exceed that individual's total educational income received.

D. All loans, including loans from private individuals as well as commercial institutions, other than educational loans on which repayment is deferred. Educational loans on which repayment is deferred shall be excluded according to DSSM 9506 C. A loan on which repayment must begin within 60 days after receipt of the loan shall not be considered a deferred repayment loan.

E. No portion of any educational assistance that is provided for normal living expenses (room and board) shall be considered a reimbursement excludable under this section.

NEW

24. Allowances paid to children of Vietnam veterans who are born with spina bifida are excluded from income and resources for food stamp purposes (P.L. 104-204). These monthly allowances (\$200, \$700, or \$1,200) are based on the degree of disability suffered by the child.

Current policy

9507 Income Deductions

Two annualized utility allowances are offered:

The basic allowance, presently \$164, is available to households that do not pay for heat, yet incur costs for

a major utility such as electricity or cooking fuel.

The heat allowance, presently \$239, is available to households with heating costs.

Permit households to switch between their actual utility costs and the appropriate utility standard at the time of recertification. Qualifying households not opting to itemize actual utility costs will be assigned the appropriate standard utility allowance.

Proposed policy

9507 Income Deductions

NEW

Standard Utility Allowances (SUA)

There are two standard utility allowances. The basic SUA is for households that pay for costs for a major utility, such as electricity or cooking fuels, which includes cooling costs but not heat costs. The heat SUA is for households with heating costs. Households eligible to use a SUA are required to use the appropriate standard utility allowance when they have costs for a major utility or heating.

The two annualized standard utility allowances are as follows:

Basic SUA is \$164 per month.

Heat SUA is \$239 per month.

Current policy - N/A

9615 Certification Periods

Proposed policy

9615 Certification Periods

NEW

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

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

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

Current policy

9709 Failure to comply with another assistance program's requirements

Do not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program (such as but not limited to ABC, GA or SSI) have been decreased (reduced, suspended or terminated) due to an intentional failure to comply with a requirement of the program that imposed the benefit decrease. This does not apply to food stamp work sanctions under DSSM 9203.

Proposed policy

9709 Failure to comply with another assistance program's requirements

Do not increase food stamp benefits when a household's benefits received under another means-tested Federal, State or local welfare or public assistance program (such as but not limited to AFDC, GA or SSI) have been decreased (reduced, suspended or terminated) due to failure to comply with a requirement of the program that imposed the benefit decrease. This does not apply to food stamp work sanctions under DSSM 9203.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

DIVISION OF WATER RESOURCES

Statutory Authority: 7 Delaware Code,
Section 6010 (7 Del.C. 6010)

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, has proposed to revise the Regulations for Licensing Operators of Wastewater Facilities. Proposed amendments would change the due date from July 1 to January 31 of each year for registration of wastewater facilities and operators and provide a way to allow wastewater operators to retain licenses while not actively operating as long as they meet the continuing education requirements. Section 9 and 15 have also been deleted.

Possible Terms of the Agency Action:

N/A

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

List of Other Regulations That May be Impacted or Affected by the Proposal:

None

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control will hold a public hearing on November 5, 1997, beginning at 7:00 p.m., in the Canteen Conference Room, of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to consider proposed amendments to the Regulations for Licensing Operators of Wastewater Facilities. The proposals address reporting requirements and the requirements to retain an operators license when not operating and also delete Section 9 and 15.

The proposals will be available for inspection at the Division of Water Resources offices located at 89 Kings Highway, Dover, Delaware. Inquiries should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. Written statements may be presented prior to the hearing and

should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

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*** Please note that the page numbers listed above do not refer to the Register. The page numbers refer to the original document.**

1.01 It is the purpose of this regulation to protect the public health and to conserve and protect the water resources of the State; to provide for the classification of all public and private (including industrial) wastewater facilities; to require the examination of operators and licensing of their competency to supervise on-site the operation of such facilities; to create a board of certification; and to provide for reciprocal arrangements.

Section 2 - Definitions:

2.01 Person: Means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate commission, board, public or private institution, utility, cooperative, municipality or any other political subdivision of this State, any interstate body, or any other legal entity.

2.02 Operator: Means the designated individual who at a given time is in direct responsible charge of the operations of a wastewater facility or a major segment of a system or facility.

2.03 Direct Responsible Charge: Means on-site accountability for an on- site performance of active daily operation. Where shift operation is required and/or practiced, "direct responsible charge" means both (1) on-site accountability for and on-site performance of active daily operation, including technical and administrative supervision, and (2) active daily on-site charge of an operating shift, or a major segment of a system or facility.

2.04 Wastewater Facility (Facilities): Means the system of pipes, structures, equipment and processes required to treat any waste and dispose of the effluent.

2.05 Wastewater Treatment Plant: Means the portion of the wastewater facility used in the pretreatment and/or treatment of wastewater, including the treatment, handling and disposal of sludge solids related thereto.

2.06 Secretary: Means the Secretary of the Department of Natural Resources and Environmental Control or his duly authorized designee.

2.07 Department: Means the Department of Natural Resources and Environmental Control.

2.08 Association of Boards of Certification For Operating Personnel In Water and Wastewater Utilities (ABC): Means that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of wastewater facilities and certification of operators, facilities reciprocity between State programs, and assists authorities in establishing new certification programs and updating existing ones.

2.09 Board: Means the State Board of Certification.

2.10 Population Equivalent (P.E.): Means the population computed by relating the total daily weight (W lbs.) of Biochemical Oxygen Demand (BOD) to the daily per capita BOD of 0.17 lb. as shown below:

$$P.E. = \frac{W}{0.17}$$

Section 3 - State Board of Certification:

3.01 A State Board of Certification shall be appointed by the Secretary to advise and assist the Secretary in the administration of the certification program. The Board will consist of three (3) members: One (1) member who is currently certified as a wastewater operator or who is eligible to be licensed under this regulation; one (1) member representing the Department who shall be responsible for maintaining records; and one (1) member-

at-large. Board members will serve three (3) year terms which will be staggered so that the term of not more than one (1) member will expire in any single year.

3.02 The State Board of Certification, with the consent of the Secretary, shall establish such procedures and guidelines as may be necessary for the administration of this regulation, and shall include at least the following provisions:

(a) procedures for examination of candidates, and renewal of licenses;

(b) procedures for the suspension and revocation of licenses;

(c) guidelines for evaluating equivalency of training and examinations conducted by recognized agencies and institutions;

(d) guidelines for evaluating equivalency of other certification and/or licensing programs for the purpose of according reciprocal treatment;

(e) procedures for establishing regularly scheduled meetings.

3.03 When taking action pursuant to this regulation, the Board may consider generally applicable criteria and guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Wastewater Utilities (ABC).

Section 4 - License Requirement:

4.01 Any wastewater facility (except those specifically exempted by the Department) whether publicly or privately owned, used or intended for use by the public or private persons shall be under the supervision of an operator(s) whose competency is licensed by the Secretary in a classification corresponding to or higher than the classification of the facility to be supervised.

4.02 This section reserved for future use.

4.03 On or before January 1, 1989, any wastewater facility (except those specifically exempted by the Department) whether publicly or privately owned, used or intended for use by the public or private persons shall at all times have available an operator(s) capable of operating and performing direct responsible charge responsibilities.

4.04 On or before ~~July~~ January 31 each year any owner of a wastewater facility whether publicly or privately owned, used or intended for use by the public or private persons shall register with the Department and list the type of facility, the average daily flow and the name(s) of the operator(s) in direct responsible charge. Any personnel changes involving the operator(s) in responsible

charge shall be reported to the Department within one (1) month after the change.

4.05 On-site sewage disposal systems with a design daily flow less than 2,500 gallons are exempt from the provisions of this regulation. Other wastewater facilities may be granted exemption by the Department under Section 5.02 after due compliance with the requirements of Section 4.04 of this regulation.

4.06 All persons must be operating at a wastewater facility in Delaware in order to be issued a Delaware wastewater treatment plant operator's license.

Section 5 - Classification of Wastewater Facilities:

5.01 The Department shall classify wastewater facilities which discharge into publicly owned wastewater systems, or to receiving bodies of water, or on land surface or subsurface. The classification shall take due regard of the skill, knowledge, and experience required of an operator; and shall be in accordance with the criteria hereby established.

5.02 Classification of Wastewater Treatment Plants: Waste water treatment plants shall be classified in one of four classes. These classifications shall be made in accordance with the point system established in Table I, and the range of points for each class of facility as shown below:

- Class I - 11 - 30 points
- Class II - 31 - 55 points
- Class III - 56 - 75 points
- Class IV - 76 points or greater

Treatment plants other than those with on-site sewage disposal systems scoring fifteen (15) points, or less, shall be exempt from the Requirements of Section 4.01 of this regulation, and the owner shall be so notified by the Department. Treatment plants with on-site sewage disposal systems only, scoring ten (10) points, or less, shall be exempt from the requirements of Section 4.01 of this regulation, and the owner shall be so notified by the Department.

**TABLE I
POINT SYSTEM CLASSIFICATION OF
WASTEWATER TREATMENT PLANTS**

Assign points for every item that applies:

ITEM	POINTS	REMARKS
Size		
Maximum population equivalent (P.E.) served, peak (lbs. BOD) day, per 10,000 P.E. or part	1	20 Points Maximum
Design daily flow or peak month's daily flow, whichever is larger, per MGD or part	1	20 Points Maximum
Effluent Discharge		
Receiving stream (sensitivity)	2-6	Slight 2; Moderate 4; Extreme 6
Discharge into treatment system	1	
Land Disposal - evaporation	2	
Land Disposal - Spray Irrigation		
Overload Flow, Rapid Infiltration	4	
Subsurface disposal	4	
Variation in Raw Wastes	0-6	Slight 0; Moderate 3; Extreme 6
Pretreatment		
Oil & Grease Trap	3	
Screening, comminution	3	
Grit removal	3	
Plant pumping of main flow	3	
Equalization Tank with aeration	3	
Primary Treatment		
Settling Basin, Tanks, or Lagoons	5	
Primary clarifiers	5	
Combined sedimentation/digestion	5	

<p>Chemical addition (except chlor., enz.) 4</p> <p>Oil & Water Separator 5</p> <p>Secondary Treatment</p> <p>Rotating Biological Contactors w/sec. clarifiers 10</p> <p>Trickling filter w/sec. clarifiers 10</p> <p>Activated sludge w/sec. clarifiers (including ext. aeration and oxidation ditches) 15</p> <p>Stabilization ponds without aeration 5</p> <p>Aerated lagoon or tank 8</p> <p>Chemical addition 4</p> <p>Advanced Waste Treatment</p> <p>Polishing ponds 2</p> <p>Chemical/physical - without secondary (inc. DAF & Filters) 15</p> <p>Chemical/physical - following secondary (inc. DAF & Filters) 10</p> <p>Biological or chemical/biological 12</p> <p>Ion exchange 10</p> <p>Reverse Osmosis, electro dialysis 15</p> <p>Chemical recovery, carbon regeneration 4</p> <p>Oil & Water Separator 5</p> <p>Solids Handling</p> <p>Aerated Sludge Holding Tank 3</p> <p>Thickening 5</p> <p>Anaerobic digestion 10</p> <p>Aerobic digestion 6</p> <p>Evaporative sludge drying 2</p> <p>Mechanical dewatering 8</p> <p>Solids reduction (incineration, wet oxidation) 12</p> <p>Composting by plant personnel 5</p> <p>Land Disposal by Plant Personnel 8</p> <p>Disinfection</p> <p>Disinfection i.e., lime stabilization, etc. 5</p> <p>Chlorination or comparable 5</p> <p>Ultraviolet Disinfection 3</p> <p>Ozone Disinfection 5</p> <p>Dechlorination (Chemical) 5</p>	<p>Dechlorination (Aeration) 3</p> <p>Laboratory Control by Plant Personnel</p> <p>Complexity 1-10 Slight 1; Moderate 5; Extreme 10</p> <p>5.03 Any wastewater facility may be classified in a group other than indicated by the general criteria after determination by the Secretary that the incorporation of special features of design or characteristics, conditions of flow or use of the receiving waters or combination of such conditions or circumstances are not fully covered in the general criteria. The owner of the facility shall be given due notice of the tentative determinations and his comments, if any, shall be considered before making the final determination.</p> <p>5.04 Classification of any wastewater facility may be changed at the discretion of the Secretary by reason of changes in any condition or circumstances on which the original classification was predicated. Due notice of any such change shall be given to the owner of the treatment plant.</p> <p>Section 6 - Operator Qualifications and Classifications:</p> <p>6.01 Operators shall be examined by the Board as to education, experience, and knowledge as related to the classification of facility for which examined. Applicants shall be required further to give evidence of good character, dependability, interest in work, and other pertinent characteristics in relation to responsible operations. Applicants must pass the required written examination except when waived by the Board in which case an oral examination by the Board will be required.</p> <p>6.02 In evaluating qualifications of operators, the Board will be guided by the following:</p> <p style="margin-left: 40px;">A. Experience requiring some technical knowledge of the work and whether or not direct responsible charge (DRC) of work was included. In large plants where responsibility is divided, operators of important divisions may be credited with having responsible charge.</p> <p style="margin-left: 40px;">B. Experience, to be acceptable, must be the result of satisfactory accomplishment of work. Evaluation may be based on reports of the employers, state and local water pollution control agencies having appropriate responsibilities for supervising systems and plants.</p> <p style="margin-left: 40px;">C. Partial credit may be given for operating</p>
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experience in maintenance, laboratories, or other work of water and/or wastewater systems and allied trades such as plumbing.

D. Where applicable, education may be substituted for a portion of experience requirements as specified below:

(i) Approved college level education may be substituted on a year for year basis for operating or direct responsible charge experience.

(ii) Specialized operator training courses, correspondence courses, seminars, workshops, etc., may be substituted for experience on a case by case basis; and the equivalency will be determined by the board.

(iii) Where education or training is substituted for experience, it shall not exceed an amount which would reduce the requirement of actual experience to less than one year for any classification or less than two years actual experience for Classes II, III and IV. One year of experience is equivalent to a minimum of 1500 hours per year of on-site operating experience at a wastewater facility.

(iv) Education applied to experience requirement cannot also be applied to education requirement.

E. Where applicable, experience may be substituted for educational requirements as specified below:

(i) One year of operating experience may be considered as equivalent to two years of grade school or one year of high school without limitation of time.

(ii) One year of direct responsible charge experience or one year experience in an important phase of operation, other than direct charge, may be considered as equivalent to one year of college level education.

(iii) Experience applied to educational requirement may not also be applied to the experience requirement.

F. Substitutions for formal education may be made as follows:

(i) Specialized operator training courses, correspondence courses, seminars, workshops, etc., may be substituted for formal education on a case by case basis; and the equivalency will be determined by the Board.

(ii) An acceptable high school equivalency certificate may be used to substitute for graduation from high school.

6.03 Wastewater Treatment Plant Operators:

Four classes of operators are hereby established. Their qualifications are intended to relate as nearly as possible to the corresponding classifications for wastewater treatment plants.

Class IV:

1. A college degree or completion of four (4) years in a standard curriculum in engineering or allied subjects or equivalent, plus

2. At least four (4) years of acceptable operating experience of treatment plants in Class III or higher, two years of which must have been in a position of major responsibility (DRC).

Class III:

1. Completion of high school or equivalent, and two (2) years of approved college level education in engineering or allied subjects or equivalent, plus

2. Four (4) years of acceptable operating experience of treatment plants of Class II or higher, two years of which must have been in a position of major responsibility (DRC).

Class II:

1. Completion of high school or equivalent, plus

2. Three years of acceptable operating experience of treatment plants of Class I or higher.

Class I:

1. Completion of high school or equivalent, plus

2. One year of acceptable operating experience of a treatment plant.

6.04 Speciality License:

Where an industrial or commercial wastewater treatment facility is of a highly unusual character requiring skills and techniques other than those indicated by the general criteria, the Board may, with the consent of the Secretary, provide a speciality license to an operator which shall be valid for operating the specific facility for which it was issued. The requirements for a specialist license shall be determined by the Board on a case-by-case basis.

Applicants shall pass the required written examinations except when waived by the Board in which case an oral exam by the Board will be required.

Section 7 - Examination:

7.01 The Board or its authorized designee shall prepare written examinations to be used in determining knowledge, ability and judgment of the operators.

7.02 Examinations shall be held at places and times set by the Board, with a suitable method of advance announcement made by the Board. Examinations shall be conducted at least semi-annually.

7.03 Except in such cases as the Board may decide otherwise, all examinations shall be written. In cases where no written examinations are required, the reasons shall be stated. All examinations will be graded by the Board, or by others designated by the Board, and the applicant notified of the outcome. Papers will not be returned to the applicant, but means will be provided to review the results with a member of the Board or Division of Water Resources on request by the applicant.

7.04 Separate examinations may be prepared to cover basic differences in the duties and responsibilities of operations, types of facilities, variations in waste water quality, conditions of receiving waters and other pertinent matters.

7.05 Any person who is applying for a particular class of wastewater treatment plant operator's license and who has failed the written examinations for that particular class on three (3) consecutive occasions shall satisfactorily complete an approved educational examination review course prior to again being considered to take that particular class of written examination.

Section 8 - Licensing:

8.01 Issuance of a License:

A. On satisfactory fulfillment of the requirements provided herein and based on the recommendation of the Board, the Secretary may issue a suitable license to the applicant designating his competency. The license will indicate the class of wastewater treatment facility for which the operator is qualified to operate.

B. A license may be issued, without examination, in a comparable classification to any person who holds a current valid certificate and/or license in any state, territory or possession of the United States or any country, if in the judgment of the Board the requirements for the licensing of an operator under which the person's certification and/or license was issued do not conflict with the provisions of this regulation and are of a standard not lower than that specified by this regulation and providing further that

reciprocal privileges are granted to licensed operators of this State.

C. A license shall be renewable every two years unless revoked for cause, replaced by one of a higher grade, or invalidated under subsection D or E below.

D. Beginning on January 1, 1990, the applicant for a license renewal shall submit with the renewal application proof that the applicant has in the preceding two years attended and/or satisfactorily completed a minimum of twenty (20) classroom, seminar or workshop hours relating to wastewater facility operations and/or maintenance that are sponsored by recognized government, educational, and/or industrial groups, including equipment manufacturers.

E. Beginning on January 1, 1990, the applicant for a license renewal who is no longer employed at a wastewater treatment plant shall have met the requirements of subsection D above. The license of an operator who has terminated employment at a wastewater treatment plant and who does not meet the requirements of subsection D above at the time of license renewal shall be valid for no more than two (2) years. After expiration of those two (2) years, the license shall automatically be invalidated. An operator whose license is invalidated may be issued a new license of like classification provided appropriate proof of competency is presented to the Board. Successful completion of a written examination shall be required if the license has been invalidated for two (2) or more years.

~~E. The license of operators who terminate their employment at a wastewater treatment plant will be valid for no more than two (2) years. After two (2) years, the license will automatically be invalidated. An operator whose license is invalidated may be issued a new license of like classification provided appropriate proof of competency is presented to the Board. Successful completion of a written examination shall be required if the license has been invalidated for two or more years.~~

F. A license shall be valid only so long as the holder uses reasonable care, judgment and application of his knowledge in the performance of his duties. No license will be valid if obtained through fraud, deceit, or the submission of inaccurate data on qualifications.

G. Operator-In-Training License:

An operator who desires to become licensed in Class I, or in a higher grade and does not meet the experience or

educational requirements may, with the approval of the Board of Certification, receive an interim Operator-In-Training (OIT) license pending fulfillment of these requirements providing the appropriate examination has been successfully passed. A holder of an OIT license may, with the recommendation of the Board and with the consent of the Secretary, be allowed to operate a facility on a temporary basis until the requirements are met up to a maximum period of two years.

H. Emergency License:

An emergency license of proper classification may be issued after an oral examination by the Board, to an individual certified by the owner to be in responsible charge when it is demonstrated to the satisfaction of the Secretary that the owner has unexpectedly lost a licensed operator and/or is unable to hire a licensed operator in spite of good faith efforts. Such license may be issued with special conditions or requirements deemed necessary to protect the public health and the water resources of the State. An emergency license shall be valid only for that plant or system for a period of one (1) year and may be renewed for a maximum of one (1) additional year when extreme extenuating circumstances are shown and concurred with by the Board.

8.02 Suspension and Revocation of License:

The Secretary may suspend or revoke the license of an operator, after considering the recommendation of the Board of Certification, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly. The Board shall act in accordance with procedures established under Section 3.02(b) of this regulation and shall hold a hearing before making its recommendations.

8.03 Additional Persons Licensed:

The Secretary may determine at his discretion (due to size of plant, shift operation or other influencing factors), that more than one operator shall be required to be in

responsible charge in a given facility and, therefore, more than one operator shall be licensed.

8.04 Additional facilities:

A. Application may be made to the Secretary to operate more than one facility and must include justification and capabilities.

B. Any person considered in responsible charge of more than one facility may be required to be licensed in a classification higher than the classification of those plants in the operator's charge. The degree of operator classification may be further increased depending upon the total number of facilities under the responsible charge of the operator. The Board will recommend with the consent of the Secretary the degree of classification in accordance with these factors.

Section 9 - Fees:

9.01 The fee schedule for wastewater operator applications, examinations and licenses shall be established by the General Assembly.

~~Section 9 - Fees:~~

~~9.01 The fee schedule set forth below shall take effect from the effective date of this regulation.~~

- ~~A: Application for License:~~
 - ~~(i) Classes I, H, III, IV, OIT, Speciality and Temporary License \$25.00~~
 - ~~(ii) Emergency License \$250.00~~
- ~~B: Examination (written and/or oral) Fee \$75.00~~
- ~~C: Re-examination at same level \$75.00~~
- ~~D: Renewal of License:~~
 - ~~(i) Classes I, H, III, IV, OIT and Speciality License for two (2) years or less \$25.00~~
 - ~~(ii) Emergency License for one (1) year or less \$250.00~~
- ~~E: Surcharge on late renewal of license \$10.00~~

~~9.02 The fee schedule may be revised by the Secretary at any time after consulting with the Board and following a public hearing.~~

Section 10 - Prohibited Acts:

10.01 It shall be unlawful:

A. for any wastewater facility (except those exempted under provisions of this regulation) to be

operated unless the operator(s) in direct responsible charge is duly licensed under the provisions of this regulation; and

B. for any person to perform the duties of an operator without being duly licensed under the provisions of this regulation.

Section 11 - Penalties:

11.01 Any person who knowingly and willfully violates any provision of this regulation shall be subject to enforcement and penalties under 7 Del. C., Subsection 6005.

Section 12 - Reciprocity:

12.01 On or after the effective date of this regulation, certification and/or licensing of operators by any State which, as determined by the recommendation of the Board with the consent of the Secretary, accepts certifications made or certification requirements deemed satisfactory pursuant to the provisions of this regulation, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this regulation, if in the judgment of the Board with the consent of the Secretary, the certification requirements of such State are substantially equivalent to the requirements of this regulation or any rules promulgated thereunder.

12.02 In making determination pursuant to subsection 12.01 of this Section, the Secretary shall consult with the Board of Certification and may consider any generally applicable criteria and guidelines developed by the Association of Boards of Certification for Operating Personnel in Water and Waste Water Utilities (ABC).

Section 13 - Repealer:

13.01 The provisions of this regulation are intended to supersede existing regulations of this State insofar as they relate to the matters included in this regulation.

Section 14 - Severability:

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

~~Section 15 - Effective Date:~~

~~15.01 The effective date of this regulation is January 1, 1988.~~

Section 15 - Department Contact Point:

15.01 All contacts of these regulations shall be through:

Division of Water Resources
Department of Natural Resources
and Environmental Control
State of Delaware
89 Kings Highway
Dover, DE 19901
Telephone: 302-739-5731

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

AIR QUALITY MANAGEMENT SECTION

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

The Department of Natural Resources and Environmental Control, Air Quality Management Section, is proposing for adoption a regulation that will require the control of landfill gas emissions from new and existing municipal solid waste landfills. Landfill gas contains methane, carbon dioxide, and more than 100 nonmethane organic compounds that include volatile organic compounds, hazardous air pollutants, and odorous compounds. The regulation is, generally, an adoption of a federal rule (40 CFR 60 Subpart WWW) by reference.

NOTICE OF PUBLIC HEARING

The Department of Natural Resources and Environmental Control, Air Quality Management Section, will conduct a public hearing on a new Section to be added to Regulation No. 20 of the State of Delaware "Regulations Governing the Control of Air Pollution," Regulation No. 20 Section No. 28- STANDARDS OF PERFORMANCE FOR MUNICIPAL SOLID WASTE LANDFILLS.

The Department is proposing to, through Regulation No. 20, Section 28, adopt the Federal New Source Performance Standard found at 40 CFR Part 60 Subpart WWW by reference. The applicability of Subpart WWW is proposed to be expanded such that it will cover both new and existing municipal solid waste landfills. The public hearing will be held on October 23, 1997, beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings

Highway, Dover, DE.

For more information, please contact Joanna L. French, in New Castle, at (302) 323-4542.

The following is proposed Regulation No. 20 Section 28:

Section 28 - Standards of Performance for Municipal Solid Waste Landfills

The provisions of Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills, of Part 60, Title 40 of the Code of Federal Regulations, as set forth in Vol. 61, No. 49, pp. 9919-9929, of the Federal Register, dated March 12, 1996, are hereby adopted by reference with the following changes:

(a) Wherever the word Administrator appears it shall be replaced by the word Department, with the exception of section 60.750(b).

(b) Any subsection or appendix that is referenced in the text of the preceding adoption is also adopted by reference as it appears in Title 40 of the Code of Federal Regulations.

(c) 60.750(a) shall be replaced with the following language: The provisions of this subpart apply to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification on or after May 30, 1991 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste.

(d) 60.752(a) shall be replaced with the following language: Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the Department as provided in 60.757(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. For purposes of Regulation 30 permitting, a landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under Regulation 30, provided it is not a major source as defined in Regulation 30. Submittal of the initial design capacity report shall fulfill the requirements of this subpart except as provided for in paragraphs (a)(1) and (a)(2) of this section.

(e) 60.752(b) shall be replaced with the following language: Each owner or operator of an MSW landfill

having a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters and that has accepted waste after November 8, 1987 or that has additional design capacity available to accept waste, shall either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in '60.754. The NMOC emission rate shall be recalculated annually, except as provided in '60.757(b)(1)(ii) of this subpart. The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters is subject to Regulation 30. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in '60.752(b)(2)(v) of this subpart, a Regulation 30 operating permit is no longer required.

(f) 60.752(b)(2)(ii) shall be replaced with the following language: Install a collection and control system within 18 months of the submittal of the design plan under paragraph (b)(2)(i) of this section for municipal solid waste landfills that commenced construction, reconstruction, or modification on or after May 30, 1991, and by September 30, 1998 for all other subject municipal solid waste landfills, that effectively captures the gas generated within the landfill.

(g) 60.753(g) shall be replaced with the following language: If monitoring demonstrates that the operational requirement in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in 60.755(a)(3) through (5) or 60.755(c) of this subpart. If corrective actions are taken as specified in 60.755, the monitored exceedance is not a violation of the operational requirements in this section.

(h) Delete 60.754(c).

(i) Add new section 60.757(a)(1)(iv) as follows: For a subject municipal solid waste landfill not constructed, reconstructed, or modified on or after May 30, 1991, the initial design capacity report shall be submitted the earlier of the date specified in a State construction or operating permit, if applicable, or within 90 days from the effective date of this regulation.

(j) 60.757(b)(1)(i) shall be replaced with the following language: The initial NMOC emission rate report shall be submitted with the initial design capacity report required in paragraph (a) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1)(ii) and (b)(3) of this section.

The following is the full text of 40 CFR Part 60 Subpart WWW, displayed as it is proposed to be adopted by the Department. Underline text indicates language proposed to be adopted that is in addition to that of 40 CFR Part 60, strikeout text indicates language that is part of 40 CFR Part 60. that is not proposed to be adopted.

40 CFR Part 60, Subpart WWW - New Source Performance Standards and Compliance Times for Municipal Solid Waste Landfills

60.750 Applicability, designation of affected facility, and delegation of authority.

(a) The provisions of this subpart apply to each municipal solid waste landfill, open or closed, that commenced construction, reconstruction, or modification ~~or began accepting waste~~ on or after May 30, 1991 or that has accepted waste after November 8, 1987 or that has additional capacity available to accept waste. ~~Physical or operational changes made to an existing MSW landfill solely to comply with Subpart Cc of this part are not considered construction, reconstruction, or modification for the purposes of this section.~~

(b) The following authorities shall be retained by the Administrator and not transferred to the State: None.

60.751 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in subpart A of this part.

Active collection system means a gas collection system that uses gas mover equipment.

Active landfill means a landfill in which solid waste is being placed or a landfill that is planned to accept waste in the future.

Closed landfill means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under ‘ 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of ‘ 258.60 of this title.

Closure means that point in time when a landfill becomes a closed landfill.

Commercial solid waste means all types of solid waste

generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Controlled landfill means any landfill at which collection and control systems are required under this subpart as a result of the nonmethane organic compounds emission rate. The landfill is considered controlled at the time either (1) a notification of intent to install a collection and control system or (2) a collection and control system design plan is submitted in compliance with ‘ 60.752(b)(2)(i).

Design capacity means the maximum amount of solid waste a landfill can accept, as specified in the construction or operating permit issued by the State, local, or Tribal agency responsible for regulating the landfill.

Disposal facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Emission rate cutoff means the threshold annual emission rate to which a landfill compares its estimated emission rate to determine if control under the regulation is required.

Enclosed combustor means an enclosed firebox which maintains a relatively constant limited peak temperature generally using a limited supply of combustion air. An enclosed flare is considered an enclosed combustor.

Flare means an open combustor without enclosure or shroud.

Gas mover equipment means the equipment (i.e., fan, blower, compressor) used to transport landfill gas through the header system.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including, but not limited to, single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of the Resource Conservation and Recovery Act, ‘ 264 and 265 of this title. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/by-products;

inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Interior Well means any well or similar collection component located inside the perimeter of the landfill. A perimeter well located outside the landfilled waste is not an interior well.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined under ‘ 257.2 of this title.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSW landfill. A lateral expansion is not a modification unless it results in an increase in the design capacity of the landfill.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA Subtitle D wastes (‘ 257.2 of this title) such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned. An MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion.

Municipal solid waste landfill emissions or *MSW landfill emissions* means gas generated by the decomposition of organic waste deposited in an MSW landfill or derived from the evolution of organic compounds in the waste.

NMOC means nonmethane organic compounds, as measured according to the provisions of ‘ 60.754.

Nondegradable waste means any waste that does not decompose through chemical breakdown or microbiological activity. Examples are, but are not limited to, concrete, municipal waste combustor ash, and metals.

Passive collection system means a gas collection system that solely uses positive pressure within the landfill to move the gas rather than using gas mover equipment.

Sludge means any solid, semisolid, 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, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, 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 materials in irrigation return flows or industrial discharges that are point sources subject to permits under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C 2011 et seq.).

Sufficient density means any number, spacing, and combination of collection system components, including vertical wells, horizontal collectors, and surface collectors, necessary to maintain emission and migration control as determined by measures of performance set forth in this part.

Sufficient extraction rate means a rate sufficient to maintain a negative pressure at all wellheads in the collection system without causing air infiltration, including any wellheads connected to the system as a result of expansion or excess surface emissions, for the life of the blower.

60.752 Standards for air emissions from municipal solid waste landfills.

(a) Each owner or operator of an MSW landfill having a design capacity less than 2.5 million megagrams by mass or 2.5 million cubic meters by volume shall submit an initial design capacity report to the Administrator Department as provided in ‘ 60.757(a). The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exemption values. Any density conversions shall be documented and submitted with the report. For purposes of ~~part 70~~ Regulation 30 permitting, a landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters does not require an operating permit under ~~part 70~~ Regulation 30, ~~of this chapter provided it is not a major source as defined in Regulation 30~~. Submittal of the initial design capacity report shall fulfill the requirements of this subpart except as provided for in paragraphs (a)(1) and (a)(2) of this section.

(1) The owner or operator shall submit to the ~~Administrator~~ Department an amended design capacity report, as provided for in ' 60.757(a)(3), when there is any increase in the design capacity of a landfill subject to the provisions of this subpart, whether the increase results from an increase in the area or depth of the landfill, a change in the operating procedures of the landfill, or any other means.

(2) If any increase in the maximum design capacity of a landfill exempted from the provisions of ' 60.752(b) through ' 60.759 of this subpart on the basis of the design capacity exemption in paragraph (a) of this section results in a revised maximum design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters, the owner or operator shall comply with the provision of paragraph (b) of this section.

(b) Each owner or operator of an MSW landfill having a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters, shall either comply with paragraph (b)(2) of this section or calculate an NMOC emission rate for the landfill using the procedures specified in ' 60.754. The NMOC emission rate shall be recalculated annually, except as provided in ' 60.757(b)(1)(ii) of this subpart. The owner or operator of an MSW landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters is subject to ~~part 70 permitting requirements~~ Regulation 30. When a landfill is closed, and either never needed control or meets the conditions for control system removal specified in 60.752(b)(2)(v) of this subpart, a ~~part 70~~ Regulation 30 operating permit is no longer required.

(1) If the calculated NMOC emission rate is less than 50 megagrams per year, the owner or operator shall:

(i) submit an annual emission report to the ~~Administrator~~ Department, except as provided for in ' 60.757 (b)(1)(ii); and

(ii) recalculate the NMOC emission rate annually using the procedures specified in ' 60.754(a)(1) until such time as the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, or the landfill is closed.

(A) If the NMOC emission rate, upon recalculation required in paragraph (b)(1)(ii) of this section, is equal to or greater than 50 megagrams per year, the owner or operator shall install a collection and control system in compliance with paragraph (b)(2) of this section.

(B) If the landfill is permanently closed, a closure notification shall be submitted to the ~~Administrator~~ Department as provided for in ' 60.757(d).

(2) If the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, the owner or operator shall:

(i) Submit a collection and control system design

plan prepared by a professional engineer to the ~~Administrator~~ Department within 1 year:

(A) The collection and control system as described in the plan shall meet the design requirements of paragraph (b)(2)(ii) of this section.

(B) The collection and control system design plan shall include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, recordkeeping or reporting provisions of 60.753 through 60.758 proposed by the owner or operator.

(C) The collection and control system design plan shall either conform with specifications for active collection systems in ' 60.759 or include a demonstration to the ~~Administrator's~~ Department's satisfaction of the sufficiency of the alternative provisions to ' 60.759.

(D) The ~~Administrator~~ Department shall review the information submitted under paragraphs (b)(2)(i)(A),(B) and (C) of this section and either approve it, disapprove it, or request that additional information be submitted. Because of the many site-specific factors involved with landfill gas system design, alternative systems may be necessary. A wide variety of system designs are possible, such as vertical wells, combination horizontal and vertical collection systems, or horizontal trenches only, leachate collection components, and passive systems.

(ii) Install a collection and control system within 18 months of the submittal of the design plan under paragraph (b)(2)(i) of this section for municipal solid waste landfills that commenced construction, reconstruction, or modification on or after May 30, 1991, and by September 30, 1998 for all other subject municipal solid waste landfills, that effectively captures the gas generated within the landfill.

(A) An active collection system shall:

(1) Be designed to handle the maximum expected gas flow rate from the entire area of the landfill that warrants control over the intended use period of the gas control or treatment system equipment;

(2) Collect gas from each area, cell, or group of cells in the landfill in which the initial solid waste has been placed for a period of:

(i) 5 years or more if active; or

(ii) 2 years or more if closed or at final

grade;

(3) Collect gas at a sufficient extraction rate;

(4) Be designed to minimize off-site migration of subsurface gas.

(B) A passive collection system shall:

(1) Comply with the provisions specified in paragraphs (A)(1),(2), and (4) of paragraph (b)(2)(ii) of this section.

(2) Be installed with liners on the bottom and all sides in all areas in which gas is to be collected. The liners

shall be installed as required under ‘ 258.40 of this title.

(iii) Route all the collected gas to a control system that complies with the requirements in either paragraph (b)(2)(iii)(A), (B) or (C) of this section.

(A) An open flare designed and operated in accordance with 60.18;

(B) A control system designed and operated to reduce NMOC by 98 weight-percent, or, when an enclosed combustion device is used for control, to either reduce NMOC by 98 weight percent or reduce the outlet NMOC concentration to less than 20 parts per million by volume, dry basis as hexane at 3 percent oxygen. The reduction efficiency or parts per million by volume shall be established by an initial performance test, required under 60.8 using the test methods specified in ‘ 60.754(d).

(1) If a boiler or process heater is used as the control device, the landfill gas stream shall be introduced into the flame zone.

(2) The control device shall be operated within the parameter ranges established during the initial or most recent performance test. The operating parameters to be monitored are specified in 60.756;

(C) Route the collected gas to a treatment system that processes the collected gas for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system shall be subject to the requirements of paragraph (b)(2)(iii)(A) or (B) of this section.

(iv) Operate the collection and control device installed to comply with this subpart in accordance with the provisions of 60.753, 60.755 and 60.756.

(v) The collection and control system may be capped or removed provided that all the conditions of paragraphs (b)(2)(v)(A), (B), and (C) of this section are met:

(A) The landfill shall be no longer accepting solid waste and be permanently closed under the requirements of ‘ 258.60 of this title. A closure report shall be submitted to the Administrator Department as provided in ‘ 60.757(d);

(B) The collection and control system shall have been in operation a minimum of 15 years; and

(C) Following the procedures specified in 60.754(b) of this subpart, the calculated NMOC gas produced by the landfill shall be less than 50 megagrams per year on three successive test dates. The test dates shall be no less than 90 days apart, and no more than 180 days apart.

60.753 Operational standards for collection and control systems.

Each owner or operator of an MSW landfill gas collection and control system used to comply with the provisions of ‘ 60.752(b)(2)(ii) of this subpart shall:

(a) Operate the collection system such that gas is collected from each area, cell, or group of cells in the MSW landfill in which solid waste has been in place for:

- (1) 5 years or more if active; or
- (2) 2 years or more if closed or at final grade;

(b) Operate the collection system with negative pressure at each wellhead except under the following conditions:

(1) a fire or increased well temperature. The owner or operator shall record instances when positive pressure occurs in efforts to avoid a fire. These records shall be submitted with the annual reports as provided in 60.757(f)(1);

(2) use of a geomembrane or synthetic cover. The owner or operator shall develop acceptable pressure limits in the design plan;

(3) a decommissioned well. A well may experience a static positive pressure after shut down to accommodate for declining flows. All design changes shall be approved by the Administrator Department;

(c) Operate each interior wellhead in the collection system with a landfill gas temperature less than 55oC and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent. The owner or operator may establish a higher operating temperature, nitrogen, or oxygen value at a particular well. A higher operating value demonstration shall show supporting data that the elevated parameter does not cause fires or significantly inhibit anaerobic decomposition by killing methanogens.

(1) the nitrogen level shall be determined using Method 3C, unless an alternative test method is established as allowed by 60.752(b)(2)(i) of this subpart.

(2) unless an alternative test method is established as allowed by 60.752(b)(2)(i) of this subpart, the oxygen shall be determined by an oxygen meter using Method 3A except that:

- (i) the span shall be set so that the regulatory limit is between 20 and 50 percent of the span;
- (ii) a data recorder is not required;
- (iii) only two calibration gases are required, a zero and span, and ambient air may be used as the span;
- (iv) a calibration error check is not required;
- (v) the allowable sample bias, zero drift, and calibration drift are + 10 percent.

(d) Operate the collection system so that the methane concentration is less than 500 parts per million above background at the surface of the landfill. To determine if this level is exceeded, the owner or operator shall conduct surface testing around the perimeter of the collection area along a pattern that traverses the landfill at 30 meter intervals and where visual observations indicate elevated concentrations of landfill gas, such as distressed vegetation and cracks or seeps in the cover. The owner or operator may establish an alternative traversing pattern that ensures equivalent coverage. A surface monitoring design plan

shall be developed that includes a topographical map with the monitoring route and the rationale for any site-specific deviations from the 30 meter intervals. Areas with steep slopes or other dangerous areas may be excluded from the surface testing.

(e) Operate the system such that all collected gases are vented to a control system designed and operated in compliance with 60.752 (b)(2)(iii). In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere shall be closed within 1 hour; and

(f) Operate the control or treatment system at all times when the collected gas is routed to the system.

g) If monitoring demonstrates that the operational requirement in paragraphs (b), (c), or (d) of this section are not met, corrective action shall be taken as specified in ~~60.752~~ 60.755(a)(3) through (5) or 60.755(c) of this subpart. If corrective actions are taken as specified in 60.755, the monitored exceedance is not a violation of the operational requirements in this section.

60.754 Test methods and procedures.

(a) (1) The landfill owner or operator shall calculate the NMOC emission rate using either the equation provided in paragraph (a)(1)(i) of this section or the equation provided in paragraph (a)(1)(ii) of this section. The values to be used in both equations are 0.05 per year for k, 170 cubic meters per megagram for Lo, and 4,000 parts per million by volume as hexane for the CNMOC.

(i) The following equation shall be used if the actual year-to-year solid waste acceptance rate is known.

$$MNMO C = \sum_{i=1}^n E_2 k L_o M_i (e^{-kt_i}) (CNMOC) (3.6 \times 10^{-9})$$

where,

MNMOC = Total NMOC emission rate from the landfill, megagrams per year

k = methane generation rate constant, year-1

Lo = methane generation potential, cubic meters per megagram solid waste

Mi = mass of solid waste in the ith section, megagrams

ti = age of the ith section, years

CNMOC = concentration of NMOC, parts per million by volume as hexane

3.6×10^{-9} = conversion factor

The mass of nondegradable solid waste may be subtracted from the total mass of solid waste in a particular section of the landfill when calculating the value for Mi if the documentation provisions of 60.758(d)(2) are

followed.

(ii) The following equation shall be used if the actual year-to-year solid waste acceptance rate is unknown.

$$MNMO C = 2L_o R (e^{-kc} - e^{-kt}) (CNMOC) (3.6 \times 10^{-9})$$

where,

MNMOC = mass emission rate of NMOC, megagrams per year

Lo = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year-1

t = age of landfill, years

CNMOC = concentration of NMOC, parts per million by volume as hexane

c = time since closure, years. For active landfill c = 0 and $e^{-kc} = 1$

3.6×10^{-9} = conversion factor

The mass of nondegradable solid waste may be subtracted from the average annual acceptance rate when calculating a value for R, if the documentation provisions of 60.758(d)(2) are followed.

(2) Tier 1. The owner or operator shall compare the calculated NMOC mass emission rate to the standard of 50 megagrams per year.

(i) If the NMOC emission rate calculated in paragraph (a)(1) of this section is less than 50 megagrams per year, then the landfill owner shall submit an emission rate report as provided in 60.757(b)(1), and shall recalculate the NMOC mass emission rate annually as required under 60.752(b)(1).

(ii) If the calculated NMOC emission rate is equal to or greater than 50 megagrams per year, then the landfill owner shall either comply with 60.752(b)(2), or determine a site-specific NMOC concentration and recalculate the NMOC emission rate using the procedures provided in paragraph (a)(3) of this section.

(3) Tier 2. The landfill owner or operator shall determine the NMOC concentration using the following sampling procedure. The landfill owner or operator shall install at least two sample probes per hectare of landfill surface that has retained waste for at least 2 years. If the landfill is larger than 25 hectares in area, only 50 samples are required. The sample probes should be located to avoid known areas of nondegradable solid waste. The owner or operator shall collect and analyze one sample of landfill gas from each probe to determine the NMOC concentration using Method 25C of appendix A of this part or Method 18 of appendix A of this part. If using Method 18 of appendix A of this part, the minimum list of compounds to be tested shall be those published in the most recent Compilation

of Air Pollutant Emission Factors (AP-42). If composite sampling is used, equal volumes shall be taken from each sample probe. If more than the required number of samples are taken, all samples shall be used in the analysis. The landfill owner or operator shall divide the NMOC concentration from Method 25C of appendix A of this part by six to convert from CNMOC as carbon to CNMOC as hexane.

(i) The landfill owner or operator shall recalculate the NMOC mass emission rate using the equations provided in paragraph (a)(1)(i) or (a)(1)(ii) of this section and using the average NMOC concentration from the collected samples instead of the default value in the equation provided in paragraph (a)(1) of this section.

(ii) If the resulting mass emission rate calculated using the site-specific NMOC concentration is equal to or greater than 50 megagrams per year, then the landfill owner or operator shall either comply with 60.752(b)(2), or determine the site-specific methane generation rate constant and recalculate the NMOC emission rate using the site-specific methane generation rate using the procedure specified in paragraph (a)(4) of this section.

(iii) If the resulting NMOC mass emission rate is less than 50 megagrams per year, the owner or operator shall submit a periodic estimate of the emission rate report as provided in ' 60.757(b)(1) and retest the site-specific NMOC concentration every 5 years using the methods specified in this section.

(4) Tier 3. The site-specific methane generation rate constant shall be determined using the procedures provided in Method 2E of appendix A of this part. The landfill owner or operator shall estimate the NMOC mass emission rate using equations in paragraph (a)(1)(i) or (a)(1)(ii) of this section and using a site-specific methane generation rate constant k, and the site-specific NMOC concentration as determined in paragraph (a)(3) of this section instead of the default values provided in paragraph (a)(1) of this section. The landfill owner or operator shall compare the resulting NMOC mass emission rate to the standard of 50 megagrams per year.

(i) If the NMOC mass emission rate as calculated using the site-specific methane generation rate and concentration of NMOC is equal to or greater than 50 megagrams per year, the owner or operator shall comply with 60.752 (b)(2).

(ii) If the NMOC mass emission rate is less than 50 megagrams per year, then the owner or operator shall submit a periodic emission rate report as provided in 60.757(b)(1) and shall recalculate the NMOC mass emission rate annually, as provided in 60.757(b)(1) using the equations in paragraph (a)(1) of this section and using the site-specific methane generation rate constant and NMOC concentration obtained in paragraph (a)(3) of this section. The calculation of the methane generation rate

constant is performed only once, and the value obtained is used in all subsequent annual NMOC emission rate calculations.

(5) The owner or operator may use other methods to determine the NMOC concentration or a site-specific k as an alternative to the methods required in paragraphs (a)(3) and (a)(4) of this section if the method has been approved by the Administrator Department as provided in 60.752(b)(2)(i)(B).

(b) After the installation of a collection and control system in compliance with ' 60.755, the owner or operator shall calculate the NMOC emission rate for purposes of determining when the system can be removed as provided in 60.752(b)(2)(v), using the following equation:

$$MN\text{MOC} = 1.89 \times 10^{-3} \text{QLFG CNMOC}$$

where,

MNMOC = mass emission rate of NMOC, megagrams per year

QLFG= flow rate of landfill gas, cubic meters per minute

CNMOC = NMOC concentration, parts per million by volume as hexane

(1) The flow rate of landfill gas, QLFG, shall be determined by measuring the total landfill gas flow rate at the common header pipe that leads to the control device using a gas flow measuring device calibrated according to the provisions of section 4 of Method 2E of appendix A of this part.

(2) The average NMOC concentration, CNMOC, shall be determined by collecting and analyzing landfill gas sampled from the common header pipe before the gas moving or condensate removal equipment using the procedures in Method 25C or Method 18 of appendix A of this part. If using Method 18 of appendix A of this part, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). The sample location on the common header pipe shall be before any condensate removal or other gas refining units. The landfill owner or operator shall divide the NMOC concentration from Method 25C of appendix A of this part by six to convert from CNMOC as carbon to CNMOC as hexane.

(3) The owner or operator may use another method to determine landfill gas flow rate and NMOC concentration if the method has been approved by the Administrator Department as provided in 60.752(b)(2)(i)(B).

~~(e) The owner or operator of each MSW landfill subject to the provisions of this subpart shall estimate the NMOC emission rate for comparison to the PSD major source and significance levels in 51.166 or 52.21 of this chapter using AP-42 or other approved measurement procedures. If a collection system, which complies with the provisions in ' 60.752(b)(2) is already installed, the owner or operator shall estimate the NMOC emission rate using the~~

procedures provided in paragraph (b) of this section:

(d) For the performance test required in 60.752(b)(2)(iii)(B), Method 25 or Method 18 of appendix A of this part shall be used to determine compliance with 98 weight-percent efficiency or the 20 ppmv outlet concentration level, unless another method to demonstrate compliance has been approved by the Administrator Department as provided by 60.752(b)(2)(i)(B). If using Method 18 of appendix A of this part, the minimum list of compounds to be tested shall be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42). The following equation shall be used to calculate efficiency:

$$\text{Control Efficiency} = (\text{NMOC}_{\text{in}} - \text{NMOC}_{\text{out}}) / (\text{NMOC}_{\text{in}})$$

where,

NMOC_{in} = mass of NMOC entering control device

NMOC_{out} = mass of NMOC exiting control device

60.755 Compliance provisions.

(a) Except as provided in 60.752(b)(2)(i)(B), the specified methods in paragraphs (a)(1) through (a)(6) of this section shall be used to determine whether the gas collection system is in compliance with 60.752(b)(2)(ii).

(1) For the purposes of calculating the maximum expected gas generation flow rate from the landfill to determine compliance with 60.752(b)(2)(ii)(A)(1), one of the following equations shall be used. The k and Lo kinetic factors should be those published in the most recent Compilation of Air Pollutant Emission Factors (AP-42) or other site specific values demonstrated to be appropriate and approved by the Administrator Department. If k has been determined as specified in 60.754(a)(4), the value of k determined from the test shall be used. A value of no more than 15 years shall be used for the intended use period of the gas mover equipment. The active life of the landfill is the age of the landfill plus the estimated number of years until closure.

(i) For sites with unknown year-to-year solid waste acceptance rate:

$$Q_m = 2L_o R (e^{-kc} - e^{-kt})$$

where,

Q_m = maximum expected gas generation flow rate, cubic meters per year

L_o = methane generation potential, cubic meters per megagram solid waste

R = average annual acceptance rate, megagrams per year

k = methane generation rate constant, year⁻¹

t = age of the landfill at equipment installation plus the time the owner or operator intends to use the gas mover equipment or active life of the landfill, whichever is less. If the equipment is installed after closure, t is the age of the landfill at installation, years

c = time since closure, years (for an active landfill

c = 0 and e^{-kc} = 1)

(ii) For sites with known year-to-year solid waste acceptance rate:

$$QM = \sum_{i=1}^n E_i k_i L_o M_i (e^{-k_i t_i})$$

where,

QM = maximum expected gas generation flow rate, cubic meters per year

k = methane generation rate constant, year⁻¹

L_o = methane generation potential, cubic meters per megagram solid waste

M_i = mass of solid waste in the ith section, megagrams

t_i = age of the ith section, years

(iii) If a collection and control system has been installed, actual flow data may be used to project the maximum expected gas generation flow rate instead of, or in conjunction with, the equations in paragraphs (a)(1)(i) and (ii) of this section. If the landfill is still accepting waste, the actual measured flow data will not equal the maximum expected gas generation rate, so calculations using the equations in paragraphs (a)(1)(i) or (ii) or other methods shall be used to predict the maximum expected gas generation rate over the intended period of use of the gas control system equipment.

(2) For the purposes of determining sufficient density of gas collectors for compliance with 60.752(b)(2)(ii)(A)(2), the owner or operator shall design a system of vertical wells, horizontal collectors, or other collection devices, satisfactory to the Administrator Department, capable of controlling and extracting gas from all portions of the landfill sufficient to meet all operational and performance standards.

(3) For the purpose of demonstrating whether the gas collection system flow rate is sufficient to determine compliance with 60.752(b)(2)(ii)(A)(3), the owner or operator shall measure gauge pressure in the gas collection header at each individual well, monthly. If a positive pressure exists, action shall be initiated to correct the exceedance within 5 calendar days, except for the three conditions allowed under 60.753(b). If negative pressure cannot be achieved without excess air infiltration within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial measurement of positive pressure. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

(4) Owners or operators are not required to install additional wells as required in paragraph (a)(3) of this section during the first 180 days after gas collection system start-up.

(5) For the purpose of identifying whether excess air infiltration into the landfill is occurring, the owner or operator shall monitor each well monthly for temperature and nitrogen or oxygen as provided in 60.753(c). If a well exceeds one of these operating parameters, action shall be initiated to correct the exceedance within 5 calendar days. If correction of the exceedance cannot be achieved within 15 calendar days of the first measurement, the gas collection system shall be expanded to correct the exceedance within 120 days of the initial exceedance. Any attempted corrective measure shall not cause exceedances of other operational or performance standards.

(6) An owner or operator seeking to demonstrate compliance with 60.752(b)(2)(ii)(A)(4) through the use of a collection system not conforming to the specifications provided in 60.759 shall provide information satisfactory to the Administrator Department as specified in 60.752(b)(2)(i)(C) demonstrating that off-site migration is being controlled.

(b) For purposes of compliance with 60.753(a), each owner or operator of a controlled landfill shall place each well or design component as specified in the approved design plan as provided in 60.752(b)(2)(i). Each well shall be installed within 60 days of the date in which the initial solid waste has been in place for a period of:

- (1) 5 years or more if active; or
- (2) 2 years or more if closed or at final grade;.

(c) The following procedures shall be used for compliance with the surface methane operational standard as provided in 60.753(d).

(1) After installation of the collection system, the owner or operator shall monitor surface concentrations of methane along the entire perimeter of the collection area and along a serpentine pattern spaced 30 meters apart (or a site-specific established spacing) for each collection area on a quarterly basis using an organic vapor analyzer, flame ionization detector, or other portable monitor meeting the specifications provided in paragraph (d) of this section.

(2) The background concentration shall be determined by moving the probe inlet upwind and downwind outside the boundary of the landfill at a distance of at least 30 meters from the perimeter wells.

(3) Surface emission monitoring shall be performed in accordance with section 4.3.1 of Method 21 of appendix A of this part, except that the probe inlet shall be placed within 5 to 10 centimeters of the ground. Monitoring shall be performed during typical meteorological conditions.

(4) Any reading of 500 parts per million or more above background at any location shall be recorded as a monitored exceedance and the actions specified in paragraphs (c)(4)(i) through (v) of this section shall be taken. As long as the specified actions are taken, the exceedance is not a violation of the operational requirements of 60.753(d).

(i) The location of each monitored exceedance shall be marked and the location recorded.

(ii) Cover maintenance or adjustments to the vacuum of the adjacent wells to increase the gas collection in the vicinity of each exceedance shall be made and the location shall be re-monitored within 10 calendar days of detecting the exceedance.

(iii) If the re-monitoring of the location shows a second exceedance, additional corrective action shall be taken and the location shall be monitored again within 10 days of the second exceedance. If the re-monitoring shows a third exceedance for the same location, the action specified in paragraph (c)(4)(v) of this section shall be taken, and no further monitoring of that location is required until the action specified in paragraph (c)(4)(v) has been taken.

(iv) Any location that initially showed an exceedance but has a methane concentration less than 500 ppm methane above background at the 10-day re-monitoring specified in paragraph (c)(4)(ii) or (iii) of this section shall be re-monitored 1 month from the initial exceedance. If the 1-month re-monitoring shows a concentration less than 500 parts per million above background, no further monitoring of that location is required until the next quarterly monitoring period. If the 1-month re-monitoring shows an exceedance, the actions specified in paragraph (c)(4)(iii) or (v) shall be taken.

(v) For any location where monitored methane concentration equals or exceeds 500 parts per million above background three times within a quarterly period, a new well or other collection device shall be installed within 120 calendar days of the initial exceedance. An alternative remedy to the exceedance, such as upgrading the blower, header pipes or control device, and a corresponding timeline for installation may be submitted to the Administrator Department for approval.

(5) The owner or operator shall implement a program to monitor for cover integrity and implement cover repairs as necessary on a monthly basis.

(d) Each owner or operator seeking to comply with the provisions in paragraph (c) of this section shall comply with the following instrumentation specifications and procedures for surface emission monitoring devices:

(1) The portable analyzer shall meet the instrument specifications provided in section 3 of Method 21 of appendix A of this part, except that "methane" shall replace all references to VOC.

(2) The calibration gas shall be methane, diluted to a nominal concentration of 500 parts per million in air.

(3) To meet the performance evaluation requirements in section 3.1.3 of Method 21 of appendix A of this part, the instrument evaluation procedures of section 4.4 of Method 21 of appendix A of this part shall be used.

(4) The calibration procedures provided in section 4.2

of Method 21 of appendix A of this part shall be followed immediately before commencing a surface monitoring survey.

(e) The provisions of this subpart apply at all times, except during periods of start-up, shutdown, or malfunction, provided that the duration of start-up, shutdown, or malfunction shall not exceed 5 days for collection systems and shall not exceed 1 hour for treatment or control devices.

60.756 Monitoring of operations.

Except as provided in 60.752(b)(2)(i)(B),

(a) Each owner or operator seeking to comply with 60.752 (b)(2)(ii)(A) for an active gas collection system shall install a sampling port and a thermometer or other temperature measuring device at each wellhead and:

(1) Measure the gauge pressure in the gas collection header on a monthly basis as provided in 60.755(a)(3); and

(2) Monitor nitrogen or oxygen concentration in the landfill gas on a monthly basis as provided in 60.755(a)(5); and

(3) Monitor temperature of the landfill gas on a monthly basis as provided in 60.755(a)(5).

(b) Each owner or operator seeking to comply with 60.752(b)(2)(iii) using an enclosed combustor shall calibrate, maintain, and operate according to the manufacturer's specifications, the following equipment.

(1) A temperature monitoring device equipped with a continuous recorder and having an accuracy of +1 percent of the temperature being measured expressed in degrees Celsius or +0.5 oC, whichever is greater. A temperature monitoring device is not required for boilers or process heaters with design heat input capacity greater than 44 megawatts.

(2) A gas flow rate measuring device that provides a measurement of gas flow to or bypass of the control device. The owner or operator shall either:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(c) Each owner or operator seeking to comply with 60.752 (b)(2)(iii) using an open flare shall install, calibrate, maintain, and operate according to the manufacturer's specifications the following equipment:

(1) A heat sensing device, such as an ultraviolet beam sensor or thermocouple, at the pilot light or the flame itself to indicate the continuous presence of a flame.

(2) A device that records flow to or bypass of the flare. The owner or operator shall either:

(i) Install, calibrate, and maintain a gas flow rate measuring device that shall record the flow to the control device at least every 15 minutes; or

(ii) Secure the bypass line valve in the closed position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the closed position and that the gas flow is not diverted through the bypass line.

(d) Each owner or operator seeking to demonstrate compliance with 60.752(b)(2)(iii) using a device other than an open flare or an enclosed combustor shall provide information satisfactory to the Administrator Department as provided in 60.752(b)(2)(i)(B) describing the operation of the control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator Department shall review the information and either approve it, or request that additional information be submitted. The Administrator Department may specify additional appropriate monitoring procedures.

(e) Each owner or operator seeking to install a collection system that does not meet the specifications in 60.759 or seeking to monitor alternative parameters to those required by 60.753 through 60.756 shall provide information satisfactory to the Administrator Department as provided in 60.752(b)(2)(i)(B) and (C) describing the design and operation of the collection system, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The Administrator Department may specify additional appropriate monitoring procedures.

(f) Each owner or operator seeking to demonstrate compliance with 60.755(c), shall monitor surface concentrations of methane according to the instrument specifications and procedures provided in 60.755(d). Any closed landfill that has no monitored exceedances of the operational standard in three consecutive quarterly monitoring periods may skip to annual monitoring. Any methane reading of 500 ppm or more above background detected during the annual monitoring returns the frequency for that landfill to quarterly monitoring.

60.757 Reporting requirements.

Except as provided in 60.752(b)(2)(i)(B),

(a) Each owner or operator subject to the requirements of this subpart shall submit an initial design capacity report

to the Administrator Department.

(1) The design capacity report shall fulfill the requirements of the notification of the date construction is commenced as required under 60.7(a)(1) and shall be submitted no later than the earliest day from the following:

- (i) 90 days of the issuance of the State, Local, Tribal, or RCRA construction or operating permit; or
- (ii) 30 days of the date of construction or reconstruction as defined under 60.15; or
- (iii) 30 days of the initial acceptance of solid waste.

(iv) For a subject municipal solid waste landfill not constructed, reconstructed, or modified on or after May 30, 1991, the initial design capacity report shall be submitted the earlier of the date specified in a state construction or operating permit, if applicable, or within 90 days from the effective date of this regulation.

(2) The initial design capacity report shall contain the following information:

(i) A map or plot of the landfill, providing the size and location of the landfill, and identifying all areas where solid waste may be landfilled according to the provisions of the State, local, Tribal, or RCRA construction or operating permit;

(ii) The maximum design capacity of the landfill. Where the maximum design capacity is specified in the State or local construction or RCRA permit, a copy of the permit specifying the maximum design capacity may be submitted as part of the report. If the maximum design capacity of the landfill is not specified in the permit, the maximum design capacity shall be calculated using good engineering practices. The calculations shall be provided, along with such parameters as depth of solid waste, solid waste acceptance rate, and compaction practices as part of the report. The State, Tribal, local agency or Administrator may request other reasonable information as may be necessary to verify the maximum design capacity of the landfill.

(3) An amended design capacity report shall be submitted to the Administrator Department providing notification of any increase in the design capacity of the landfill, whether the increase results from an increase in the permitted area or depth of the landfill, a change in the operating procedures, or any other means which results in an increase in the maximum design capacity of the landfill above 2.5 million megagrams or 2.5 million cubic meters. The amended design capacity report shall be submitted within 90 days of the issuance of an amended construction or operating permit, or the placement of waste in additional land, or the change in operating procedures which will result in an increase in maximum design capacity, whichever occurs first.

(b) Each owner or operator subject to the requirements of this subpart shall submit an NMOC emission rate report

to the Administrator Department initially and annually thereafter, except as provided for in paragraphs (b)(1)(ii) or (b)(3) of this section. The Administrator Department may request such additional information as may be necessary to verify the reported NMOC emission rate.

(1) The NMOC emission rate report shall contain an annual or 5-year estimate of the NMOC emission rate calculated using the formula and procedures provided in 60.754 (a) or (b), as applicable.

(i) The initial NMOC emission rate report shall be submitted ~~within 90 days of the date waste acceptance commences and may be combined~~ with the initial design capacity report required in paragraph (a) of this section. Subsequent NMOC emission rate reports shall be submitted annually thereafter, except as provided for in paragraphs (b)(1)(ii) and (b)(3) of this section.

(ii) If the estimated NMOC emission rate as reported in the annual report to the Administrator Department is less than 50 megagrams per year in each of the next 5 consecutive years, the owner or operator may elect to submit an estimate of the NMOC emission rate for the next 5-year period in lieu of the annual report. This estimate shall include the current amount of solid waste-in-place and the estimated waste acceptance rate for each year of the 5 years for which an NMOC emission rate is estimated. All data and calculations upon which this estimate is based shall be provided to the Administrator Department. This estimate shall be revised at least once every 5 years. If the actual waste acceptance rate exceeds the estimated waste acceptance rate in any year reported in the 5-year estimate, a revised 5-year estimate shall be submitted to the Administrator Department. The revised estimate shall cover the 5-year period beginning with the year in which the actual waste acceptance rate exceeded the estimated waste acceptance rate.

(2) The NMOC emission rate report shall include all the data, calculations, sample reports and measurements used to estimate the annual or 5-year emissions.

(3) Each owner or operator subject to the requirements of this subpart is exempted from the requirements of paragraphs (b)(1) and (2) of this section, after the installation of a collection and control system in compliance with 60.752(b)(2), during such time as the collection and control system is in operation and in compliance with 60.753 and 60.755.

(c) Each owner or operator subject to the provisions of 60.752-(b)(2)(i) shall submit a collection and control system design plan to the Administrator Department within 1 year of the first report, required under paragraph (b) of this section, in which the emission rate exceeds 50 megagrams per year, except as follows:

(1) If the owner or operator elects to recalculate the NMOC emission rate after Tier 2 NMOC sampling and analysis as provided in 60.754(a)(3) and the resulting rate

is less than 50 megagrams per year, annual periodic reporting shall be resumed, using the Tier 2 determined site-specific NMOC concentration, until the calculated emission rate is equal to or greater than 50 megagrams per year or the landfill is closed. The revised NMOC emission rate report, with the recalculated emission rate based on NMOC sampling and analysis, shall be submitted within 180 days of the first calculated exceedance of 50 megagrams per year.

(2) If the owner or operator elects to recalculate the NMOC emission rate after determining a site-specific methane generation rate constant (k), as provided in Tier 3 in 60.754(a)(4), and the resulting NMOC emission rate is less than 50 Mg/yr, annual periodic reporting shall be resumed. The resulting site-specific methane generation rate constant (k) shall be used in the emission rate calculation until such time as the emissions rate calculation results in an exceedance. The revised NMOC emission rate report based on the provisions of 60.754(a)(4) and the resulting site-specific methane generation rate constant (k) shall be submitted to the Administrator Department within 1 year of the first calculated emission rate exceeding 50 megagrams per year.

(d) Each owner or operator of a controlled landfill shall submit a closure report to the Administrator Department within 30 days of waste acceptance cessation. The Administrator Department may request additional information as may be necessary to verify that permanent closure has taken place in accordance with the requirements of 258.60 of this title. If a closure report has been submitted to the Administrator Department, no additional wastes may be placed into the landfill without filing a notification of modification as described under 60.7(a)(4).

(e) Each owner or operator of a controlled landfill shall submit an equipment removal report to the Administrator Department 30 days prior to removal or cessation of operation of the control equipment.

(1) The equipment removal report shall contain all of the following items:

- (i) A copy of the closure report submitted in accordance with paragraph (d) of this section;
- (ii) A copy of the initial performance test report demonstrating that the 15 year minimum control period has expired; and
- (iii) Dated copies of three successive NMOC emission rate reports demonstrating that the landfill is no longer producing 50 megagrams or greater of NMOC per year.

(2) The Administrator Department may request such additional information as may be necessary to verify that all of the conditions for removal in 60.752(b)(2)(v) have been met.

(f) Each owner or operator of a landfill seeking to

comply with 60.752(b)(2) using an active collection system designed in accordance with 60.752(b)(2)(ii) shall submit to the Administrator Department annual reports of the recorded information in (f)(1) through (f)(6) of this paragraph. The initial annual report shall be submitted within 180 days of installation and start-up of the collection and control system, and shall include the initial performance test report required under 60.8. For enclosed combustion devices and flares, reportable exceedances are defined under 60.758(c).

(1) Value and length of time for exceedance of applicable parameters monitored under 60.756(a), (b), (c), and (d).

(2) Description and duration of all periods when the gas stream is diverted from the control device through a bypass line or the indication of bypass flow as specified under 60.756.

(3) Description and duration of all periods when the control device was not operating for a period exceeding 1 hour and length of time the control device was not operating.

(4) All periods when the collection system was not operating in excess of 5 days.

(5) The location of each exceedance of the 500 parts per million methane concentration as provided in 60.753(d) and the concentration recorded at each location for which an exceedance was recorded in the previous month.

(6) The date of installation and the location of each well or collection system expansion added pursuant to paragraphs (a)(3), (b), and (c)(4) of ' 60.755.

(g) Each owner or operator seeking to comply with 60.752(b)(2)(i) shall include the following information with the initial performance test report required under 60.8:

(1) A diagram of the collection system showing collection system positioning including all wells, horizontal collectors, surface collectors, or other gas extraction devices, including the locations of any areas excluded from collection and the proposed sites for the future collection system expansion;

(2) The data upon which the sufficient density of wells, horizontal collectors, surface collectors, or other gas extraction devices and the gas mover equipment sizing are based;

(3) The documentation of the presence of asbestos or nondegradable material for each area from which collection wells have been excluded based on the presence of asbestos or nondegradable material;

(4) The sum of the gas generation flow rates for all areas from which collection wells have been excluded based on nonproductivity and the calculations of gas generation flow rate for each excluded area; and

(5) The provisions for increasing gas mover equipment capacity with increased gas generation flow

rate, if the present gas mover equipment is inadequate to move the maximum flow rate expected over the life of the landfill; and

(6) The provisions for the control of off-site migration.

60.758 Recordkeeping requirements.

Except as provided in 60.752(b)(2)(i)(B),

(a) Each owner or operator of an MSW landfill subject to the provisions of 60.752(b) shall keep for at least 5 years up-to-date, readily accessible, on-site records of the maximum design capacity, the current amount of solid waste in-place, and the year-by-year waste acceptance rate. Off-site records may be maintained if they are retrievable within 4 hours. Either paper copy or electronic formats are acceptable.

(b) Each owner or operator of a controlled landfill shall keep up-to-date, readily accessible records for the life of the control equipment of the data listed in paragraphs (b)(1) through (b)(4) of this section as measured during the initial performance test or compliance determination. Records of subsequent tests or monitoring shall be maintained for a minimum of 5 years. Records of the control device vendor specifications shall be maintained until removal.

(1) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with 60.752(b)(2)(ii):

(i) The maximum expected gas generation flow rate as calculated in 60.755(a)(1). The owner or operator may use another method to determine the maximum gas generation flow rate, if the method has been approved by the Administrator Department.

(ii) The density of wells, horizontal collectors, surface collectors, or other gas extraction devices determined using the procedures specified in 60.759(a)(1).

(2) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with 60.752 (b)(2)(iii) through use of an enclosed combustion device other than a boiler or process heater with a design heat input capacity greater than 44 megawatts:

(i) The average combustion temperature measured at least every 15 minutes and averaged over the same time period of the performance test.

(ii) The percent reduction of NMOC determined as specified in 60.752(b)(2)(iii)(B) achieved by the control device.

(3) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with 60.752 (b)(2)(iii)(B)(1) through use of a boiler or process heater of any size: a description of the location at which the collected gas vent stream is introduced into the

boiler or process heater over the same time period of the performance testing.

(4) Where an owner or operator subject to the provisions of this subpart seeks to demonstrate compliance with 60.752 (b)(2)(iii)(A) through use of an open flare, the flare type (i.e., steam-assisted, air-assisted, or nonassisted), all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in 60.18; continuous records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

(c) Each owner or operator of a controlled landfill subject to the provisions of this subpart shall keep for 5 years up-to-date, readily accessible continuous records of the equipment operating parameters specified to be monitored in 60.756 as well as up-to-date, readily accessible records for periods of operation during which the parameter boundaries established during the most recent performance test are exceeded.

(1) The following constitute exceedances that shall be recorded and reported under 60.757(f):

(i) For enclosed combustors except for boilers and process heaters with design heat input capacity of 44 megawatts (150 million British thermal unit per hour) or greater, all 3-hour periods of operation during which the average combustion temperature was more than 28 oC below the average combustion temperature during the most recent performance test at which compliance with 60.752 (b)(2)(iii) was determined.

(ii) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone as required under paragraph (b)(3)(i) of this section.

(2) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the indication of flow to the control device or the indication of bypass flow or records of monthly inspections of car-seals or lock-and-key configurations used to seal bypass lines, specified under 60.756 28.6.

(3) Each owner or operator subject to the provisions of this subpart who uses a boiler or process heater with a design heat input capacity of 44 megawatts or greater to comply with 60.752(b)(2)(iii) shall keep an up-to-date, readily accessible record of all periods of operation of the boiler or process heater. (Examples of such records could include records of steam use, fuel use, or monitoring data collected pursuant to other State, local, Tribal, or Federal regulatory requirements.)

(4) Each owner or operator seeking to comply with the provisions of this subpart by use of an open flare shall keep up-to-date, readily accessible continuous records of

the flame or flare pilot flame monitoring specified under 60.756(c), and up-to-date, readily accessible records of all periods of operation in which the flame or flare pilot flame is absent.

(d) Each owner or operator subject to the provisions of this subpart shall keep for the life of the collection system an up-to-date, readily accessible plot map showing each existing and planned collector in the system and providing a unique identification location label for each collector.

(1) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the installation date and location of all newly installed collectors as specified under 60.755(b).

(2) Each owner or operator subject to the provisions of this subpart shall keep readily accessible documentation of the nature, date of deposition, amount, and location of asbestos-containing or nondegradable waste excluded from collection as provided in 60.759(a)(3)(i) as well as any nonproductive areas excluded from collection as provided in 60.759(a)(3)(ii).

(e) Each owner or operator subject to the provisions of this subpart shall keep for at least 5 years up-to-date, readily accessible records of all collection and control system exceedances of the operational standards in 60.753, the reading in the subsequent month whether or not the second reading is an exceedance, and the location of each exceedance.

60.759 Specifications for active collection systems.

(a) Each owner or operator seeking to comply with 60.752(b)(2)(i) shall site active collection wells, horizontal collectors, surface collectors, or other extraction devices at a sufficient density throughout all gas producing areas using the following procedures unless alternative procedures have been approved by the Administrator Department as provided in 60.752(b)(2)(i)(C) and (D):

(1) The collection devices within the interior and along the perimeter areas shall be certified to achieve comprehensive control of surface gas emissions by a professional engineer. The following issues shall be addressed in the design: depths of refuse, refuse gas generation rates and flow characteristics, cover properties, gas system expandibility, leachate and condensate management, accessibility, compatibility with filling operations, integration with closure end use, air intrusion control, corrosion resistance, fill settlement, and resistance to the refuse decomposition heat.

(2) The sufficient density of gas collection devices determined in paragraph (a)(1) of this section shall address landfill gas migration issues and augmentation of the collection system through the use of active or passive systems at the landfill perimeter or exterior.

(3) The placement of gas collection devices

determined in paragraph (a)(1) of this section shall control all gas producing areas, except as provided by paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(i) Any segregated area of asbestos or nondegradable material may be excluded from collection if documented as provided under 60.758(d). The documentation shall provide the nature, date of deposition, location and amount of asbestos or nondegradable material deposited in the area, and shall be provided to the Administrator Department upon request.

(ii) Any nonproductive area of the landfill may be excluded from control, provided that the total of all excluded areas can be shown to contribute less than 1 percent of the total amount of NMOC emissions from the landfill. The amount, location, and age of the material shall be documented and provided to the Administrator Department upon request. A separate NMOC emissions estimate shall be made for each section proposed for exclusion, and the sum of all such sections shall be compared to the NMOC emissions estimate for the entire landfill. Emissions from each section shall be computed using the following equation:

$$Q_i = 2 k L_o M_i (e^{-k t_i}) \text{ (CNMOC)} (3.6 \times 10^{-9})$$

where,

Q_i = NMOC emission rate from the i th section, megagrams per year

k = methane generation rate constant, year⁻¹

L_o = methane generation potential, cubic meters per megagram solid waste

M_i = mass of the degradable solid waste in the i th section, megagram

t_i = age of the solid waste in the i th section, years

CNMOC = concentration of nonmethane organic compounds, parts per million by volume

3.6×10^{-9} = conversion factor

The values for k , L_o , and CNMOC determined in field testing shall be used, if field testing has been performed in determining the NMOC emission rate or the radii of influence. If field testing has not been performed, the default values for k , L_o and CNMOC provided in 60.754(a)(1) shall be used. The mass of nondegradable solid waste contained within the given section may be subtracted from the total mass of the section when estimating emissions provided the nature, location, age, and amount of the nondegradable material is documented as provided in paragraph (a)(3)(i) of this section.

(b) Each owner or operator seeking to comply with 60.752 (b)(2)(i)(A) shall construct the gas collection devices using the following equipment or procedures:

(1) The landfill gas extraction components shall be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or

other nonporous corrosion resistant material of suitable dimensions to: convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system shall extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors shall be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations shall be situated with regard to the need to prevent excessive air infiltration.

(2) Vertical wells shall be placed so as not to endanger underlying liners and shall address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors shall be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices shall be designed so as not to allow indirect short circuiting of air into the cover or refuse into the collection system or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(3) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly shall include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices shall be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(c) Each owner or operator seeking to comply with 60.752 (b)(2)(i)(A) shall convey the landfill gas to a control system in compliance with 60.752(b)(2)(iii) through the collection header pipe(s). The gas mover equipment shall be sized to handle the maximum gas generation flow rate expected over the intended use period of the gas moving equipment using the following procedures:

(1) For existing collection systems, the flow data shall be used to project the maximum flow rate. If no flow data exists, the procedures in paragraph (c)(2) of this section shall be used.

(2) For new collection systems, the maximum flow rate shall be in accordance with 60.755(a)(1).

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 902(e)(3) (7 Del.C. 902(e)(3))

Brief Synopsis of the Subject Substance and Issue

The Department of Natural Resources and Environmental Control is authorized to promulgate regulations consistent with fishery management plans for species of fish under management of a fishery management plan approved by the Secretary of Commerce.

The Department proposes to enact tidal finfish regulations for certain Atlantic Sharks (see list of sharks defined as the management unit below) to be consistent with the Fishery Management Plan for Sharks of the Atlantic Ocean, as amended, and final rules approved by the Secretary of Commerce (50 CFR Part 678).

These regulations will make it illegal to possess sharks in the management unit after the federal semi-annual commercial quota is landed for large pelagic sharks, small coastal sharks or pelagic sharks respectively; implement a recreational creel limit; prohibit directed commercial fishing for landing of or sale of five species of sharks; establish a recreational catch and release only fishery for white sharks; prohibit filleting of sharks at sea and prohibit the removal of any fins from a shark in the management unit and discarding the remainder. These regulations are intended to reduce effective fishing mortalities, stabilize the large coastal shark population, facilitate enforcement and improve management of atlantic shark resources. Sharks in the management unit are currently at very low populations due to recent increases in their harvest.

Possible Terms of the Agency Action

The Department of Natural Resources and Environmental Control may reject or approve Tidal Finfish Regulations to manage certain sharks.

Statutory Basis or Legal Authority to Act

§ 902 (e) (3), 7 Del. C.

Notes of Public Comment

Individuals may present their opinions and/or request

additional information by writing or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 prior to 4:30 p.m. on October 31, 1997. A public hearing on these proposals will be held in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Monday, October 27, 1997.

Proposed Tidal Finfish Regulations

TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS;

A) Definitions

1) Fillet means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

2) Large coastal sharks species means any of the species, or a part thereof, listed in paragraph (a) of the definition of management unit.

3) Land or Landing shall mean to put or cause to go on shore from a vessel.

4) Management Unit means any of the following species in the Western Atlantic Ocean, Delaware's Territorial Sea or tidal waters of Delaware:

(a) Large coastal species:

Hammerhead sharks-- Sphyrnidae
 Great hammerhead, *Sphyrna mokarran*
 Scalloped hammerhead, *Sphyrna lewini*
 Smooth hammerhead, *Sphyrna zygaena*
 Mackerel sharks--Lamnidae
 White shark, *Carcharodon carcharias*
 Nurse sharks--Ginglymostomatidae
 Nurse shark, *Ginglymostoma cirratum*
 Requiem sharks--Carcharhinidae
 Bignose shark, *Carcharhinus altimus*
 Blacktip shark, *Carcharhinus limbatus*
 Bull shark, *Carcharhinus leucas*
 Caribbean reef shark, *Carcharhinus perezii*
 Dusky shark, *Carcharhinus obscurus*
 Galapagos shark, *Carcharhinus galapagensis*
 Lemon shark, *Neqapriion brevirostris*
 Narrowtooth shark, *Carcharhinus brachyurus*
 Night shark, *Carcharhinus signatus*
 Sandbar shark, *Carcharhinus plumbeus*
 Silky shark, *Carcharhinus falciformis*
 Spinner shark, *Carcharhinus brevipinna*
 Tiger shark, *Galeocerdo cuvieri*

(b) Small coastal species:

Angel sharks--Squatinae
 Atlantic angel shark, *Squatina dumerili*
 Hammerhead sharks--Sphyrnidae
 Bonnethead, *Sphyrna tiburo*
 Requiem sharks--Carcharhinidae
 Atlantic sharpnose shark, *Rhizoprionodon*

terraenovae

Blacknose shark, *Carcharhinus acronotus*
 Caribbean sharpnose shark, *Rhizoprionodon*

porosus

Finetooth shark, *Carcharhinus isodon*
 Smalltail shark, *Carcharhinus porosus*

(c) Pelagic species:

Cow sharks--Hexanchidae
 Bigeye sixgill shark, *Hexanchus vitulus*
 Sevengill shark, *Heptanchias perlo*
 Sixgill shark, *Hexanchus griseus*
 Mackerel sharks--Lamnidae
 Longfin mako, *Isurus paucus*
 Porbeagle shark, *Lamna nasus*
 Shortfin mako, *Isurus oxyrinchus*
 Requiem sharks--Carcharhinidae
 Blue shark, *Prionace glauca*
 Oceanic whitetip shark, *Carcharhinus longimanus*
 Thresher sharks--Alopiidae
 Bigeye thresher, *Alopias superciliosus*
 Thresher shark, *Alopias vulpinus*

(d) Prohibited species:

Basking sharks--Cetorhinidae
 Basking shark, *Cetorhinidae maximus*
 Mackerel sharks--Lamnidae
 White shark, *Carcharodon carcharias*
 Sand tiger sharks--Odontaspidae
 Bigeye sand tiger, *Odontaspis noronhai*
 Sand tiger, *Odontaspis taurus*
 Whale sharks--Rhincodontidae
 Whale shark, *Rhincodon typus*

(5) Pelagic species means any of the species, or a part thereof, listed in paragraph (c) of the definition of management unit.

(6) Prohibited species means any of the species, or a part thereof, listed in paragraph (d) of the definition of management unit.

(7) Small coastal species means any of the species, or part thereof, listed in paragraph (b) of the definition of management unit.

(B) Prohibitions

1) It shall be unlawful for any person to fish for, purchase, trade, barter, or possess or attempt to fish for, purchase, trade, barter, or possess a prohibited species.

2) It shall be unlawful for any person to remove the fins from any shark in the management unit and discard the remainder prior to landing said shark.

3) It shall be unlawful for any person to fillet a shark in the management unit except that a shark may be eviscerated and the head and fins removed prior to landing said shark.

4) It shall be unlawful to release any shark in the

management unit in a manner that will not ensure maximum probability of survival.

5) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than two sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

6) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce and published in the Federal Register.

TIDAL FINFISH REGULATIONS

As of July 1, 1997, the following Tidal Finfish Regulations are in effect.

These regulations are in addition to Tidal Finfish Laws in Chapter 9, Title 7, Delaware Code.

TIDAL FINFISH REGULATION 2. STRIPED BASS SPAWNING SEASON AND AREA RESTRICTIONS.

a) The spawning season for striped bass (*Morone saxatilis*) in Delaware shall begin at 12:01 A.M. on April 1 and continue through midnight on May 31 of each calendar year.

b) It shall be unlawful for any person to take and retain any striped bass during the striped bass spawning season from the Nanticoke River or its tributaries, the Delaware River and its tributaries to the north of a line extending due east beginning at and including the south jetty at the mouth of the C & D Canal, or the C & D Canal or its tributaries.

c) It shall be unlawful for any person to fish a fixed gill net in the Nanticoke River or its tributaries or the C & D Canal or its tributaries during the striped bass spawning season.

d) It shall be unlawful for any person to fish during the striped bass spawning season in the Nanticoke River or its tributaries or the C & D Canal or its tributaries with a draft gill net of multi- or mono-filament twine larger than 0.28 millimeters in diameter (size #69) or a stretched mesh size larger than five and one-half (5 2) inches.

e) It shall be unlawful for any person to fish any fixed gill net in the Delaware River north of a line

beginning at Liston Point (River Mile 48.06) and continuing due east to the boundary with New Jersey during January, February, March, April or May.

TIDAL FINFISH REGULATION NO. 4. SUMMER FLOUNDER SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be lawful for any person to take and reduce to possession summer flounder from the tidal waters of this State at any time except as otherwise set forth in this regulation.

b) It shall be unlawful for any recreational fisherman to have in possession more than ten (10) summer flounder at or between the place where said summer flounder were caught and said recreational fisherman's personal abode or temporary or transient place of lodging.

c) It shall be unlawful for any person, other than qualified persons as set forth in paragraph (f) of this regulation, to possess any summer flounder that measure less than fourteen and one-half (14.5) inches between the tip of the snout and the furthest tip of the tail.

d) It shall be unlawful for any person, other than a licensed commercial finfisherman with a gill net permit, while on board a vessel, to have in possession any part of a summer flounder that measures less than fourteen and one-half (14.5) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

e) It shall be unlawful for any licensed commercial finfisherman with a gill net permit to have in possession any part of a summer flounder that measures less than fourteen (14) inches between said part's two most distant points unless said person also has in possession the head, backbone and tail intact from which said part was removed.

f) Notwithstanding the size limits and possession limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout and the furthest tip of the tail and a quantity of summer flounder in excess of the possession limit set forth in this regulation, provided said person has one of the following:

1) A valid bill-of-sale or receipt indicating the date said summer flounder were received, the amount of said summer flounder received and the name, address and signature of the person who had landed said summer flounder;

2) A receipt from a licensed or permitted fish dealer who obtained said summer flounder; or

3) A bill of lading while transporting fresh or frozen summer flounder.

g) Notwithstanding the size limits in this regulation, a person may possess a summer flounder that measures no less than fourteen (14) inches between the tip of the snout

and the furthest tip of the tail, provided said person has one of the following:

- 1) A valid commercial finfishing license and gill net permit issued by the Department; or
- 2) A valid vessel permit issued by the Regional director, NMFS, to fish for and retain summer flounder in the EEZ or a dealer permit issued by the Regional Director or NMFS, as set forth in 50CFR, Part 625.

h) It shall be unlawful for any commercial finfisherman to sell, trade and or barter or attempt to sell, trade and or barter any summer flounder or part thereof that is landed in this State by said commercial fisherman after a date when the de minimis amount of commercial landings of summer flounder is determined to have been landed in this State by the Department. The de minimis amount of summer flounder shall be 0.1% of the coast wide commercial quota as set forth in the Summer Flounder Fishery Management Plan approved by the Atlantic States Marine Fisheries Commission.

i) It shall be unlawful for any vessel to land more than 200 pounds of summer flounder in any one day in this State.

j) It shall be unlawful for any person, who has been issued a commercial foodfishing license and fishes for summer flounder with any food fishing equipment other than a gill net, to have in possession more than ten (10) summer flounder at or between the place where said summer flounder were caught and said person's personal abode or temporary or transient place of lodging.

TIDAL FINFISH REGULATION 5. AREAS CLOSED TO GILL NET FISHING.

a) It shall be unlawful for any person to fish with gill nets for foodfish in areas described as follows:

- 1) The Assawoman Canal from White Creek to Assawoman Bay;
- 2) Indian River from Millsboro Pond dam to the first Canal marker approximately 1,000 yards down river;
- 3) Masseys Ditch from Canal marker 12 in Rehoboth Bay to a line connecting the southern most part of Middle Island and the nearest point of land to the west;
- 4) The Lewes and Rehoboth Canal from Roosevelt Inlet to its entrance into Rehoboth Bay;
- 5) The Broadkill River from Roosevelt Inlet to a point up river 1,000 yards;
- 6) Mispillion River from the tip of the jetty up river to a line drawn perpendicularly across the Mispillion river from the Mispillion Lighthouse;
- 7) Cedar Creek from its entrance to the Mispillion River up river to a point 500 yards south of the Route 36 bridge;
- 8) The Murderkill River from the mouth up river to Webbs Landing;

9) The Fenwick Ditch from Little Assawoman Bay to the Delaware - Maryland state line.

TIDAL FINFISH REGULATION 6. STRIPED BASS RECREATIONAL FISHING SEASONS; METHODS OF TAKE; CREEL LIMIT; POSSESSION LIMIT.

a) It shall be lawful for any person to take and reduce to possession striped bass from the tidal waters of this State at any time except as otherwise set forth in this regulation or in Tidal Finfish Regulation Nos. 2 and 7.

b) It shall be unlawful for any recreational fisherman to take or attempt to take any striped bass from the tidal waters of this State with any fishing equipment other than a hook and line or a spear while said recreational fisherman using the spear is underwater. Recreational gill net permittees are not authorized to take and reduce to possession any striped bass in gill nets.

c) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession more than two (2) striped bass per day from the tidal waters of this State that is not immediately returned, without unnecessary injury, to the same waters from which it was taken, is deemed taken and reduced to possession for purposes of this subsection.

d) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than two (2) striped bass at or between the place said striped bass was taken and said fisherman's personal abode or temporary or transient place of lodging.

TIDAL FINFISH REGULATION 7. STRIPED BASS POSSESSION SIZE LIMIT; EXCEPTIONS.

a) Notwithstanding, the provisions of '929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any recreational fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measures less than twenty-eight (28) inches in total length.

b) Notwithstanding, the provisions of '929(b)(1), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any commercial food fisherman to take and reduce to possession any striped bass from the tidal waters of this State that measure less than twenty (20) inches in total length.

c) Unless otherwise authorized, it shall be unlawful for any person to possess a striped bass that measures less than 28 inches, total length, unless said striped bass is in one or more of the following categories:

- 1) It has affixed, a valid strap tag issued by the Department to a commercial food fisherman; or
- 2) It was legally landed in another state for

commercial purposes and has affixed a valid tag issued by said state's marine fishery authority; or

3) It is packed or contained for shipment, either fresh or frozen, and accompanied by a bill-of-lading with a destination to a state other than Delaware; or

4) It was legally landed in another state for non commercial purposes by the person in possession of said striped bass and there is affixed to either the striped bass or the container in which the striped bass is contained a tag that depicts the name and address of the person landing said striped bass and the date, location, and state in which said striped bass was landed; or

5) It is the product of a legal aquaculture operation and the person in possession has a written bill of sale or receipt for said striped bass.

d) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

e) The words "land" and "landed" shall mean to put or cause to go on shore from a vessel.

f) It shall be unlawful for any person, except a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery, to land any striped bass that measures less than twenty eight (28) inches in total length.

g) It shall be unlawful for a commercial finfisherman authorized to fish during Delaware's commercial striped bass fishery to land any striped bass that measures less than twenty (20) inches in total length.

TIDAL FINFISH REGULATION 8. STRIPED BASS COMMERCIAL FISHING SEASONS; QUOTAS; TAGGING AND REPORTING REQUIREMENTS.

a) It shall be unlawful for any commercial food fisherman using a gill net to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial gill net fishery for striped bass established herein. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on March 1 and ending at 4:00 P.M. on April 30 next ensuing. A commercial food fisherman may use a gill net to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on November 15 and ending at 4:00 P.M. on December 31 next ensuing provided at least two (2) percent of the commercial allocation of striped bass for the gill net fishery, as determined by the Department, was not landed in the March - April gill net fishery. In order for a commercial food fisherman to be authorized by the Department to participate in a commercial gill net fishery, said commercial food

fisherman shall have a valid food fishing equipment permit for a gill net and shall register in writing with the Department to participate in said fishery by February 15 for the March - April gill net fishery and by November 1 for the December gill net fishery.

b) It shall be unlawful for any commercial food fisherman using a hook and line to take and reduce to possession any striped bass at any time except when said commercial food fisherman is authorized by the Department to participate in a commercial hook and line fishery for striped bass established herein. A commercial food fisherman may use a hook and line to take and reduce to possession striped bass during the period beginning at 12:01 A.M. on September 1 and ending at 4:00 P.M. on December 31 next ensuing. In order for a commercial food fisherman to be authorized to participate in the commercial hook and line fishery, said commercial food fisherman shall register in writing with the Department to participate in said fishery by August 15.

c) It shall be unlawful for any commercial food fisherman using a hook and line, during the striped bass hook and line fishery established for subsection (b) herein, to take striped bass by means of a gill net or to have any gill net on board or to otherwise have in possession on or near his person any gill net.

d) The striped bass gill net fishery in March - April, the striped bass gill net fishery in November - December and the striped bass hook and line fishery in September - December shall be considered separate striped bass fisheries. Each participant in a striped bass fishery shall be assigned an equal share of the total pounds of striped bass allotted by the Department to that fishery. A share shall be determined by dividing the number of pre-registered participants in that fishery into the total pounds of striped bass allotted to that fishery by the Department. The total pounds of striped bass allotted to each fishery by the Department shall be as follows: 95% of the State's commercial quota, as determined by the ASMFC, for the March - April gill net fishery, 10% of the State's commercial quota for the September - December hook and line fishery and, provided that in excess of two (2) % of the March - April gill net fishery allocation was not landed, said remainder for the November - December gill net fishery. Any overage of the State's commercial quota will be subtracted from the next year's commercial quota proportionally to the appropriate fishery.

e) It shall be unlawful for any commercial food fisherman to land, during a striped bass fishing season, more than the total pounds assigned by the Department to said individual commercial food fisherman.

f) It shall be unlawful for any commercial food fisherman to possess any striped bass that does not have locked into place through the mouth and gill a tag issued to said commercial fisherman by the Department. Said

tag shall be locked into place immediately after taking said striped bass.

g) The Department shall issue tags to commercial food fishermen who register in writing with the Department to participate in a striped bass fishery. Each participant shall initially be issued a quantity of tags that is to be determined by the Department by dividing said participants assigned share in pounds by the estimated weight of a striped bass expected to be landed. If a commercial food fisherman needs additional tags to fulfill his or her assigned share, the Department shall issue additional tags after verifying the balance of the share from reports submitted by an official weigh station to the Department.

h) It shall be unlawful for a commercial food fisherman who has been issued striped bass tags by the Department to transfer said tags to another person.

i) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass unless said tag had been issued to said commercial food fisherman by the Department.

j) It shall be unlawful for any commercial food fisherman to apply a tag to a striped bass if said tag had previously been applied to another striped bass.

k) It shall be unlawful for any commercial food fisherman to sell, barter or trade any striped bass, to attempt to sell, barter or trade any striped bass or to transport, to have transported or to attempt to have transported any striped bass out of the state unless said striped bass has been weighed and tagged by an official weigh station.

l) The Department shall appoint individuals and their agents as official weigh stations to weigh and tag all striped bass landed in a commercial striped bass fishery. Official weigh stations shall be compensated by the Department for each striped bass weighed and tagged. An official weigh station shall enter into an agreement with the Department to maintain records and report on a regular basis each commercial food fisherman's daily landings of striped bass weighed and tagged at said station. The Department shall provide official weigh stations with tags to be applied to each striped bass weighed.

m) Each commercial food fisherman participating in a striped bass fishery shall file an acceptable report with the Department on forms provided by the Department on all striped bass landed during said fishery. Each report shall be filed with the Department within 30 days after the end date of each fishery. All unused tags issued to a commercial food fisherman shall be returned to the Department with said report. Failure to file an acceptable report or failure to return all unused tags may disqualify the commercial food fishermen from future striped bass fisheries.

TIDAL FINFISH REGULATION 9. BLUEFISH POSSESSION LIMITS.

a) Unless otherwise authorized, it shall be unlawful for any recreational fisherman to have in possession more than ten (10) bluefish (*Pomatomus saltatrix*) at or between the place caught and his/her personal abode or temporary or transient place of lodging.

TIDAL FINFISH REGULATION 10. WEAKFISH SIZE LIMITS; POSSESSION LIMITS; SEASONS.

a) It shall be unlawful for any person to possess weakfish *Cynoscion regalis* taken with a hook and line, that measure less than thirteen (13) inches, total length.

b) It shall be unlawful for any person to whom the Department has issued a commercial food fishing license and a food fishing equipment permit for hook and line to have more than six (6) weakfish in possession during the period beginning at 12:01 AM on May 1 and ending at midnight on October 31 except on four specific days of the week as indicated by the Department on said person's food fishing equipment permit for hook and line.

c) It shall be unlawful for any person, who has been issued a valid commercial food fishing license and a valid food fishing equipment permit for equipment other than a hook and line to possess weakfish, lawfully taken by use of such permitted food fishing equipment, that measure less than twelve (12) inches, total length.

d) It shall be unlawful for any person, except a person with a valid commercial food fishing license, to have in possession more than six (6) weakfish, not to include weakfish in one's personal abode or temporary or transient place of lodging. A person may have weakfish in possession that measure no less than twelve (12) inches, total length, and in excess of six (6) if said person has a valid bill-of-sale or receipt for said weakfish that indicates the date said weakfish were received, the number of said weakfish received and the name, address and signature of the commercial food fisherman who legally caught said weakfish or a bill-of-sale or receipt from a person who is a licensed retailer and legally obtained said weakfish for resale.

e) It shall be unlawful for any person to fish with any gill net in the Delaware Bay or Atlantic Ocean or to take and reduce to possession any weakfish from the Delaware Bay or the Atlantic Ocean with any fishing equipment other than a hook and line during the following periods of time:

Beginning at 12:01 AM on May 3, 1997 and ending at midnight on May 11, 1997;

beginning at 12:01 AM on May 16, 1997 and ending at midnight on May 18, 1997;

beginning at 12:01 AM on May 23, 1997 and

ending at midnight on May 26, 1997;
beginning at 12:01 AM on May 30, 1997 and
ending at midnight on June 1, 1997;
beginning at 12:01 AM on June 6, 1997 and
ending at midnight on June 8, 1997;
beginning at 12:01 AM on June 13, 1997 and
ending at midnight on June 15, 1997;
and beginning at 12:01 AM on June 20, 1997 and
ending at midnight on June 28, 1997.

f) The Department shall indicate on a persons food fishing equipment permit for hook and line four (4) specific days of the week during the period May 1 through October 31, selected by said person when applying for said permit, as to when said permit is valid to take in excess of six (6) weakfish per day. These four days of the week shall not be changed at any time during the remainder of the calendar year.

g) It shall be unlawful for any person with a food fishing equipment permit for hook and line to possess more than six (6) weakfish while on the same vessel with another person who also has a food fishing equipment permit for hook and line unless each person's food fishing equipment permit for hook and line specifies the same day of the week in question for taking in excess of six (6) weakfish.

TIDAL FINFISH REGULATION 11. RED DRUM SIZE LIMITS; CREEL LIMITS.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any red drum, (*Sciaenops ocellatus*), that measures less than eighteen (18) inches, total length or more than twenty-seven (27) inches, length, except as otherwise provided in paragraph (b) in this regulation.

b) Unless otherwise authorized, it shall be unlawful for any person to possess more than five (5) red drum, one of which may exceed twenty-seven (27) inches, total length.

TIDAL FINFISH REGULATION 12. ATLANTIC STURGEON SIZE LIMITS.

a) Notwithstanding the provisions of '929(b)(5), Chapter 9, Title 7, Delaware Code or unless otherwise authorized, it shall be unlawful for any person to possess any Atlantic sturgeon, (*Acipenser oxyrhynchus*), that measures less than eighty-four (84) inches total length.

TIDAL FINFISH REGULATION 13. SPOTTED SEATROUT SIZE LIMIT.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any spotted seatrout, (*Cynoscion nebulosus*), that measure less than twelve (12) inches total

length.

TIDAL FINFISH REGULATION 14. SPANISH MACKEREL SIZE LIMIT AND CREEL LIMIT.

a) Unless otherwise authorized, it shall be unlawful for any person to possess any Spanish mackerel, (*Scomberomorus maculatus*), that measure less than fourteen (14) inches total length.

b) Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to have in possession more than ten (10) Spanish mackerel at or between the place caught and his/her personal abode or temporary or transient place of lodging.

TIDAL FINFISH REGULATION 15. ELECTRIC LIGHTS.

a) 'Lights used for illumination for visual purposes' shall mean any light that is fixed in position anywhere directly above the hull or deck of any vessel, dock or shore area or any electric flood light less than 500 watts and fixed in position no less than ten (10) feet directly above the surface of the water. An electric flood light is any electric light that does not have a focused beam.

b) It shall be legal for any person to fish in the tidal waters of this State with the aid of 'lights used for illumination for visual purposes' in addition to the equipment and methods listed in '910, Title 7, Delaware Code.

TIDAL FINFISH REGULATION 16. GILL NET MESH SIZE RESTRICTIONS.

a) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to fish any gill net having a mesh size less than 3 1/8 inches, stretched measure; in the tidal waters of this State during a period beginning at 12:01 A.M. on April 1 and ending midnight on June 30, next ensuing.

b) Unless otherwise authorized, it shall be unlawful for any recreational finfisherman to fish any gill net having a mesh size less than 3 1/4 inches, stretched measure, in the Delaware River, Delaware Bay and Atlantic Ocean under the jurisdiction of this State.

TIDAL FINFISH REGULATION 18. STRIPED BASS; TOTAL LENGTH MEASUREMENT.

a) Unless otherwise authorized, it shall be unlawful for any commercial finfisherman to possess any striped bass for which the total length has been altered in any way prior to selling, trading or bartering said striped bass.

TIDAL FINFISH REGULATION 19. SPEAR FISHING.

PROPOSED REGULATIONS

a) Unless otherwise prohibited, it shall be lawful for any recreational fisherman while submerged in the tidal waters of this State to use a spear that is propelled by a gun or a mechanical or pneumatic device to take a species of food fish whenever a hook and line is authorized as legal fishing equipment to take said species of food fish in the Department's tidal finfish regulations.

TIDAL FINFISH REGULATION 20. WINTER FLOUNDER SIZE LIMIT.

a) It shall be unlawful for any person to possess any winter flounder, (*Pleuronectes americanus*), that measure less than ten (10) inches, total length.

TIDAL FINFISH REGULATION 21. SCUP SIZE LIMIT.

a) It shall be unlawful for any recreational fisherman to have in possession any scup, *Stenotomus chrysops*, that measures less than seven (7) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to possess any scup that measures less than nine (9) inches, total length.

c) It shall be unlawful for any commercial finfisherman to sell, trade or barter or attempt to sell, trade or barter any scup or part thereof that is landed in this State by said commercial finfisherman after a date when the de minimis amount of commercial landings of scup is determined to have been landed in this State by the Department. The de minimis amount of scup shall be 0.1% of the coastwide commercial quota as set forth in the Scup Fishery Management Plan approved by the Atlantic State Marine Fisheries Commission.

TIDAL FINFISH REGULATION NO. 22 TAUTOG; SIZE LIMITS.

a) Notwithstanding 7 Del. C. 929 (b) (7) it shall be unlawful for any person to possess any tautog that measures less than thirteen (13) inches in total length during the period beginning at 12:01 AM on January 1, 1997 and ending at midnight on March 31, 1997 or during the period beginning at 12:01 AM on July 1, 1997 and ending at midnight on December 31, 1997.

b) Notwithstanding 7 Del. C. 929 (b) (7) it shall be unlawful for any person to possess any tautog that measures less than fourteen (14) inches in total length during the period beginning at 12:01 AM on January 1, 1998 and ending at midnight on March 31, 1998 or during the period beginning at 12:01 AM on July 1, 1998 and ending at midnight on December 31, 1998 or during said periods in all years thereafter.

TIDAL FINFISH REGULATION NO. 23 BLACK SEA BASS SIZE LIMIT

a) It shall be unlawful for any person to have in possession any black sea bass *Centropristis striata* that measures less than nine (9) inches, total length.

b) It shall be unlawful for any person who has been issued a commercial food fishing license by the Department to have in possession any black sea bass, after January 1, 1998, that measures less than ten (10) inches, total measure.

TIDAL FINFISH REGULATION NO. 24 FISH POT REQUIREMENTS

a) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot has an escape vent placed in a lower corner of the parlor portion of said pot which complies with one of the following minimum sizes: 1.125 inches by 5.75 inches; or a circular vent 2 inches in diameter; or a square vent with sides of 1.5 inches, inside measure. Pots constructed of wooden lathes must have spacing of at least 1.125 inches between one set of lathes.

b) It shall be unlawful for any person to fish, set, place, use or tend any fish pot in the tidal waters of this state unless said fish pot contains a panel (ghost panel) measuring at least 3.0 inches by 6.0 inches affixed to said pot with one of the following degradable materials:

- 1.) Untreated hemp, jute or cotton string of 3/16 inches diameter or smaller; or
- 2.) Magnesium alloy timed float release (pop-up devices) or similar magnesium alloy fasteners; or
- 3.) Ungalvanized or uncoated iron wire of 0.094 inches diameter or smaller.

TIDAL FINFISH REGULATION 25. ATLANTIC SHARKS;

A) Definitions

1) Fillet means to remove slices of fish flesh, of irregular size and shape, from the carcass by cuts made parallel to the backbone.

2) Large coastal sharks species means any of the species, or a part thereof, listed in paragraph (a) of the definition of management unit.

3) Land or Landing shall mean to put or cause to go on shore from a vessel.

4) Management Unit means any of the following species in the Western Atlantic Ocean, Delaware's Territorial Sea or tidal waters of Delaware:

- (a) Large coastal species:
Hammerhead sharks-- Sphyrnidae

Great hammerhead, Sphyrna mokarran
Scalloped hammerhead, Sphyrna lewini
Smooth hammerhead, Sphyrna zygaena
Mackerel sharks--Lamnidae
White shark, Carcharodon carcharias
Nurse sharks--Ginglymostomatidae
Nurse shark, Ginglymostoma cirratum
Requiem sharks--Carcharhinidae
Bignose shark, Carcharhinus altimus
Blacktip shark, Carcharhinus limbatus
Bull shark, Carcharhinus leucas
Caribbean reef shark, Carcharhinus perezi
Dusky shark, Carcharhinus obscurus
Galapagos shark, Carcharhinus galapagensis
Lemon shark, Negaprion brevirostris
Narrowtooth shark, Carcharhinus brachyurus
Night shark, Carcharhinus signatus
Sandbar shark, Carcharhinus plumbeus
Silky shark, Carcharhinus falciformis
Spinner shark, Carcharhinus brevipinna
Tiger shark, Galeocerdo cuvieri

(b) Small coastal species:

Angel sharks--Squatinae
Atlantic angel shark, Squatina dumerili
Hammerhead sharks--Sphyrnidae
Bonnethead, Sphyrna tiburo
Requiem sharks--Carcharhinidae
Atlantic sharpnose shark, Rhizoprionodon

terraenovae

Blacknose shark, Carcharhinus acronotus
Caribbean sharpnose shark, Rhizoprionodon

porosus

Finetooth shark, Carcharhinus isodon
Smalltail shark, Carcharhinus porosus

(c) Pelagic species:

Cow sharks--Hexanchidae
Bigeye sixgill shark, Hexanchus vitulus
Sevengill shark, Heptranchias perlo
Sixgill shark, Hexanchus griseus
Mackerel sharks--Lamnidae
Longfin mako, Isurus paucus
Porbeagle shark, Lamna nasus

Shortfin mako, Isurus oxyrinchus
Requiem sharks--Carcharhinidae
Blue shark, Prionace glauca
Oceanic whitetip shark, Carcharhinus

longimanus

Thresher sharks--Alopiidae
Bigeye thresher, Alopias superciliosus
Thresher shark, Alopias vulpinus

(d) Prohibited species:

Basking sharks--Cetorhinidae
Basking shark, Cetorhinidae maximus

Mackerel sharks--Lamnidae
White shark, Carcharodon carcharias
Sand tiger sharks--Odontaspidae
Bigeye sand tiger, Odontaspis noronhai
Sand tiger, Odontaspis taurus
Whale sharks--Rhincodontidae
Whale shark, Rhincodon typus

(5) Pelagic species means any of the species, or a part thereof, listed in paragraph (c) of the definition of management unit.

(6) Prohibited species means any of the species, or a part thereof, listed in paragraph (d) of the definition of management unit.

(7) Small coastal species means any of the species, or part thereof, listed in paragraph (b) of the definition of management unit.

(B) Prohibitions

1) It shall be unlawful for any person to fish for, purchase, trade, barter, or possess or attempt to fish for, purchase, trade, barter, or possess a prohibited species.

2) It shall be unlawful for any person to remove the fins from any shark in the management unit and discard the remainder prior to landing said shark.

3) It shall be unlawful for any person to fillet a shark in the management unit except that a shark may be eviscerated and the head and fins removed prior to landing said shark.

4) It shall be unlawful to release any shark in the management unit in a manner that will not ensure maximum probability of survival.

5) It shall be unlawful for the operator of any vessel without a commercial food fishing license to have on board said vessel more than two sharks in the management unit except that two Atlantic sharpnose sharks also may be on board.

6) It shall be unlawful for any person who has been issued a valid commercial food fishing license while on board any vessel to possess any large coastal shark, any small coastal shark or any pelagic shark in the management unit during the remainder of any period after the effective date a commercial quota for that group of sharks has been reached in said period or is projected to be reached in said period by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce and published in the Federal Register.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority:

7 Delaware Code, Section 1902(a)(2) (7 Del.C.
1902(a)(2))

7 Delaware Code, Section 1902(a)(3) 7 Del.C.
1902(a)(3))

SHELLFISH REGULATION NO. S-41

Brief Synopsis of the Subject, Substance and Issues

Legislative authority to classify shellfish growing areas was changed from the Department of Health and Social Services, Division of Public Health to the Department of Natural Resources and Environmental Control (DNREC) in 1996. Consequently, the DNREC promulgated Shellfish Sanitation Regulations that classify shellfish growing areas as approved, prohibited, seasonally approved or conditionally approval based upon theoretical pollution loading, sanitary survey data and bacteriological monitoring. Shellfish Regulation No. S-41 is proposed to be amended to reflect the above changes and make it unlawful to harvest any shellfish from shellfish growing areas that are prohibited or when seasonally closed.

Statutory Basis or Legal Authority to Act

§ 1902 (a) (2), 7 Del. C.

Notice of Public Comment

Persons may obtain additional information and/or submit their views on the proposed amendment to Shellfish Regulation No. S-41 by contacting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 prior to 4:30 p.m. on Friday, October 31, 1997. A public hearing on the amendment to Shellfish Regulation No. S-41 is scheduled in the DNREC auditorium, 89 Kings Highway, Dover, DE on Thursday, October 30, 1997 at 7:30 p.m.

Existing Shellfish Regulation No. S-41

S-41 SHELLFISHING GROWING AREAS CLOSED TO HARVESTING CLAMS, MUSSELS, AND OYSTERS

(a) It shall be unlawful for any person to harvest or attempt to harvest any clams, mussels or oysters from any shellfish growing area that is classified as prohibited,

conditionally approved but closed to harvesting shellfish or otherwise not classified as a shellfish growing area as established in regulations adopted by the Division of Public Health of the Delaware Department of Health and Social Services under authority of Title 16, Section 122 (3) (A), (B), (F), and (J) and currently in effect.

Proposed amendment to Shellfish Regulation No. S-41

S-41 SHELLFISHING GROWING AREAS CLOSED TO HARVESTING CLAMS, MUSSELS, AND OYSTERS

(a) It shall be unlawful for any person to harvest or attempt to harvest any clams, mussels or oysters from any shellfish growing area that is classified as prohibited, conditionally approved but closed to harvesting shellfish or otherwise not classified as a shellfish growing area as established in regulations adopted by the Department of Natural Resources and Environmental Control, Division of Water Resources under authority of section 1902 (a)(2) in Title 7 of the Delaware Code.

SHELLFISH REGULATIONS NOS. S-55, S-56

Brief Synopsis of the Subject, Substance and Issues

Currently there are no restrictions on the number and length of trotlines that may be used by a recreational crabber and there are no restrictions on the number of crab traps that may be used by a recreational crabber. Recreational crabbers are limited to harvesting no more than one bushel of crabs per day.

The use of trotlines and crab traps is proliferating in the Inland Bays. Some trotlines measure in excess of 1000 feet. Crab traps, which differ from a crab pot, must be activated by the crabber to catch a crab where as a crab potcatches crabs passively. The number of crab traps being used by individuals also is proliferating. Crab pots are limited to two per person.

It is suspected that some recreational crabbers are illegally selling crabs taken by trotline and crab traps from the Inland Bays. In order to reduce the effort by recreational crabbers who use trotlines or crab traps, it has been recommended by environmental law enforcement officials to limit the number and length of crab trotlines and the number of crab traps per individual. Since these gears are sometimes left unattended, the owners name and address should be legible on a float attached to the gear.

The Division of Fish and Wildlife, Department of Natural Resources and Environmental Control, (DNREC) proposes to promulgate new shellfish regulations that will limit the number and length of crab trotlines (defined) to one per person no more than 300 feet in length. A new

shellfish regulation also is proposed to limit the numbers of crab traps (defined) to no more than 12 per person. In addition, each crab trotline and crab trap will be required to have attached a white buoy with the owners name and address clearly legible on the buoy. These regulations will decrease the potential of a recreational crabber harvesting more than one bushel per day.

Statutory Basis on Legal Authority to Act Section 1902 (a) (3), 7 Del. C.

Notice of Public Comment:

Additional information may be obtained from the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE., 19901. (302-739-3441). Comments on these proposed shellfish regulations may be submitted to the Fisheries Section until 4:30 p.m. on Friday, October 31, 1997. A public hearing is scheduled in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Thursday, October 30, 1997. The public is invited to attend and comment.

Proposed Shellfish Regulations

S-55 CRAB TROTLINE; DEFINITION; LIMITS; IDENTIFICATION.

a) Crab trotline shall mean a length of line with a series of attached baits spaced along said line. It is placed on the bottom and raised to the surface to dip net crabs on the baits.

b) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State more than one crab trotline.

c) It shall be unlawful for the operator of any vessel to tend to more than one trotline from said vessel.

(d) It shall be unlawful for any person who uses or otherwise causes to be in the waters of this State a crab trotline unless attached thereto is an all white buoy with said persons name and permanent mailing address inscribed on said buoy or on a waterproof tag attached to said buoy.

S-56 CRAB TRAP; DEFINITION; LIMITS; IDENTIFICATION.

a) Crab trap shall mean any device constructed with wire mesh or netting or other similar material that when lifted or activated by a person, it is capable of capturing a crab.

b) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State more than twelve (12) crab traps.

c) It shall be unlawful for the operator of any vessel to tend to more than twelve (12) crab traps from said vessel.

d) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State any crab trap unless said crab trap is either attached by a line to a fixed structure or a vessel or is attached to an all white buoy with said persons' name and permanent mailing address inscribed on said buoy or on a waterproof tag attached to said buoy.

SHELLFISH REGULATIONS

The following regulations are pursuant to Title 7, Delaware Code, Chapters 19, 21, 23, 24, 25, 27, and 28. They are supplementary to new and revised shellfish laws.

S-1 DEFINITIONS:

1. "Commercial Shellfishing" - shall mean for any person to possess those species of shellfish in excess of the following quantities unless said person has a valid receipt for all shellfish above these quantities; or as otherwise provided by law or regulation:

- (1) Oysters - one (1) bushel per vessel
- (2) Blue Crabs - one (1) bushel per person
- (3) Hard Clams - five hundred (500) clams per person
- (4) Lobsters - two (2) lobsters per person

2. "Commercial Measure" - shall mean that unit of measurement of a species of shellfish as described herein:

- (1) Oysters - bushels
- (2) Blue Crabs -bushels
- (3) Clams - actual numbers or bushels
- (4) Lobsters - actual numbers or pounds
- (5) Blue Mussels - bushels or pounds

3. "A Person's Intent to Sell Shellfisheries to Another" - shall mean a person has in his possession a quantity of that species of shellfish in excess of the quantity specified under the definition of "Commercial Shellfishing" or this same person advertises for sale, offers for sale or completes the sale of any portion of that measure of shellfish to another person.

4. "Delaware Bay": - shall mean all those waters and submerged lands under the jurisdiction of the State located within an area bordered on the North by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the South by a line drawn from Cape may Inlet East Jetty Light to Cape May Harbor Inlet Lighted Bell Buoy 2CM; thence to the northernmost

extremity of Cape Henlopen, but not including any tributaries thereto.

5. "Delaware River" - shall mean all those waters and submerged lands under the jurisdictions of the State located within an area to the North of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

6. "Recreational Purposes" - shall mean the noncommercial use of shellfish that does not include the sale, trade or barter of shellfish in quantities less than the prescribed quantities for commercial shellfishing.

7a. "New Licensee" shall mean for purposes of interpreting § 1918(a), Chapter 19, Title 7, Delaware Code, any person who has never been issued a commercial crab pot license or any person who has not been issued a valid commercial crab pot license by the Department before May 1, 1995 and annually thereafter when applying for the renewal of such license.

7b. "New Licensee" shall mean for purposes of interpreting § 1918(b), Chapter 19, Title 7, Delaware Code, any person who has never been issued a commercial crab dredger's license or any person who has not been issued a valid crab dredger's license by the Department before May 1, 1994 and then annually thereafter when applying for the renewal of such license."

8. "2 consecutive years, as it appears in §1918(c), 7 Del.C. shall mean any consecutive 24 month period."

S-3 COMMERCIAL SHELLFISHING PROHIBITED ON SUNDAY

(a) It shall be unlawful for any person to engage in commercial shellfishing on Sunday. (Exception. §1904, 7 Del. C. has been amended so that crabs and conchs may be taken on any Sunday and clams may be taken on any Sunday between and including Memorial Day and Labor Day.

S-5 TAKING SHELLFISH OTHER THAN OYSTERS, CLAMS, LOBSTERS AND CRABS

(a) It shall be lawful for persons to take any species of shellfish other than oysters, *Crassostrea virginica*; clams, *Mercenaria mercenaria*; lobsters, *Harnarus americanus*; and crabs, *Callinectes sapidus* from the shellfish grounds under the jurisdiction of the State. Oysters, clams, lobsters and crabs only maybe taken according to the provisions of Chapters 19, 21, 23, 24,

and 25 of Title 7, Delaware Code.

(Note- Conchs only may be taken according to the provisions of Chapter 28, 7. Del. C.)

(b) It shall be unlawful for any person, unless authorized to do so, to take shellfish, other than crabs and lobsters, from natural oyster beds, the leased shellfish grounds of other persons or those shellfish grounds closed to shellfishing by order of the Department of Health and Social Services.

S-7 NATURAL OYSTER BEDS - LOCATION

(a) Natural oyster beds shall mean those shellfish grounds located to the North of the "East Line" in Delaware Bay and River and shellfish grounds located upstream of the entrances of all tributaries entering the Delaware River and Delaware Bay under the jurisdiction of the State.

(b) The Department shall designate specific natural oyster beds that will be open for taking seed oysters on specific dates prior to April 1 in any given year.

S-9 OYSTERS - PUBLIC TONGING AREAS - LOCATION

(a) Public tonging areas for oysters shall mean those shellfish grounds located in the Delaware Bay approximately two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay and more specifically described as plotted on the Delaware Bay Chart No. 2304, 22nd edition, published by the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C., November 1975 with Loran C overprinted as follows:

CORNER LOCATION	LORAN READING
1. Northwest Corner	9930-Y-52260.91 9930-Z-70042.54
2. Northeast Corner	9930-Y-52259.36 9930-Z-70043.20
3. Southwest Corner	9930-Y-52262.10 9930-Z-70043.80
4. Southeast Corner	9930-Y-52260.65 9930-Z-70043.95

S-11 OYSTERS - PUBLIC TONGING AREAS - SEASON

(a) It shall be unlawful for any person to harvest oysters from the public tonging area located in the Delaware Bay two (2) miles Northeast of the Murderkill River entrance to the Delaware Bay at any time other than

September 1 through April 30 next ensuing for each year.

NOTE: It is unlawful for any person to harvest oysters from any public tonging areas unless said person has a valid public oyster tonger's license.

S-13 OYSTERS - DAILY TAKE LIMITS - PUBLIC TONGING AREA

(a) It shall be unlawful for any person to take more than fifteen (15) bushels of oysters in any one (1) day from the oyster public tonging grounds.

S-15 HARD CLAMS - SEASON AND LIMITS FOR COMMERCIAL CLAM TONG/RAKE LICENSE

(a) It shall be lawful for any person who has a valid Commercial Clam Tong/Rake License to harvest hard clams during permitted times on any date except Sunday.

(Exception- § 1904, 7 Del. C. has been amended so that clams may be taken on Sundays between and including Memorial Day and Labor Day.)

(b) It shall be unlawful for any person who has a valid Commercial Clam Tong/Rake License to harvest on any one (1) day or possess at any time more than two thousand five hundred (2,500) hard clams unless said person has a valid receipt for clams in excess of two thousand five hundred (2,500).

S-17 HARD CLAMS - SEASON AND LIMITS FOR COMMERCIAL DREDGE CLAM LICENSE

(a) It shall be lawful for any person who has a valid Commercial Dredge Clam License to take clams from shellfish grounds, as permitted by law, at permitted times on any date except Sunday.

(Exception - §1904, 7. Del.C. has been amended so that clams may be taken on Sundays between and including Memorial Day and Labor Day.)

(b) It shall be lawful for any person who has a valid Commercial Dredge Clam License to harvest any number of hard clams.

S-19 HARD CLAMS - METHOD OF TAKE, SEASON AND LIMITS FOR NON-COMMERCIAL CLAMMING PERMIT

(a) It shall be unlawful for any person who has a valid Non-Commercial Clamming Permit to attempt to take, catch kill or reduce to possession any hard clams with any

device other than a hand-held rake with a head no wider than fourteen (14) inches measured perpendicular to the tines and a straight handle not in excess of seven (7) feet in length.

(b) it shall be unlawful for any person who has a valid Non-Commercial Clamming Permit to harvest hard clams during the period between one-half hour after sunset and one-half hour before sunrise next ensuing.

(c) it shall be unlawful for any person who has a valid Non-Commercial Clamming Permit to harvest in any one (1) day or possess at any time more than five hundred (500) hard clams unless said person has a valid receipt for clams in excess of five hundred (500).

(d) It shall be lawful for any person who has a valid Non-Commercial Clamming Permit to harvest hard clams on any date during the time period permitted.

S-21 HARD CLAMS - METHODS OF TAKE, SEASON AND LIMITS FOR RECREATIONAL CLAMMING

(a) It shall be unlawful for any person to attempt to take, catch, kill or reduce to possession any hard clams with a device other than a hand-held rake with a head no wider than fourteen (14) inches measured perpendicular to the tines and a straight handle not in excess of seven (7) feet in length.

(b) It shall be unlawful for any person to harvest hard clams during the period between one-half hour after sunset and one-half hour before sunrise next ensuing.

(c) It shall be unlawful for any person who is a resident of this State to harvest in any one (1) day or possess at any time more than one hundred (100) clams unless otherwise permitted to do so by license or permit or said person has a valid receipt for all clams in excess of one hundred (100).

(d) It shall be unlawful for any person who is a non-resident of this State to harvest in any one (1) day or possess at any time more than fifty (50) hard clams unless otherwise permitted to do so by license or permit or said person has a valid receipt for all clams in excess of fifty (50).

(e) It shall be lawful for any person to harvest hard clams on any date during the time period permitted.

S-23 LOBSTERS - POT DESIGN

(a) It shall be unlawful for any person to set, tend or

conduct shellfishing for lobsters with any pot or trap in the waters under the jurisdiction of the State unless said pot or trap has an escape vent, slot, or port of not less than 1 3/4" x 6" located in the parlor section of each pot or trap.

S-25 LOBSTERS - POT, SEASON AND LIMITS FOR COMMERCIAL LOBSTER POT LICENSE

(a) It shall be lawful for any person who has a valid Commercial Lobster Pot License to harvest lobsters in the waters under the jurisdiction of the State at any time as permitted by law on any date except Sunday.

(b) It shall be unlawful for any person who has a valid Commercial Lobster Pot License to set, tend or use in any manner in excess of fifty (50) lobster pots for the taking of lobsters in the waters under the jurisdiction of the State.

S-27 DREDGE RESTRICTIONS FOR TAKING SHELLFISH

(a) It shall be unlawful for any person to take or attempt to take any shellfish with any device attached to a vessel powered by sail or mechanical means in any waters under the jurisdiction of the State of Delaware except in the Delaware Bay and the territorial waters in the Atlantic Ocean within three miles of the Delaware shoreline unless otherwise permitted by law or by Departmental regulation.

S-29 CRAB POT NUMBER BUOYS AND VESSEL PANEL COLOR CODE AND NUMBER REQUIREMENTS

(a) The color code assigned by the Department to a commercial crab pot licensee shall be displayed on each buoy or buoys attached to the line of each crab pot deployed in the water in the following order:

(1) The first color in the color code sequence shall be on a buoy or buoys located the farthest from the crab pot (top).

(2) The last color in the color code sequence shall be on the buoy or buoys located the closest to the crab pot (bottom).

(3) Any second or third color in the color code sequence between the first and last colors shall be on a buoy or buoys in the same top to bottom order as in the color code sequence.

(b) Each color coded buoy attached to a line of a commercial crab pot shall measure at least three (3) inches by three (3) inches by three (3) inches except that a separate buoy, located between the crab pot and

colorcoded buoy nearest the crab pot but no closer than five (5) feet to the color coded buoy nearest the crab pot may be of lesser dimensions.

(c) Each color in a color code shall covers a contiguous area of at least 28 square inches on a buoy.

(d) Each color coded buoy shall be visible on the water's surface when the tide is slack and the wind is less than ten (10) miles per hour.

(e) Each color coded buoy shall have its color or colors recognizable at all times.

(f) The color code assigned by the Department to a commercial crab pot licensee shall be displayed on the 2' x 2' panel on the licensee's vessel in a manner that when viewed from either side of the vessel, the sequence of colors shall be as follows relative to the vessel:

(1) The first color in the color code sequence shall be on the panel in a vertical band closest to the stem of the vessel.

(2) The last color in the color code shall be on the panel in a vertical band closest to the bow of the vessel.

(3) Any second or third color in the color code sequence between the first and last colors shall be on the panel in vertical band(s) in the same stem to bow order as assigned in the color code sequence.

(g) Each color coded panel shall be visible and the color(s) shall be recognizable at all times while tending crab pots.

(h) Each color coded panel shall be displayed as vertical bands on the panel such that each color covers a contiguous area of equal size. The panel shall not display any color other than the colors in the assigned color code except for a color used to indicate the crab pot number.

(i) A number shall be assigned by the Department to each commercial crab pot license.

(j) The commercial crab pot licensee's number shall be displayed on the color coded panel on the licensee's vessel with at least three (3) inch high contrasting colored Arabic numerals so that said number shall be visible from either side of the vessel.

(k) The commercial crab pot licensee's number shall be displayed on at least one color coded buoy attached to each crab pot displayed in the water in at least one (1) inch high Arabic numerals. The number shall be painted in a contrasting color, branded on or carved into the buoy.

S-33 NON-COMMERCIAL CRAB POTS: ILLEGAL TAMPERING THEREOF

(a) It shall be unlawful for any person, other than the rightful owner of a non-commercial crab pot whose initials appear on the white float attached to said crab pot, to lift, move, take or damage any non-commercial crab pot or to take or attempt to take crabs from any non-commercial crab pot.

S-35 COMMERCIAL CLAMMING: MORATORIUM ON FORMERLY LEASED SHELLFISH GROUNDS

(a) It shall be unlawful for any person, including former leaseholders, to take or attempt to take shellfish by any means on formerly leased shellfish grounds in the Indian River and bay as indicated on a Department map, Document 40-05178/02/2, and described as follows:

- a. Elisha Cropper Plot 1 (310 acres)
 Plot 2 (140 acres)
 Plot 3 (100 acres)
- b. John Satterfield Plot 6 (20 acres)
- c. Linden Short Plot 8 (20 acres)
- d. John Rogers Plot 28 (70 acres)

S-37 OYSTER VESSEL LICENSING FOR TRANSPLANTING OYSTERS FORM NATURAL OYSTER BEDS

(a) The owner of a vessel which was previously licensed in Delaware to harvest and/or transplant oysters form natural oyster beds or from leased shellfish ground in Delaware Bay may directly apply to the Department for a license for said vessel to harvest and/or transplant oysters from the natural oyster beds or from leased shellfish grounds within the jurisdiction of the State.

(b) The owner of a vessel which was not previously licensed to harvest oysters in Delaware and is to be used for transplanting oysters form natural oyster beds in Delaware Bay to leased shellfish grounds in Delaware Bay, must submit an application for said vessel license to the Department that will first be reviewed by the Council on Shellfisheries for their determination as to whether or not:

(1) the legal and equitable owner is a Delaware resident or a corporation whose principal place of business is located within Delaware prior to January 1, 1 990 or a Delaware corporation incorporated after January 1, 1990 with its principal place of business in Delaware and whose legal and equitable owners are Delaware residents; and,

(2) the profits for the operation of said vessel will help to preserve and improve the Delaware shellfish industry; and,

(3) the vessel to be licensed will remain exclusively in Delaware's shellfish industries for a period of at least sixty (60) months.

Based upon these three criteria, the council on Shellfisheries shall then recommend approval or disapproval for issuing an oyster harvesting license for said vessel within ten (10) calendar days of receipt of the application provided that there is no regularly scheduled council meeting between the date of the application and the beginning of the oyster transfer season. The Department, upon receiving a recommendation from the Council on Shellfisheries, shall decide whether or not to issue an oyster harvesting license for the vessel for the forthcoming oyster transfer season.

(c) The owner of a vessel which was not previously licensed to harvest and/or transplant oysters in Delaware and said vessel is only to be used to harvest oysters from leased shellfish grounds may directly apply to the Department and receive a vessel license to harvest oysters from leased shellfish grounds within the jurisdiction of the state.

S-41 SHELLFISHING GROWING AREAS CLOSED TO HARVESTING CLAMS, MUSSELS AND OYSTERS

(a) It shall be unlawful for any person to harvest or attempt to harvest any clams, mussels or oysters from any shellfish growing area that is classified as prohibited, conditionally approved but closed to harvesting shellfish or otherwise not classified as a shellfish growing area as established in regulations adopted by the ~~Division of Public Health of the Delaware Department of Health and Social Services under authority of Title 16, Section 122(3) (A), (B), (F), and (J) and currently in effect.~~ Department of Natural Resources and Environmental Control, Division of Water Resources under authority of section 1902(a)(2) in Title 7 of the Delaware Code.

S-43 FAILURE TO TEND CRAB POTS

(a) It shall be unlawful for any person who sets a crab pot in the tidal waters of the State to fail to tend and remove crabs from said pot at least once during every 72-hour period.

S-45 DESCRIPTION OF BOUNDARIES DELINEATING LEASABLE SHELLFISH GROUNDS

(a) Shellfish grounds to be leased for protecting, planting and harvesting shellfish in the State shall be limited to the following area in Delaware Bay described as follows:

Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then continuing south to a point at Loran-C coordinates 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27279.67/42837.42 and then continuing west southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line".

S-46 MAXIMUM NUMBER OF CRAB POTS AUTHORIZED TO BE FISHED

(a) It shall be unlawful for any person with a valid commercial crab pot license to fish, place or cause to have placed in the waters of this State at any time more than the number of crab pots for which said person's commercial crab pot license stipulates in accordance with §2303, Chapter 23, Title 7, Delaware Code.

S-48 CONCH MINIMUM SIZE LIMITS

It shall be unlawful for any person to possess any channeled conch, *Busycotypus canaliculatum*, that measures less than six (6) inches in length or 2.75 inches in diameter at the whorl.

(b) Notwithstanding the provisions of paragraph (a), a person may possess no more than five (5) channeled conchs per 60 pounds that are less than six (6) inches in length or 3 inches in diameter at the whorl.

(c) It shall be unlawful for any person to possess any knobbed conch, *Busycon carica*, that measures less than five (5) inches in length or 2 3/4 inches in diameter at the whorl.

S-50 DEFINITIONS

The following definitions shall apply to terms in Chapter 27, Title 7, Delaware Code relative to horseshoe crabs.

1) 'Dispose of said crabs properly shall mean bury on the beach, incorporate into soil as fertilizer or any other method approved by the Department.

2) 'Personal, non-commercial use' shall mean to be used as food, fertilizer or bait or otherwise properly disposed without trading, bartering, or selling by one individual to another, or without transporting, shipping,

or causing to be transported or shipped, out of the state.

3) 'Collect' shall mean to take live horseshoe crabs by any means other than by dredge.

4) 'Dredge' shall mean to use any device to gather, scrape, scoop, fish for or otherwise take bottom dwelling horseshoe crabs.

S-51 SEASON'S AND AREA CLOSED TO COLLECTING AND DREDGING HORSESHOE CRABS

(a) It shall be unlawful for any person to collect or dredge horseshoe crabs from any state or federal land owned in fee simple or water within one thousand (1000) feet, measured perpendicularly from the mean low waterline, during the period beginning at 12:01 am on May 1 and continuing through midnight, June 7, except authorized persons may collect horseshoe crabs on Wednesdays, Thursdays and Fridays from state owned lands to the east of State Road 89. Provided, however, any person that has been issued a valid scientific collecting permit may collect horseshoe crabs at any time in any area as specified in the permit.

(b) it shall be unlawful for any person to dredge horseshoe crabs except from one's own leased shellfish grounds or with permission from the owner of leased shellfish grounds in an area of Delaware Bay within the boundaries that delineate leasable shellfish grounds and described as follows:

Starting at a point on the "East Line" in Delaware at Loran-C coordinates 27314.50/42894.25 and continuing due east to a point at Loran-C coordinates 27294.08/42895.60 and then 27270.80/42852.83 and then continuing southwest to a point at Loran-C coordinates 27279.67/42837.42 and then continuing west southwest to a point at Loran-C coordinates 27281.31/42803.48 and then continuing west to a point at Loran-C coordinates 27280.75/42795.50 and then in a northerly direction on a line 1000' offshore, coterminous with the existing shoreline to the point of beginning on the "East Line".

S-52 REQUIREMENT FOR COLLECTING HORSESHOE CRABS FOR PERSONS UNDER 16

(a) It shall be unlawful for any person under the age of sixteen (16) years to possess more than six (6) horseshoe crabs unless accompanied by a person who has been issued a valid horseshoe crab scientific collecting, commercial collecting or dredge permit.

S-53 NUMBER OF PERSONS ACCOMPANYING A PERSON WITH A VALID, HORSESHOE CRAB

COLLECTING PERMIT

(a) It shall be unlawful for any person with a valid horseshoe crab commercial collecting permit when collecting horseshoe crabs to be assisted by more than three (3) persons who are not required to have valid horseshoe crab commercial collecting permits.

S-54 POSSESSION LIMIT OF HORSESHOE CRABS, EXCEPTIONS

(a) Unless otherwise authorized, it shall be unlawful for any person to possess more than six (6) horseshoe crabs, except a person with a validated receipt form a person with a valid horseshoe crab commercial collecting or dredge permit for the number of horseshoe crabs in said person's possession. A receipt shall contain the name, address and signature of the supplier, the date and the number of horseshoe crabs obtained.

(b) Any person who has been issued a valid commercial eel fishing license by the Department is exempt from the possession limit of six (6) horseshoe crabs, provided said commercial eel fishing licensee has submitted an annual report of his/her previous year's harvest of horseshoe crabs to the Department on forms provided by the Department. Said exemption also applies to a commercial eel fisherman's alternate while the alternate is in the presence of the commercial eel fisherman. Any person who has been issued a commercial eel fishing license (and such person's Alternate while in the presence of the licensee) may collect or dredge horseshoe crabs without a horseshoe crab commercial collecting or dredge permit, provided all horseshoe crabs taken are for personal, non-commercial use, as bait for the licensee's eel pots fished in this state.

S-55 CRAB TROTLINE; DEFINITION; LIMITS; IDENTIFICATION.

a) Crab trotline shall mean a length of line with a series of attached baits spaced along said line. It is placed on the bottom and raised to the surface to dip net crabs on the baits.

b) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State more than one crab trotline.

c) It shall be unlawful for the operator of any vessel to tend to more than one trotline from said vessel.

d) It shall be unlawful for any person who uses or otherwise causes to be in the waters of this State a crab trotline unless attached thereto is an all white buoy with said persons name and permanent mailing address inscribed on said buoy or on a waterproof tag attached to

said buoy.

S-56 CRAB TRAP; DEFINITION; LIMITS; IDENTIFICATION.

a) Crab trap shall mean any device constructed with wire mesh or netting or other similar material that when lifted or activated by a person, it is capable of capturing a crab.

b) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State more than twelve (12) crab traps.

c) It shall be unlawful for the operator of any vessel to tend to more than twelve (12) crab traps from said vessel.

d) It shall be unlawful for any person to use or otherwise cause to be in the waters of this State any crab trap unless said crab trap is either attached by a line to a fixed structure or a vessel or is attached to an all white buoy with said persons' name and permanent mailing address inscribed on said buoy or on a waterproof tag attached to said buoy.

DEPARTMENT OF EDUCATION

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

The Secretary of Education with approval of the State Board of Education recommends that the regulation on Interscholastic Athletics found in Section I.K.6., Page A-32 in the *Handbook for K-12 Education*, be amended. The amendment is necessary to reflect the new language in H.B. 81 concerning the role of the Secretary of Education and the State Board of Education in relation to the Delaware Secondary School Athletic Association (DSSAA). The new legislation states that the Secretary with the approval of the State Board may delegate to a non-profit organization the authority to implement the Department's rules and regulations on interscholastic athletics. These amended regulations delegate this authority to the Delaware Secondary School Athletic Association (DSSAA) and define DSSAA's relationship with the Secretary and the State Board. The amended regulations also define, as the original regulations did, DSSAA's structure and its relationship with the building principals. Since it is also being recommended that items 2., 3., 4., 5., and 7. in Section K. be repealed, Interscholastic Athletics would become the new K.2.

EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122
AMENDMENT TO INTERSCHOLASTIC ATHLETICS

A. TYPE OF REGULATORY ACTION REQUESTED
Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF
REGULATION

The regulation on Interscholastic Athletics found in Section I.K.6., page A-32 in the *Handbook for K-12 Education*, must be amended. The amendment is necessary due to the new language in H.B. 81 concerning the role of the Secretary of Education and the State Board of Education in relation to the Delaware Secondary School Athletic Association (DSSAA). The new legislation states that the Secretary with approval of the State Board may delegate to a non-profit organization the authority to implement the Department's rules and regulations on Interscholastic Athletics. These amended regulations delegate this authority to the Delaware Secondary School Athletic Association (DSSAA) and define DSSAA's relationship with the Secretary and the State Board. The amended regulations also define, as the original regulations did, DSSAA's structure and its relationship with building principals. Since it is also being recommended that items 2., 3., 4., 5., and 7. in Section K. be repealed, Interscholastic Athletics would become the new K.2.

C. IMPACT CRITERIA

1. Will the regulation help improve student achievement as measured against state achievement standards? (If so, how? If not, why?)

This amendment addresses changes involving organizations and not curriculum issues.

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

This amendment addresses changes involving organizations and not equity in education issues.

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

This amendment addresses changes involving organizations and not health and safety issues.

4. Will the regulation help to ensure that all students' legal rights are respected? (If so, how?)

This amendment addresses changes involving organizations and continues, as the original regulation did, to address the legal rights of student athletes.

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

This amendment addresses the relationship between the Department of Education and DSSAA but it does not change DSSAA's relationship to the local school districts.

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

The amendment does not place any additional reporting or administrative requirements or mandates upon decision makers at the local board and school level.

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

The amendment addresses the relationship between the Department of Education and DSSAA but it does not change DSSAA's relationship to the local school district concerning decision making authority and accountability.

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 amendment will not be an impediment to other state education policies.

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

The amendment is necessary to bring the current regulation in line with H.B. 81.

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

There is no cost to the state and local school boards to comply with this amendment since it does not effect the local school districts.

Handbook for K-12 Education

6. INTERSCHOLASTIC ATHLETICS

a. Responsibility

The principal of the middle level and the high school is responsible for the conduct of the interscholastic athletic program in which representative teams participate. The extent of the athletic program for the secondary school necessitates leadership consideration and coordination on part of the principal and staff members responsible for the organization and scheduling of individual and team sports.

b. Jurisdiction

Interscholastic athletics are under the jurisdiction of the Delaware Secondary School Athletic Association composed of all member schools. The Athletic Association is under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Public Instruction serving as the Executive Secretary. All policies and recommendations for modifying the rules and bylaws of the Athletic Association must be approved by the State Board of Education.

c. Rules

All interscholastic athletic activities in the middle level and high schools must be conducted in accordance with the rules and regulations established in the Official Handbook of the Delaware Secondary School Athletic Association and subscribed to by all member schools.

As Amended

6. INTERSCHOLASTIC ATHLETICS

a)The Delaware Secondary School Athletic Association (DSSAA) shall, as the official designee of the Secretary of Education, have the authority to implement the Department of Education’s rules and regulations governing the conduct of interscholastic athletics. This authority is granted with oversight by the Department of Education. Disputes involving the rules and regulations governing interscholastic athletics are subject to State Board review.

b)The Delaware Secondary School Athletic Association shall be under the general management of a Board of Directors with the Education Associate for Interscholastic Athletics in the Department of Education serving as the Executive Director. All recommendations for modifying

the rules and regulations as they appear in the DSSAA Official Handbook must be proposed by the Secretary of Education and approved by the State Board of Education with the advice and guidance of the DSSAA Board of Directors.

c)The principals of middle level and high school member schools shall be responsible for the conduct of the interscholastic athletic program in which representative teams participate including the organization and scheduling of individual and team sports.

d)All interscholastic athletic activities in the middle level and high school must be conducted in accordance with the Department of Education’s rules and regulations as they appear in the DSSAA Official Handbook and as they may be amended hereafter as proposed by the Secretary of Education and approved by the State Board with the advice and guidance of the DSSAA Board of Directors.

DEPARTMENT OF EDUCATION

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

The Secretary of Education with the approval of the State Board recommends readopting the regulation entitled, Membership in Fraternities and Sororities, found in the *Handbook for K-12 Education*, I.K.8., Pages A-33 and 34. These regulations forbid any public school student from becoming a member of any fraternity or sorority or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization. These regulations also authorize local school districts to take certain actions concerning the existence of such fraternities or sororities and/or any pupils who belong to them. Because this is still a potential problem for local school districts, readopting this regulation is recommended. Since it is also being recommended that items 2., 3., 4., 5., and 7. in Section K. be repealed, Membership in Fraternities and Sororities would become the new K.3.

EDUCATIONAL IMPACT ANALYSIS PURSUANT
TO 14 DEL. C., SECTION 122
READOPTION OF REGULATION, MEMBERSHIP IN
FRATERNITIES AND SORORITIES

A. TYPE OF REGULATORY ACTION REQUESTED

Reauthorization of Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATIONS

The regulations, which are in the section entitled, Membership in Fraternities and Sororities, found in the *Handbook for K-12 Education*, I.K.8., Pages A-33 and 34 should be readopted. These regulations forbid any public school student from becoming a member of any fraternity or sorority or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization. These regulations also authorize local school districts to take certain actions concerning the existence of such fraternities or sororities and/or any pupils who belong to them. Because this is still a potential problem for local school districts, readopting this recommendation is recommended. Since it is also being recommended that items 2., 3., 4., 5., and 7. in Section K. be repealed, Membership in Fraternities and Sororities would become the new K.3.

C. IMPACT CRITERIA

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

This regulation deals with student activities and not with curriculum issues.

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

This regulation helps to insure that students have fair access to student organizations and are not kept out of organizations based on arbitrary decisions made by the membership.

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

This regulation does address student safety as it may

apply through general school oversight of student organizations.

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

This regulation helps to protect students' legal rights to choose to participate in school based student organizations.

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

This regulation provides the local school districts with full authority to ban fraternities and sororities from their districts and to discipline any student who participates in such organizations. The regulation also makes it clear that districts should set policies for all of their student organizations and clubs.

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

This regulation places no unnecessary reporting or administrative mandates on local districts or buildings.

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

This regulation places the authority and accountability directly with the local school district.

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?

This regulation addresses student activities and will not be an impediment to policies concerning curriculum issues.

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

This issue is best addressed through a Department of Education regulation to ensure continuity throughout the nineteen school districts.

10. What is the cost to the state and local school boards

of compliance with the regulation?

There will be no cost to the local school boards if this regulation is readopted.

K. 8. 3. MEMBERSHIP IN FRATERNITIES AND SORORITIES

a. No pupil enrolled in a public school in any school district of Delaware shall be a member of a fraternity or sorority, or any other secret, exclusive, self-perpetuating social organization composed in whole or part of public school pupils which seeks to organize and perpetuate itself by taking in members from among the pupils enrolled in such school based upon the decisions of the membership of such organizations rather than from the free choice of any pupil in such school who is otherwise qualified to fulfill the special aims of such an organization.

b. The local board of education is hereby authorized upon finding that any pupil is a member of a high school fraternity, sorority or social organization as above defined to exclude such pupil from representing the school in any public activity, contest, or exhibition such as athletic, literary, or dramatic and from participating in any school activity other than class attendance and from holding a position of authority in any school or class organization.

c. Nothing in this regulation shall be deemed as prohibiting the local board of education from excluding any pupil from class in those instances where the behavior of such pupil is detrimental to school discipline.

d. Any definition of fraternity, sorority, or secret exclusive self-perpetuating social organization shall not be deemed to include youth organizations or fraternal orders, religious and church organizations, or similar organizations which are institutionally sponsored and approved and which are organized with responsible adult leadership and supervision.

e. Where schools do approve of student organizations and clubs which do not fall under the definition of fraternity, sorority, or secret organization, it becomes the responsibility of the school administration and the sponsoring persons to develop these recommended procedures:

- (1) establishment of the purposes and criteria for membership in the organization;
- (2) establishment of guidelines to be followed in the selection of members; and
- (3) establishment of methods to notify applicants or candidates as to acceptance or non-acceptance as a member in the organization. This

procedure assures that students are made aware of the reasons for non-admittance to membership selectivity.

DEPARTMENT OF EDUCATION

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

The Secretary of Education with the approval of the State Board recommends the repeal of the following regulations concerning student activities found in the *Handbook for K-12 Education*, Sections I.K.2., K.3., K.4., K.5., and K.7., found in pages A-28 to A-32. They include the following: Local Financing of School activities, K-2; General Guidelines for Contests and Activities, K-3; Guidelines from the National Association of Secondary School Principals (NASSP) for Student Contests and Activities, K-4; Student Travel Procedures and Activities, K-5; and Student Organizations, K-7. These changes cause the present K.6. to become K.2. and the present K.8. to become K.3. These regulations as presently written are general in nature and mainly make statements about desired behaviors. Regulations in this area are best made by the local boards of education who are much closer to the specific situations in each district.

~~K. STUDENT ACTIVITIES, ATHLETICS AND ORGANIZATIONS~~

~~2. LOCAL FINANCING OF SCHOOL ACTIVITIES~~

~~School activities which are not financed by the regular school allotment must be paid for by funds which are raised locally. Since many of these activities are of importance to the school and are highly desirable, it would be far better if they could be paid out of the regular instruction allotment, but that is sometimes impossible. If funds are raised locally by means other than taxation, the following guidelines must be followed:~~

~~a. Public education is provided free of charge to students. This includes admission to any functions held during the time when the schools are in session.~~

~~b. It is essential that adequate accounting procedures exist for student activity funds. Such records must be open for inspection by interested parties at all times.~~

~~c. Any fund raising activities must be approved by the chief school officer of the district.~~

d. All funds collected shall be kept in a safe repository where accounting can be made at regular intervals and shall be handled in accordance with the provisions of the State of Delaware Budget and Accounting Manual.

3. GENERAL GUIDELINES FOR CONTESTS AND ACTIVITIES

The following general guidelines are recommended to serve as an appropriate frame of reference:

a. No school should enter any national contest except those approved by the National Association of Secondary School Principals or approved Advisory Committees appointed by the Department of Public Instruction.

b. Local contests should have the approval of the school principal and school superintendent on behalf of the local board of education.

c. Participation in any contest or competition should be outside class time unless considered as part of the curricular activities.

d. The "Guidelines" established by the NASSP as contained in the Approved List of National Contests and Activities should be followed in the selection and conduct of national, state, and local contests and activities.

e. Nothing in this section shall preclude the conduct of contests and activities on a county or regional basis provided all parties concerned have granted approval for such participation.

f. Ad hoc committees may be organized from time-to-time to consider procedures for the conduct of special contests or competition.

4. GUIDELINES FROM THE NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS (NASSP) FOR STUDENT CONTESTS AND ACTIVITIES

The National Association of Secondary School Principals through its Committee on National Contests and Activities has established guidelines regarding contests and activities which involve student participation in seven or more states. These guidelines, prepared as part of the Advisory List of National Contests and Activities, are as follows:

a. A contest or activity should be designed solely to benefit secondary school youth in educational, civic, social, and ethical development. Statements expressing: (1) the educational benefits anticipated to accrue to participating students; (2) the educational objectives the activity is designed to serve; and (3) justification of the activity as a needed and functional means of serving schools and students and as expressed in (1) and (2) are to be submitted with the sponsor's application.

b. Cost of participation must be minimal to the student, school, and community. No profit should be realized at the expense of the participant. Contests and activities that are profit-oriented or tend to promote or advertise a product or an ideology will not be listed. A financial accounting, giving specific per pupil or per school cost estimates in such areas as administration, promotion, housing, travel, food, entertainment, health and recreation, and other incidental expenses, shall be submitted to the committee to demonstrate that no profit is made from sponsorship.

c. Contests and activities that motivate students to be creative and to demonstrate excellence are encouraged.

d. Contests and activities must be open to all students, regardless of race, creed, sex, or national origin. The eligibility of a student to participate shall not depend upon an individual teacher's membership in the sponsoring organization.

e. Contests and activities must provide for appropriate and adequate supervision for the duration of the event.

f. Contests and activities must not place an undue burden on students, professional staff, or schools. The involvement of teachers and/or principals in the selection or judging process is discouraged where there is a conflict of interest.

g. Team or delegate competitive events are strongly discouraged on a national level.

h. Contests and activities should be held on nonschool time (weekends, vacation, etc.). When a group of students and/or teachers from a school are involved, regional contests and activities will, in most instances, not be listed when more than one day of absence from school is required for participation; and national contests and activities will not normally be listed when more than two days of absence from school are required. Contests and activities that utilize school time or involve extensive travel by students or supervising teachers must be

evaluated in terms of the benefits to all students affected by the loss of instructional time:

i. Awards should be appropriate in number, kind, and value and must comply with the state amateur eligibility requirements. Scholarships are regarded as the most desirable type of award, and should be paid directly to the institution selected by the student.

j. Unsupervised essay and poster contests will not be listed.

k. Activities designed primarily to raise funds for groups or individuals will not be considered.

l. Adjudication and competitive programs involving cheerleading, pompon, drill teams and spirit groups beyond the state level are strongly discouraged and will not be listed.

m. Because of the number of students involved, commitment of faculty time, cost in comparison to the educational benefits, and exposure of the school to liability, schools should very carefully consider any proposal to participate in a group music festival. The Committee, while wishing to support music education, often finds that music festivals and music-travel programs, particularly those tied to theme/amusement parks or highly attractive tourist areas, warrant additional and special standards for review. Therefore, the Committee will consider listing music festivals and music-travel programs, if they meet the following additional guidelines:

(1) Music programs should be scheduled so that no absence from regularly scheduled classes is involved for students or teachers. In most instances no program will be listed by the Committee if in its estimation more than two school days, including travel, are required for participation.

(2) The arrangements for travel, housing, and meals for participants shall not be mandated by the sponsor. Any such arrangements offered by the sponsor must be purely an option available to schools as a service. Activities sponsored by travel agents/bureaus must stipulate in their announcements that schools may arrange their own travel or arrange travel packages through travel agents of their own choice.

(3) The amount of time spent by participating groups in musical performance, instruction, and evaluation must be substantial in relation to the total time spent at the site of the activity.

(4) Events sponsored by commercial organizations for promotional purposes shall not require admissions and/or entry fees be paid by participating schools or groups. Programs offering package deals which include entry to parks may not be listed.

(5) Festivals conducted on the grounds of theme parks shall provide free admission to the park to the participating students.

(6) Adjudication and recognition provided must not, in any respect, suggest a national championship nor any special status other than achievement in the context of the activity.

(7) Due to the vast numbers of summer music camps established to improve skills of students for competition, the Committee will not evaluate these programs unless they are an outgrowth of an ongoing school activity and participation requires school nomination or sponsorship.

The National Association of Secondary School Principals believes that the "Guidelines" listed above and the specific activities making up the Advisory List can assist principals in protecting students, teachers, and schools from some undesirable and unwarranted pressures that often are detrimental to the educational process.

5. STUDENT TRAVEL PROCEDURES AND ACTIVITIES

Educators recognize the value and contribution of the field trip as a learning experience. Well planned and executed field trips can enrich learning to an extent not otherwise possible in the classroom. The principal of each school concerned has the responsibility for determining whether or not student groups should participate in educationally-related activities which require travel provisions. The following guidelines are recommended for student activities involving travel:

a. Approval of overnight trips shall follow local district regulations.

b. The dates and time of the project should be considered in relation to the rest of the school program.

c. An appropriately developed plan pertaining to the student activity should be submitted to the principal in writing by the sponsoring member of the teaching staff.

d. The financing of the activity should not take inordinate amounts of student, teacher, or parent time or

impose a financial hardship on any student:

e. Students must be under planned supervision at all times and provision should be made for adequate housing and meals:

f. Project or activity arrangements must comply with insurance regulations as stated in Title 14, Section 2904, of the Delaware Code. Copies of written evidence of insurance coverage for out-of-state travel should be on file in the office of the chief school officer or school principal at least 3 days before the scheduled departure of the student group:

g. The school should establish a procedure to secure parental or guardian permission and to provide information on the proposed activity, its purpose, and various organizational details. This information should be forwarded to parents well in advance of the activity:

h. Some provision shall be made for those students who choose not to participate in a planned activity:

i. Each activity should be evaluated as a learning experience in respect to the stated purpose or objectives of the activity:

j. Participation in strictly commercial projects is prohibited. Performances involving strictly entertainment purposes are not recommended:

k. All interscholastic athletic activities in middle level and high schools must be conducted in accordance with the rules and regulations established in the Official Handbook of the Delaware Secondary School Athletic Association and subscribed to by all member schools:

7. STUDENT ORGANIZATIONS

Student organizations provide individuals with an opportunity to share similar interests and gain recognition in their educational program. When acknowledged as an integral part of instruction, the primary role of student organizations is to promote good teaching and learning. They vitalize and enrich the instructional program by motivating students to learn, by supplementing the course of study, and by extending and recognizing learning experiences beyond the classroom. Student organizations also develop career understanding, civic and social competencies, and provide leadership training:

DEPARTMENT OF HEALTH & SOCIAL SERVICES DIVISION OF SOCIAL SERVICES/MEDICAL ASSISTANCE PROGRAM (DMAP)

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, the Delaware Department of Health and Social Services (DHSS) hereby publishes notice of proposed policies and procedures. The DHSS/Division of Social Services/Medical Assistance Program (DMAP) will implement a change in the value of a vehicle that can be excluded from resource consideration from \$4500 to \$4650 to comply with Federal Regulations that require Medicaid to use the same exclusion value as does the Food Stamp Program. The proposed policy change is as follows:

DMAP SECTION 410.15 (Page 3)

2. Vehicles

Vehicles are defined as automobiles, boats, travel trailers, motorcycles etc. The current market value of a vehicle is the average price that it will sell for (based on year, make, model and condition) on the open market in a certain geographic area. Current market value can be determined by using the NADA book (trade in value) or a written appraisal from a disinterested, knowledgeable source. One vehicle may be excluded under Section 410.13. Only one vehicle may be excluded for a married couple.

If NO vehicle is excluded per 410.13, up to ~~\$4500~~ \$4650 of the CMV of ONE vehicle is excluded. If the CMV exceeds ~~\$4500~~ \$4650, the excess counts as a resource, unless the vehicle can be excluded under some other provision (i.e., co-owner refuses to sell). It is unlikely the ~~\$4500~~ \$4650 exclusion will be used. This is because most vehicles are used for either a medical problem or for essential daily activities and can be excluded per 410.13.

Any vehicle an individual owns in addition to the vehicle that was totally or partly excluded (up to ~~\$4500~~ \$4650), is a resource in the amount of its equity value. The equity value is the CMV minus amount owed on the vehicle. The exclusion is applied in the manner most advantageous to the individual. If one of two vehicles can be excluded as necessary for medical treatment, the exclusion is applied to the vehicle with the greater equity value regardless of which vehicle is used to

obtain medical treatment.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than November 1, 1997, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated.

Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

IN THE MATTER OF:

**REVISION OF REGULATION
OF THE MEDICAID/MEDICAL
ASSISTANCE PROGRAM
CONTAINED IN DMAP
SECTION 420**

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, the Delaware Department of Health and Social Services (DHSS) hereby publishes notice of proposed policies and procedures. The DHSS/Division of Social Services/Medical Assistance Program (DMAP) will implement a change, approved and funded by the State Legislature, for an increase in the personal needs allowance protected for individuals who are eligible for Medicaid and who are residing in a nursing facility, effective 7/1/97.

The revised rule increases the amount to be protected for the personal needs of a Medicaid client in a long-term care facility from \$36 to \$42. The wording of the policy is as follows:

DMAP 420

1. Personal needs

(a) ~~\$36.00~~ \$42.00 per month of available income is to be protected for the recipients direct personal needs, as defined by Form MAP-64 *

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex

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**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

**DIVISION OF SOCIAL SERVICES/MEDICAL
ASSISTANCE PROGRAM (DMAP)**

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 42 CFR §447.205, the Delaware Department of Health and Social Services (DHSS) hereby publishes notice of proposed policies and procedures. The DHSS/Division of Social Services/Medical Assistance Program (DMAP) is publishing its Inpatient Hospital and Outpatient Hospital provider manuals in the State Register of Regulations for the first time and so they appear in complete form as follows.

There is also one addition to the Ambulance Provider Specific Policy Manual and two additions to the Long-Term Care Provider Specific Policy Manual.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Services, P.O.

Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947.

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Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

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INPATIENT HOSPITAL PROVIDER SPECIFIC POLICY

Inpatient hospital services are provided to the majority of Medicaid clients through a Managed Care Organization (MCO). This manual reflects the policies as they relate to Medicaid clients who are exempt from managed care coverage (see list of those exempt from managed care coverage in the Managed Care section of the General Policy) or Medicaid clients who are enrolled with an MCO and the Division of Alcoholism, Drug Abuse, and Mental Health is managing their behavioral health problems and has authorized an inpatient treatment for behavioral health.

I. GENERAL INFORMATION

Overview

This manual contains information specifically applicable to:

- Acute care inpatient general hospitals;
- Certified physical rehabilitation wing of an acute care inpatient general hospitals;
- Psychiatric hospitals;
- Rehabilitation hospitals; and
- Specialty hospitals.

The information in this section of the manual is applicable to all the above facilities. Further, each of the above facilities has a section in the manual which includes information that is specific to the type of facility.

A hospital, for the purpose of this policy manual, is defined as an institution primarily engaged in providing, by or under the supervision of physicians, to inpatients, diagnostic and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and provides:

- continuous twenty-four (24) hour nursing services to

patients confined therein;

- standard dietary, nursing, diagnostic, and therapeutic facilities;
- staff composed of physicians, surgeons, and doctors of podiatric medicine and dental surgery, etc.; and
- is licensed and certified by the appropriate State agency to participate under the requirements of Title XVIII and/or Title XIX of the Social Security Act.

A practitioner, for the purpose of this policy manual, is a duly licensed Doctor of Medicine, Doctor of Dental Surgery, Doctor of Osteopathy, Doctor of Podiatric Medicine, Doctor of Optometry, or Certified Nurse Midwife. Practitioner services furnished in a hospital facility are services provided:

- within the scope of practice as defined by state law, and
- by or under the personal supervision of an individual licensed under state law to practice medicine.

A discharge is deemed to have occurred when a patient:

- is formally released from the hospital,
- expires while a patient,
- is transferred to another hospital if the transferring hospital is not the appropriate type of hospital to meet the medical needs of the patient,
- is transferred from inpatient care to a certified physical rehabilitation unit of the same acute care inpatient hospital.

An inpatient, for the purpose of this policy manual, is a person who has been admitted to a hospital for bed occupancy for the purpose of receiving inpatient hospital services. A person is considered an inpatient when, at the time of formal admission, it is anticipated that (s)he will remain at least overnight and occupy a bed, even though it later develops that he can be discharged or that he is transferred to another hospital and does not actually use a hospital bed overnight.

Quality Assurance

The hospital must have either an organized governing body or persons legally responsible for its conduct as an institution. The governing body must assure that the hospital meet standards with respect to medical staff, the chief executive officer, care of patients, institutional plans and budgets, contracted services, and emergency services. The hospital must:

- appoint qualified members to the medical staff, assure that the medical staff has bylaws and other rules and regulations, and ensure that appropriate criteria are used to determine who will be appointed to staff membership;

- appoint a chief executive officer who is responsible for managing the hospital;
- assure every patient is under the care of an appropriately-qualified physician, assure that a doctor of medicine or osteopathy is on call at all times, and maintain proper written protocols to identify potential organ donors;
- have an overall institutional plan that includes budgeting, capital expenditures, and sources of financing. The plan must be submitted for review to the appropriate state planning agency and it must be reviewed and updated annually;
- be responsible for services furnished in the hospital whether or not the services are furnished under contracts and ensure that services furnished under contract are performed in a safe and effective manner; and
- assure that emergency services standards are complied with if hospital provides emergency services or if the hospital does not provide emergency services, assure that medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

The governing body must ensure that there is an effective, hospital-wide quality assurance program to evaluate the provision of patient care. Included must be evaluation of contractor services, medication therapy, diagnosis and treatment, discharge planning, and transfers or referrals. The hospital must take and document appropriate remedial action to address deficiencies found through the quality assurance program. The hospital must document the outcome of remedial actions (42 CFR § 482.21).

License/Certification

The hospital must be in compliance with applicable Federal laws related to the health and safety of patients.

The hospital must be:

- Licensed; or approved as meeting standards for licensing established by the agency of the State or locality responsible for licensing hospitals;
- The hospital must assure that personnel are licensed or meet other applicable standards that are required by State or local laws.

Provider Responsibility

All providers have the ethical and programmatic responsibility to direct recipients to the most appropriate, medically necessary, and cost-efficient care possible.

Employees of the hospital should be aware of their responsibility when signing or completing an order or prescription for any service covered by the Delaware Medical Assistance Program (DMAP) on behalf of a Medicaid recipient. The decision to allow or deny some necessary services is based on the signed assessment of the patient's condition. If the hospital employee misrepresents or falsifies the essential information upon which federal/state funds is based, (s)he may, upon conviction, be subject to a fine and imprisonment under federal/state laws. In order to avoid potential prosecution, the hospital employee must clearly and accurately represent his/her clinical assessment of the patient's condition and the functional status (s)he is using in prescribing the necessary services.

Inpatient Certification of Medical Necessity

Federal regulation 42 CFR §456.60 requires inpatient hospital services to be periodically certified as medically necessary by the practitioner. In compliance with this regulation, the DMAP requires practitioners to formally certify medical necessity every sixty (60) days for inpatient acute care services. Thus, a statement of certification must be made at the time of admission or, if an individual applies for assistance while in a hospital, before the DMAP authorizes payment. Further, a statement of recertification of medical necessity of the inpatient hospital care must be documented by the attending practitioner in the progress notes at least once every sixty (60) days. The statement by the attending practitioner at both admission and at recertification must be clearly identifiable and specific that the services are medically necessary.

Medical Records Service - Retention and Disclosure

The hospital must have a medical record service that has administrative responsibility for medical records. A medical record must be maintained for every individual evaluated or treated in the hospital. Contents of medical records must contain information to:

- justify admission and continued hospitalization;
- support the diagnosis; and
- describe the patient's progress and response to medications and services.

Documentation should include properly executed informed consent forms for procedures and treatments where written patient consent is required. There should be a discharge summary with the outcome of hospitalization, disposition of case, and provisions for follow-up care. [42 CFR § 482.24(c).]

The hospital must maintain or make available at a location within the State of Delaware, such records as are necessary or deemed necessary by the DMAP to fully disclose and substantiate the nature and extent of items and services rendered to the DMAP eligible, including all records necessary to verify the comparable charges for such items and services provided to non-DMAP individuals.

All records must be made available without notice for inspection and reproduction to authorized Federal or State representatives, including but not limited to Delaware's Medicaid Fraud Control Unit, for the purpose of conducting audits to substantiate claims, costs, and to determine the reasonableness and necessity of items or services provided to Medicaid recipients, or for any other appropriate purpose.

The hospital must retain medical, financial, and other supporting records relating to each DMAP claim for not less than five (5) years after the claim is submitted. In the event that the contract with the DMAP and the hospital is terminated, the hospital's records must remain subject to the DMAP regulations. Records involving litigation must be retained for one (1) year following the termination of such litigation.

General Billing Information

Revenue Center and Diagnosis Codes

Providers are required to use the UB92 billing form and to accurately indicate revenue and ICD-9 diagnosis codes for charges. All such codes are critical to receiving correct payment from the Delaware Medical Assistance Program (DMAP). Valid revenue codes can be found in the Uniform Billing and Training Manual. Valid ICD-9 diagnosis codes can be found in a current International Classification of Diseases publication.

Inpatient Hospital Days

The number of days of care charged for inpatient hospital services is always in units of full days. A day begins at midnight and ends 24 hours later. The midnight to midnight method is to be used in reporting days of care even if the hospital uses a different definition of days for statistical or other purposes.

Discharge

Room and board charges for the day of discharge are NOT covered and should not appear on the claim; however,

charges for ancillary services on the day of discharge are covered and should be included on the claim. If admission and discharge occur on the same day, the day is considered a day of admission and counts as one (1) inpatient day.

The DMAP will not cover any additional costs associated with a hospital stay when a patient, for personal reasons, chooses to continue to occupy his/her hospital accommodation beyond the time that the discharge order is issued.

Hospital services which are not medically necessary or "non-covered" (such as dental services for adults, plastic surgery and cosmetic treatment services, or infertility related services) should not be included on the UB92.

Non-Covered Services

Some services are NEVER covered by the DMAP (refer to the General Policy for a list of these services). If the inpatient hospital admission is only for dental services for persons age 21 and over, plastic surgery, cosmetic treatment services, or infertility related services, the hospital shall not bill the DMAP. If the inpatient hospital admission is for a covered diagnoses and dental services for persons age 21 and over, plastic surgery, cosmetic treatment services, or infertility related services are delivered, they may not be included in the inpatient bill. The procedure code(s) and charges shall NOT be reported. The following are non-covered services that cannot be billed to the DMAP.

Dental Services

All (routine and non-routine) dental services are restricted to recipients under twenty-one (21) years of age and must be authorized by the Division of Public Health or a local dental clinic who is contracted to provide EPSDT dental services to Medicaid 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, etc.

Plastic Surgery and Cosmetic Treatment Services

The DMAP does not reimburse any provider for cosmetic treatment or procedures or plastic surgery. 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.

Infertility Related Services

The DMAP does not cover any services relating 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.

Room Accommodations

Charges are allowed to be included on the UB92 for the reasonable cost of a private room or other accommodations more expensive than semi-private or ward. Such accommodations are allowed only when medically necessary. Private rooms will be considered medically necessary when the patient's condition requires him to be isolated for his/her own health or that of others. Private room certification of medical necessity by the physician must be on file before discharge.

Charges may also be included for the use of special facilities, such as intensive care, coronary care, etc., where medically necessary.

Diagnostic/Therapeutic Services

Diagnostic or therapeutic items or services ordinarily furnished to inpatients by the hospital or by others under arrangements with the hospital are covered. This category of covered services encompasses items and services not otherwise specifically listed as covered inpatient hospital services. Examples of these items/services include, but are not limited to: clinical laboratory services; therapies; surgical dressings splints; casts; prosthetic devices; braces; artificial limbs; etc. With respect to items that leave the hospital with the patient when they are discharged, the rules for determining whether the item is covered are the same as the rules set forth in the Supplies, Appliances and Equipment section.

The facility is prohibited from billing the DMAP for any service for which an enrolled DMAP provider intends to bill directly.

Nursing Services

Nursing services must meet applicable standards with

respect to organization, staffing and delivery of care, and preparation and administration of drugs. [42 CFR § 482.23.] The services of a private-duty nurse or other private-duty attendant, are excluded as inpatient hospital services.

Pharmaceutical Services

The hospital must have a pharmacy directed by a registered pharmacist or a drug storage area under competent supervision. There must be a full-time, part-time, or consulting pharmacist who is responsible for developing, supervising, and coordinating all the activities of the pharmacy. There must also be an adequate number of personnel to ensure quality pharmaceutical services. Current and accurate records must be kept for the receipt and disposition of all scheduled drugs. Drugs provided to patients must meet federal and state law and comport with applicable standards of safety and practice. [42 CFR § 482.25.]

Biologicals (any preparation made from living organisms or the products of living organisms and used as diagnosis, preventive, or therapeutic agents. Kinds of biologics are: antigens, antitoxins, serums, and vaccines) for use in the hospital, which are ordinarily furnished by the hospital for the care and treatment of inpatients, are covered and are recognized as an allowable cost item. If biologicals are supplied by other departments, reasonable oversight and care must be applied similar to the criteria specified for pharmaceutical services.

Radiology Services

The hospital must maintain, or have available, diagnostic radiologic services. A qualified full-time, part-time, or consulting radiologist must supervise the ionizing radiology services and must interpret only those radiologic tests that are determined by the medical staff to require a radiologist's specialized knowledge. [42 CFR § 482.26.]

Laboratory Services

The hospital must maintain, or have available, adequate clinical laboratory services that are performed in a Medicare approved hospital or independent laboratory. Emergency laboratory services must be available 24 hours a day. The laboratory must have procedures for proper receipt and reporting of tissue specimens. The director of the laboratory must be a pathologist or otherwise qualified by training and experience. [42 CFR § 482.27(a)-(c).]

There must be facilities for the procurement, safe keeping, and transfusion of blood. The hospital must

ensure that blood products are readily available, either through the hospital's own properly supervised blood storage facility or through an outside blood bank with which the hospital has an agreement. There must be procedures for prompt blood grouping, antibody detection, compatibility testing, and laboratory investigation of transfusion reactions. Samples of each unit of transfused blood must be retained for further testing in the event of reactions. [42 CFR § 482.27(d).]

Medical Social Services

Social services which contribute meaningfully to the treatment of a patient's condition, and are ordinarily furnished by the hospital are covered as inpatient hospital services. Such services include, but are not limited to:

- assessment of the social and emotional factors related to the patient's illness - their need for care, their response to treatment, and their adjustment to care in the facility;
- appropriate action to obtain casework services to assist in resolving problems in these area;
- assessment of the relationship of the patient's medical and nursing requirements to their home situation, their financial resources, and the community resources available to them in making decision regarding discharge.

Medical Services of an Intern or Resident

The medical services provided by an intern or resident under an "approved teaching program" of a hospital are included in the discharge rate where applicable.

Supplies, Appliances and Equipment

Supplies, appliances, and equipment which are ordinarily furnished by the hospital for the care and treatment of the recipient solely during his/her inpatient stay in the hospital are covered inpatient hospital services.

Under certain circumstances, the supplies, appliances, and equipment used during the inpatient stay are covered even though they leave the hospital with the patient when s/he is discharged. These are circumstances in which it would be unreasonable or impossible from a medical standpoint to limit the patient's use of the times to the periods during which the individual is an inpatient.

A temporary or disposable item which is medically necessary to permit or facilitate the patient's departure from the hospital and which is required until the patient can obtain a continuing supply, is covered as an inpatient hospital service. Examples of items covered under this rule includes, but are not limited to: tracheostomy or

drainage tubes, bandages, etc.

II. ACUTE CARE INPATIENT HOSPITAL

Overview

Acute care inpatient hospital services are covered by the DMAP only if the hospital is accredited by the Joint Commission on Accreditation of Hospitals and certified by the State agency responsible for licensing and certification.

Acute care inpatient hospitals which bill in this category must be enrolled with the DMAP and have a provider number ending in "05" with a specialty code of "W6".

Specific Billing Information

In addition to revenue and diagnosis codes, the facility must use HCPCS procedure codes when billing the DMAP for an inpatient stay where surgical procedures were performed. The facility, the operating surgeon, and the anesthesiologist must bill the same HCPCS procedure code. The documentation required to support the service billed must be maintained by the provider.

If a patient is transferred from an acute care bed to a certified inpatient physical rehabilitation unit, the patient must be discharged from acute care and readmitted to the physical rehabilitation unit. The hospital should bill one discharge for acute care and one discharge for physical rehabilitation using the appropriate revenue codes and provider identification numbers. The acute care discharge must not include any of the following certified physical rehabilitation accommodation revenue codes: 118, 128, 138, 148, or 158.

A transfer from an acute care bed to the certified inpatient physical rehabilitation unit must be primarily for the purpose of receiving physical rehabilitation services. Admission records should include adequate documentation to justify physical rehabilitation.

Patients must be admitted to the physical rehabilitation unit using the appropriate accommodation code(s) on the claim.

Observation Services

The DMAP covers outpatient observation services in acute care settings. Outpatient observation services must be physician-ordered services, provided by a facility which are reasonable and necessary to evaluate an outpatient's condition or determine the medical necessity of an

inpatient admission. Observation services are those hospital services furnished on a hospital's premises and are not required to be provided in the actual outpatient area or on a designated unit. The observation services can be provided in any area of the facility with periodic monitoring by the hospital staff.

Observation services are implemented for an anticipated short length of stay.

Observation services must not exceed forty-eight (48) continuous hours. The physician must indicate in the order that the patient should be moved to an observation bed or service. The patient is still considered an outpatient. The provider should clearly document the time at which the patient is admitted as an outpatient in observation status.

The following types of services are *not* covered as observation services:

- services that are not reasonable and necessary for the diagnosis of the patient
- services provided for the convenience of the patient or provider
- services that are not physician ordered.

Providers are not expected to substitute outpatient observation service for medically appropriate inpatient admissions. Same day surgeries that require care beyond the customary stay will be subject to the observation criteria review by the DMAP if admitted for one (1) day.

If a patient is admitted as an inpatient from observation services, all outpatient services rendered by the admitting facility prior to the admission are included in the inpatient discharge payment and may not be billed separately as an outpatient claim. During the review process, the DMAP will consider only the medical evidence available to the attending physician at the time the admission decision was made.

Sterilizations and Hysterectomies

The DMAP reimburses acute care inpatient hospitals for voluntary sterilizations (for both males and females) and medically necessary hysterectomies if the criteria set by federal and state regulations are met and if it is medically necessary that the procedure be performed in an inpatient setting.

Voluntary Sterilization - Consent Form

When a voluntary or elective sterilization is performed, the hospital *is required* to attach the DMAP's standardized

Consent Form to the UB92 claim form. It is the responsibility of the hospital to secure a properly executed Consent Form from the operating surgeon. The DMAP does NOT cross-reference claims. Refer to Appendix D for a copy of the Consent Form.

Hysterectomies - Awareness Form

The Awareness Form *is required* to be attached to the UB92 claim form for medically necessary hysterectomy procedures which may result in sterilization. It is the responsibility of the hospital to secure a properly executed Awareness Form from the operating surgeon. The DMAP does NOT cross-reference claims. Refer to Appendix E for a copy of the Awareness Form.

Unilateral/Bilateral Sterilization Procedure Codes

Certain HCPCS procedure codes may describe a procedure which is performed for the purpose of voluntary sterilization or may describe a medically necessary procedure which may or may not result in sterilization. Claims for these procedures must be accompanied by either an Awareness or Consent Form depending on the exact nature of the surgery. A unilateral procedure *requires* an Awareness Form while a bilateral procedure *requires* a Consent Form. It is the responsibility of the hospital to secure a properly executed Consent or Awareness Form from the operating surgeon. The DMAP does NOT cross-reference claims.

Sterilization of the Mentally Challenged

In accordance with 42CFR Subsection 441, Subpart F-Sterilizations and the Delaware Budget Epilogue, Section 121(a)(ii), the DMAP does not reimburse for the sterilization of the mentally challenged.

Although the DMAP does not cover the sterilization of the mentally challenged, the appropriate parties may obtain this service through another source by petitioning the Court of Chancery in the county in which the person to be sterilized resides or in which the institution (s)he resides is located.

Abortions

Endangerment to Mother's Life

Federal regulation, 42 CFR §441.203, permits the DMAP to reimburse acute care inpatient general hospitals for abortions if the "life of the mother would be endangered by the pregnancy" and if the inpatient admission is medically necessary.

A physician must certify in writing, that in his/her professional judgment, the life of the mother would be endangered if the fetus was carried to term. The certification must contain the patient's name, address, Medical Assistance ID number, and documentation of the reason why the pregnancy endangers the mother's life. In addition, the hospital must attach the complete medical record to the UB 92.

It is the responsibility of the facility to secure both a copy of the certification letter and the complete medical record (including hospital record) from the attending practitioner for their billing purposes.

Rape or Incest

Effective December 31, 1993, in compliance with the Hyde Amendment provision, the DMAP may reimburse for abortions to terminate pregnancies resulting from an act of rape or incest.

The practitioner must submit a letter stating that the request for the abortion is due to rape or incest and provide written documentation that the incident was reported to the police. In cases of incest where the victim is under 18 years of age, the incident must also have been reported to the Department of Services for Children, Youth and their Families.

It is the responsibility of the facility to secure a copy of the practitioner's letter that documents the incident was reported to the police and if applicable, to the Department of Services for Children, Youth and Their Families.

If an adult has just cause for not reporting a rape to the police, the practitioner must document the reason in writing. The DMAP will consider coverage on a case by case basis.

Hospitalization for Severely & Persistently Ill Clients

Individuals who are enrolled with a managed care organization (MCO) but are determined severely and persistently ill (SPI) by the Division of Alcoholism, Drug Abuse, and Mental Health (DADAMH) may receive inpatient psychiatric services in an acute care hospital when authorized by DADAMH.

The procedure for obtaining authorization and payment for this population is as follows:

The hospital will identify a referred patient as SPI by either:

- calling the MCO for service authorization and

being informed by the

- MCO that the patient is the responsibility of DADAMH, or
- receiving the referral from DADAMH with immediate information about the SPI status of the patient.

The hospital will contact the DADAMH Program Directors for authorization for admission or continued stay. If these individuals or their designees are not available or if the hospital needs authorization during evening or weekend hours, the hospital may call the Mobile Crisis Intervention Service.

DADAMH will fax or send you an authorization form.

The hospital must use the unique provider number (ending with "05") assigned by the DMAP when billing for Medicaid managed care clients who are SPI and managed by DADAMH.

The bill must be submitted to Medicaid with a copy of the DADAMH authorization form through the fiscal agent, using normal manual billing procedures. Any billing without this authorization will deny. There must be an exact match between your bill and the authorization form for the fields:

- Client name;
- Client ID#;
- Hospital name;
- Hospital ID#;
- Admission date; and
- Approved duration of stay (total number of nights authorized).

If the authorization does not match your billing information, call your DADAMH contact for an updated form before billing.

Reimbursement

An acute care inpatient hospital facility is reimbursed based upon:

- One of two prospectively set payments per discharge:
 1. Nursery Discharge (revenue codes 17X, except for 175)
 2. General Discharge (all other valid revenue codes [including 175] regardless of accommodation type, diagnosis, and procedures performed.)
- Admissions which reach a pre-determined cost threshold may be reimbursed and amount in addition to the discharge payment.

- Out-of-state hospital reimbursements are based on the discharge and outlier rates paid to a similar in-State facility.

Medicaid Credit Balance Report (MCBR)

General Information

Title XIX of the Social Security Act established the Medicaid Program under which federal grants are provided to states for medical assistance to low income persons. The Program is jointly financed by the Federal and state governments and administered by the states. Within broad Federal rules, each state decides eligibility groups, types and ranges of services, payment levels for services, and administrative and operating procedures. The state's description of its Medicaid Program is called its State Plan.

Payments for services included within the State Plan are made directly by the state to the individuals or entities that provide the services. Each state designates a single State Agency which administers the operation of its Medicaid Program. On the Federal level, the Health Care Financing Administration (HCFA) within the Department of Health and Human Services oversees the Title XIX Program, monitors compliance with Federal requirements, provides Federal matching funds for qualified Medicaid expenditures incurred by the states, and reviews Medicaid expenditures for allow ability and accuracy. States report their Medicaid expenditures and claim Federal matching moneys on a quarterly basis. Federal Medicaid regulations under 42 CFR 433.300 subpart F, mandates that States adjust any outstanding Medicaid credit balances within sixty (60) days after notification by a provider.

Federal Medicaid regulations require that the state Medicaid agency take reasonable measures to determine the legal liability of third parties to pay for services under the State Medicaid Plan. In summary, these regulations require that all benefits available through other party payers be exhausted, since the Medicaid Program is the payer of last resort. Federal Financial Participation is not available if the State Medicaid Agency fails to fulfill the Federal requirements with regard to established liability and seeking reimbursements.

HCFA has completed reviews in a number of states to determine if the Federal requirements were being met. HCFA discovered instances where Medicaid funds were being retained by hospitals, even though other third party payments sources had made payments for the same service. HCFA's review revealed that a large number of patient records indicated credit balances in cases where the

Medicaid Program was the secondary payer. In many cases, the hospital provider billed the Medicaid Program and a third party payer. Payments made by a third party payer were credited to patient accounts, along with payments received from the Medicaid Program. However, the appropriate refunds were not made to the Medicaid Program. Credit balances were also caused by duplicate Medicaid payments.

When such circumstances occur, the provider is obligated to immediately refund the appropriate credit balances to appropriate Medicaid authorities.

Purpose

To insure that Medicaid properly recovers improper or excess program payments resulting from patient billing or claims processing errors, the DMAP has established a Hospital Provider Credit Balance reporting requirement. HCFA has similarly mandated credit balance reporting requirements under the Medicare Program.

All hospital providers of health care services participating in the DMAP are required to submit a Medicaid Credit Balance Report (MCBR). This is a requirement for all in-State and out-of-state acute care hospitals who were paid greater than \$10,000 in the quarter (for either in-patient and/or out-patient services), by DMAP. The MCBR must be submitted even though there are no credit balances on Medicaid accounts at the close of business in the reporting period.

A completed MCBR must be submitted at the end of each quarter, to the Medicaid Surveillance and Utilization Review Unit (SUR), Lewis Building, P.O. Box 906, New Castle, Delaware 19720 within 30 days after the close of each calendar quarter.

The MCBR will be specifically used to monitor the identification and recovery of "credit balances" due the DMAP. Generally, when a provider receives improper or excessive payment for a claim, it is reflected in their accounting records (patient accounts receivable) as a "credit". For example, if payments are made by the DMAP and another insurer/payer, DMAP must be reimbursed. DMAP is always considered as the payer of last resort when a patient has another insurer. However, DMAP credit balances include money due the DMAP regardless of its classification in a provider's accounting records. For example, if a provider maintains credit balance accounts for a stipulated period (e.g., 90 days), and then transfers the accounts or writes them off to a holding account, this does not relieve the provider of its liability to the DMAP. In these instances, the provider is responsible for identifying and repaying all of the moneys due to the

DMAP.

Completing the MCBR

The MCBR consists of a certification page and a detail page (see Appendix B and C of this manual). The certification page is to be signed and dated by an authorized individual such as an officer or administrator of the provider organization. If no Medicaid credit balances are reflected in the provider's records for the reporting quarter, the certification page must still be signed and submitted attesting to this fact. The detail page requires specific information on each credit balance account including both Medicaid Managed Care Recipients and Fee For Service Recipients). The detail page may be copied, as necessary, to accommodate all credit balances being reported. See Appendix A for specific instructions on completing the MCBR.

Submitting the MCBR

The due date for submitting the MCBR to the DMAP is not later than 30 days from the close of the quarter. The report will include all Medicaid credit balances reflected in the provider's accounting records including transfer, holding or other general accounts used to accumulate credit balance funds) as of the close of business each calendar quarter. **REPORT ALL SUSPECTED MEDICAID CREDIT BALANCES REFLECTED IN THE PROVIDER'S RECORDS REGARDLESS OF WHEN THEY OCCURRED. DO NOT** adjust/void claim through the DMAP Fiscal Agent or send a check to Medicaid or the DMAP Fiscal Agent for claims/amounts on the MCBR. Medicaid will determine the appropriate credit balance which must be refunded to Medicaid and notify the provider concerning this repayment. It is the provider's responsibility to report and repay all improper or excess payments that have been received from the time the provider began participation in the DMAP. Penalties for non-timely submission or failure to submit the MCBR, could result in (but are not limited to) the suspension of the Provider's Medicaid payments and/or effect the provider's eligibility to participate in DMAP.

Validation

By contract, providers agree to allow the DMAP, and/or its authorized representatives, access to all requested financial and medical records, as appropriate, including private pay records. The DMAP retains the right to access records and reports to validate the MCBR. The DMAP will determine the necessity to access records and reports. The DMAP and/or its authorized representatives are also permitted to reproduce records as they deem appropriate.

III. CERTIFIED PHYSICAL REHABILITATION WING OF AN ACUTE CARE INPATIENT HOSPITAL**Overview**

A provider who bills in this category must be enrolled with the DMAP and have a provider number ending in "05" with a specialty category code of R7, which specifies a Certified Physical Rehabilitation Wing of an Acute Care Inpatient Hospital. As used in the context of this policy, certified means a hospital that is accredited by the Joint Commission on Accreditation of Hospitals or meets Medicare standards as a distinct physical rehabilitation unit. Distinct physical rehabilitation units must meet the requirements specified in 42CFR §412.29 and §412.30.

Specific Billing Information

Requests for reimbursement from the DMAP for certified physical rehabilitation services provided in an acute care setting must meet the following criteria:

- The acute care inpatient hospital must be certified to provide inpatient physical rehabilitation services in order to receive reimbursement from DMAP for admission to inpatient physical rehabilitation wings.
- A certified rehabilitation provider number must be used to submit any claim for an admission to a certified inpatient physical rehabilitation wing in an acute care inpatient hospital.

Claims submitted for DMAP reimbursement under the certified physical rehabilitation provider number may only include accommodation revenue codes: 118, 128, 138, 148, and 158. Accommodations must be entered in revenue code sequence. In addition, the claim must include the appropriate ICD-9-CM diagnosis code corresponding to the diagnosis of the patient condition which prompted admission to the certified physical rehabilitation unit.

Inpatient acute care hospitals are required to bill one discharge, which includes charges from admission to discharge of the patient, for each certified physical rehabilitation unit stay.

Prior Approval

Except for providers located in New Jersey, Pennsylvania, Maryland, and the District of Columbia, all certified physical rehabilitation services in acute care inpatient hospitals outside of Delaware requires approval prior to reimbursement. Refer to the General Policy for

details regarding approval procedures.

Reimbursement

A certified physical rehabilitation wing in an acute care inpatient hospital is reimbursed based upon the facility's current acute care Medicaid reimbursement methodology. Refer to Section II, Acute Care Inpatient Hospital, Reimbursement.

The DMAP established standards for DMAP reimbursement of certified physical rehabilitation services provided in an acute care inpatient hospital. The scope of these standards do NOT apply to psychiatric and addiction rehabilitation units. Services provided in psychiatric, detoxification and substance abuse rehabilitation units for Medicaid recipients are not covered under this category for DMAP reimbursement and should not appear on the claim form. For individual 20 years of age and under and for individuals 65 years and older, these services may be covered under other DMAP related categories and programs. They must not be billed under the certified physical rehabilitation provider number.

IV. INPATIENT PSYCHIATRIC HOSPITAL/FACILITY**Overview**

Long-term inpatient psychiatric hospital/facility services are covered by the DMAP for individuals under age 21 and over age 65 years, and only in facilities for mental diseases that have been accredited by the Joint Commission on Accreditation of Hospitals and certified by the State agency responsible for licensing and certification.

A provider who bills in this category must be enrolled with the DMAP and have a provider number ending in "25" with a provider specialty "Y1".

Individuals must be found to require an intermediate level of care and inpatient psychiatric services. Referrals for this program, for individuals over age 65 years, should be made to the appropriate Long Term Care Medicaid Financial Eligibility Unit (refer to the General Policy for the address and telephone number to the Robscott Building in Newark and the Milford State Service Center in Milford.) Medicaid eligible recipients through age 17 years must be approved for this program by the Department of Services for Children, Youth & Their Families. Those individuals between the ages of 18 and 21 years may be approved for this program through the Division of Alcoholism, Drug Abuse and Mental Health (DADAMH.)

Mental health and substance abuse services are covered, with limits, for individuals between ages 21 and 65 who are enrolled with a Managed Care Organization (refer to the General Policy, Section II - Diamond State Health Plan, Coverage Under the MCO Benefits Package).

Specific Criteria

A psychiatric hospital/facility must:

- be primarily engaged in providing, by or under the supervision of a doctor of
- medicine or osteopathy, psychiatric services for the diagnosis and treatment of mentally ill persons;
- meet the requirements of 42CFR, §§ 482.1-482.23 and §§ 482.25-482.57;
- maintain clinical records on all patients including records sufficient for the DMAP to determine the degree and intensity of treatment as specific in 42 CFR § 482.61; and
- meet staffing requirements specified in 42 CFR § 482.62.

Specific Billing Information

Specific billing information for psychiatric hospital/facility services may be found in the Billing Instructions of this manual.

Hospitalization for Severely and Persistently Ill Clients

Individuals who are enrolled with a managed care organization (MCO) but are determined severely and persistently ill (SPI) by the Division of Alcoholism, Drug Abuse, and Mental Health (DADAMH) may receive inpatient psychiatric services in a psychiatric hospital/facility when authorized by DADAMH. For more information, refer to the Acute Care Inpatient Hospital section of this manual.

Reimbursement

The DMAP always covers the deductible/co-insurance after Medicare *EXCEPT* for services provided in a psychiatric hospital/facility for individuals aged 21 through 64 years. Medicaid does not cover this service for this age group even if Medicare does.

Inpatient psychiatric hospital/facility reimbursement is a prospectively set per diem based on annually reported costs, not to exceed the Medicare rate for the same service.

An out-of-state inpatient psychiatric hospital/facility is reimbursed at the Medicaid rate established by the State

in which the hospital/facility is located.

V. INPATIENT REHABILITATION HOSPITALS

Overview

Inpatient rehabilitation hospitals must be accredited by the Joint Commission on Accreditation of Hospitals and certified by the State agency responsible for licensing and certifications.

Providers who bill the DMAP for inpatient rehabilitation hospital services must be enrolled with the DMAP and have a provider number ending with "05" and a provider specialty "R1".

Inpatient rehabilitation hospital services are provided only for *physical* rehabilitation.

Inpatient rehabilitative care in a hospital must be reasonable and necessary (in terms of efficacy, duration, frequency, and amount) for the treatment of the individual's medical condition. The individual must require:

- close medical supervision by a physician with specialized training or experience in rehabilitation;
- twenty-four (24) hours rehab nursing;
- an intense level of physical therapy, occupational therapy, or if needed, speech therapy, psychological services, or prosthetic-orthotic services (at least 3 hours per day of physical and/or occupational therapy, in addition to any other required therapies or services.)
- a multidisciplinary team approach to the delivery of the program and a coordinated program of care.

The initial assessment must document that there is a reasonable expectation that the intensive rehabilitation program will lead the individual to experience significant practical improvement.

Realistic rehabilitative goals must be established for the individual.

Prior Approval

Currently, Delaware does not have any separately licensed inpatient rehabilitation hospitals.

Referrals for out-of-state rehabilitation hospital services must be made to Medicaid's Medical Review Team (refer to the General Policy, Services Requiring Prior

Authorization section for address). Referrals must include:

- a completed MAP-25 (see Appendix F of this manual);
- denial letter(s) from a rehabilitation wing(s) of an acute care hospital located in Delaware that documents that they have been denied admission to an in-state facility because the needed rehabilitation services are not available; and
- the name of the rehabilitation hospital to which the patient is being referred.

Eligible Medicaid recipients must be referred to a facility that is licensed as a rehabilitation hospital and which is enrolled, or will become enrolled, as a provider with the DMAP. Medical eligibility for this program is determined by the Medicaid Medical Review Team. If the referral is approved, the rehabilitation hospital will be notified by the DMAP. A letter of notification from the DMAP will include:

- name of Medicaid recipient;
- recipient's Medicaid ID #;
- dates for which inpatient rehabilitation hospital services are approved (date of admission and scheduled date of discharge);
- request for extension information; and
- approval/authorization number.

Specific Billing Information

Rehabilitation hospital providers are required to use the UB92 billing form and to accurately indicate the accommodation revenue codes (118, 128, 138, 148, and 158). In addition, the claim should include the appropriate ICD-9-CM diagnosis code corresponding to the diagnosis of the patient condition.

When billing the DMAP for inpatient rehabilitation services, the provider must include the assigned prior authorization number on the claim form.

Reimbursement

Out-of-state inpatient rehabilitation hospitals are reimbursed at the Medicaid rate established by the State in which the hospital is located.

VI. INPATIENT SPECIALTY HOSPITAL

Overview

A specialty hospital may be a wing in an acute care hospital or a freestanding facility and must be certified/

licensed by the Joint Commission on Accreditation of Hospitals as a "Specialty Hospital". Currently, Delaware does not have a certified/licensed specialty hospital.

A provider who bills in this category must be enrolled with the DMAP and have a provider number ending in "05" with a provider specialty "H7".

Specialty hospitals do not have operating or emergency rooms. Therefore, major surgical procedures are not performed in specialty hospitals.

Prior Approval

Admission into a specialty hospital must be approved by Medicaid's Medical Review Team. Requests for admission into a specialty hospital must be submitted in writing and mailed or faxed to:

Division of Social Services
P.O. Box 906, Lewis Building
New Castle, DE 19720
Attention: Out-of-State Coordinator

FAX 302-577-4899

The attending physician must provide the following information:

- the patient's diagnoses and treatment provided to date;
- what services will be provided in the specialty hospital that cannot be provided in Delaware;
- what does the physician wish to accomplish by the admission into a specialty hospital;
- length of stay required;
- name, address, telephone number of the facility; and
- name of contact person within the facility.

If approval is given for the admission of an eligible Medicaid recipient into an enrolled specialty hospital, the Medicaid Out-of-State Coordinator will assign an authorization number.

If the specialty hospital is not enrolled with the DMAP, the Out-of-State Coordinator will initiate enrollment procedures through Medicaid's Fiscal Agent.

Specific Billing Information

When billing DMAP the specialty hospital is required to indicate the authorization number assigned by Medicaid's Out-of-State Coordinator in form locator 63 of the UB92.

Claims cannot be processed without this authorization number.

Reimbursement

Out-of-state specialty hospitals are reimbursed at the Medicaid rate established by the State in which the hospital is located.

**OUTPATIENT HOSPITAL PROVIDER
SPECIFIC MANUAL
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Outpatient services are provided to the majority of Medicaid clients through a Managed Care Organization (MCO). Outpatient services are included in the MCO benefits package. All Medicaid clients who are enrolled with an MCO must receive outpatient services through the MCO.

This manual reflects the policies as they relate to Medicaid clients who are exempt from managed care coverage (see list of those exempt from managed care coverage in the Managed Care section of the General Policy).

I. OVERVIEW

This manual contains information specifically applicable to outpatient hospital services.

An outpatient hospital, for the purpose of this policy manual, is defined as an institution which provides preventive, diagnostic, therapeutic, rehabilitative, or palliative services to outpatients in an institution licensed or formally approved as a hospital by an officially designated authority for state standard setting. Except for requirements relating to medical supervision of nurse-midwives, the institution must meet requirements for participation in Medicare and Medicaid as a hospital and services must be furnished under the direction of a physician or a dentist.

A practitioner, for the purpose of this policy manual, is defined as a duly licensed Doctor of Medicine, Doctor of Dental Surgery, Doctor of Osteopathy, Doctor of Podiatric Medicine, Doctor of Optometry, or Certified Nurse Midwife. Practitioner services whether furnished or elsewhere, are defined as services provided:

- within the scope of practice as defined by state law; and

- by or under the personal supervision of an individual licensed under state law to practice medicine.

A “hospital outpatient” or “day patient” is a person who has not been admitted by the hospital as an inpatient but is registered on the hospital records an outpatient and receives services (rather than supplies alone) from the hospital. An inpatient of a hospital cannot be considered an outpatient of that or any other hospital. However, an inpatient of a nursing facility may be considered an outpatient of a hospital.

Hospitals provide two distinct types of services to outpatients, namely: therapeutic services and diagnostic services.

Therapeutic services provided by a hospital on an outpatient basis are those services and supplies (including the use of hospital facilities) that are incident to the services of physicians in the treatment of patients. Therapeutic services also include clinic services and emergency room services. Drugs and biologicals are covered if they are of the type which cannot be self-administered. Biologicals are defined as medicinal preparations made from living organisms and their products, including serums, vaccines, etc.

To be covered as incident to physician’s services, the services and supplies must be furnished as an integral, although incidental, part of the physician’s professional service in the course of diagnosis or treatment of an illness or injury. The services and supplies must be furnished on a physician’s order by hospital personnel and under the physician’s supervision. This does not mean that each occasion of service by a non-physician need also be the occasion of the actual rendition of a personal professional service by the physician. However, during any course of treatment rendered by auxiliary personnel, the physician must personally see the patient periodically and sufficiently often to assess the course of treatment and the patient’s progress and, where necessary, to change the treatment regimen. An outpatient hospital service or supply would not be considered incident to a physician’s service if the attending physician merely wrote an order for the services or supplies and referred the patient to the hospital without being involved in the management of the course of treatment.

Diagnostic services furnished to an outpatient by a hospital or by others under arrangements made by a hospital in facilities supervised by the hospital or its organized medical staff are covered when such services are ordinarily furnished by the hospital to its outpatients for the purpose of diagnostic study. A service may be

regarded as “diagnostic” if it is an examination or procedure to which the patient is subjected or which is performed on materials derived from the patient, to obtain information to aid in the assessment of a medical condition or the identification of a disease. Among these examinations and tests are diagnostic laboratory services such as hematology and chemistry, diagnostic X-rays, isotope studies, EKGs, pulmonary function studies, thyroid function tests, psychological tests, and other tests given to determine the nature and severity of an ailment or injury.

Covered diagnostic services to outpatients include the services of nurses, psychologists, and technicians, drugs and biologicals necessary for diagnostic study, and the use of supplies and equipment.

II. PROVIDER RESPONSIBILITY

All providers have the ethical and programmatic responsibility to direct recipients to the most appropriate, medically necessary, and cost-efficient care possible.

Practitioners should be aware of their responsibility when signing or completing an order or prescription for any service covered by the Delaware Medical Assistance Program (DMAP) on behalf of a Medicaid recipient. The decision to allow or deny some necessary services is based on the practitioner’s assessment of the patient’s condition. If the practitioner misrepresents or falsifies the essential information upon which federal/state funds is based, (s)he may, upon conviction, be subject to a fine and imprisonment under federal/state laws. In order to avoid potential prosecution, the practitioner must clearly and accurately represent his/her clinical assessment of the patient’s condition and the functional status (s)he is using in prescribing the necessary services.

It is important that practitioners not refer patients to the emergency room(s) for routine matters. Practitioners should consider referrals to the outpatient emergency room(s) only when a potential life-threatening situation exists. “Practitioner-induced (outpatient) emergency room abuse” causes the cost of medical care to increase and adds an undue burden on everyone supporting and associated with the Medicaid Program.

III. OUTPATIENT HOSPITAL SERVICES

Observation Services

The DMAP covers outpatient observation services in acute care settings. Outpatient observation services must be physician-ordered services, provided by a facility which are reasonable and necessary to evaluate an outpatient’s

condition or determine the medical necessity of an inpatient admission. Observation services are those hospital services furnished on a hospital's premises and are not required to be provided in the actual outpatient area or on a designated unit. The observation services can be provided in any area of the facility with periodic monitoring by the hospital staff.

Observation services are implemented for an anticipated short length of stay and must not exceed 48 continuous hours. The physician must indicate in the order that the patient should be moved to an observation bed or service. The patient is still considered an outpatient. The provider should clearly document the time at which the patient is admitted as an outpatient in observation status.

The following types of services are *not* covered as observation services:

- Services that are not reasonable and necessary for the diagnosis of the patient.
- Services provided for the convenience of the patient or provider.
- Services that are not physician ordered.

For patients who are admitted as an inpatient from observation services, all outpatient services rendered by the admitting facility prior to the admission are included in the inpatient discharge payment and may not be billed separately as an outpatient claim.

Dental Services

When medically necessary, eligible Medicaid recipients may receive dental services from an outpatient hospital emergency department or outpatient hospital clinic.

Dental services are limited to recipients under age twenty-one (21) years. Procedures that are purely dental in nature are not covered by the DMAP for recipients age twenty-one (21) years and over in any setting.

Oral Surgery

Oral surgery is defined as surgery and services related to the surgery of the maxillo-facial area (jaw bone). Oral surgery that is medical in nature is covered by the DMAP.

Laboratory Services

The Clinical Laboratory Amendments of 1988 (CLIA) were enacted by congress to improve the quality and reliability of clinical laboratory testing. CLIA applies to any provider who performs any laboratory test used for

health purposes, no matter how simple or routine.

The DMAP reimburses enrolled providers for properly ordered, medically necessary, non-experimental, CLIA-certified laboratory services when properly performed, documented, and billed.

All tests performed by an outpatient hospital facility laboratory must be documented by a written order from the ordering practitioner. The signing of the practitioner's name by another individual or the use of facsimiles are not acceptable. Any telephone order for laboratory testing must be supported by a signed order from the practitioner.

An outpatient hospital facility laboratory may bill for those divisions of services for which they have been certified by CLIA. An outpatient hospital facility laboratory may use a reference laboratory which is CLIA-certified to perform a test for which the outpatient hospital facility lab is not certified.

Providers are never to redefine HCPCS procedure codes to meet the needs of their individual outpatient hospital facility laboratory.

Providers are reminded to choose their HCPCS procedure codes carefully. Do not use multiple procedure codes when a single procedure code accurately describes the services rendered.

The level of service billed must correspond to the definition of that particular code rather than the expected reimbursement amount. The documentation required to support the level of service billed must also be maintained by the provider.

Even though the Delaware Medical Assistance Program (DMAP) uses HCPCS procedure codes as its instrument in facilitating payment to providers, this does not mean that all HCPCS procedure codes are covered by DMAP.

CLIA Certificate of Waiver Tests

The following clinical diagnostic laboratory tests are CLIA Certificate of Waiver tests. These are the only HCPCS procedure codes that may be billed to the DMAP by a provider who holds a CLIA Certificate of Waiver. If there is a specific product name or manufacturer listed, a provider who holds a CLIA Certificate of Waiver may only bill if the test is done **USING THE SPECIFIC PRODUCT AND MANUFACTURER AS LISTED.**

PROPOSED REGULATIONS

CODE	DEFINITION	PRODUCT NAME	MANUFACTURER
*80002 effective 1/23/96	Glucose; quantitative	Cholestech LDX	Cholestech
*80002 effective 1/23/96	Triglycerides	Cholestech LDX	Cholestech
*80002 effective 1/1/97 (replaces G0054)	Cholesterol, total	1. Chemtraka Accumeter 2. Advanced Care 3. Boehringer Mannheim AccuChek Instant Plus Cholesterol 4. Cholestech LDX	1. Chemtrak 2. Johnson & Johnson 3. Boehringer Mannheim 4. Cholestech
81002	Urinalysis, by dipstick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH, protein, specific gravity, urobilinogen, any number of these constituents; non-automated, without microscopy	Various	Various
81025	Urine pregnancy test, by visual color comparison methods	Various	Various
82044 effective 1/23/96,	Albumin; urine, microalbumin semiquantitative (eg, reagent strip assay)	Boehringer Mannheim Chemstrip Micral	Boehringer Mannheim
82270	Blood, occult; feces screening, 1-3 simultaneous determinations	Various	Various
82273 effective 1/23/96	Blood, occult; other sources, qualitative	SmithKline Gastrocullt	SmithKline
82950 effective 1/1/97 (replaces G0055)	Glucose; Post glucose dose	HemoCue B-Glucose Photometer	Hemo-Cue
82951 effective 1/1/97 (replaces G0056)	Glucose; tolerance test (GTT), three specimens (includes glucose)	HemoCue B-Glucose Photometer	HemoCue
82952 effective 1/1/97 (replaces G0057)	Glucose; tolerance test, each additional beyond three specimens	HemoCue B-Glucose Photometer	HemoCue
82962	Glucose, blood by glucose monitoring device(s) cleared by the FDA specifically for home use	Various	Various
8026	Hemoglobin; by copper sulfate method, non-automated	Various	Various
83718 effective 1/23/96	Lipoprotein, direct measurement; high density cholesterol (HDL cholesterol)	Cholestech LDX	Cholestech
83986 effective 1/23/96	pH, body fluid, except blood. Using qualitative color comparison	Various	Various
85013	Blood count; spun microhematocrit	Various	Various
85018 effective 1/1/97 (replaces Q0116)	Blood count; hemoglobin	Hemoglobin by single instrument with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout	HemoCue
85651	Sedimentation rate, erythrocyte; non-automated	Various	Various
86588 effective 1/23/96	Streptococcus, screen, direct	Quick Vue In-Line One-Step Strep A Test	Quidel
87072 effective 1/23/96	Culture or direct bacterial identification method, each organism, by commercial kit, any source except urine	Serim Pyloritek Test Kit	Serim

*If one (1) or two (2) of these tests are done, the provider must bill procedure code 80002 with one (1) unit. If all three (3) of these tests are done, the provider must bill

procedure code 80003 with one (1) unit.

NOTE: The DMAP does not cover any services relating solely to the treatment of infertility. Therefore, the following waiver test is not reimbursable by the DMAP:

84830 Ovation tests, by visual color comparison methods for human luteinizing hormone

CLIA Certificate for Provider-Performed Microscopy Procedures (PPMP)

The following clinical diagnostic laboratory tests are CLIA provider-performed microscopy procedures. A provider who holds a CLIA Certificate for Provider-Performed Microscopy may bill the DMAP for the following procedures in addition to the Certificate of Waiver tests.

81000 Urinalysis, by dipstick or tablet reagent for bilirubin, glucose, hemoglobin, ketones, leukocytes, nitrite, pH, protein, specific gravity, urobilinogen, any number of these constituents; non-automated, with microscopy

81015 Urinalysis; microscopic only

89190 Nasal smear for eosinophils

G0026 Fecal leukocyte examination

NOTE: The DMAP considers the following provider-performed microscopy procedures to be part of the physician evaluation and management service. Therefore, the following are not separately reimbursable by DMAP:

Q0111 Wet mounts, including preparations of vaginal, cervical or skin specimen

Q0112 All potassium hydroxide (KOH) preparations

Q0113 Pinworm examinations

NOTE: The DMAP does not cover any services relating solely to the treatment of infertility. Therefore, the following provider-performed microscopy procedures are not reimbursable by DMAP:

Q0114 Fern test

Q0115 Post-coital direct, qualitative examinations of vaginal or cervical mucous

G0027 Semen analysis; presence and/or motility of sperm excluding Huhner test

CLIA Certificate of Registration Tests

A provider who holds a CLIA Certificate of Registration may bill the DMAP for any clinical diagnostic laboratory test for which they have received CLIA certification.

Multiple Units Of Service

The following restrictions apply when billing for multiple units of service:

- Repetition of the same test on the same specimen must not be billed.
- When the same test is performed on separate specimens collected on the same day from the same patient, bill for multiple units of the appropriate HCPCS procedure code. In form locator (FL) 84 of the UB92 which is used to explain unusual
- services or circumstances, note the times that the specimens were collected.

EXAMPLE: If a glucose is drawn at 8 AM and again at 2 PM on the same day, bill for two units of 80002. In form locator (FL) 84 of the UB92, note that the specimens were collected at 8 AM and 2 PM.

- When different procedures are described by one HCPCS procedure code, bill for multiple units of service. In form locator (FL) 84 of the UB92 which is used to explain unusual services or circumstances, identify the procedures performed.

EXAMPLE: When both a wound culture and an eye culture are performed on the same day, bill for two units of 87070. In form locator (FL) 84 of the UB92, state that one wound culture and one eye culture were performed.

Pregnancy Tests

The following restrictions apply:

- HCPCS procedure code 81025 (Urine pregnancy test, by visual color comparison methods) should be used for pregnancy tests performed on urine samples that are reported as positive or negative by a visual color comparison.
- HCPCS procedure code 84703 (Gonadotropin, chorionic [hCG]; qualitative) should be used for pregnancy tests reported as positive or negative.
- HCPCS procedure code 84702 (Gonadotropin, chorionic [hCG]; quantitative) should be used when determining the range of values of the beta sub-unit of the chorionic gonadotropin. **DO NOT USE THIS CODE FOR ROUTINE PREGNANCY TESTS.**

Panels And Profiles (80002-G0060)

Panels or profiles are groups of laboratory tests that are

performed and billed as a single unit. Providers must use the appropriate single procedure code that describes the group of tests being performed.

The individual HCPCS procedure codes for the 22 tests listed below are NOT used by DMAP.

Name of Test	Individual HCPCS Procedure Codes Which Are Not Used
Alanine aminotransferase (ALT, SGPT)	84460
Albumin	82040
Aspartate aminotransferase (AST, SGOT)	84450
Bilirubin, direct	82250, 82251
Bilirubin, total	82250, 82251
Calcium	82310
Carbon dioxide content	82374
Chloride	82435
Cholesterol	82465
Creatine kinase (CK, CPK)	82550
Creatinine	82565
Glucose (sugar)	82947
Gammaglutamyltransferase (GGT)	82977
Lactate dehydrogenase (LD)	83615
Phosphatase, alkaline	84075
Phosphorus (inorganic phosphate)	84100
Potassium	84132
Protein, total	84155, 84160
Sodium	84295
Triglyceride	84478
Urea nitrogen (BUN)	84520
Uric acid	84550

When reporting any of these 22 tests, regardless of whether the tests are performed using manual or semi-automated methods, or on automated multichannel equipment, use the appropriate profile code 80002 - G0060 listed below:

USE THESE CODES:

80002	Automated multichannel test; 1 or 2 clinical chemistry tests
80003	Automated multichannel test; 3 clinical chemistry tests
80004	Automated multichannel test; 4 clinical chemistry tests
80005	Automated multichannel test; 5 clinical chemistry tests
80006	Automated multichannel test; 6 clinical chemistry tests
80007	Automated multichannel test; 7 clinical chemistry tests
80008	Automated multichannel test; 8 clinical chemistry tests
80009	Automated multichannel test; 9 clinical chemistry tests
80010	Automated multichannel test; 10 clinical chemistry tests
80011	Automated multichannel test; 11 clinical chemistry tests
80012	Automated multichannel test; 12 clinical chemistry tests
80016	Automated multichannel test; 13-16 clinical chemistry tests
80018	Automated multichannel test; 17-18 clinical chemistry tests
80019	Automated multichannel test; 19 clinical chemistry tests
G0058	Automated multichannel test; 20 clinical chemistry tests
G0059	Automated multichannel test; 21 clinical chemistry tests
G0060	Automated multichannel test; 22 clinical chemistry test

EXAMPLE: If a BUN and a glucose were run on the same specimen, the correct code would be one unit of

80002. If only a glucose was ordered, the correct code would still be one unit of 80002. If a glucose was run a 9 AM and again at 2 PM on the same day on different specimens, two units of 80002 would be billable.

EXAMPLE: If five of the above tests are ordered, the correct code would be one unit of 80005. Fifteen tests would be billed as one unit of 80016 while twenty-one tests would be one unit of G0059. In each case, the unit of service would be one, not the number of tests actually performed.

Drug Testing (80100-80103)

HCPCS procedure code 80100 (Drug, screen; multiple drug classes, each procedure) should be used for a qualitative drug screen that detects multiple drug classes in a single procedure. HCPCS procedure code 80101 (Drug, screen; single drug class, each drug class) should be used for a qualitative drug screen that detects a single drug class. HCPCS procedure code 80102 (Drug, confirmation, each procedure) should be used for confirmation (by a second method) of any drugs detected in a drug screen.

HCPCS procedure code 83518 (Immunoassay for analyte other than antibody or infectious agent antigen, qualitative or semiquantitative; single step method [e.g., reagent strip]) should be used for a qualitative or semiquantitative immunoassay of an analyte other than an antibody. This includes quick screens, using low technology testing (e.g., reagent strips, dip stick, etc.).

Confirmed drugs may be quantitated using the appropriate code in the chemistry section (82000-84999) or therapeutic drug assay section (80150-80299).

Therapeutic Drug Assays (80150-80299)

Use the specific procedure code listed in the CPT book for individual quantitative assay. For non quantitative testing, use codes 80100-80103.

Urinalysis (81000-81099)

Code 81000 is described as a complete urinalysis, non-automated. Code 81001 is a complete urinalysis, automated. Neither is to be used in conjunction with the following HCPCS procedure codes: 81002, 81003, 81005, and 81015. Any stick, dip, or tablet tests performed on a single specimen are considered to be part of the 81000 or 81001 and are not eligible for separate reimbursement. In order to bill for an 81000 or an 81001, a microscopy must be performed.

Chemistry And Toxicology (82000-84999)

When billing for any specific chemistry test that is noted under the list of automated, multichannel tests, do not use the individual HCPCS procedure codes regardless of whether the tests are performed using manual methods or automated, multichannel equipment. The provider must bill using the appropriate profile code.

Hematology (85000 - 85999)

When billing codes for a complete blood count (CBC) or hemogram, identified as HCPCS procedure codes 85021, 85022, 85023, 85024, 85025, 85027, or 85031, do not bill for any code that is a component of a CBC for the same specimen. The following are the HCPCS procedure codes for components: 85007, 85008, 85013, 85014, 85018, 85041, 85048, 85585, 85590, and 85595.

Providers are reminded not to use multiple procedure codes when a single procedure code accurately describes the service rendered.

Immunology (86000 - 86999)

When there is no specific code for an immunology procedure, the code for the methodology is to be used. Certain codes can be used to describe many different tests. When two or more different tests are described by the same code and are performed on the same patient on the same day, bill on a single line using multiple units of service. Identify the procedures performed in form locator (FL) 44 of the UB92, which is used to explain unusual services or circumstances.

Microbiology (87001 - 87999)

The following policies apply:

- A definitive culture is one in which ALL probable pathogens are isolated and identified. Commercial kits are not considered to be definitive culture methods.

EXAMPLE: When billing code 87060 (Culture, bacterial, definitive; throat or nose), the provider is expected to be able to isolate and identify Haemophilus, gram negative rods, staphylococci, pneumococci, and other probable naso-pharyngeal pathogens in addition to beta hemolytic streptococci.

- A presumptive or screening culture is one in which a single pathogen is isolated but may or may not be

definitively identified.

EXAMPLE: When a throat culture is screened for the presence or absence of group A beta streptococci using a low concentration bacitracin disc, bill for one unit of 87081. Identification aids such as bacitracin and neomycin discs are considered part of the screen and should not be billed in addition to the 87081.

EXAMPLE: When a genital culture is screened for the presence or absence of Neisseria gonorrhoea (GC), bill for one unit of 87081.

- Commercial kits are self-contained microbiology systems that offer screening information on one or more probable pathogens. HCPCS procedure codes for commercial kits are found in the microbiology section of the CPT book. Cultures performed using commercial kits are not considered definitive. In form locator (FL) 44 of the UB92, which is used to explain unusual services or circumstances, identify the commercial kit used.

EXAMPLE: When a culture of the urethra for Neisseria gonorrhoea (GC) is performed using the Isocult commercial kit for gonorrhoea, bill for one unit of HCPCS procedure code 87082. In form locator (FL) 44 of the UB92, note that Isocult was the commercial kit used.

- Direct sensitivities are not reimbursable. A direct sensitivity is inoculated directly from the specimen at the time of the initial culture. DO NOT use HCPCS procedure codes 87181, 87184, 87186, or 87188 to describe direct sensitivities. Sensitivities will only be reimbursed after a pathogen has been isolated and set up for sensitivities.

- HCPCS procedure code 87088 is described as a culture, bacterial, urine; identification, in addition to quantitative or commercial kit. It is not to be used in conjunction with procedure code 87086 (Culture, bacterial,urine; quantitative, colony count) or with procedure code 87087 (Culture, bacterial, urine; commercial kit). They are considered to be part of procedure code 87088 when performed on the same specimen.

Voluntary Sterilization

The DMAP shall reimburse for voluntary sterilizations for both males and females. The DMAP shall reimburse the outpatient hospital for voluntary sterilizations if the criteria set by federal and state regulations are met. When a voluntary or elective sterilization is performed, the hospital *is required* to attach the DMAP's standardized

Consent Form to the UB92 claim form. It is the responsibility of the hospital to secure a properly executed Consent Form from the operating surgeon. The DMAP does NOT cross-reference claims. Refer to Appendix B for a copy of the Consent Form.

Hysterectomies

The DMAP shall reimburse outpatient hospitals for medically necessary hysterectomies if the criteria set by federal and state regulations are met. It is the responsibility of the hospital to secure a properly executed Awareness Form from the operating surgeon when a medically necessary hysterectomy procedure may result in sterilization. The hospital *is required* to attach an Awareness Form to the UB92 claim form. The DMAP does NOT cross-reference claims. Refer to Appendix C for a copy of the Awareness Form.

Unilateral/Bilateral Sterilization Procedure Codes

Certain HCPCS procedure codes may describe a procedure which is performed for the purpose of voluntary sterilization or may describe a medically necessary procedure which may or may not result in sterilization. Claims for these procedures must be accompanied by either an Awareness or Consent Form depending on the exact nature of the surgery. A unilateral procedure requires an Awareness Form while a bilateral procedure requires a Consent Form. It is the responsibility of the hospital to secure a properly executed Consent or Awareness Form from the operating surgeon and attach the appropriate to the UB92. The DMAP does NOT cross-reference claims.

Sterilization of the Mentally Challenged

In accordance with 42CFR Subsection 441, Subpart F-Sterilizations and the Delaware Budget Epilogue, Section 121(a)(ii), the DMAP does not reimburse for the sterilization of the mentally challenged.

Although the DMAP does not cover the sterilization of the mentally challenged, the appropriate parties may obtain this service through another source by petitioning the Court of Chancery in the county in which the person to be sterilized resides or in which the institution in which (s)he resides is located.

Abortions

Endangerment to Mother's Life

Federal regulation, 42 CFR 441.203, permits the DMAP to reimburse for abortions if the "life of the mother would

be endangered by the pregnancy."

The outpatient hospital facility must obtain a letter from the attending physician that certifies that in his/her professional judgment the life of the mother would be endangered if the fetus was carried to term. The certification must contain:

- patient's name;
- address;
- Medical Assistance ID number; and
- documentation of the reason why the pregnancy endangers the mother's life.

In addition, the outpatient hospital facility must attach the complete medical record to the UB92 claim form. The outpatient hospital facility shall obtain a copy of medical records from the attending practitioner.

Rape or Incest

Effective December 31, 1993, in compliance with the Hyde Amendment provision, the DMAP may reimburse for abortions to terminate pregnancies resulting from an act of rape or incest.

The outpatient hospital facility must submit a letter from the attending practitioner documenting that the request for the abortion was due to rape or incest and provide written documentation that the incident was reported to the police. In cases of incest where the victim is under 18 years of age, the incident must also have been reported to the Department of Services for Children, Youth and their Families.

If an adult has just cause for not reporting a rape to the police, the practitioner must document the reason in writing. The DMAP will consider coverage on a case by case basis.

When an outpatient hospital facility performs an abortion procedure, the following documents must be attached to the UB92 claim form:

- a practitioner's letter that documents the abortion was due to rape or incest; and
- documentation that certifies the rape or incest was reported to the appropriate authorities; or
- a practitioner's letter that documents the reason for not reporting a case of rape or incest in an adult situation.

Emergency Department

An emergency department is defined as an organized

hospital-based facility for the provision of unscheduled episodic services to patients who present for immediate medical attention. The emergency department must be available twenty-four (24) hours per day.

Emergency department services must be furnished under the direction of a practitioner, within the scope of practice of medicine or osteopathy as defined by state law.

The hospital-based facility may employ emergency room staff and include practitioner services under the facility provider number or the facility may contract with a physician/physician group to staff the emergency department. Practitioners who are employed by the facility are not required to be enrolled separately with the DMAP. Practitioners who deliver services and are paid fee-for-service must be enrolled with the DMAP.

Radiology

Radiology includes diagnostic radiology, diagnostic ultrasound, nuclear medicine, and radiation oncology.

Radiology services can be divided into two (2) components - professional and technical. The professional component is the interpretation of x-ray plates, angiograms, myelograms, pyelograms, or ultrasound procedures. The technical component is the facility service needed to produce the x-ray film or other items that are interpreted by the radiologist. Providers can do either the professional or the technical component, or they can do both the professional and the technical components.

Radiology services are limited to those that are medically necessary and that are ordered by a physician.

IV. MEDICAID CREDIT BALANCE REPORT (MCBR)

General Information

Title XIX of the Social Security Act established the Medicaid Program under which federal grants are provided to states for medical assistance to low income persons. The Program is jointly financed by the Federal and state governments and administered by the states. Within broad Federal rules, each state decides eligibility groups, types and ranges of services, payment levels for services, and administrative and operating procedures. The state's description of its Medicaid Program is called its State Plan.

Payments for services included within the State Plan are made directly by the state to the individuals or entities that provide the services. Each state designates a single State Agency which administers the operation of its

Medicaid Program. On the Federal level, the Health Care Financing Administration (HCFA) within the Department of Health and Human Services oversees the Title XIX Program, monitors compliance with Federal requirements, provides Federal matching funds for qualified Medicaid expenditures incurred by the states, and reviews Medicaid expenditures for allow ability and accuracy. States report their Medicaid expenditures and claim Federal matching moneys on a quarterly basis. Federal Medicaid regulations under 42 CFR 433.300 subpart F, mandates that States adjust any outstanding Medicaid credit balances within sixty (60) days after notification by a provider.

Federal Medicaid regulations require that the state Medicaid agency take reasonable measures to determine the legal liability of third parties to pay for services under the State Medicaid Plan. In summary, these regulations require that all benefits available through other party payers be exhausted, since the Medicaid Program is the payer of last resort. Federal Financial Participation is not available if the State Medicaid Agency fails to fulfill the Federal requirements with regard to established liability and seeking reimbursements.

HCFA has completed reviews in a number of states to determine if the Federal requirements were being met. HCFA discovered instances where Medicaid funds were being retained by hospitals, even though other third party payments sources had made payments for the same service. HCFA's review revealed that a large number of patient records indicated credit balances in cases where the Medicaid Program was the secondary payer. In many cases, the hospital provider billed the Medicaid Program and a third party payer. Payments made by a third party payer were credited to patient accounts, along with payments received from the Medicaid Program. However, the appropriate refunds were not made to the Medicaid Program. Credit balances were also caused by duplicate Medicaid payments.

When such circumstances occur, the provider is obligated to immediately refund the appropriate credit balances to appropriate Medicaid authorities.

Purpose

To insure that Medicaid properly recovers improper or excess program payments resulting from patient billing or claims processing errors, the DMAP has established a Hospital Provider Credit Balance reporting requirement. HCFA has similarly mandated credit balance reporting requirements under the Medicare Program.

All hospital providers of health care services

participating in the DMAP are required to submit a Medicaid Credit Balance Report (MCBR). This is a requirement for all in-State and out-of-state acute care hospitals who were paid greater than \$10,000 in the quarter (for either in-patient and/or out-patient services), by DMAP. The MCBR must be submitted even though there are no credit balances on Medicaid accounts at the close of business in the reporting period.

A completed MCBR must be submitted at the end of each quarter, to the Medicaid Surveillance and Utilization Review Unit (SUR), Lewis Building, P.O. Box 906, New Castle, Delaware 19720 within 30 days after the close of each calendar quarter.

The MCBR will be specifically used to monitor the identification and recovery of "credit balances" due the DMAP. Generally, when a provider receives improper or excessive payment for a claim, it is reflected in their accounting records (patient accounts receivable) as a "credit". For example, if payments are made by the DMAP and another insurer/payer, DMAP must be reimbursed. DMAP is always considered as the payer of last resort when a patient has another insurer. However, DMAP credit balances include money due the DMAP regardless of its classification in a provider's accounting records. For example, if a provider maintains credit balance accounts for a stipulated period (e.g., 90 days), and then transfers the accounts or writes them off to a holding account, this does not relieve the provider of its liability to the DMAP. In these instances, the provider is responsible for identifying and repaying all of the moneys due to the DMAP.

Completing the MCBR

The MCBR consists of a certification page and a detail page (see Appendix E and F of this manual). The certification page is to be signed and dated by an authorized individual such as an officer or administrator of the provider organization. If no Medicaid credit balances are reflected in the provider's records for the reporting quarter, the certification page must still be signed and submitted attesting to this fact. The detail page requires specific information on each credit balance account (including both Medicaid Managed Care Recipients and Fee For Service Recipients).. The detail page may be copied, as necessary, to accommodate all credit balances being reported. See Appendix D for specific instructions on completing the MCBR.

Submitting the MCBR

The due date for submitting the MCBR to the DMAP is

not later than 30 days from the close of the quarter. The report will include all Medicaid credit balances reflected in the provider's accounting records including transfer, holding or other general accounts used to accumulate credit balance funds) as of the close of business each calendar quarter. **REPORT ALL SUSPECTED MEDICAID CREDIT BALANCES REFLECTED IN THE PROVIDER'S RECORDS REGARDLESS OF WHEN THEY OCCURRED.** DO NOT adjust/void claim through the DMAP Fiscal Agent or send a check to Medicaid or the DMAP Fiscal Agent for claims/amounts on the MCBR. Medicaid will determine the appropriate credit balance which must be refunded to Medicaid and notify the provider concerning this repayment. It is the provider's responsibility to report and repay all improper or excess payments that have been received from the time the provider began participation in the DMAP. Penalties for non-timely submission or failure to submit the MCBR, could result in (but are not limited to) the suspension of the Provider's Medicaid payments and/or effect the provider's eligibility to participate in DMAP.

Validation

By contract, providers agree to allow the DMAP, and/or its authorized representatives, access to all requested financial and medical records, as appropriate, including private pay records. The DMAP retains the right to access records and reports to validate the MCBR. The DMAP will determine the necessity to access records and reports. The DMAP and/or its authorized representatives are also permitted to reproduce records as they deem appropriate.

V.GENERAL BILLING INFORMATION

Services which are rendered during the same visit must appear on the same UB92. All ancillary services associated with the visit must be on the same UB92 claim form. For example: A DMAP recipient comes to the emergency room and receives medication and an MRI. The same UB92 claim must contain all appropriate revenue codes and HCPCS for the emergency room, drugs, and radiology. Example #2: A DMAP recipient comes to the clinic and receives an injection. Both the visit and the injection must be on the same UB92 claim form. Otherwise, it may appear that the provider is duplicate billing for the same services.

Revenue Center and Diagnosis Codes

Providers of outpatient hospital services are required to use the UB92 billing form and to indicate revenue and ICD-9-diagnosis codes for charges. A revenue code is a 3-digit code that identifies the service provided for the recipient. An ICD-9 code is a common classification of a

disease and related entities. It is used to describe the clinical picture of the patient. Both the revenue and ICD-9 codes must be used accurately to describe the services provided and the diagnosis of the patient. All such codes are critical to receiving correct payment. Valid revenue codes can be found in the Uniform Billing and Training Manual.

HCPCS Procedure Codes

The DMAP uses HCPCS procedure codes as its listing of descriptive terms and identifying codes for reporting medical services and procedures performed by providers. The purpose of the terminology is to provide a uniform language that will accurately designate medical, surgical, and diagnostic services. Refer to the General Policy for further information regarding HCPCS procedure codes.

Outpatient hospitals must use HCPCS procedure codes when billing the DMAP for laboratory, radiology, surgical and co-pay services. When billing the DMAP for laboratory/radiology procedures, the appropriate HCPCS code must appear in form locator 44 of the UB92 claim form. When billing the DMAP for surgical procedures, the appropriate surgical HCPCS code(s) must appear in form locator 81 of the UB 92 claim form. Additionally, outpatient hospitals must use HCPCS procedure codes if the revenue code used is listed on Appendix C in the Billing Instructions of this manual.

Billing co-pay Amounts

Medicaid recipients may also be covered by plans such as BC/BS's Total Health Plus, CIGNA's Healthplan of Delaware, and Healthcare of Delaware, etc. Under these kinds of plans, the patients choose a primary care physician who provides total care. The primary care physician refers patients to member specialists when necessary. The plans pay a capitated fee to the primary care physician based on the patient's age, and there is frequently a co-pay amount incurred for all sick office visits, emergency room visits, specialist visits, etc. According to the terms of the policies, all co-pay amounts are the responsibility of the insured and failure to pay these charges may result in termination of the member's contract.

In those instances where a Medicaid recipient is also covered by a plan for which payment of the above mentioned co-pays is required, the DMAP will cover the applicable co-pay amounts. (Co-Pays are differentiated from "non-covered" or "non-allowed" charges.)

When billing the DMAP for the appropriate co-pay, complete the UB92 as instructed the Billing Instruction section with the following exceptions:

- Enter the HCPCS co-pay procedure code (WW102; - Emergency Room Co-Pay) in form locator (FL) 44. Form locator (FL) 42 should contain the co-pay revenue center code of "070".
- Enter only the co-pay amount in form locator (FL) 47. Do not enter your usual and customary charge nor add in any non-allowed charges.
- Attach a copy of the payment voucher if it is available.

VI. REIMBURSEMENT

An acute care outpatient hospital facility is reimbursed as follows:

Visits Services - Visit services are reimbursed using a prospective flat rate. There are three types of visit services:

- emergency room (emergency and non-emergency);
- clinic; and
- delivery/labor (where appropriate).

Payment for drugs and supplies when used in conjunction with these services are included in the flat rate payment.

Each type of visit service is defined by a set of outpatient revenue codes. In addition, emergency room services must be associated with an ICD-9 diagnosis code. If the diagnosis code indicates a "true emergency", the visit is paid at an emergency rate. Refer to Appendix G of the General Policy for a list of approved ICD-9 emergency diagnosis codes. If the diagnosis code does not indicate an emergency the visit is reimbursed at the non-emergency rate.

Stand-Alone Services - Stand-alone services encompass all other services provided (e.g., operating room, therapies, etc.) in the outpatient setting that cannot be grouped into a visit category. A stand-alone service is identified by a revenue code or a CPT code.

The outpatient hospital facility is required to use the most appropriate revenue code for their facility for the services rendered.

Certain services such as radiology and laboratory is paid using a fee schedule.

Out-of-State Outpatient Hospital Facilities - Out-of-State outpatient hospital facilities are reimbursed based upon rates paid to a similar in-State facility.

The established rates and methodology for outpatient

hospital facility reimbursement shall be reviewed annually by the Delaware Medicaid program and adjusted, as necessary.

In addition, the following information about transportation services is being added to the Ambulance Provider Specific Policy and the Long-Term Care Provider Specific Policy:

TO BE ADDED TO THE AMBULANCE PROVIDER SPECIFIC POLICY MANUAL

Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility

The DMAP may cover non-emergency ambulance transportation for eligible Medicaid clients in a nursing facility when the transport is to and/or from a medical service (e.g., physician's office, clinic, dialysis center, or other medical consultation), and if one of the following criteria is met:

- if facility transport is not available; or
- if the client is ambulatory but cannot be safely transported via normal transport system (e.g., client is agitated, combative, or is otherwise mentally compromised); or
- if the client requires more physical assistance than can be provided by one facility attendant; or
- if the client has a physical or medical condition which contraindicates normal van/car transport (e.g., client is morbidly obese, or has a temporary condition that prevents ambulating); or
- if the client has another physical/medical condition which contraindicates normal van/car transport (e.g., cardiac condition, severely respiratory compromised, or requires assistance and transportation of medical equipment such as a ventilator, oxygen, or IVs).

The medical necessity of each transport must be documented on the claim being submitted to the DMAP for payment. The required documentation consists of the following:

- the "from" place of transport;
- the "to" place of transport; and
- a detailed description of the patient's condition at the time of transport. The ambulance provider must receive documentation from the nursing facility that will verify which of the above criteria qualifies the recipient for non-emergency ambulance transportation.

TO BE ADDED TO THE LONG-TERM CARE PROVIDER SPECIFIC POLICY MANUAL

Criteria for Non-Emergency Ambulance Transportation for Medicaid Clients in a Nursing Facility

The DMAP may cover non-emergency ambulance transportation for eligible Medicaid clients in a nursing facility when the transport is to and/or from a medical service (e.g., physician's office, clinic, dialysis center, or other medical consultation), and if one of the following criteria is met:

- if facility transport is not available; or
- if the client is ambulatory but cannot be safely transported via normal transport system (e.g., client is agitated, combative, or is otherwise mentally compromised); or
- if the client requires more physical assistance than can be provided by one facility attendant; or
- if the client has a physical or medical condition which contraindicates normal van/car transport (e.g., client is morbidly obese, or has a temporary condition that prevents ambulating); or
- if the client has another physical/medical condition which contraindicates normal van/car transport (e.g., cardiac condition, severely respiratory compromised, or requires assistance and transportation of medical equipment such as a ventilator, oxygen, or IVs).

The nursing facility is expected to transport Medicaid clients to and/or from medical services if the facility has vehicle (s) utilized for patient transportation.

It is the responsibility of the nursing facility to provide documentation to the ambulance provider that will verify which of the above criteria qualifies the recipient for non-emergency ambulance transportation.

TO BE ADDED TO THE LONG-TERM CARE PROVIDER SPECIFIC POLICY MANUAL

The facility must bill any third party payer which may be liable for services provided. This billing must be done prior to billing the DMAP.

The facility must accept the DMAP payment as "payment in full" for services provided.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

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

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, has proposed to revise Subsection 1 of Section 9 in the Regulations Governing the Control of Water Pollution. Proposed amendments would revise Part 1 and 2 and add Part 3 through 14 to the NPDES General Permit Program Regulations Governing Storm Water Discharges Associated with Industrial Activity.

Possible Terms of the Agency Action:

The Regulation has a term of 5 years

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

List of Other Regulations That May be Impacted or Affected by the Proposal:

None

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control will hold a public hearing on November 6 1997, beginning at 7:00 p.m., in the DNREC auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to consider proposed amendments to Section 9 of the Regulations Governing the Control of Water Pollution. The proposals amend Subsection 1, Part 1 and 2 and add Part 3 through 14 to the NPDES General Permit Program Regulations Governing Storm Water Discharges Associated with Industrial Activity.

The proposals will be available for inspection at the Division of Water Resources offices located at 89 Kings Highway, Dover, Delaware. Inquiries should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

Section 9 - The NPDES General Permit Program

~~SUBSECTION 1 -- REGULATIONS GOVERNING
STORM WATER DISCHARGES ASSOCIATED WITH
INDUSTRIAL ACTIVITY~~

Introduction

~~Part 1 -- PROVISIONS GOVERNING ALL STORM
WATER DISCHARGES~~

- 9.00 Definitions
- 9.01 Applicability
- 9.02 General Standards
- 9.03 Notification
- 9.04 Monitoring
- 9.05 Storm Water Plan
- 9.06 Effective Dates of Coverage
- 9.07 Effective Dates of this Subsection

~~Part 2 -- SPECIAL CONDITIONS FOR LAND
DISTURBING ACTIVITY~~

- 9.11 Applicability
- 9.12 General Standards
- 9.13 Notification
- 9.14 Monitoring
- 9.15 Storm Water Plan
- 9.16 Effective Dates of Coverage

~~Part 3 -- SPECIAL CONDITIONS FOR ASPHALT BATCH
MIX AND CONCRETE BATCH MIX~~

Reserved:

~~Part 4 -- SPECIAL CONDITIONS FOR EXTRACTIVE USE~~

Reserved:

~~Part 5 -- SPECIAL CONDITIONS FOR WOOD
PRODUCTS~~

Reserved:

~~Part 6 -- SPECIAL CONDITIONS FOR CHEMICALS AND
ALLIED PRODUCTS~~

Reserved:

~~Part 7 -- SPECIAL CONDITIONS FOR HAZARDOUS
WASTE HANDLING SITES~~

Reserved:

~~Part 8 -- SPECIAL CONDITIONS FOR RECYCLING
CENTERS~~

Reserved:

~~Part 9 -- SPECIAL CONDITIONS FOR MAINTENANCE
ACTIVITIES FOR TRANSPORTATION INDUSTRIES~~

Reserved:

~~Part 10 - SPECIAL CONDITIONS FOR FOOD AND KINDRED PRODUCTS~~

Reserved.

~~Part 11 - SPECIAL CONDITIONS FOR METALS MANUFACTURING, PRODUCTS AND ASSOCIATED INDUSTRIES~~

Reserved.

~~Part 12 - SPECIAL CONDITIONS FOR TEXTILES, PRINTING & PUBLISHING WAREHOUSING STORAGE~~

Reserved.

REGULATIONS GOVERNING STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES

INDEX

- Part 1- Baseline General Permit (9.101)
- Part 2- Special Conditions for Storm Water Discharges Associated with Land Disturbing Activities (9.102)
- Part 3- Special Conditions for Storm Water Discharges Associated with Concrete Manufacturing Activities (9.103)
- Part 4- Special Conditions for Storm Water Discharges Associated with Asphalt Manufacturing Activities (9.104)
- Part 5- Special Conditions for Storm Water Discharges Associated with Chemical Manufacturing Activities (9.105)
- Part 6- Special Conditions for Storm Water Discharges Associated with Activities Regulated by the Delaware Regulations Governing Solid Waste (9.106)
- Part 7- Special Conditions for Storm Water Discharges Associated with Automotive Salvaging Activities (9.107)
- Part 8- Special Conditions for Storm Water Discharges Associated with Scrap Recycling Activities (9.108)
- Part 9- Special Conditions for Storm Water Discharges Associated with Watercraft Maintenance Activities (9.109)
- Part 10- Special Conditions for Storm Water Discharges Associated with Air Transportation Maintenance and Deicing Activities (9.110)
- Part 11- Special Conditions for Storm Water Discharges Associated with Rail Transportation Maintenance Activities (9.111)
- Part 12- Special Conditions for Storm Water Discharges Associated with Automotive Transportation Maintenance Activities (9.112)

Part 13- Special Conditions for Storm Water Discharges Associated with Food Processors Activities (9.113)

Part 14- Special Conditions for Storm Water Discharges Associated with Metals Manufacturing Activities (9.114)

Part 1 - INTRODUCTION

NPDES permit coverage is now required for a wide range of dischargers that were not previously regulated by the NPDES permit program. The new Section 9 of these Regulations, the General Permit Program, will regulate dischargers by category when classes are substantially similar. It is designed to provide NPDES permit coverage for the wide range of dischargers who could not practically obtain individual NPDES permits in the foreseeable future. This approach will allow staff resources to concentrate on individual NPDES permits for discharges which may have more significant potential for impacting water quality of the State of Delaware.

Although no individual permits will be issued to the categories of dischargers covered by Section 9 of these Regulations, the subsections dealing with each category may be referred to as "General NPDES Permits" and the entire Section of the Regulations may be referred to as the "General NPDES Permit Program."

General NPDES Permits as defined by federal law in 40 C.F.R. '122.28 authorize a category of discharges from sources within a defined area that share certain similarities. General NPDES Permits are self-implementing standards applicable to multiple dischargers that the DNREC has determined can best be regulated as a class. Conversely, individual NPDES permits are issued to a potential discharger who applies for a permit with special conditions specifically tailored to the discharger. Thus, a General NPDES Permit is an agency statement of general applicability and future effect that implements and prescribes law and as such is a regulation.

In order to obtain coverage under Section 9 of these Regulations (the General NPDES Permit Program) most persons will be required to file with the DNREC a Notice of Intent to be covered in accordance with 40 C.F.R. '122.28(b)(2). DNREC will consider this the equivalent of an NPDES Permit application for a General NPDES Permit.

Part 1 of the General NPDES Permit Program (Section 9 of these Regulations) consists of general provisions applicable to each category of discharger that the General NPDES Permit Program will cover. Parts 2 through 12 of the General NPDES Permit Program will add or modify the general provision for the specific category of discharger to which it applies.

INTRODUCTION

Storm water discharges contribute significantly to water quality degradation across the U.S. Storm water-related sources of water quality degradation include the following: manufacturing and processing facilities, transportation maintenance areas, urban areas, resource extraction, hydro-habitat modification, land disposal and contaminated sediments present in stream and river beds. In November of 1990 the USEPA issued the NPDES Storm Water Permit Application Regulations for Storm Water Discharges in response to the evidence indicating storm water as a major source of impairment to the quality of rivers, streams and wetlands in the United States.

In 1993, Section 9 (The General NPDES Permit Program) of the Regulations Governing the Control of Water Pollution was issued. The General NPDES Permit Program is designed to provide NPDES permit coverage for the wide range of dischargers who could not practicably obtain individual NPDES permits in the foreseeable future. This approach will allow the DNREC resources to concentrate on individual NPDES permits for facilities with discharges which have a more significant potential for impacting water quality of the State of Delaware.

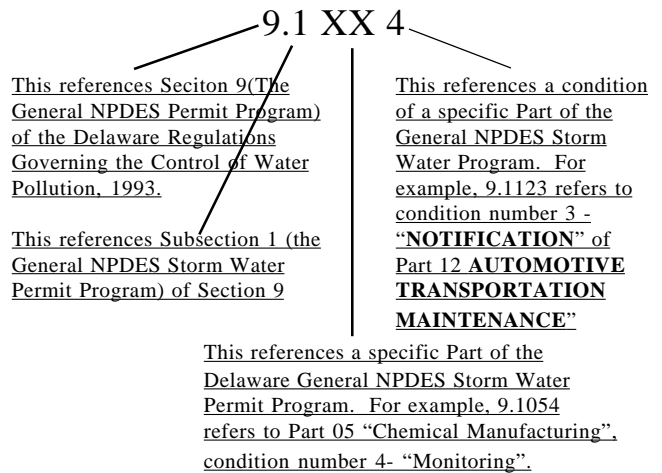
A General NPDES Permit as defined by federal law in 40 C.F.R. '122.28 authorizes the discharge of storm water associated with industrial activity from sources within a defined area or that share certain similarities. A General NPDES Permit Regulation is a self-implementing standard that can apply to multiple dischargers which the DNREC has determined can most efficiently be regulated as a category. Conversely, an individual NPDES permit contains special conditions specifically tailored to one specific facility. A General NPDES Permit is a Department statement of general applicability. A General NPDES Permit is a regulation since it implements and prescribes law which effects existing and future facilities.

Subsection 1 of the General NPDES Permits Program contains The Regulations Governing Storm Water Discharges Associated With Industrial Activity and are referred to as the "General NPDES Storm Water Permit Program". In order to obtain coverage through the General NPDES Storm Water Permit Program, persons will be required to file with the DNREC a Notice of Intent (NOI). The NOI requirement is in accordance with 40 C.F.R. '122.28(b)(2) of the USEPA NPDES Program. The NOI is the equivalent of an NPDES permit application for General NPDES Storm Water Permit coverage. Part 1 of the General NPDES Storm Water Permit Program consists of general provisions applicable to all discharges associated with industrial activity. A letter verifying acquisition of permit coverage instead of an actual permit will be issued to the dischargers covered by the General NPDES Storm Water Permit Program.

The goal of the General NPDES Storm Water Permit Program is to establish, over a period of time, accepted practices for protecting and improving water quality and minimizing any adverse impacts to waters of the State of Delaware by storm water discharges associated with industrial activity. To apply water-quality based numerical limits to storm water runoff, a large expenditure of the DNREC and industry resources (time and money) would be needed to develop and perform the myriad of assessments (e.g. modeling, analytical testing, statistical reviews of the varied rain event occurrences, event intensities, event intensity-deltas, event durations, and rainfall quantities). Therefore, the General NPDES Storm Water Permit Program requires Best Management Practices to be implemented by all facilities as a more efficient approach to protect and improve waters of the State of Delaware. The Best Management Practices (BMPs) requirements in this regulation will serve in place of numerical limits in accordance with 40 Code of Federal Regulations (CFR) Part 122.44(k).

The General NPDES Storm Water Permit Program is divided into 14 Parts. In Part 1, the baseline of the General NPDES Storm Water Permit Program is established. Parts 2 through 14 apply to specific categories of industrial activity. A facility is required to obtain coverage under each applicable Part. If there is not an applicable industry-specific Part for a facility, then the facility is required to obtain and maintain coverage under Part 1.

The numbering sequence for the regulations is displayed by the following graphic:



9.1010 DEFINITIONS

The following words and phrases shall have the meaning ascribed to them in this Subsection unless the context clearly indicates otherwise:

PROPOSED REGULATIONS

(1) APPROPRIATE PLAN APPROVAL AGENCY: means the Department, Conservation District, county, municipality, or State agency that is responsible in a jurisdiction for review of a Sediment and Stormwater Management Plan.

(2) CERTIFIED CONSTRUCTION REVIEWER: means those individuals, having passed a Department-sponsored or approved training course, who provide on-site inspection for sediment control and stormwater management in accordance with the Delaware Sediment and Stormwater Regulations.

(3) .F.R. means the Code of Federal Regulations.

(4) COMPARABLE LEVEL: an estimated level of environmental benefit related to the quality of the storm water discharges equivalent to what would be achieved by implementing the management practices described under the Significant Materials Management requirements described in Parts 3 through 14.

(5) DEPARTMENT: means the State of Delaware Department of Natural Resources and Environmental Control.

(6) DISCHARGE: means storm water runoff.

(7) EFFECTIVE DATE: means the date when these regulations have formally passed through a public comment period, public hearing, have been formally adopted by the Department and start being operative.

(8) ENCLOSED AREAS: means an area(s) which consists of an impervious surface as a floor and is shielded from precipitation and storm water run-on.

(9) INDIVIDUAL PERMIT: means a permit which is written for one specific facility or site.

(10) LAND DISTURBING ACTIVITIES: means a land change or construction activity for residential, commercial, silvicultural, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including, but not limited to, clearing, grading, excavating, transporting, and filling of land.

(11) MAXIMUM EXTENT PRACTICABLE: means to complete an objective or requirement of this Part, to a level which bears the most benefit from an environmental standpoint, but not to a level that is physically or economically infeasible or that would jeopardize human

health or safety, or that would prohibit the conductance of work at the facility.

(12) MUNICIPAL STORM WATER SYSTEM: means a conveyance system which is not intended to convey anything but storm water and is owned by a municipal or public entity.

(13) PERSON: means any individual, partnership, corporation, association, institution, enterprise, municipality, commission, political subdivision, or duly established entity.

(14) SECRETARY: means the Secretary of the State of Delaware Department of Natural Resources and Environmental Control or his duly authorized designee.

(15) SIGNIFICANT MATERIALS: means substances, products, or wastes that are exposed to precipitation and can contribute pollutants to storm water runoff or storm water infiltration.

(16) STORM WATER: means run-on or runoff of water from the surface of the land resulting from precipitation or snow or ice melt.

(17) STRUCTURAL CONTROLS: means curbs, dikes, berms, walls, sheds, impervious pads, ditches, etc. which limit the contribution of significant materials to storm water discharges from a facility.

(18) WATER PRIORITY CHEMICALS: The list of chemicals presented in Appendix A of these Regulations.

9.1011 COVERAGE

A This Subsection shall apply to storm water discharges from the following categories of industrial activities:

Storm Water associated with industrial activity which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. This Subsection does not include discharges from facilities or activities excluded from the NPDES program.

For the categories of industries identified in subparagraphs (i) through (x) of this Subsection, this Subsection applies to, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling activities; refuse sites; sites used for the application or disposal of process waste

waters (as defined at 40 C.F.R. '401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and Significant Materials remain.

For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all areas listed in the previous sentence (except access roads) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.

For the purposes of this Subsection, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above-described areas.

Industrial facilities (including industrial facilities that are municipally owned or operated that meet the descriptions listed in this paragraph (i) through (xi)) include those facilities designated under 40 C.F.R. Part 122.26(a)(1)(v) of the NPDES Storm Water Regulations. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this Subsection:

(i) Facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. subchapter N [except facilities exempted under category xi];

(ii) Facilities classified in the Standard Industrial Classification Manual (Office of Management and Budget, 1987) as: 24 [Lumber and Wood Products] except 2434 [Wood Kitchen Cabinets]; 26 [Paper & Allied Products] except 265 [Paperboard Containers and Boxes] and 267 [Converted Paper & Paperboard Products]; 28 [Chemicals & Allied Products] except 283 [Drugs] and 285 [Paints, Varnishes, Lacquers, Enamels & Allied Products]; 29 [Petroleum Refining & Asphalt]; 311 [Leather Tanning]; 32 [Stone, Clay & Glass Products]; except 323 [Glass Products, Made of Purchased Glass] 33 [Primary Metals Industry]; 3441 [Fabricated Structural Metal]; 373 [Ship Building & Repair];

(iii) Facilities classified as Standard Industrial Classifications 10 [Metal Mining], 11 [Anthracite Mining], 12 [Coal Mining, except for areas of coal mining operations meeting the definition of a reclamation area under 40 C.F.R. '434.11(1)], 13 [Oil & Gas Extraction including exploration, production, processing, or treatment operations, or transmission facilities, that discharge storm water contaminated by contact with or that has come in contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations], 14 [Nonmetallic Minerals Mining] including active or inactive mining operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this Subsection);

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as Standard Industrial Classification 5015 [Motor Vehicle Parts, Used] and 5093 [Scrap & Waste Materials], but not including recycling collection centers consisting solely of "igloos" or similar structures;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40 [Railroad Transportation], 41 [Local & Suburban Transits], 42 [Motor Freight & Warehousing] except 4221 [Farm Product Warehousing & Storage]; 4222 [Refrigerated Warehousing & Storage]; 4225 [General Warehousing & Storage]; 43 [U.S. Postal Service] 44 [Water Transportation], and 45 [Transportation by Air] and 5171 [Bulk Petroleum Terminals]. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) through (vii) or (ix) through (xi) of this Subsection are associated with industrial activity;

(ix) Treatment works with a design flow of one million gallons per day or more treating domestic sewage or any other sewage sludge or waste water treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including

land dedicated to the disposal of sewage sludge that are located within the confines of the facility, or required to have an approved pretreatment program under 7 Del. C. '6033. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 C.F.R. '503;

(x) Construction activity including clearing, grading, and excavation activities;

(xi) Facilities under Standard Industrial Classifications 20 [Food & Kindred Products]; 21 [Tobacco Products]; 22 [Textile Mill Products]; 23 [Apparel & Other Finished Products Made From Fabrics & Similar Materials]; 2434 [Wood Kitchen Cabinets]; 25 [Furniture & Fixtures]; 265 [Paperboard Containers & Boxes]; 267 [Converted Paper & Paperboard Products]; 27 [Printing, Publishing & Allied Industries]; 283 [Drugs]; 285 [Paints, Varnishes, Lacquers, Enamels, & Allied Products]; 30 [Rubber & Miscellaneous Plastics Products]; 31 [Leather & Leather Products] except 311 [Leather Tanning & Finishing]; 323 [Glass Products, Made of Purchased Glass]; 34 [Fabricated Metal Products] except 3441 [Fabricated Structural Metal Products]; 35 [Industrial & Commercial Machinery & Computer Equipment]; 36 [Electronic & Other Electrical Equipment & Components, Except Computer Equipment]; 37 [Transportation Equipment] except 373 [Ship & Boat Building & Repairing]; 38 [Measuring, Analyzing & Controlling Instruments/Photographic, Medical and Optical Goods/Watches & Clocks]; 39 [Miscellaneous Manufacturing Industries]; 4221 [Farm Product Warehousing & Storage]; 4222 [Refrigerated Warehousing & Storage]; 4225 [General Warehousing & Storage]; (and which are not otherwise included within categories (i) through (x)).

B. Eligibility

1. This Subsection covers all new and existing discharges that are composed in whole or in part of storm water associated with industrial activities.

2. Facilities with existing individual NPDES permits for discharges other than storm water, are covered by this Subsection, for storm water discharges not covered by the existing individual NPDES permit.

3. Facilities with individual NPDES permits which do not fully address storm water are covered by this regulation until amendments which will fully address storm water can be made on the existing NPDES permits.

4. No person shall discharge storm water associated with an industrial activity except as authorized by an individual NPDES permit or this Subsection. Part 1 of this Subsection shall apply to all discharges of storm

water associated with industrial activity. Parts 2 through 14 of this Subsection apply to certain categories of industrial activity and modify certain parts of Part 1 and/or add additional requirements for certain specified industrial Activities. Authorization can be obtained through this Subsection by submitting a Notice Of Intent (NOI) in accordance with the respective Part of this Subsection. Once coverage through this Subsection has been obtained, the person is authorized to discharge storm water only from the specific outfalls that were listed on the submitted NOI.

C. Limits on Eligibility

The following activities are not eligible for coverage under this Subsection:

1. facilities with NPDES individual permits which fully address storm water discharges associated with the industrial activity at the facility;

2. activities that have been determined by the Secretary to be significant contributors of a pollutant to storm water runoff.

D. Requesting an Individual Permit or Coverage Under an Alternative Regulation

1. Any person covered by this Subsection may request to obtain coverage under an individual permit or Parts 2 through 14 of this Subsection. The person shall submit an individual application (Form 1 and Form 2F) or an appropriate NOI and shall submit in writing, the reasons supporting the request. Coverage under this Subsection will continue until authorization for coverage under an alternative regulation is granted or an individual permit has been issued to the person making the request.

2. Part 1 shall no longer apply to any person otherwise subject to it when the person is issued an individual NPDES Storm Water Permit for Industrial Activities. Termination of coverage under Part 1 shall occur on the effective date of the individual NPDES Storm Water Permit.

3. No person who is otherwise eligible for coverage under Part 1 whose activities are described in Parts 2 through 14 of this Subsection shall discharge storm water except in compliance with Parts 2 through 14. When a person is approved for coverage under Parts 2 through 14 of this Subsection, some provisions of Part 1 may be superseded or replaced by the requirements of that Part. In the event that the requirements of Parts 2 through 14 supersede, replace, amend, or delete any requirement of Part 1, the requirements of Parts 2 through 14 shall control.

E. Requiring an Individual Permit or Coverage Under Parts 2 Through 14

1. The Secretary may require any person covered by Part 1 of this Subsection to obtain either an individual NPDES permit or coverage under Parts 2

through 14 of this Subsection. Any interested citizen may also petition the Secretary to take action under this paragraph. The Secretary may take action when:

(a) there is noncompliance with the provisions of this Part;

(b) there is new demonstrated control technology or practices applicable to an activity subject to this Part;

(c) the U. S. Environmental Protection agency develops effluent limitation guidelines for an activity covered by this Part;

(d) this Part is no longer appropriate for a discharge or type of activity;

(e) there is evidence indicating potential or realized impacts on water quality due to any storm water discharge covered by this Part; or

(f) other circumstances merit the application of this Part.

2. The Secretary shall notify a person so required in writing that a permit application or an alternative NOI is required. This notice shall include a brief statement of the reasons for the decision, an application or appropriate NOI form, a statement setting a deadline for the person to file the application or NOI, and a statement that on the effective date of the individual NPDES permit or the alternative Part of this Subsection, as it applies to the person, coverage under Part 1 of this Subsection shall automatically terminate and the person will be in violation of this Regulation.

3. If a person fails to submit an application or an NOI in compliance with this notice from the Secretary, the applicability of Part 1 of this Subsection to the person shall automatically terminate at the end of the day specified for application or NOI submittal.

Limits on Coverage

The following activities are not eligible for coverage under this Subsection:

1. facilities with NPDES individual permits which fully address storm water discharges associated with the industrial activity at the facility;

2. activities that have been determined by the Secretary to be significant contributors of a pollutant to storm water runoff.

A. This Subsection shall apply to storm water discharges from the following categories of industrial activities:

Storm Water associated with industrial activity which is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. This Subsection does not include discharges from facilities or activities excluded from the NPDES program.

For the categories of industries identified in

subparagraphs (i) through (x) of this Subsection, this Subsection applies to, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling activities; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 C.F.R. 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and Significant Materials remain.

For the categories of industries identified in subparagraph (xi), the term includes only storm water discharges from all areas listed in the previous sentence (except access roads) where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.

For the purposes of this Subsection, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above-described areas.

Industrial facilities (including industrial facilities that are municipally owned or operated that meet the descriptions listed in this paragraph (i) through (xi)) include those facilities designated under 40 C.F.R. Part 122.26(a)(1)(v) of the NPDES Storm Water Regulations. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this Subsection:

(i) Facilities subject to storm water effluent limitation guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. subchapter N [except facilities exempted under category xi)];

(ii) Facilities classified in the Standard Industrial Classification Manual (Office of Management and Budget, 1987) as: 24 [Lumber and Wood Products] except 2434 [Wood Kitchen Cabinets]; 26 [Paper & Allied Products] except 265 [Paperboard Containers and Boxes] and 267 [Converted Paper & Paperboard Products]; 28 [Chemicals & Allied Products] except 283 [Drugs] and 285 [Paints, Varnishes, Lacquers, Enamels & Allied Products]; 29 [Petroleum Refining & Asphalt]; 311 [Leather Tanning];

32 [Stone, Clay & Glass Products]; except 323 [Glass Products, Made of Purchased Glass] 33 [Primary Metals Industry]; 3441 [Fabricated Structural Metal]; 373 [Ship Building & Repair];

(iii) Facilities classified as Standard Industrial Classifications 10 [Metal Mining], 11 [Anthracite Mining], 12 [Coal Mining, except for areas of coal mining operations meeting the definition of a reclamation area under 40 C.F.R. '434.11(b)], 13 [Oil & Gas Extraction including exploration, production, processing, or treatment operations, or transmission facilities, that discharge storm water contaminated by contact with or that has come in contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations], 14 [Nonmetallic Minerals Mining] including active or inactive mining operations. Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this Subsection);

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but not limited to those classified as Standard Industrial Classification 5015 [Motor Vehicle Parts, [Used] and 5093 [Scrap & Waste Materials], but not including recycling collection centers consisting solely of "igloos" or similar structures;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40 [Railroad Transportation], 41 [Local & Suburban Transits], 42 [Motor Freight & Warehousing] except 4221 [Farm Product Warehousing & Storage]; 4222 [Refrigerated Warehousing & Storage]; 4225 [General Warehousing & Storage]; 43 [U.S. Postal Service] 44 [Water Transportation], and 45 [Transportation by Air] and 5171 [Bulk Petroleum Terminals]. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i) through (vii) or (ix) through (xi) of this Subsection are associated with industrial activity;

(ix) Treatment works with a design flow of one million gallons per day or more treating domestic sewage or any other sewage sludge or waste water

treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, or required to have an approved pretreatment program under 7 Del. C. '6033. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 C.F.R. '503;

(x) Construction activity including clearing, grading, and excavation activities;

(xi) Facilities under Standard Industrial Classifications 20 [Food & Kindred Products]; 21 [Tobacco Products]; 22 [Textile Mill Products]; 23 [Apparel & Other Finished Products Made From Fabrics & Similar Materials]; 2434 [Wood Kitchen Cabinets]; 25 [Furniture & Fixtures]; 265 [Paperboard Containers & Boxes]; 267 [Converted Paper & Paperboard Products]; 27 [Printing, Publishing & Allied Industries]; 283 [Drugs]; 285 [Paints, Varnishes, Lacquers, Enamels, & Allied Products]; 30 [Rubber & Miscellaneous Plastics Products]; 31 [Leather & Leather Products] except 311 [Leather Tanning & Finishing]; 323 [Glass Products, Made of Purchased Glass]; 34 [Fabricated Metal Products] except 3441 [Fabricated Structural Metal Products]; 35 [Industrial & Commercial Machinery & Computer Equipment]; 36 [Electronic & Other Electrical Equipment & Components, Except Computer Equipment]; 37 [Transportation Equipment] except 373 [Ship & Boat Building & Repairing]; 38 [Measuring, Analyzing & Controlling Instruments/Photographic, Medical and Optical Goods/Watches & Clocks]; 39 [Miscellaneous Manufacturing Industries]; 4221 [Farm Product Warehousing & Storage]; 4222 [Refrigerated Warehousing & Storage]; 4225 [General Warehousing & Storage]; (and which are not otherwise included within categories (i) through (x)).

9.1012 GENERAL STANDARDS

A. Prohibition on Non-storm Water Discharges

Discharges to a storm water system of anything other than storm water shall be eliminated or be in compliance with an appropriate NPDES permit. If non-storm water discharges to a storm water system occur, compliance with this Part must be attained by performing one of the following:

1. If appropriate, a date for submittal of an application for individual NPDES permit coverage for the non-storm water discharges; or
2. a sequence of steps which will result in the

removal of the non-storm water discharges to the storm water system; and

3. ~~Develop and submit to the Department a schedule which shall include -~~

4. ~~compliance with this Subsection within one year unless granted a written extension by the Department.~~

A. Entry and Inspection

Any person subject to this Subsection shall allow the Department to:

1. Enter the facility subject to this Subsection;
2. Inspect and copy at reasonable times, any records that must be kept under the conditions of this Subsection;
3. Inspect at reasonable times any facilities or equipment; and
4. Perform sampling of the storm water discharges from the site.

B. Signature Requirements

All Notices of Intent, Storm Water Plans, reports, certifications or information submitted to the Department shall be signed in accordance with the following:

1. All NOIs shall be signed by:
 - (a) A president, vice-president, secretary or treasurer for a corporation;
 - or
 - (b) a general partner or proprietor for a partnership or sole proprietorship; or
 - (c) a principal executive officer or ranking official for a municipality or public agency.
2. All other reports or information required by this Subsection shall be signed by a person described above or by a duly authorized representative.
3. Any person signing documents in accordance with this Subsection shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for willful violations."

C. Proper Procedures

Any person subject to this Subsection shall at all times properly operate and maintain all facilities and systems of treatment and controls which are installed or used to achieve compliance with the conditions of this Subsection and with the requirements of the Storm Water Plan.

D. Duty to Mitigate

Any person subject to this Subsection shall take all reasonable steps to minimize or prevent any discharge of pollutants in violation of this Subsection.

E. Other State or Federal Laws

Nothing in this Subsection shall be construed to preclude the institution of any legal action or relieve any person subject to this regulation from any responsibilities, liabilities, or penalties established pursuant to any applicable State or Federal law or regulation.

F. Penalties for Violations

Any person who violates conditions of this Subsection may be subject to penalties in accordance with 7 Del. C. Chapter 40, 7 Del. C. Chapter 60, or both. Violation of this Subsection is also a violation of the Clean Water Act and may be subject to penalties established under this statute.

G. Oil and Hazardous Substance Liability

Nothing in this Subsection shall preclude the institution of any legal action or relieve any person from any responsibilities, liabilities, or penalties to which a person is or may be subject under 40 C.F.R. Part 117 or 7 Del. C. Chapters 60, 62 or 63.

H. Additional Requirements for Salt Storage

Storage piles of salt shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than three years after the date of issuance of this Subsection.

9.1013 NOTIFICATION

A. Deadlines

~~As of October 1, 1992,~~ Any person who intends to obtain coverage for storm water discharges associated with industrial activity through this Subsection, must submit a Notice of Intent (NOI) in accordance with this Subsection. The Notice of Intent should be submitted by certified mail.

1. Any person intending to obtain coverage through this Subsection for storm water discharges associated with industrial activities existing before the effective date of this Subsection must submit an NOI within 30 days after the effective date of this Subsection.

2. Any person intending to obtain coverage through this Subsection for storm water discharges

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associated with industrial activities commencing after the effective date of this Subsection must submit an NOI at least 180 days prior to the commencement of industrial activities at the facility listed on the NOI.

B. Contents of the Notice of Intent

The Notice of Intent shall be submitted on a form provided by the Department. The Notice Of Intent shall include, but not be limited to, the following information:

1. The name of the owner, the facility, facility mailing address, and location, if different from mailing address;
2. The latitude and longitude of the facility;
3. Up to four Standard Industrial Classification (SIC) codes that best represent the principal products or activities of the facility;
4. The name, address, and telephone number of the individual who is directly responsible for development, implementation, maintenance, and revision of the Storm Water Plan;
5. The name of the receiving waters or municipal storm water system; and
6. Whether the facility has participated in a Group application and the EPA number assigned to that Group.

C. Other Information

When any person subject to this Subsection becomes aware that any relevant facts were omitted or submitted incorrectly on the NOI or on any other records required by this Subsection, that person shall promptly submit such corrected information to the Department.

D. Where to Submit

Persons intending to obtain coverage through this Subsection must submit an NOI to the following address:

Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Surface Water Discharges Section - NPDES Storm Water Program, 89 Kings Highway, Dover, DE 19901

9.1014 MONITORING

b. Water Priority Chemical Facilities

~~Facilities that handle a Water Priority Chemical (WPC), (see Appendix A for a list of WPCs) that are subject to '313 of SARA Title III, are required to sample storm water that is discharged from the facility that comes into contact with any equipment, tank, container or other vessel or area used for storage of WPCs :~~

(i) Analyze a grab sample taken within the first 30 minutes of a storm water discharge from the permitted facility for any WPCs for which the facility is subject to reporting requirements under SARA Title III '313;

- (ii) this shall be performed twice per year, at least

~~90 days apart and continue from the effective date to termination of this regulation.~~

A. Persons subject to this Part shall monitor the discharges of storm water discharges associated with industrial activity as specified below beginning on the effective date of coverage under this Part:

1. Analyze a grab sample taken within the first half hour of a storm water discharge. This shall be performed once per year for all discharges from a facility;
2. Allow for two full days of standard operating activities at the facility since the last rainfall event that resulted in run-off from the facility;
3. Samples taken shall be representative of the monitored discharge. Sampling and analysis must be conducted according to test procedures approved under 40 C.F.R. Part 136, or an alternative method approved by the Department for this purpose;
4. Allow for at least 180 days from the last sample; and
5. Analyze samples in accordance with the following parameters:
 - a. Please refer to the applicable Part (Parts 3-14) for requirements.

b. Water Priority Chemical Facilities

Facilities that have released a Water Priority Chemical (WPC), {see Appendix A for a list of WPCs} that are subject to '313 of SARA Title III, or have WPCs exposed to storm water, are required to sample the storm water associated with the area of the release or exposure. The storm water shall be analyzed for the constituents which will indicate the presence of WPCs as follows:

Discharge Parameter Units Frequency Sample Type
Flow Gal/minute At each sampling Estimated

<u>Indicator #1</u>	<u>mg/L</u>	<u>2/year</u>	<u>Grab</u>
<u>Indicator #2</u>	<u>mg/L</u>	<u>2/year</u>	<u>Grab</u>
<u>Indicator #3</u>	<u>mg/L</u>	<u>2/year</u>	<u>Grab</u>

Monitoring shall continue until it is demonstrated that the WPC are no longer present in the discharge(s).

6. Representative Discharge

If any person subject to this Subsection reasonably believes that two or more outfalls, based on a consideration of industrial activity, Significant Materials, and management practices and activities within the area drained by the outfall, discharge substantially identical effluents, that person may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls.

B. Records of all sampling and analysis shall include the following:

1. the date, exact place, and time of sampling

or measurements;

2. the name(s) of the individual(s) who performed the sampling or measurements as well as the procedures used for sample collection and preservation;
3. the date and time when the analysis of the samples took place along with the name of the individual(s) who performed the analysis;
4. references and written procedures, when available, for the analytical techniques or methods used; and
5. the results of such analyses, including the bench sheets, instrument read-outs, computer disks or tapes, etc., used to determine these results.

9.05 Storm Water Plan (SWP)

~~A. Each person covered by this Subsection shall develop a Storm Water Plan, signed in accordance with this Subsection and kept on the site. The intent of the SWP is to minimize the contribution of pollutants to storm water runoff to the maximum extent practicable. The SWP shall describe the practices which are to be used to reduce the pollutants in the storm water discharges associated with the facility. (For guidance in developing the SWP, a person can refer to the EPA Storm Water Management For Industrial Activities manual, 9/92.)~~

~~B. Facilities must implement the provisions of the SWP required under this Part as a condition of this Subsection.~~

~~C. Deadlines for the SWP Preparation and Compliance for Existing Facilities:~~

- ~~1. the SWP shall be prepared no later than 12 months after the effective date of this Subsection;~~
- ~~2. the SWP shall be implemented in accordance with this Subsection no later than 18 months after the effective date of this Subsection;~~
- ~~3. for facilities which have been designated by the Secretary as being required to obtain coverage under Parts 2 through 12 of this Subsection pursuant to 9.01D, the SWP plan shall be prepared 6 months after written notification of the designation. The SWP shall be implemented 12 months after such notification.~~

~~D. Deadlines for the SWP Preparation and Compliance for new facilities:~~

- ~~1. the SWP shall be prepared 6 months before the facility commences industrial activity;~~
- ~~2. the SWP shall be implemented in accordance with this Subsection before the facility commences industrial activity.~~

~~E. Upon a showing of good cause, the Secretary may establish a later date for a facility to prepare and comply with a SWP. This extension must be obtained in writing from the Department.~~

9.1015 STORM WATER PLAN (SWP)

A. Persons covered by this Part shall develop and administer a Storm Water Plan (SWP) throughout the entire facility. The goal of developing and administering the SWP is to create a program for continually assessing the potential for Significant Materials to be exposed to precipitation and storm water run-on, implementing and maintaining practices which eliminate or minimize the transport of Significant Materials from the facility by storm water runoff, as well as reviewing the success of the implemented practices and amend the SWP as appropriate.

B. Facilities must implement ' 9.1015 as a condition of this Part.

C. The SWP shall be signed in accordance with this Part and kept at the facility.

D. SWP Deadlines

1. Existing Facilities

a. Persons covered by these Regulations shall comply with the following deadlines unless granted a different deadline by any of Parts 2 through 14 :

- (1) develop a SWP within 90 days of the effective date
- (2) initiate implementation of the SWP within 90 days of the effective date.

b. Persons Not Covered by Any of Parts 2 thorough 14

(1) Persons with a current NOI on file at the Department shall maintain the existing SWP. Persons subject to Part 1 shall continue to implement the existing SWP unless informed of SWP deficiencies in writing by the Department.

(2) Persons without a current NOI on file at the Department shall develop a SWP in accordance with this Part. Persons without a current NOI on file at the Department shall submit the SWP to the Department for review within 60 days of the effective date of these Regulations. The SWP shall be implemented within 60 days after the date of approval.

2. New Facilities

Facilities which were not engaged in industrial activity prior to the effective date are required to develop a SWP 90 days before the start of operations at the facility. Full implementation of the SWP shall coincide with the start of industrial activity at the facility.

F. Contents of the SWP. The SWP shall include, at a minimum, the following items:

1. The name, address, and telephone number of the individual who is responsible for the development, implementation, maintenance, and revision of the SWP.

2. Facility Assessment

(a) A Facility Map

A map identifying the potential sources of pollutants, drainage areas, structural controls, each

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storm water outfall and all surface waters that are within the facility boundaries or that receive stormwater discharges:

(b) An Inventory of Significant Materials

The yearly quantities of all Significant Materials handled by the facility.

(c) An Inventory of Spills and Leaks

A list of spills and leaks of Significant Materials that have occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility. The list shall be updated annually.

(d) A certification that no floor drain connections to the storm water system exist. If such conditions exist, a plan and timetable for the removal of the connections must be included.

E. Contents of the SWP

Persons covered by this Part shall comply with the following requirements when developing and administering the SWP. The SWP shall include at a minimum, but not be limited to, the following items:

1. Facility Identification Component

The name, address, and telephone number of the individual who is responsible for development, implementation, maintenance, and revision of the SWP.

2. Facility Assessment Component

a. A Map of the Facility

All markings, delineations and designations on the map shall be clearly identifiable. A narrative description of the markings, delineations and designations shall accompany the facility map. The map shall identify:

(1) all of the building at the facility;

(2) the areas where Significant Materials are stored, handled or used in processes and the types of Significant Materials associated with each areas;

(3) the drainage areas associated with each storm water discharge from the facility/site and the associated ground cover;

(4) all storm water related drainage and discharge structures including all conveyances systems and appurtenances;

(5) any structural storm water controls (i.e. detention basins, secondary containment, storm water diversions); and

(6) all surface waters that receive storm water discharges from the facility.

b. An Inventory of Significant Materials

An estimate of the yearly quantities of all Significant Materials handled by the facility.

c. An Inventory of Spills and Leaks

A list of substantial spills, leaks or residual deposits of Significant Materials within the last three years that have occurred at areas that are exposed

to precipitation or that otherwise drain to a storm water conveyance at the facility. The list shall be updated annually.

3. Significant Material Control

The Storm Water Plan shall show that all Significant Materials are managed in a way which will minimize to the maximum extent practicable the contribution of pollutants to storm water runoff. This includes:

(a) Management Practices for the handling, transferring and shipping of Significant Material in order to minimize the potential for leaks or spills which could contribute pollutants to storm water runoff;

(b) Structural Controls, when needed, to store, cover, enclose, contain, trap or treat Significant Materials or storm water containing Significant Materials;

(c) A response plan which addresses prevention and minimization of releases of oil or hazardous material into the storm water system. When required, the management of oil and hazardous materials shall be performed in accordance with 40 C.F.R. Part 117 and 7 Del. C. Chapters 60, 62 and 63.

4. Maintenance

A maintenance program shall describe a schedule of inspections in order to prevent or correct any functional deficiencies of management devices or equipment used to control or prevent the transport of pollutants from the facility by storm water - including any equipment that has the potential to release pollutants to the storm water system as a result of failure or breakdown.

Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

5. Briefing

Facility employees and contractor personnel that work in areas where Significant Materials are located shall be informed of their responsibilities to meet the requirements of the SWP. Employee briefing shall be conducted not less than once per year.

6. Consistency With Other Plans

The SWP must comply with any other plans developed for the facility to control discharges of Significant Materials into the environment.

3. Significant Material Management Component

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented by the permittee in order to conform with the following requirements unless subject to any of Parts 3 through 14 :

(a) Non-structural control practices implemented

to eliminate or minimize the exposure of Significant Materials to precipitation and storm water run-on during handling, transferring and shipping of Significant Material;

(b) Structural Controls, when needed, to store, cover, enclose, contain, trap or treat Significant Materials or storm water containing Significant Materials;

(c) A response plan which addresses prevention and minimization of releases of oil or hazardous material into the storm water system. When required, the management of oil and hazardous material shall be performed in accordance with 40 C.F.R. Part 117 and 7 Del. C. Chapters 60, 62 and 63.

(d) Maintenance

A maintenance program shall describe a schedule of inspections in order to prevent or correct any functional deficiencies of management devices or equipment used to control or prevent the transport of pollutants from the facility by storm water - including any equipment that has the potential to release pollutants to the storm water system as a result of failure or breakdown.

Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1015 E.3 a. or b. are completed, all significant materials shall be managed in a responsible manner. All significant materials shall be managed in a responsible manner once either or all of '9.1015 E.3. a. or b. have been completed.

5. Inadequate Significant Material Management

If a continued transport of substantial amounts of Significant Material through a facility's storm water discharges persists, the Department may require treatment of the contaminated storm water discharges along with limits for contaminant levels. If treatment of the contaminated storm water discharges along with limits for contaminant levels are required, permit coverage through an individual NPDES Storm Water Permit may be required.

F. Prohibition on Non-storm Water Discharges

Discharges to a storm water system of anything other than storm water shall be eliminated or be in compliance with an appropriate NPDES permit. If non-storm water discharges to a storm water system occur, compliance with this Part must be attained by performing one of the following:

1. Obtain coverage through an appropriate Part (general permit) of these regulations which
2. Develop and submit to the Department a

schedule which shall include -

a. a date for submittal of an application for individual NPDES permit coverage for the non-storm water discharges; or

b. a sequence of steps which will result in the removal of the non-storm water discharges to the storm water system; and

The schedule shall be submitted to the Department within 15 days unless granted a written extension by the Department.

Enclosed Areas where Significant Material is used, stored, handled, shipped, or received shall not have drains connected to any storm water conveyance unless approved by the Department in writing.

G. Additional Requirements for Facilities Subject to SARA III '313 Water Priority Chemicals

All areas where Water Priority Chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, the appropriate preventive systems or its equivalent shall be used:

(An equivalent practice may be used if approved by the Department in writing for this purpose.)

1. Non-liquid storage areas shall have roofs, covers or other forms of appropriate protection to prevent exposure of storage piles to storm water and wind; or

2. Liquid storage areas for Water Priority Chemicals shall include secondary containment providing for at least 110% of the entire contents of the largest single tank plus 6 inches to allow for precipitation.

H. Review of Plans, Reports, Records or SWP

1. Upon notification from this Department that the SWP does not adequately address the requirements of this Part, persons subject to this Part shall amend the SWP and submit these amendments to this Department within 30 days of such notification. The notification from the Department shall list and describe the deficiencies of the Storm Water Map.

2. This Department may grant additional time for amending a SWP. This extension must be obtained from the Department in writing.

I. Training

Facility employees and contractor personnel that work in areas where significant materials are used or stored shall be appropriately trained to meet the requirements of the SWP. Employee training shall be conducted not less than once per year.

J. Storm Water Associated With Industrial Activity Which Discharges Through a Municipal Storm Water System

Any person subject to the provisions of this Subsection who discharges through a Municipal Storm

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Water System shall:

1. ~~include in the SWP any storm water management controls required by the Municipal Storm Water System operator;~~
2. ~~provide the SWP to the municipal operator of the system upon request;~~
3. ~~Submit to the municipal operator a copy of the NOI submitted in accordance with this Subsection. The copy of the NOI shall be submitted to the municipal operator the same time the original NOI is submitted to the Department.~~

J. Consistency With Other Plans

The Storm Water Plan must comply with any other plans developed for the facility to control discharges of significant materials into the environment.

K. Facility security

Facilities shall have the necessary security systems to prevent accidental or intentional entry which could result in a discharge of hazardous material or oil through vandalism.

9.06 Effective Date of Coverage

A. Commencement of Coverage

Coverage under this Subsection begins when the Department has received a completed NOI in accordance with this Subsection.

B. Renotification

Upon reissuance of this Subsection, any person subject to the provisions of this Subsection is required to submit a new NOI in accordance with the requirements of the reissued Subsection.

C. Termination of Coverage

When all storm water discharges associated with industrial activity that are authorized by this Subsection are eliminated, the facility may submit a Notice of Termination which shall be submitted on a form provided by the Department and shall include the following certification:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by this Subsection have been eliminated. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity under this Subsection, and that discharging pollutants in storm water associated with industrial activity to waters of the State is unlawful under 7 Del. C. Chapter 60.

9.07 Effective Dates of this Subsection

This Subsection shall take effect upon adoption by the Secretary in accordance with 29 Del. C. 10118(b) and

shall expire five years from the date of adoption by the Secretary.

9.1016 EFFECTIVE DATE OF COVERAGE UNDER THIS PART

A. Commencement of Coverage

Coverage under this Part begins when the Department has been notified pursuant to the provisions outlined in 9.1013 A.

B. Renotification

Upon reissuance of this Part, any person subject to the provisions of this Part is required to submit a new NOI in accordance with the requirements of the reissued Part.

Part 03 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH THE CONCRETE MANUFACTURING

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9.1031 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with Concrete Manufacturing. Concrete Manufacturing includes:

Standard Industrial Classification 3271 - Concrete Block and Brick;

Standard Industrial Classification 3272 - Concrete Products, Except Block and Brick; and

Standard Industrial Classification 3273 - Ready-Mixed Concrete

9.1032 STANDARD CONDITIONS Refer to 9.1012 of Part 1, Subsection 1 of the Regulations.

9.1033 NOTIFICATION Refer to 9.1013 of Part 1, Subsection 1 of the Regulations.

9.1034 MONITORING

A. Refer to 9.1014 - A.1. through A.4. and A.6. of Part 1, Subsection 1 of the Regulations.

5. Analyze grab samples in accordance with the following parameters:

- a. Effluent Parameter Units Frequency Sample

<u>Flow</u>	<u>Gal/minute</u>	<u>[1]</u>	<u>Estimated</u>	<u>Type</u>
<u>Total Suspended Solids</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>	<u>Grab</u>
<u>Total Dissolved Solids</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>	<u>Grab</u>
<u>Total Petroleum</u>				
<u>Hydrocarbons</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>	<u>Grab</u>
<u>pH</u>	<u>standard</u>	<u>[2]</u>	<u>Grab</u>	<u>Grab</u>

b. Refer to 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

[1] Determine the flow of storm water discharge at the time the sample is taken.

[2] Samples shall be taken and analyzed during the first, third and fifth years of the regulations.

B. Records of all sampling and analysis shall include the following: Refer to 9.1014 -B. of Part 1, Subsection 1 of the Regulations.

9.1035 STORM WATER PLAN (SWP)

Refer to 9.1015 - A. through C of Part 1, Subsection 1 of the Regulations.

D. SWP Deadlines Refer to 9.1015 - D of Part 1, Subsection 1 of the Regulations.

E. Contents of the SWP

Refer to 9.1015 - E1. and 2. of Part 1, Subsection 1 of the Regulations.

3. Significant Material Management

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule when the practices will be implemented by the permittee in order to conform with the requirements of this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Option for Management of Significant Material by Enclosure Only (Option #1)

(1) Material Management Practices

(a) Mixing and loading of concrete shall take place in enclosed areas;

(b) All raw materials, wastes, by-products and residues shall be stored in enclosed areas;

(c) The exposure of significant materials to precipitation that occurs during handling, shipping, receiving, shall be minimized or eliminated to the maximum extent practicable through Best Management Practices.

(d) The changing and replacing of any machinery, equipment or vehicle fluids shall occur

in enclosed areas. Fluids associated with machinery, equipment, or vehicle maintenance shall be stored in enclosed areas; and

(e) A response plan for addressing prevention and minimization of releases of significant materials to storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1035 E.3.a will be completed in accordance with following deadlines:

One of '9.1035 E.3.a. must be completed each year starting on the effective date.

b. Option for Management of Significant Material by a Combination of Protocols and Discharge Buffering (Option #2)

(1) Significant Material Management Requirements :

(a) Minimize the exposure of the mixing and loading of concrete to precipitation to the MEP;

(b) Minimize the exposure of all raw materials, wastes, by-products and residues to precipitation to the MEP; shall be stored in enclosed areas;

(c) Minimize the exposure of Significant Materials that occurs during handling, shipping, and receiving to precipitation to the MEP;

(d) Minimize the exposure of machinery, equipment or vehicle maintenance to precipitation to the MEP;

(e) Develop a response plan for addressing prevention and minimization of releases of significant materials to storm water runoff; and

(f) Emplace a Best Management Practice (BMP) which will buffer the storm water discharge from the facility.

(2) Deadlines for Option #2

(a) The Significant Material management procedures shall be implemented within three years of the effective date of this Part.

(b) Discharge Buffering

{1} The BMP which will buffer the discharge shall be functional within one year of the effective date of this Part if truck rinse water will drain to the BMP. If truck rinse water will drain to the BMP, the BMP will be designed to hold 1.5 inches of runoff plus the maximum volume of rinse water per week; or

{2} The BMP which will buffer the discharge shall be functional within three years of the effective date of this Part if truck rinsing is not combined with storm water at the facility and discharged.

c. Alternative Approach for Managing Significant Materials (Option #3) Persons subject to this

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Part may choose to implement an alternative approach for '9.1035 E.3.a or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site by storm water discharges from the facility to a level comparable to '9.1035 E.3.a or b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Significant Material Management Practices During the time between the effective date of this Part and the date when any of '9.1035 E.3 a., b. or c. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management If the transport of substantial amounts of Significant Material by a facility's/site's stormwater discharges persists, the Department may require treatment of the contaminated storm water discharges along with limits for contaminant levels. If treatment of the contaminated storm water discharges along with limits for contaminant levels are required, permit coverage through an individual NPDES Storm Water Permit may be required.

F. Prohibition on Non-storm Water Discharges
Refer to 9.1015 - F. of Part 1, Subsection 1 of the Regulations.

G. Review of Plans, Reports, Records or SWP
Refer to 9.1015 - G. of Part 1, Subsection 1 of the Regulations.

H. Training
Refer to 9.1015 - H. of Part 1 of Subsection 1 of the Regulations.

I. Consistency With Other Plans
Refer to 9.1015 - I. of Part 1, Subsection 1 of the Regulations.

J. Facility Security
See 9.1015 - J. of Part 1, Subsection 1 of the Regulations.

9.1036 EFFECTIVE DATE OF COVERAGE UNDER THIS PART

Refer to 9.1016 of Part 1, Subsection 1 of the Regulations.

Part 04 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH ASPHALT MANUFACTURING INDUSTRIES

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- 9.1041 COVERAGE
- 9.1042 STANDARD CONDITIONS
- 9.1043 NOTIFICATION

9.1044 DISCHARGE LIMITATIONS

9.1045 MONITORING

9.1046 STORM WATER PLAN (SWP)

9.1047 EFFECTIVE DATE OF COVERAGE

9.1041 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with Asphalt Manufacturing and related activities. Asphalt Manufacturing includes:

Standard Industrial Classification 2951 - Asphalt Paving Mixtures and Blocks

Standard Industrial Classification 2952 - Asphalt Felts and Coatings

9.1042 STANDARD CONDITIONS

Please refer to Part 1 - 9.1012 of Subsection 1 of the Regulations.

9.1043 NOTIFICATION

Please refer to Part 1 - 9.1013 of Subsection 1 of the Regulations.

9.1044 STORM WATER DISCHARGE LIMITATIONS

Asphalt Emulsion

The following limitations only apply to storm water discharges from facilities/sites which are engaged in the production of asphalt paving and roofing emulsions:

	<u>BAT</u>	<u>Effluent</u>
<u>Effluent Parameter</u>	<u>(Max 1 day)</u>	<u>Limitation</u>
	<u>kg / cu m of run-off</u>	
<u>Oil & Grease</u>	<u>0.015 (15 mg/L)</u>	<u>0.010(10 mg/L)</u>
<u>Total Suspended Solids</u>	<u>0.023 (23 mg/L)</u>	<u>0.015(15 mg/L)</u>
<u>pH</u>	<u>6.0 standard units nor greater than 9.0 standard units.</u>	

9.1045 MONITORING

Please refer to Part 1 - 9.1014 A.1. through 4. and A.6. of Subsection 1 of the Regulations.

5. Analyze grabs samples in accordance with the following parameters:

<u>a. Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow</u>	<u>Gal/minute</u>	<u>[1]</u>	<u>Estimate</u>
<u>Total Petroleum</u>			
<u>Hydrocarbons</u>	<u>mg/L [2]</u>		<u>Grab</u>
<u>Total suspended Solids</u>	<u>mg/L [2]</u>		<u>Grab</u>
<u>pH</u>	<u>standard[2]</u>		<u>Grab</u>

b. See 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Please refer to Part 1 - 9.1013 B. of Subsection 1 of the Regulations.

9.1046 STORM WATER PLAN (SWP)

Please refer to Part 1 - 9.1015 A. through C. of Subsection 1 of the Regulations.

D. SWP Deadlines

Please refer to Part 1 - 9.1015 D1. and 2. of Subsection 1 of the Regulations.

E. Contents of the SWP

Please refer to Part 1 - 9.1015 E1. and 2. of Subsection 1 of the Regulations.

3. Significant Material Management

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule when the practices will be implemented by the permittee in order to conform with the requirements of this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by Enclosure (Option #1)

(1) Material Management Practices

(a) Mixing and loading of concrete shall take place in enclosed areas;

(b) All raw materials, wastes, by-products and residues shall be stored in enclosed areas;

(c) The exposure of significant materials to precipitation that occurs during handling, shipping, receiving, shall be minimized or eliminated to the maximum extent practicable through Best Management Practices.

(d) The changing and replacing of any machinery, equipment or vehicle fluids shall occur in enclosed areas. Fluids associated with machinery, equipment, or vehicle maintenance shall be stored in enclosed areas.

(e) A response plan for addressing prevention and minimization of releases of significant materials to storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1046 E.3.a. will be completed in accordance with following deadlines:

One of '9.1046 E.3. a. must be completed each year starting on the effective date.

b. Option for Management of Significant Material by a Combination of Enclosure and Discharge Buffering (Option #2)

(1) Material Management Requirements:

(a) Minimize the exposure of the

mixing and loading of concrete to precipitation to the MEP;

(b) Minimize the exposure of all raw materials, wastes, by-products and residues to precipitation to the MEP;

(c) Minimize the exposure of Significant Materials that occurs during handling, shipping, and receiving to precipitation to the MEP;

(d) Minimize the exposure of machinery, equipment or vehicle maintenance to precipitation to the MEP;

(e) Develop a response plan for addressing prevention and inimization of releases of significant materials to storm water runoff; and

(f) Emplace a BMP which will buffer the storm water discharges from the facility.

(2) Deadlines for Option #2

Each year two requirements of '9.1046 E.3.b (1) - (a) through (f) shall be implemented and maintained.

c. Alternative Approach Option for Managing Significant Materials (Option #3)

Persons may develop alternative approaches to be substituted for '9.1046 E.3.a. or b. Any alternative approach must reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1046 E.3.a. or b. and must be implemented within a competitive period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1046 E.3 a. or b. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Please refer to Part 1 - 9.1016 E.5. of Subsection 1 of the Regulations.

F. Prohibition on Non-storm Water Discharges

Please refer to Part 1 - 9.1016 F. of Subsection 1 of the Regulations.

G. Review of Plans, Reports, Records or SWP

Please refer to Part 1 - 9.1016 G. of Subsection 1 of the Regulations.

H. Training

Please refer to Part 1 - 9.1016 H. of Subsection 1 of the Regulations.

I. Consistency With Other Plans

Please refer to Part 1 - 9.1016 I. of Subsection 1 of the Regulations.

J. Facility security

Please refer to Part 1 - 9.1016 J. of Subsection 1 of the Regulations.

PROPOSED REGULATIONS

9.1047 EFFECTIVE DATE OF COVERAGE

Please refer to Part 1 - 9.1017 of Subsection 1 of the Regulations.

Part 05 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH THE CHEMICAL MANUFACTURING INDUSTRIES

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- 9.1051 COVERAGE
- 9.1052 STANDARD CONDITIONS
- 9.1053 NOTIFICATION
- 9.1054 MONITORING
- 9.1055 STORM WATER PLAN (SWP)
- 9.1056 EFFECTIVE DATE OF COVERAGE

9.1051 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with the Chemical Manufacturing industry. The Chemical Manufacturing industry includes:

Standard Industrial Classification - 2812; 2816; 2819; 2821; 2822; 2823; 2824; 2865; 2869; 2891; 2892; 2899; 2893; 2895; and 2899.

9.1052 STANDARD CONDITIONS

Please Refer to Part 1 - 9.1012 of Subsection 1 of the Regulations.

9.1053 NOTIFICATION

Please Refer to Part 1 - 9.1013 of Subsection 1 of the Regulations.

9.1054 MONITORING

A. Refer to Part 1 - 9.1014 A.1 through A.4 and A.6. of Subsection 1 of the Regulations.

5. Analyze grabs samples in accordance with the following parameters:

a. Effluent Parameter	Units	Frequency	Sample Type
Flow	Gal/minute	[1]	Estimate
Total suspended Solids	mg/L	[2]	Grab
pH	standard	[2]	Grab
[2]	mg/L	[2]	Grab

b. Refer to 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Please Refer to Part 1 of 9.1014 of Subsection 1 of the Regulations.

[1] Determine the instantaneous flow of storm water discharge at the time the sample is taken.

[2] In addition, persons subject to this Part shall be develop a monitoring plan choosing parameters which will bepresent all Significant Materials associated with the activity described under 9.61 A. Appropriate units shall be used to measure the chosen parameters.

9.1055 STORM WATER PLAN (SWP)

Please Refer to Part 1 9.1015 A. through C. of Subsection 1 of the Regulations.

D. SWP Deadlines

Please Refer to Part 1 9.1015 of Subsection 1 of the Regulations.

E. Contents of the SWP

Refer to Part 1- 9.1015 A. through C. of Subsection 1 of the Regulations.

3. Management of Significant Material Component The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule when the practices will be implemented by the permittee in order to conform with therequirements of this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Option for Management of Significant Material by Enclosure Only (Option #1)

(1) Material Management Requirements

(a) Manufacturing and processing shall take place in enclosed areas;

(b) Significant Materials (e.g. raw materials, waste materials) shall be stored in enclosed areas;

(c) Handling, shipping, receiving, loading or unloading of Significant Materials shall shall take place in enclosed areas;

(d) All maintenance activities shall take place in enclosed areas; and

(e) A response plan which addresses prevention and minimization of releases of Significant Material into storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1055 E.3. a will be completed in accordance with following deadlines:

Each year one of '9.1055 E.3.a.. must be completed starting on the effective date of this Part.

b. Management of Significant Materials by a Combination of Protocols and Discharge Buffering

(Option # 2)

1. Management Practices

(a) Minimize the exposure of Significant materials that occurs during manufacturing and processing shall be minimized to the MEP;

(b) Minimize the exposure to precipitation of stored Significant Materials to the MEP;

(c) Minimize the exposure of Significant Materials to precipitation during handling, shipping, receiving, loading or unloading to the MEP;

(d) Minimize the exposure of Significant Materials to precipitation during maintenance to the MEP;

(e) Write a response plan which contains measures for prevention, containment and removal of leaks and spills; and

(f) A structural BMP which buffers the storm water associated with industrial activity that discharges from the facility.

2. Deadlines (Option #2)

The SWP shall contain a list of the sequence in which the requirements of '9.1055 E.3. b will be completed in accordance with following deadlines:

Two of '9.1055 E.3. b. must be completed each year starting on the effective date.

c. Alternative Approach for Managing Significant Materials (Option #3)

Persons subject to this Part may choose to implement an alternative approach for '9.1055 E.3.a or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a comparable level and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1055 E.3. a..or b. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations.

F. Prohibition on Non-storm Water Discharges Please Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations.

G. Review of Plans, Reports, Records or SWP Please Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations.

H. Training Please Refer to Part 1 - 9.1015 of Subsection

1 of the Regulations.

I. Consistency With Other Plans

Please Refer to Part 1 9.1015 of Subsection 1 of the Regulations.

J. Facility security

Please Refer to Part 1 9.1015 of Subsection 1 of the Regulations.

9.1056 EFFECTIVE DATE OF COVERAGE

Please Refer to Part 1 - 9.1016 of Subsection 1 of the Regulations.

Part 06 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH ACTIVITIES REGULATED BY THE DELAWARE REGULATIONS GOVERNING SOLID WASTE

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<u>9.1061</u>	<u>COVERAGE</u>
<u>9.1062</u>	<u>STANDARD CONDITIONS</u>
<u>9.1063</u>	<u>NOTIFICATION</u>
<u>9.1064</u>	<u>MONITORING</u>
<u>9.1065</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1066</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1061 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with activities subject to the Delaware Regulations Governing Solid Waste (DRGSW).

9.1062 STANDARD CONDITIONS

Activities covered by this Part shall comply with all of the provisions of '9.1012 of Part 1 of the Regulations Governing Storm Water Discharges Associated with Industrial Activity.

9.1063 NOTIFICATION

A. Persons who intend to obtain coverage under this Part for storm water discharges associated with activities subject to the DRGSW which commence after the effective date of this Part shall submit certification that a permit or approval has been obtained in accordance with the DRGSW. Activities subject to the DRGSW shall not commence and coverage under this Part shall not apply until a permit or approval has been obtained in accordance with the DRGSW.

The requirements of notification will be satisfied when a Notice Of Intent (NOI) with accompanying information is submitted in accordance with this Part. The NOI shall be submitted to:

The Department of Natural Resources and Environmental Control, Division of Water Resources/

PROPOSED REGULATIONS

Surface Water Discharges Section, 89 Kings Highway, Dover, DE 19901

B. Persons complying with '9.1063(A) shall be considered in compliance with the NOI provisions outlined in '9.1013(A-D) of Part 1.

C. Persons identified in any plans required by the DRGSW permit or approval shall sign a copy of the following certification statement before conducting any professional service identified in the plans:

"I certify under penalty of law that I understand the terms and conditions of the Delaware National Pollutant Discharge Elimination System (NPDES) General Permit Regulation for Storm Water Discharges Associated with Activities subject to the DRGSW."

9.1064 MONITORING

Monitoring shall be performed in accordance with the DRGSW.

9.1065 STORM WATER PLAN (SWP)

In place of the Storm Water Plan required by '9.1015 A. of Part 1, persons covered by this Part shall maintain at the site/central location of activities subject to the DRGSW, any certifications required under '9.1065 of this Part and/or the approved plans for complying with the DRGSW.

9.1066 EFFECTIVE DATE OF COVERAGE

A. Commencement of Coverage

Coverage under this Part begins when the Department has been notified pursuant to the provisions outlined in '9.1013 of Part 1.

B. Renotification

Upon reissuance of this Part, any person subject to the provisions of this Part is required to submit a new NOI in accordance with the requirements of the reissued Part.

C. Termination of Coverage Under This Part

A site may request a Final Closure Letter after the site has undergone Closure in accordance with the DRGSW. Closure and Post-Closure activities shall be conducted in accordance with the requirements of the DRGSW.

Part 07 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH AUTOMOTIVE SALVAGING

TABLE OF CONTENTS

<u>9.1071</u>	<u>COVERAGE</u>
<u>9.1072</u>	<u>STANDARD CONDITIONS</u>
<u>9.1073</u>	<u>NOTIFICATION</u>

<u>9.1074</u>	<u>MONITORING</u>
<u>9.1075</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1076</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1071 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with Automotive Salvaging. Automotive Salvaging includes:

Standard Industrial Classification 5015 - Motor Vehicle Parts, Used

9.1072 STANDARD CONDITIONS

Refer to Part 1 - 9.1012 of Subsection 1 of the Regulations.

9.1073 NOTIFICATION

Refer to Part 1 - 9.1013 of Subsection 1 of the Regulations.

9.1074 MONITORING

A. Refer to Part 1 - 9.1014 A.1. through 4. of Subsection 1 of the Regulations.

5. Analyze grabs samples in accordance with the following parameters:

<u>a. Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow</u>	<u>Gal/min</u>	<u>[1]</u>	<u>Estimated</u>
<u>pH</u>	<u>S.U.</u>	<u>1/yr</u>	<u>Grab</u>
<u>Total Cadmium</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Chromium</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Copper</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Lead</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Nickel</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Suspended Solids</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Zinc</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>

b. Refer to 9.1014 - A.5.b. and A.6. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Refer to Part 1 - 9.1014 B.1 of Subsection 1 of the Regulations.

[1] Determine the flow of storm water discharge at the time the sample is taken.

[2] Samples shall be taken and analyzed during the first, third and fifth years of this Part.

<u>9.1075</u>	<u>STORM WATER PLAN (SWP)</u>
	<u>Refer to Part 1 - 9.1015 A. through C. of Subsection</u>

1 of the Regulations.

D. SWP Deadlines

See Part 1 - 9.1015 D.1. and 2. of Subsection 1 of the Regulations.

E. Contents of the SWP

See Part 1 - 9.1015 E.1. and 2. of Subsection 1 of the Regulations.

3. Significant Material Management Component

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule when the practices will be implemented by the permittee in order to conform with the requirements of this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. **Option Management of Significant Material by Enclosure (Option #1)**

(1) Material Management Practices

(a) The dismantling of motor vehicles, or the salvaging of parts or fluids, or the cleaning of parts shall take place in an enclosed area;

(b) Fresh fluids, recycled fluids, wastes, by-products, residues and any Significant Materials needed for cleaning parts, or used for machinery, equipment, or vehicle maintenance, the fluids and materials shall be stored in enclosed areas;

(c) The exposure of significant materials to precipitation that occurs during handling, shipping, receiving, loading or unloading shall be minimized or eliminated to the maximum extent practicable through Best Management Practices;

(d) The changing and replacing of any machinery, equipment or vehicle fluids shall occur in enclosed areas. Fluids associated with machinery, equipment, or vehicle maintenance shall be stored in enclosed areas; and

(e) A response plan which addresses prevention and minimization of releases of oil or hazardous material into storm water runoff.

(2) Deadlines For Enclosure Only (Option #1)

The SWP shall contain a list of the sequence in which the requirements of '9.1075 E.3.a. will be completed in accordance with following deadlines:

One of '9.1075E.3.a. shall be completed each year starting on the effective date.

b. **Management of Significant Material by a Combination of Protocols and Discharge Buffering (Option #2)**

(1) Significant Material Management requirements:

(a) Minimize the exposure of the dismantling, salvaging or cleaning to precipitation to the MEP;

(b) Minimize the exposure of stored raw materials, wastes, by-products and residues to precipitation to the MEP;

(c) Minimize the exposure of Significant Materials that occurs during handling, shipping, and receiving to precipitation to the MEP;

(d) Minimize the exposure of machinery, equipment or vehicle maintenance to precipitation to the MEP;

(e) Develop a response plan for addressing prevention and minimization of releases of significant materials to storm water runoff; and

(f) Emplace a BMP which will buffer the storm water discharges from the facility.

(2) Deadlines for Option #2

Each year two requirements of '9.1075 E.3.b (1) shall be implemented and maintained starting on the effective date of this Part.

c. **Alternative Approach for Managing Significant Material (Option #3)**

Persons may develop alternative approaches to be substituted for 9.1075 E.3.a. or b. Any alternative approach must reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1075 E.3.a. or

b. and must be implemented within a competitive period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Significant Material Management Practices During the time between the effective date of this Part and the date when any of '9.1075 E.3 a., b. or c. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations.

F. Prohibition on Non-storm Water Discharges

Refer to Part 1 - 9.1015 F. of Subsection 1 of the Regulations.

G. Review of Plans, Reports, Records or SWP

Refer to Part 1 - 9.1015 G. of Subsection 1 of the Regulations.

H. Training

Refer to Part 1 - 9.1015 H. of Subsection 1 of the Regulations.

I. Consistency With Other Plans

Refer to Part 1 - 9.1015 I. of Subsection 1 of the Regulations.

J. Facility security

PROPOSED REGULATIONS

Refer to Part 1 - 9.1015 J. of Subsection 1 of the Regulations.

9.1076 EFFECTIVE DATE OF COVERAGE

Refer to Part 1 - 9.1016 of Subsection 1 of the Regulations.

Part 08 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH SCRAP RECYCLING

TABLE OF CONTENTS

<u>9.1081</u>	<u>COVERAGE</u>
<u>9.1082</u>	<u>STANDARD CONDITIONS</u>
<u>9.1083</u>	<u>NOTIFICATION</u>
<u>9.1084</u>	<u>MONITORING</u>
<u>9.1085</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1086</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1081 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with scrap recycling activities. Scrap recycling activities include:

Standard Industrial Classification 5093 - Scrap and Waste Material

9.1082 STANDARD CONDITIONS

Refer to 9.1012 of Part 1, Subsection 1 of the Regulations.

9.1083 NOTIFICATION

Refer to 9.1013 of Part 1, Subsection 1 of the Regulations.

9.1084 MONITORING

A. Refer to 9.1014 - A.1. through A.4. and A.6. of Part 1, Subsection 1 of the Regulations.

5. Analyze grabs samples in accordance with the following parameters:

Effluent Parameter	Units	Frequency	Sample Type
Flow	Gal/minute	[1]	Estimated
Total suspended Solids	mg/L	[2]	Grab
Total Cadmium	mg/L	[2]	Grab
Total Lead	mg/L	[2]	Grab
Total Copper	mg/L	[2]	Grab
Total Petroleum Hydrocarbons	mg/L	[2]	Grab
Polychlorinated Biphenyls	mg/L	[2]	Grab

pH

standard[2]

Grab

b. Refer to 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Refer to 9.1014 - B. of Part 1, Subsection 1 of the Regulations.

[1] Determine the flow of storm water discharge at the time the sample is taken. A reading from a rain gauge taken at the time of sampling can substituted for an estimate of flow.

[2] Samples shall be taken and analyzed during the first, third and fifth, years of this Part.

9.1085 STORM WATER PLAN (SWP)

Refer to 9.1015 - A. of Part 1, Subsection 1 of the Regulations.

D. SWP Deadlines See 9.1015 - D. of Part 1, Subsection 1 of the Regulations.

E. Contents of the SWP

Refer to 9.1015 - E.2 of Part 1, Subsection 1 of the Regulations.

3. Significant Material Management Component The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Materials by Enclosure (Option #1)

(1) Material Management Practices

(a) Dismantling and sorting of scrap and waste material shall occur in an enclosed area;

(b) The changing and replacing of any machinery, equipment or vehicle fluids shall occur in enclosed areas.

(c) All raw materials, recycled fluids or wastes, by-products and residues shall be stored in enclosed areas. Fluids associated with machinery, equipment, or vehicle maintenance shall be stored in enclosed areas.

(d) The exposure of significant materials

to precipitation that occurs during handling, shipping, receiving, shall be take place in an enclosed area; and

(e) A response plan for addressing prevention and minimization of leaks and spills of significant materials to storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1085 E.3.a. will be completed in accordance with following deadlines:

One of '9.1085 E.3.a.(1) (a) through (e) must be completed each year starting on the effective date.

b. Management of Significant Material by a Combination of Protocols and Discharge Buffering (Option #2)

(1) Significant Material Management Requirements :

(a) The exposure of significant materials to precipitation that occurs during dismantling and sorting of scrap and waste material shall be minimized to the MEP;

(b) The exposure of significant materials to precipitation that occurs during storage of raw materials, recycled fluids or wastes, by-products and residues shall be minimized to the MEP;

(c) The exposure of significant materials to precipitation that occurs during the changing and replacing of any machinery, equipment or vehicle fluids shall be minimized to the MEP;

(d) The exposure of significant materials to precipitation that occurs during handling,

shipping, receiving, shall be minimized to the MEP;

(e) A response plan for addressing prevention and minimization of leaks and spills of significant materials to storm water runoff; and

(f) Emplace a BMP which will buffer the storm water discharge from the facility.

(2) Deadlines for Option #2

The SWP shall contain a list of the sequence in which the requirements of '9.1085 E.3. b will be completed in accordance with following deadlines: Two of the requirements of '9.1085 E.3. b. must be completed each year starting on the effective date of this Part.

c. Alternative Approach for Managing Significant Materials (Option #3)

Persons subject to this Part may choose to implement an alternative approach for '9.1085 E.3.a. or

b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1085 E.3.a. or b.and must be implemented within a specific period of time. Any

alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1085 E.3 a., b. or c. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Refer to 9.1085 - of Part 1, Subsection 1 of the Regulations.

F. Prohibition on Non-storm Water Discharges Refer to 9.1085 - F. of Part 1, Subsection 1 of the Regulations.

G. Review of Plans, Reports, Records or SWP Refer to 9.1085 - G. of Part 1, Subsection 1 of the Regulations.

H. Training Refer to 9.1085 - H. of Part 1 of Subsection 1 of the Regulations.

I. Consistency With Other Plans Refer to 9.1085 - I. of Part 1, Subsection 1 of the Regulations.

J. Facility Security Refer to 9.1085 - J. of Part 1, Subsection 1 of the Regulations.

9.1086 EFFECTIVE DATE OF COVERAGE

Refer to 9.1085 of Part 1, Subsection 1 of the Regulations.

Part 09 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH WATERCRAFT MAINTENANCE

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<u>9.1091</u>	<u>COVERAGE</u>
<u>9.1902</u>	<u>STANDARD CONDITIONS</u>
<u>9.1093</u>	<u>NOTIFICATION</u>
<u>9.1094</u>	<u>MONITORING</u>
<u>9.1095</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1096</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1091 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of industrial storm water associated with watercraft maintenance. The watercraft maintenance includes:

SIC code 4493 - Marinas

These establishments rent boat slips and store boats and generally perform a range of other services including cleaning and incidental boat repair. They frequently sell food, fuel, fishing supplies and boats.

SIC code 4499 - Water Transportation Services, Not Elsewhere Classified

Only establishments which perform maintenance or repair on boats, ships or other watercraft.

9.1092 STANDARD CONDITIONS

Refer to Part 1 -9.1012 of the Regulations

9.1093 NOTIFICATION

Please refer to Subsection 1, Part 1 - 9.1013 of the Regulations

9.1094 MONITORING

Please refer to Subsection 1, Part 1 - 9.1014 A.1 through 4. and A.6. of the Regulations

5. Analyze grabs samples in accordance with the following parameters:

a. Effluent Parameter Units Frequency SampleType
Flow Gallons/minute At time of sample

				Estimated
Total Suspended Solids (TSS)	mg/L	[2]		Grab
Total Dissolved Solids (TDS)	mg/L	[2]		Grab
Total Copper	mg/L	[2]		Grab
Total Tin	mg/L	[2]		Grab
Biological Oxygen Demand	mg/L	[2]		Grab
pH	Standard Units	[2]		Grab
Total Petroleum Hydrocarbons (TPH)	mg/L	[2]		Grab

[1] Determine the flow of storm water discharge for the time of the sampling.

[2] Samples shall be taken and analyzed during the first, third and fifth years starting on the effective date.

b. See 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Please refer to Subsection1, Part 1 - 9.1014 B. of the Regulations

9.1095 STORM WATER PLAN (SWP)

Please refer to Subsection 1, Part 1 - 9.1095 A. through C. of the Regulations

D. SWP Deadlines

Please refer to Subsection1, Part 1 - 9.1095 D. of the Regulations

E. Contents of the SWP

Please refer to Subsection1, Part 1 - 9.1095 E. 1. through 2. of the Regulations

3. Management of Significant Material

Component The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by Enclosure Only (Option #1)

(1) Material Management Requirements:

(a) Maintenance and related activities shall take place in enclosed areas;

(b) The raw materials, wastes, by-products and residues associated with maintenance or related activities shall be stored in enclosed areas;

(c) The handling, shipping, receiving, loading or unloading of Significant Materials shall take place in enclosed areas;

(d) A response plan which addresses prevention and minimization of releases of oil or hazardous material into storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1095 E.3.a.(1) will be completed in accordance with following deadlines:

One of '9.1095 E.3. a. (1) (a) through (d) must be completed each year starting on the effective date. All of '9.1095 E.3. a. shall be completed within four years of the effective date.

b. Management of Significant Materials by a Combination of Protocols and Discharge Buffering (Option #2)

(1) Significant Material Management Requirements

(a) Minimize the exposure of Significant Materials during maintenance to the MEP;

(b) Minimize the exposure to precipitation of stored Significant Materials to the MEP;

(c) Minimize the exposure of Significant Materials to precipitation during handling, shipping, receiving, loading or unloading to the MEP;

(d) Write a response plan which contains measures for prevention, containment and removal of leaks and spills of Significant Materials; and

(e) Emplace a structural BMP which buffers the storm water associated with industrial activity that discharges from the facility.

(2) Deadlines (Option #2)

The SWP shall contain a list of the sequence in which the requirements of '9.1095 E.3.b.(1) will be completed in accordance with following deadlines:

Two of '9.1095 E.3.b.(1) must be completed starting on the effective date. All of 9.1095 E.3.b.(1) shall be completed within three years of the effective date.

c. Alternative Approaches

Persons subject to this Part may choose to implement an alternative approach for '9.1085 E.3.a. or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1085 E.3.a. or

b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1095 E.3 a. b, or c. are completed, all significant materials shall be managed in a responsible manner. All significant materials shall be managed in a responsible manner once either or all of '9.1095 E.3. a. ,b. or c. have been completed.

5. Inadequate Significant Material Management

Refer to Subsection1, Part 1 - 9.1015 F. of the Regulations

F. Prohibition on Non-storm Water Discharges

Refer to9.1085 - F. of Part 1, Subsection 1 of the Regulations.

H. Review of Plans, Reports, Records or SWP

Refer to Subsection1, Part 1 - 9.1015 of the Regulations

I. Training

Please refer to Subsection1, Part 1 - 9.1015 of the Regulations

J. Consistency With Other Plans

Please refer to Subsection1, Part 1 - 9.1015 of the Regulations

K. Facility security

Please refer to Subsection1, Part 1 - 9.1015 of the Regulations

9.1096 EFFECTIVE DATE OF COVERAGE

Please refer to Subsection1, Part 1 - 9.1016 A. and B. of the Regulations.

Part 10 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH MAINTENANCE AND DEICING AT AIR TRANSPORTATION FACILITIES

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<u>9.1101</u>	<u>COVERAGE</u>
<u>9.1102</u>	<u>STANDARD CONDITIONS</u>
<u>9.1103</u>	<u>NOTIFICATION</u>
<u>9.1104</u>	<u>MONITORING</u>
<u>9.1105</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1106</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1101 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with industrial activity at air transportation facilities. Air transportation industries include:

Standard Industrial Classification 45 - Transportation By Air

9.1102 STANDARD CONDITIONS

Refer to Part 1- 9.1012 of Subsection 1 of the Regulations

9.1103 NOTIFICATION

Refer to Part 1 - 9.1013 of Subsection 1 of the Regulations

9.1104 MONITORING

Refer to Part 9.1014 A.1 through 4. and A.6. of Subsection 1 of the Regulations

5. Analyze grabs samples in accordance with the following parameters:

<u>a. Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow</u>	<u>Gal/min</u>	<u>[1]</u>	<u>Estimate</u>
<u>Total Suspended Solid</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Surfactants</u> [3]	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>De-icing Agents</u> [4]	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>

b. See 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

[1] Estimate the flow of storm water at the time of sampling.

[2] First, third and fifth year starting on the effective date of this Part.

[3] Required only for storm water discharges associated with washing activities.

[4] Analyze the sample for the agent(s) used in deicing operations at the airport. This sample shall be taken during the a storm water discharge which follows a deicing

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operation at the airport.

B. Records of all sampling and analysis shall include the following:

Refer to Part 1 - 9.1014 B. of Subsection 1 of the Regulations

9.1105 STORM WATER PLAN (SWP)

Refer to Part 1- 9.1015 of Subsection 1 of the Regulations

[NOTE -THIS PART DOES NOT REQUIRE NOR INTEND TO REGULATE THE PRACTICES USED FOR DE-ICING AIRCRAFT. EMERGENCY SITUATION BYPASSES OF TREATMENT SYSTEMS AND/OR SIGNIFICANT MATERIAL CONTROL PRACTICES ARE ALLOWED. SEE ITEM 9.136 IN THE DELAWARE NPDES STORM WATER SUPPLEMENTAL GUIDANCE DOCUMENT]

D. SWP Deadlines

Refer to Part 1 - 9.1015 D. of Subsection 1 of the Regulations

E. Contents of the SWP

Refer to Part 1 - 9.1015 E. 1. and 2. of Subsection 1 of the Regulations

3. Significant Material Management

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by a Combination of Significant Material Management

Protocols and Discharge Buffering (Option #1)

(1) Significant Material Management Requirements

(a) Minimize the exposure to precipitation of "fresh" and waste materials associated with the maintenance of aircraft, vehicles, machinery or equipment to the Maximum Extent Practicable;

(b) Minimize the exposure to precipitation of all aircraft, vehicles, machinery or equipment maintenance activities to the MEP;

(c) Minimize the exposure to

precipitation of Significant Materials that occurs during handling, shipping, receiving, loading or unloading to the MEP;

(d) A response plan which addresses prevention and minimization of releases of oil or hazardous material into storm water runoff; and

(e) A structural BMP which buffers the storm water discharges from the facility in accordance with these regulations.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1105 E.3. a. will be completed in accordance with following deadlines: Two of '9.1105 E.3. a.(1) must be completed each of the first two years and one during the third year starting on the effective date of this Part.

b. Alternative Approach for Managing Significant Materials (Option #2)

Persons subject to this Part may choose to implement an alternative approach for '9.1085 E.3.a. or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1085 E.3.a. or b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Significant Material Management Practices During the time between the effective date of this Part and the date when '9.1105 E.3. a. or b. is completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Please refer to Part 1 - 9.1015 of Subsection 1 of the Regulations

F. Prohibition on Non-storm Water Discharges

Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations

G. Review of Plans, Reports, Records or SWP

Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations

H. Training

Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations

I. Consistency With Other Plans

Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations

J. Facility security

Refer to Part 1 - 9.1015 of Subsection 1 of the Regulations

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9.1106 EFFECTIVE DATE OF COVERAGE

Refer to Part 1 - 9.1016 of Subsection 1 of the Regulations.

Part 11 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH THE RAIL INDUSTRY MAINTENANCE

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<u>9.1111</u>	<u>COVERAGE</u>
<u>9.1112</u>	<u>STANDARD CONDITIONS</u>
<u>9.1113</u>	<u>NOTIFICATION</u>
<u>9.1114</u>	<u>MONITORING</u>
<u>9.1115</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1116</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1111 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of storm water associated with the Rail Industry Maintenance. Rail Industry Maintenance includes:

Standard Industrial Classification 40 - Railroad Transportation

9.1112 STANDARD CONDITIONS

Refer to Part 1 - 9.1012 of Subsection 1 of the Regulation.

9.1113 NOTIFICATION

A. Refer to Part 1 - 9.1013 A. of Subsection 1 of the Regulation.

B. Deadlines For Notification

Refer to Part 1 - 9.1013 B. of Subsection 1 of the Regulation.

9.1114 MONITORING

Refer to Part 1 - 9.015 A. 1. through 4. and A.6. of Subsection 1 of the Regulation.

5. Analyze grabs samples in accordance with the following parameters:

<u>a. Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
Flow	Gal/min	[1]	Estimate
pH	S. U.	[2]	Grab
Total Suspended Solids	mg/L	[2]	Grab
Total Petroleum Hydrocarbons	mg/L	[2]	Grab
Total Polychlorinated Biphenyls	mg/L	[2]	Grab

b. Refer to 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Refer to Part 1 - 9.1014 B. of Subsection 1 of the Regulation.

[1] Determine the flow of storm water at the time of sampling.

[2] Sample shall be taken and analyzed during the first, third and fifth year starting on the effective date.

9.1115 STORM WATER PLAN (SWP)

Refer to Part 1 - 9.1015 A. through C. of Subsection 1 of the Regulation.

D. SWP Deadlines

Refer to Part 1 - 9.1015D. of Subsection 1 of the Regulation.

E. Contents of the SWP

Refer to Part 1 - 9.1015 E. 1. and 2. of Subsection 1 of the Regulation.

3. Management of Significant Material Component

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by Enclosure (Option #1)

(1) Material Management Requirements:

(a) The Significant Materials associated with maintenance shall be stored in enclosed areas;

(b) All equipment and machinery maintenance activities shall take place in enclosed areas;

(c) The handling, shipping, receiving, loading or unloading of Significant Materials shall take place in enclosed areas; and

(d) A response plan which addresses prevention and minimization of releases of Significant Materials.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence

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in which the requirements of '9.1115 E.3.a.(1) will be completed in accordance with following deadlines:

Each year one of '9.1115 E.3. a. (1) must be completed starting on the effective date unless granted an extension in writing from the Department for this purpose.

b. Management of Significant Materials by a Combination of Protocols and Discharge

Buffering (Option #2)

(1) Management Practices

(a) Minimize the exposure of stored Significant Material associated with maintenance to the MEP;

(b) Minimize the exposure of Significant Materials to precipitation during all maintenance (including painting and sand blasting) to the MEP;

(c) Minimize the exposure of Significant Materials to precipitation during handling, shipping, receiving, loading or unloading to the MEP;

(d) Write a response plan which contains measures for prevention, containment and removal of leaks and spills of Significant Materials; and

(e) A structural BMP which buffers the storm water associated with industrial activity that discharges from the facility.

(2) Deadlines (Option #2)

The SWP shall contain a list of the sequence in which the requirements of '9.1115 E.3.b.(1) will be completed in accordance with following deadlines:

Each year two of '9.1115 E.3.b.(1) must be completed starting on the effective date unless granted an extension in writing from the Department for this purpose.

c. Alternative Approach Option (Option #3)

Persons subject to this Part may choose to implement an alternative approach for '9.1085 E.3.a. or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1085 E.3.a. or b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1115 E.3. a., b. or c. is completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

See Part 1 - 9.1015 of Subsection 1 of the Regulation.

E. Prohibition on Non-storm Water Discharges

See Part 1 - 9.1015 of Subsection 1 of the Regulation.

G. Review of Plans, Reports, Records or SWP

See Part 1 - 9.1015 of Subsection 1 of the Regulation.

H. Training

See Part 1 - 9.1015 of Subsection 1 of the Regulation.

I. Consistency With Other Plans

See Part 1 - 9.1015 of Subsection 1 of the Regulation.

J. Facility security

See Part 1 - 9.1015 of Subsection 1 of the Regulation.

9.1116 EFFECTIVE DATE OF COVERAGE

See Part 1 - 9.1016 of Subsection 1 of the Regulation.

Part 12 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH AUTOMOTIVE TRANSPORTATION INDUSTRIES

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<u>9.1121</u>	<u>COVERAGE</u>
<u>9.1122</u>	<u>STANDARD CONDITIONS</u>
<u>9.1123</u>	<u>NOTIFICATION</u>
<u>9.1124</u>	<u>MONITORING</u>
<u>9.1125</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1126</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1121 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of industrial storm water associated with automotive maintenance and/or significant materials which are exposed to storm water at the following automotive transportation industries:

Standard Industrial Classification 41 - Local & Suburban Transit and Interurban Highway Passenger Transportation

Standard Industrial Classification 42 - Motor Freight Warehousing & Storage, EXCEPT

Standard Industrial Classification 4221 - Farm Product Warehousing & Storage

Standard Industrial Classification 4222 - Refrigerated Warehousing & Storage

Standard Industrial Classification 4225 - General Warehousing & Storage

Standard Industrial Classification 43 - U.S. Postal Service

Storm water discharges from the following activities are only included for activities where Significant Materials are exposed to precipitation or storm water runoff:

Standard Industrial Classification 4221 - Farm Product Warehousing & Storage

Standard Industrial Classification 4222 - Refrigerated Warehousing & Storage

Standard Industrial Classification 4225 - General Warehousing & Storage

9.1122 STANDARDS CONDITIONS

Refer to Part 1 - 9.1012 of Subsection 1 of the Regulations

9.1123 NOTIFICATION

Refer to Part 1 - 9.1013 of Subsection 1 of the Regulations

9.1124 MONITORING

Please refer to Part 1 - 9.1014 A.1. through 4. and A.6. of Subsection 1 of the Regulations

5. Perform monitoring in accordance with the following:

a. Facilities which operate 5 trucks or less are required to perform quarterly visual monitoring. Describe stains present on facility property. Describe any color or debris present in storm water discharging from the facility.

b. Facilities which operate 6 to 15 trucks are required to perform quarterly visual monitoring.

Describe stains present on facility property. Describe any color or debris present in storm water discharging from the facility. Facilities which operate 6 to 15 trucks are also required to perform analytical monitoring in accordance with the following table:

<u>Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow</u>	<u>Gal/min</u>	<u>[1]</u>	<u>Estimate</u>
<u>pH</u>	<u>S. U.</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Suspended Solids</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Surfactants</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>

c. Facilities which operate 16 trucks or more are

required to perform quarterly visual monitoring. Describe stains present on facility property. Describe any color or debris present in storm water discharging from the facility. Facilities which operate 16 trucks or more are required to perform analytical monitoring in accordance with the following table:

<u>Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow</u>	<u>Gal/min</u>	<u>[1]</u>	<u>Estimate</u>
<u>pH</u>	<u>S. U.</u>	<u>[3]</u>	<u>Grab</u>
<u>Total Suspended Solids</u>	<u>mg/L</u>	<u>[3]</u>	<u>Grab</u>
<u>Total Petroleum Hydrocarbons</u>	<u>mg/L</u>	<u>[3]</u>	<u>Grab</u>
<u>Total Surfactants</u>	<u>mg/L</u>	<u>[3]</u>	<u>Grab</u>

b. See 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis information shall include the following:

Refer to Part 1 - 9.1014 B. of Subsection 1 of the Regulations

9.1125 STORM WATER PLAN (SWP)

A. Please refer to Part 1 - 9.1015 A. of Subsection 1 of the Regulations

D. SWP Deadlines

Please refer to Part 1 - 9.1015 D. of Subsection 1 of the Regulations

E. Contents of the SWP

Refer to Part 1 - 9.1015 E. 1. and 2. of Subsection 1 of the Regulations

[1] Determine the flow of storm water at the time of sampling.

[2] One sample shall be taken and analyzed during the third year of permit coverage.

[3] A sample shall be taken and analyzed during the first, third and fifth year of permit coverage.

3. Management of Significant Material

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions

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are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by Enclosure (Option #1)

(1) Material Management Requirements:

(a) The Significant Materials shall be stored in enclosed areas;

(b) All automotive vehicle, machinery, or related equipment maintenance activities shall take place in enclosed areas;

(c) The exposure of Significant Materials to precipitation that occurs during handling, shipping, receiving, loading or unloading shall take place in enclosed areas; and

(d) A response plan which addresses prevention and minimization of releases of oil or hazardous material into storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1125 E.3.a.(1) will be completed in accordance with following deadline:

One of '9.1126 E.3. a.(1) , (a) through (d) shall be completed each year starting on the effective date of this Part. All of '9.1126 E.3. a.(1) , (a) through (d) shall be completed within 4 years of the effective date of this Part.

b. Management of Significant Materials by a Combination of Protocols and Discharge Buffering (Option #2)

1. Material Management Requirements

(a) Minimize the exposure of stored Significant Materials to the MEP;

(b) Minimize the exposure of Significant Materials to precipitation during all vehicle, machinery or equipment maintenance (including painting and sand blasting) to the MEP;

(c) Minimize the exposure of Significant Materials to precipitation during handling, shipping, receiving, loading or unloading to the MEP;

(d) Response planning which contains measures for prevention, containment and removal of leaks and spills; and

(e) A BMP which buffers the storm water associated with industrial activity that discharges from the facility.

2. Deadlines for Option #2

The SWP shall contain a list of the sequence in which the requirements of 9.1125 E.3.a. will be completed in accordance with following deadlines:

Two of '9.1125 E.3. a. (2) shall be completed each year starting on the effective date. All of '9.1125 E.3. a. (2) must be completed within three years of the effective date unless granted an extension in

writing from the Department for this purpose.

c. Innovative Approach for Managing Significant Materials (Option #3)

Persons subject to this Part may choose to implement an alternative approach for 9.1085 E.3.a. or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1085 E.3.a. or b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1125 E.3.a., b., or c. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Please Refer to Part 1- '9.1015 E.3 of Subsection 1 of the Regulations

F. Prohibition on Non-storm Water Discharges

Please Refer to Part 1- '9.1015 E.3 of Subsection 1 of the Regulations

G. Review of Plans, Reports, Records

Please Refer to Part 1 - '9.1015 E.3 of Subsection 1 of the Regulations

H. Training

Please Refer to Part 1- '9.1015 E.3 of Subsection 1 of the Regulations

I. Consistency With Other Plans

Please Refer to Part 1 - '9.1015 E. of Subsection 1 of the Regulations

J. Facility Security

Please Refer to Part 1 - '9.1015 E. of Subsection 1 of the Regulations

9.1126 EFFECTIVE DATE OF COVERAGE

Please Refer to Part 1 - '9.1016 of Subsection 1 of the Regulations

Part 13 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH MAINTENANCE AT FOOD PROCESSING INDUSTRIES

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PROPOSED REGULATIONS

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- 9.1134 MONITORING
9.1135 STORM WATER PLAN (SWP)
9.1136 EFFECTIVE DATE OF COVERAGE

9.1131 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of industrial storm water associated with the food processing industries. Food processing industries include:

Standard Industrial Classification 20 - Food Manufacturing and Processing

9.1132 STANDARD CONDITIONS

Refer to Part 1 - 9.1013 of the Regulations

9.1133 NOTIFICATION

Refer to Subsection1, Part 1 - 9.1013 of the Regulations

9.1134 MONITORING

Refer to Subsection1, Part 1 - 9.1134 A.1 through 4. and A.6. of the Regulations

5. Analyze grabs samples in accordance with the following parameters:

<u>a. Effluent Parameter</u>	<u>Units</u>	<u>Frequency</u>	<u>Sample Type</u>
<u>Flow</u>	<u>Gal/min</u>	<u>[1]</u>	<u>Estimate</u>
<u>pH</u>	<u>S. U.</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Suspended Solids</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Biological Oxygen Demand</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Oil & Grease</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Ammonia as Nitrogen</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Kjeldahl Nitrogen</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Nitrate Nitrogen</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Chloride</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Sodium</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>
<u>Enterococcus</u>	<u>colonies/100mL</u>	<u>[2]</u>	<u>Grab</u>
<u>Total Phosphorus</u>	<u>mg/L</u>	<u>[2]</u>	<u>Grab</u>

[1] Determine the flow of storm water discharge for the time of the sampling.

[2] Samples shall be taken during the first, third and fifth years starting on the effective date.

b. See 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Refer to Subsection1, Part 1 - 9.1014 of the Regulations

9.1135 STORM WATER PLAN (SWP)

Refer to Subsection1, Part 1 - 9.1135 A. through C. of the Regulations

D. SWP Deadlines

Refer to Subsection1, Part 1 - 9.1135 D. of the Regulations

E. Contents of the SWP

Refer to Subsection1, Part 1 - 9.1135 E. 1. through 2. of the Regulations

3. Management of Significant Material

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by Enclosure (Option #1)

(1) Material Management Requirements:

(a) Food processing and related activities shall take place in enclosed areas;

(b) The raw food materials, wastes, by-products and residues associated with food processing or related activities shall be stored in enclosed areas;

(c) The handling, shipping, receiving, loading or unloading of Significant Materials shall take place in enclosed areas;

(d) All automotive or related equipment and machinery maintenance activities shall take place in enclosed areas;

(e) A response plan which addresses prevention and minimization of releases of oil or hazardous material into storm water runoff.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1135 E.3. a.(1) will be completed in accordance with following deadlines:

One of '9.1135 E.3. a.(1) (a) through (e) must be completed each year starting on the effective date. All of '9.1135 E.3.a. (1) shall be completed within five years of the effective date.

b. Management of Significant Materials by a

PROPOSED REGULATIONS

Combination of Protocols and Discharge

Buffering (Option #2)

(1) Management Practices

(a) Minimize the exposure of Significant Materials during processing to the MEP;

(b) Minimize the exposure of stored Significant Materials to precipitation to the MEP;

(c) Minimize the exposure of Significant Materials to precipitation during all machinery or equipment maintenance to the MEP;

(d) Minimize the exposure of Significant Materials to precipitation during handling, shipping, receiving, loading or unloading to the MEP;

(e) Write a response plan which contains measures for prevention, containment and removal of leaks and spills of Significant Materials; and

(f) A structural BMP which buffers the storm water associated with industrial activity that discharges from the facility.

(2) Deadlines for Option #2

The SWP shall contain a list of the sequence in which the requirements of '9.1135 E.3. a. will be completed in accordance with following deadlines:

One of '9.1135 E.3. b. must be completed within one year of the effective date. All of '9.1135 E.3.

b. shall be completed within three years of the effective date.

c. Alternative Approaches for Managing Significant Materials (Option #3)

Persons subject to this Part may choose to implement an alternative approach for '9.1085 E.3.a. or b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1135 E.3.a. or b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Significant Material Management

During the time between the effective date of this Part and the date when any of '9.1135 E.3.a., b., or c. are completed, all significant materials shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Please refer to Subsection 1, Part 1 - 9.1135 of the Regulations

F. Prohibition of Non-Storm Water Discharge Please refer to Subsection 1, Part 1 - 9.1015 of the Regulations

G. Review of Plans, Reports, Records or SWP Please refer to Subsection 1, Part 1 - 9.1015 of the Regulations

H. Training Please refer to Subsection 1, Part 1 - 9.1015

of the Regulations

I. Consistency With Other Plans Please refer to Subsection 1, Part 1 - 9.1015. of the Regulations

J. Facility security Please refer to Subsection 1, Part 1 - 9.1015 of the Regulations.

9.136 EFFECTIVE DATE OF COVERAGE

Please refer to Subsection 1, Part 1 - 9.1016 A. and B. of the Regulations.

Part 14 - SPECIAL CONDITIONS FOR STORM WATER DISCHARGES ASSOCIATED WITH METALS MANUFACTURING INDUSTRIES

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<u>9.1144</u>	<u>MONITORING</u>
<u>9.1145</u>	<u>STORM WATER PLAN (SWP)</u>
<u>9.1146</u>	<u>EFFECTIVE DATE OF COVERAGE</u>

9.1141 COVERAGE

This Part covers all new and existing storm water discharges that are composed in whole or in part of industrial storm water associated with the metal manufacturing industries. Metal manufacturing industries include:

Standard Industrial Classification 34 - Fabricated Metal Products, except Machinery and Transportation Equipment;

Standard Industrial Classification 35 - Industrial and Commercial Machinery;

Standard Industrial Classification 36 - Electronics;

Standard Industrial Classification 37 - Transportation Equipment, (except 373 - Ship and Boat Building and Repairing);

Standard Industrial Classification 38 - Detailed Instruments;

9.1142 STANDARD CONDITIONS

Refer to Part 1- 9.1013 of Subsection 1 of the Regulations.

9.1143 NOTIFICATION

Refer to Part 1- 9.1014 of Subsection 1 of the Regulations.

9.1144 MONITORING

Refer to Part 1- 9.1144 A. 1. through 4. and A.6. of Subsection 1 of the Regulations.

5. Analyze grabs samples in accordance with the following parameters:

a. Effluent Parameter	Units	Frequency	Sample Type
Flow	Gal/min	[1]	Estimate
pH	S. U.	[2]	Grab
Total Suspended Solids	mg/L	[2]	Grab
[2]	mg/L	[2]	Grab

[1] Determine the flow of storm water discharge for the time of the sampling.

[2] Samples shall be taken during the first, third and fifth years starting on the effective date.

See 9.1014 - A.5.b. of Part 1, Subsection 1 of the Regulations.

B. Records of all sampling and analysis shall include the following:

Refer to Part 1- 9.1014 B. of Subsection 1 of the Regulations.

9.1145 STORM WATER PLAN (SWP)

Refer to Part 1- 9.1145 A. through C. of Subsection 1 of the Regulations.

D. SWP Deadlines

Refer to Part 1 9.1145 D. of Subsection 1 of the Regulations.

E. Contents of the SWP

Refer to Part 1 9.1145 E.1. and 2. of Subsection 1 of the Regulations.

3. Management of Significant Material Component

The Storm Water Plan shall contain, but not be limited to, language which identifies and describes the practices which will be implemented and the schedule for the practices to be implemented by the permittee in order to conform with the requirements of this Part. A permittee is required to implement one of either 9.1015 - E.3.a., b., or c. in accordance with this Part. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the SWP. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. A log of inspections and any actions taken shall be maintained at the site.

a. Management of Significant Material by Enclosure (Option #1)

(1) Material Management Requirements:

(a) The manufacturing and processing shall take place in enclosed areas;

(b) All Significant Materials shall be stored in enclosed areas;

(c) The handling, shipping, receiving, loading or unloading of Significant Materials shall take place in enclosed areas;

(d) All vehicle, machinery and equipment maintenance (including painting and sand blasting) shall take place in enclosed areas; and

(e) A response plan which addresses prevention and minimization of spills or leaks of oil or hazardous material into storm water runoff shall be developed.

(2) Deadlines for Option #1

The SWP shall contain a list of the sequence in which the requirements of '9.1145 E.3.a(1) will be completed in accordance with following deadlines:

One of '9.1145 E.3. a.(1) - (a) through (e) must be completed each year starting on the effective date.

b. Management of Significant Materials by a Combination of Protocols and Discharge Buffering (Option #2) -

(1) Management Practices

(a) Minimize the exposure of Significant Materials associated with manufacturing and processing to precipitation to the MEP;

(b) Minimize the exposure to precipitation of stored Significant Materials to the MEP;

(c) Minimize the exposure of Significant Materials to precipitation during handling, shipping, receiving, loading or unloading to the MEP;

(d) Minimize the exposure of Significant materials during maintenance activities to the MEP;

(e) Develop a response plan which addresses prevention and minimization of spills or leaks of oil or hazardous material into storm water runoff shall be developed; and

(f) A structural BMP which buffers the storm water associated with industrial activity that discharges from the facility.

(2) Deadlines for Option #2

The SWP shall contain a list of the sequence in which the requirements of '9.1145 E.3.b.(1) will be completed in accordance with following deadlines:

Each year two of '9.1145 E.3. b.(1) shall be completed starting on the effective date of this Part.

c. Alternative Approach for Managing Significant Materials (Option #3)

Persons subject to this Part may choose to implement an alternative approach for '9.1085 E.3.a. or

b. Persons which choose to implement an alternative approach shall identify and describe in the SWP, the practices which will be implemented as the alternative

approach. The alternative approach shall reduce the amount of pollutants that are transported off site through storm water discharges from the facility to a level comparable to '9.1145 E.3.a. or b. and must be implemented within a specific period of time. Any alternative approach must be approved in writing by the Department.

4. Interim Material Management Practices

During the time between the effective date of this Part and the date when any of '9.1145 E.3. a., b. or c. are completed, all significant materials described under, or associated with '9.1145 E.3. a., b. or c. shall be managed in a responsible manner.

5. Inadequate Significant Material Management

Please refer to Part 1 -9.1015 of Subsection 1 of the Regulations.

F. Prohibition on Non-storm Water Discharges

Please refer to Part 1 9.1015 of Subsection 1 of the Regulations.

G. Review of Plans, Reports, Records or SWP

Please refer to Part 1 9.1015 of Subsection 1 of the Regulations.

H. Training

Please refer to Part 1 9.1015 of Subsection 1 of the Regulations.

I. Consistency With Other Plans

Please refer to Part 1 9.1015 of Subsection 1 of the Regulations.

J. Facility security

Please refer to Part 1 9.1015 of Subsection 1 of the Regulations.

9.1145 EFFECTIVE DATE OF COVERAGE

Please refer to Part 1 9.1015 of Subsection 1 of the Regulations.

**DEPARTMENT OF ADMINISTRATIVE SERVICES
PROFESSIONAL REGULATION,
BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code,
Section 2509, (24 Del.C. 2509)

The Board of Pharmacy, under authority granted by 24 Del.C. 2509, proposes to adopt additions and revisions to the existing Regulations I and V as follows:

Regulation I(C)(1) by the addition of "For the period from January 1, 1998 through and including September 30, 1998, no continuing education will be required and continuing education credits received during this time period may be credited to the next biennial renewal."

Regulation V, D, 3, (c)(5) by the addition of "If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived."

Regulation V, B will be amended to read "the practice or dispensing shall include, but not be limited to the following acts which will be performed by a pharmacist, or pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program."

A public hearing on the proposed additions and revisions of existing Regulations I and V will be held on November 19, 1997 at 11:00 a.m. in Room 309, Jesse Cooper Building, Federal and Water Streets, Dover, DE 19901.

The Board of Pharmacy shall receive input in writing from interested persons on proposed rules regarding the proposed additions and revisions of existing Regulations I and V. The final date for interested parties to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral comments should notify the Board's Administrative Assistant, Gradella E. Bunting, (302 739-4798 at the Jesse Cooper Building, Federal & Water Streets, Dover, DE 19901.

**REGULATION I
PHARMACIST LICENSURE REQUIREMENTS**

A. Examination Requirements

1. In order to be eligible for examination for licensure, an applicant must have graduated from an approved school or college of pharmacy. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate de-

gree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

2. Candidates must obtain a passing grade of 75 on the NABPLEX Examination to be eligible for a license to practice. The Secretary will supply the grade obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.

3. Any applicant who fails the examination shall be entitled to take a re-examination on the Board's next regularly scheduled NABPLEX examination date. If an applicant has failed the examination three times, he/she shall be eligible to take the examination at the next regularly scheduled time, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.

4. Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination.

B. Practical Experience Requirements

1. Applicant must submit an affidavit indicating enrollment in good standing as a student entering the first professional year of college of pharmacy or if the applicant is a graduate of a foreign pharmacy school, produce evidence that he has passed an equivalency examination by the Board.

2. Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 Del. C. §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form. The registrant must submit an affidavit of hours currently completed and properly notarized 30 days prior to taking the examination. Applicants who have not completed all the practical experience requirements, but who have graduated from

an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

C. Continuing Education Requirements

1. A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted. For the period from January 1, 1998 through and including September 30, 1998, no continuing education will be required and continuing education credits received during this time period may be credited to the next biennial renewal.

2. Grace Period - Pharmacists who have not submitted evidence of having completed the C.E. requirements by the renewal date will be granted an extension of time to comply with the requirements of the Act, not to exceed sixty days (i.e., March 1 of the renewal year.)

3. Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control. The Board may seek the advice of its Continuing Education Advisory Council in determining the granting of or length of the extension.

Criteria for Hardship Exemption as Recommended by the Continuing Education Advisory Council:

a. Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

b. The Continuing Education Advisory Council will review requests and send recommendations to the Board.

c. The Board will notify the registrant of its decision.

4. Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month)

D. Advisory Council on Continuing Education

The Board shall establish a council of six persons to evaluate and approve intrastate programs and to advise the Board on any matters pertinent to continuing education. Three pharmacists are to be recommended by the professional pharmacy organizations of the State; one member will represent independent pharmacists; two shall be members of the Board of Pharmacy; one shall be a pharmaceutical educator from one of the colleges located in Maryland, New Jersey or Pennsylvania. The committee will select a Chairman from among its membership. Appointments shall be for two year periods. No member may serve more than two consecutive terms.

E. Continuing Professional Educational Programs

1. Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

2. Approved Provider

- a. Any provider approved by ACPE.
- b. In-state organization which meets criteria

approved by the Board.

3. Application for Delaware State Provider

a. Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

b. The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

4. Criteria for Approval of Delaware State Providers

Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

a. Administration and Organization

(1) The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

(2) There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

(3) Such personnel shall be qualified for such responsibilities by virtue of experience and background.

(4) If an approved provider presents pro-

grams in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

(5) Administrative Requirements include:

(a) The development of promotional materials which state:

1. Educational objectives.
2. The target audience.
3. The time schedule of the activities.
4. Cost to the participant/covered items.
5. Amount of C.E. credit which will be awarded.
6. Credentials of the faculty, presenters, and speakers.
7. Self-evaluation instruments.

(b) Compliance with a quantitative measure for C.E. credit.

1. The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

2. In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

3. The measure of credit shall be a fifty-minute contact hour.

4. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

5. The provider must provide the Continuing Education Advisory Council upon request with appropriate records of successful participation in previous continuing education activities.

6. The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

7. The provider must have a policy and procedure for the handling or management of grievances and refunds of tuition.

b. Program Faculty

The selection of program faculty must be based

upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

c. Program Content Development

(1) Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

(a) The social, economic, behavioral, and legal aspects of health care,

(b) the properties and actions of drugs and drug dosage forms,

(c) the etiology, characteristics, therapeutics and prevention of the disease state,

(d) pharmaceutical monitoring and management of patients.

(2) All ancillary teaching tools shall be suitable and appropriate to the topic.

(3) All materials shall be updated periodically to include up-to-date-practice setting.

(4) It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

d. Facilities

The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

e. Evaluation

Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

(1) Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

(2) Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

f. Criteria for Awarding Continuing Education Credits Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an appli-

cation provided by the Board for approval of individual programs.

(1) In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

(2) In order to receive full credit for non ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

(3) The Committee will only assign credit for the core content of the program which explicitly relates to the contemporary practice of Pharmacy.

(4) A maximum of 2 credit hours will be awarded for First Aid or CPR/BCLS courses one time only per registration period.

(5) Credit for Instructors of Continuing Education.

(a) Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Continuing Education Advisory Committee of the Delaware Board of Pharmacy.

(b) Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

(c) Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

(d) A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

(6) Credit for On the Job Training:

(a) The Board of Pharmacy Continuing Education Advisory Council does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

(b) All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

(c) No credit shall be awarded for pro-

grams required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

(d) A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

F. The Verification of Continuing Education - The pharmacist will be responsible for providing the Board with verification of completion of the required continuing education programs by such means as designated by the Board.

G. Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:

1. Payment of any back fees;
2. Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;
3. Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

H. Reciprocal Requirements

1. The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board.

2. Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practiced as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.

3. Reciprocity applicants who took examinations after June 1, 1979, must have passed the National Association of Boards of Pharmacy standard examination or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

4. All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examinations will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled examination.

5. Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

Regulation I (H)(4) revised 6/16/97

REGULATION V. DISPENSING

A. Definitions

1. Dispensing - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

2. Pertinent Patient Medication Information - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

3. Delivery - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

4. Agent - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

5. New Medication - A medication not previously dispensed by the pharmacy for the ultimate user.

6. Patient Counseling - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

7. Compounding - The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns.

8. Supportive personnel - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

9. Cell - Any container which holds the medication for automatic dispensing.

10. Prescription - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

11. Automated Data Processing System (ADP) - A system utilizing computer software and hardware for the purposes of recordkeeping.

12. CRT - Cathode Ray Tube used to impose visual information on a screen.

13. Computer - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

14. Controlled Substance - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

15. Downtime - That period of time when a computer is not operable.

16. Prescriber - A practitioner authorized to prescribe and acting within the scope of this authorization.

17. Prescription - A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

18. Facsimile (FAX) Prescription - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

19. Reduced to Writing

a. For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

b. For a refill authorization, it may be handled as a new prescription as in (a) above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

c. If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described in (a).

20. Regulatory Agency - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

21. Printout - A hard copy produced by computer that is readable without the aid of any special device.

22. Stop Date - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

23. Common Data Base - A file or data base created by ADP that enables authorized users to have common access to this file regardless of physical location.

B. The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern under the immediate and personal supervision of a pharmacist, or student participating in an approved College of pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

3. Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

C. Patient Counseling

1. Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

2. Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

- a. the name and description of the prescribed drug;
- b. the dosage and the dosage form;
- c. the method and route of administration;
- d. the duration of the prescribed drug therapy;
- e. any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- f. common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- g. patient techniques for self-monitoring of the drug therapy;
- h. proper storage;
- i. prescription refill information;
- j. the action to be taken in the event of a missed dose; and
- k. current over-the-counter medication use.

3. This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

4. Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to

provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5. If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

6. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

7. The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

D. Supportive personnel

1. Qualifications and training

a) The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

b) The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 1) general drug and dosage form knowledge
- 2) medical terminology
- 3) pharmaceutical calculations
- 4) prescription labeling requirements
- 5) general filling/dispensing responsibilities
- 6) patient profile record system requirements
- 7) requirements for patient counseling
- 8) confidentiality
- 9) safety practices
- 10) inventory functions
- 11) knowledge of applicable State and Federal Statutes and Regulations
- 12) other site-specific parameters

Statutes and Regulations

c) The general content of the training program must be maintained in the policy and procedure manual.

d) Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

- 1) Obtaining the medication from stock.
- 2) Typing the label after the pharmacist has interpreted the directions.

3) Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that such selection is properly checked by the pharmacist before the dose is authorized.

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

- 1) The formulation is developed by the pharmacist before proceeding with the compounding.
- 2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.
- 3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.
- 4) The finished product is checked by the pharmacist before dispensing.

5) A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

d) Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

E. Automatic Dispensing Devices

If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

F. Authorization for renewal of prescriptions

A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

G. Mandatory Patient Profile Record System

1. A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

2. The following information shall be recorded by a pharmacist or designee:

- a. The family name and first name of the person for whom the medication is intended (the patient);
- b. The address of the patient and phone number;
- c. The patient's age, or date of birth, and gender;
- d. The original date the medication is dispensed pursuant to the receipt of a physician's prescription;
- e. The number or designation identifying the prescription;
- f. The prescriber's name;
- g. The name, strength, quantity, directions and re-fill information of the drug dispensed;
- h. The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original prescription;
- i. If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.
- j. Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

3. The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

4. Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5. A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

H. Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

1. Verbal Exchange of Prescriptions - When a phar-

macy receives a verbal request for a prescription transfer, it may be honored provided that:

- a. The request comes from a registered pharmacist.
- b. The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation V, and includes the first and last name of the pharmacist transmitting the information.
- c. The prescription used for refills must be clearly identified as a copy.
- d. The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.
- e. The copy shows the last date of dispensing.
- f. Only the actual number of refills remaining are indicated.
- g. A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

2. A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

3. Written copies of prescriptions are for information only and are not valid for refilling.

I. Automated Data Processing Systems**1. PROFILES**

When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation V must be met.

2. PRESCRIPTION (Drug Order) INFORMATION

Prescription information (drug order) shall include, but not be limited to:

- a. Original dispensing date
- b. Name and address of patient (patient location if in an institution)
- c. Name of prescriber
- d. DEA number of prescriber in the case of a controlled substance
- e. Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed
- f. Renewals authorized
- g. Directions of use for patient

3. RECORDS OF DISPENSING

Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The

information shall include, but not be limited to:

- a. Quantity dispensed
- b. Date of dispensing
- c. Serial Number (or equivalent if an institution)
- d. The identification of the pharmacist responsible

for dispensing

- e. Record of renewals to date
- f. Name and strength of medicine

4. RECORD RETRIEVAL (DOCUMENTATION OF ACTIVITY)

Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

- a. Serial number of prescription (equivalent if an institution)
- b. Date of processing
- c. Quantity dispensed
- d. The identification of the pharmacist responsible

for dispensing

- e. Medication dispensed

5. AUXILIARY RECORDKEEPING SYSTEM

An auxiliary recordkeeping system shall be established for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

6. COMMON DATA BASE

Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation V for non-controlled substances.

7. TRANSFER OF PRESCRIPTIONS VIA ADP

A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

- a. Any pharmacy using ADP must comply with all applicable State and Federal regulations.
- b. A pharmacy shall make arrangements with the

supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

c. The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

d. The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

e. To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

8. FACSIMILE TRANSMISSION OF PRESCRIPTIONS

Electronically transmitted prescription orders by facsimile transmission shall meet the following requirements:

a. The prescription order shall include, in addition to the State and Federal requirements for non-controlled and controlled prescriptions, the name, fax number, and phone number of the transmitter for verbal confirmation, the time and date of transmission, the number of pages transmitted, the name, phone number, and fax number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating that the fax should not be seen by unauthorized persons. All prescription orders for controlled substances shall be hand-signed by the practitioner.

b. Practitioners or their authorized agents transmitting the prescription must provide voice verification when requested by the pharmacist receiving the prescription order. The receiving pharmacist has the final responsibility of determining validity of the transmission.

c. If the original prescription is given to the patient, it must be noted on the face of the prescription that the prescription order was faxed, the name of the receiving pharmacy, and the initials of the person who faxed the order.

d. An electronically transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

e. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

J. Return of Medications and Supply

1. Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

2. Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section D revised

GOVERNOR'S APPOINTMENTS

BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Funeral Services	Mr. Charles P. Arcaro	9/5/00
Board of Landscape Architects	Mr. Paul Davis	9/5/00
Board of Medical Practice	Edward J. McConnell, M.D. Stephen M. Fanto, M.D.	8/26/00 8/26/00
Commission on Adult Entertainment Establishments	Mr. Daniel E. Fleming	6/25/00
Commission on National & Community Service	Dr. Wilma Mishoe Mr. Andrew W. Hastings Mr. Christopher A. Coons Mr. Diaz J. Bonville Mr. Graham Segroves Mr. Robert D. Ullrich Ms. Annie Coons Ms. Iwana Smith Ms. Sandra H. Dole	8/29/00 8/29/00 8/29/00 8/29/00 8/29/00 8/29/00 8/29/00 8/29/00 8/29/00
Council on Banking	Mr. Richard T. Collins	10/27/98
Council on Blind	Ms. Alice Capodanno Ms. Beatrice P. Simonds Ms. Gail M. Staren Ms. Tyra Clough	8/29/00 8/29/00 8/29/00 8/29/00
Council on Development Finance	Mr. Andrew M. Lubin	9/5/00
Council on Real Estate Appraisers	Mr. Douglas A. Moore Ms. Lynn A. Perrine	9/5/00 9/5/00
Delaware Agricultural Lands Preservation Foundation	Mr. Alden Hopkins Ms. Jane Mitchell	8/29/00 8/29/00
Delaware Arts Council	Mr. Carl Schnee Mr. Kevin N. Moore Ms. Cynthia H. Kuespert Ms. Lynne Howard Ms. Michele Schiavoni	8/29/00 8/19/99 8/29/00 8/29/00 8/29/00

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Delaware Commission for Women	Mr. Robert C. Moor, Jr. Ms. Kay VanSant	8/29/00 8/29/00
Delaware Commission on Interstate Cooperation	Mr. Brian Bushweller Mr. Gary Patterson	8/15/99 8/15/99
Delaware Commission on Veterans Affairs	Mr. Benjamin. Pernol, Jr.	9/5/01
Delaware Workforce Developmen Council	Mr. John J. McMahon, Jr., Chairman Mr. William Adami	Pleasure of Governor Pleasure of Governor
Foster Care Review Board	Mr. Gary T. Pollio Mr. Thomas C. Tulley Ms. Debbie E. Harris Ms. Gail B. Cantera Ms. Janet L. Goldberg Ms. Joyce K. Hayes Ms. Lillian McGowan Ms. Lue-Ann de Castro Ms. Maureen Piper	8/29/00 8/29/00 8/29/00 9/5/00 8/29/00 9/5/00 8/29/00 8/29/00 8/29/00
Governor's Council on Equal Employment Opportunity	Mr. W. H. Nick McFadden Ms. Debra Singletary Ms. Gail Launay	Pleasure of Governor Pleasure of Governor Pleasure of Governor
Health Resources Council	Mr. Richard J. Cherrin Ms. Terri Nicholau	8/15/00 12/9/97
Judicial Nominating Commission	David J. Margules, Esq.	9/5/00
Justice of the Peace for New Castle County	The Honorable Rosalind Toulson	7/15/03
New Castle VoTech Board of Education	Dr. Ray W. Christian Mr. John E. Lynch	9/5/04 9/5/04

GOVERNOR'S APPOINTMENTS

Public Defender	Mr. Lawrence M. Sullivan	8/15/03
Real Estate Commission of Delaware	Mr. Herbert W. Dayton	9/5/00
	Ms. Mary B. Parker	9/5/00
State Board of Accountancy	Mr. William F. Winters	9/18/00
	Ms. Rita M. Paige	9/5/00
State Board of Electrical Examiners	Mr. David L. Whitt	8/15/00
State Board of Examiners of Psychologists	Dr. Edward S. Wilson	9/5/00
	Mr. John K. Starke	9/5/00
State Board of Pharmacy	Mr. Carl R. June, Jr.	7/1/00
	Mr. Herbert E. VonGoerres	7/1/00
	Ms. Maryanne U. Holzapfel	7-1-00
State Committee of Dietetics/Nutritionists	Ms. Patricia Frey	9/5/00
	Ms. Shaw-May Kao	9/5/00
	Mr. Carlton I. Pippin	9/5/00
State Rehabilitation Advisory Council for the Division of Vocational Rehabilitation	Ms. Andrea Guest	Ex-officio member Serving by virtue of her title

DIVISION OF REVENUE PROPOSED TAX RULING 97-3

August 19, 1997

HOUSE BILL 678

A. REGULATORY AUTHORITY

This regulation is issued and published pursuant to the authority granted the Director of Revenue in Section 563 and the requirements of 2103(c) of Title 30 of the Delaware Code. These regulations were noticed in accordance with law on or about June 15, 1997.

B. HOUSE BILL 678 AND THE CONTRACTOR'S LICENSE TAX

Advice has been requested regarding the interplay between section 2120(b) added to Part III, the Occupational and Business Licenses and Taxes, by House Bill 678 signed into law on June 20, 1996, and the deduction from a contractor's gross receipts for sums paid to subcontractors.

C. ISSUES AND ANALYSIS

Contractors are subject to a license tax on their gross receipts. Gross receipts are defined in section 2501(5) to include all sums received by a contractor for any work done or materials supplied in connection with any real property located in this State. The gross receipts of a contractor do not include sums paid to a subcontractor by the contractor if the subcontractor is subject to the provisions of Chapter 25 with respect to the sums. It is obviously the intent of the legislature that the contractor and each of the subcontractors pay one gross receipts tax on sums paid to and retained by them for their own work rather than subjected payments to duplicative taxation, once when paid to the contractor, and then again when paid to the subcontractor.

The provisions of 2120(b) added by House Bill 678 are designed according to the Bill's synopsis to relieve very closely related businesses from paying gross receipts taxes on transactions among themselves. The act defines "related entities" as entities owned by the same five or fewer individuals or by members of a family. The provisions state that "gross receipts" shall not include amounts received from a related entity.

The issue addressed in this regulation is whether a contractor may deduct from gross receipts under section 2501(5) amounts paid to a subcontractor where the subcontractor is a related entity within the meaning of section 2120(b) and where the subcontractor would, because of the relationship to the contractor, have no gross receipts subject to tax.

D. REGULATION

Reading the two provisions in harmony to further the legislative intent of each of them, the Division holds that since a related entity-subcontractor would have no gross receipts by virtue of section 2120(b), the contractor has not paid any sums with respect to which the subcontractor is subject to the provisions of Chapter 25, within the meaning of section 2501(5).

Therefore, the contractor cannot deduct from gross receipts sums paid to a related entity-subcontractor, and the related entity-subcontractor has no tax liability with respect to, any sums paid by the contractor.

Questions about this regulation may be directed to John J. Maciejewski, Assistant Director of Business Taxes, at 577-3321.

DIVISION OF REVENUE TECHNICAL INFORMATION MEMORANDUM 97-2 AUGUST 8, 1997

SUBJECT: ALCOHOLIC BEVERAGE TAXES RELATED TO MANUFACTURERS OF WINE, BEER AND CIDER

**CONTACT: EDWARD MASTRAN
(302)577-5800 EXT. 7549**

This Technical Information Memorandum is intended to explain the requirements for reporting and paying Alcoholic Beverage Taxes by Delaware manufacturers of wine, beer and cider known as "Farm Wineries", "Microbreweries" and "Brewery-Pubs", as set forth in House Bill No. 132.

I. TAX RATES.

All persons licensed as Delaware manufacturers of beer, cider and wine shall pay a tax on all alcoholic

GENERAL NOTICES

beverages sold at the following rates, except on sales to those customers listed in Section II. below:

1. For each barrel of beer, \$4.85
2. For each gallon of cider, \$.16
3. For each gallon of wine, \$.97

II. TAX EXEMPT SALES.

No tax shall be paid by manufacturers on sales to the following customers:

1. In state licensed importers of alcoholic beverages.
2. Out of state licensed distributors where the alcoholic beverages are sold for resale in such other state.
3. Instrumentalities of the U.S. Armed Forces for the sale of beer, only.

III. FILING PROCEDURES.

Division of Revenue tax form 1800M entitled "Delaware Alcoholic Beverage Manufacturers Tax Return", must be filed, with payment, on or before the last day of each month for the preceding month, except for the May return. The May return will be due, with payment, on or before June 15.

A form must be filed for each month, even if there is no tax due.

IV. EFFECTIVE DATE.

This Act shall apply to all product sold after August 31, 1997. The initial return will cover inventory, production and sales for the month of September, 1997. Therefore, the first monthly "Delaware Alcoholic Beverage Manufacturers Tax Return, Form 1800M" is due, with payment, on or before October 31, 1997.

V. REFUND OF ALCOHOLIC BEVERAGE TAXES PAID.

In view of the fact that there was no legislation in effect prior to this legislation dealing with the taxation of product manufactured by Delaware breweries, microbreweries and brewery-pubs, the Division of Revenue will refund all alcoholic beverage taxes paid as per the following guidelines:

1. Refund requests must be submitted in writing to Delaware Division of Revenue, attention: Edward Mastran.

2. The taxpayer must present proof of tax payments made, such as copies of canceled checks, correspondence, etc.

3. The refund period will cover all tax payments made prior to the due date of the initial filing under this act.

4. Refund checks will be issued by the Division of Revenue after a review of the refund request and supporting documentation is completed.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

Delaware Health and Social Services has determined that a threat to the public welfare exists if revision of regulations contained in DSSM Section 8000 is not implemented. Failure to do so would tend to promote noncompliance with the requirements of the *A Better Chance* program.

SUMMARY OF PROPOSED REVISIONS:

Removes the A Better Chance program exception with regard to family cap for children conceived while a case is closed due to sanctioning (DSSM 8205.2).

Equated A Better Chance (ABC) sanctions for a parent's failure to cooperate with school officials to ensure compliance with school attendance for dependent children under age 16 with employment and training sanctions under the grouping of self-sufficiency requirements (DSSM 8301.1.4 and 8304.2).

Reverses the hierarchiacal order in which ABC sanctions are imposed (DSSM 8301.3).

FINDING OF FACT

The Department finds that these changes should be made in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof. such petitions must be forwarded by October 31, 1997, to the Director, Division of Social Services, P.O. box 906, New Castle, DE 19720.

discuss proposed Regulations for Assisted Living Agencies. These proposed regulations describe licensing requirements and procedures, and general and special requirements of agencies desiring to establish, conduct or maintain an Assisted Living Agency in this State. The regulations describe services that must be provided based on a social philosophy of care and that must include oversight, food, shelter, and the provision or coordination of a range of services that promote the quality of life of an individual.

These public hearings will be held on October 28, 1997 at 1:00 P.M in Room 3, Springer Building, Herman Holloway Campus, 1901 North duPont Highway, New Castle, DE 19720, and at 9:00 A.M. October 30, 1997 in Room 309, Jesse S. Cooper Building, Federal and Water Streets, Dover, Delaware.

Copies of the proposed regulations are available for review by calling the following locations:

Office of Health Facilities Licensing and Certification
Three Mill Road, Suite 308
Wilmington, Delaware 19806
Telephone: 302-577-6666

Office of Health Facilities Licensing and Certification
Jesse S. Cooper Building
Federal and Water Streets
Dover, Delaware 19901
Phone: 302-739-6610

Anyone wishing to present their oral comments at this hearing should contact Vanette Seals at (302) 577-6666 by October 24, 1997. Anyone wishing to submit written comments as a supplement to, or in lieu of oral testimony should submit such comments by November 3, 1997 to:

Jeffrey Beaman, Hearing Officer
Division of Public Health
PO Box 637
Dover, Delaware 19903

**DEPARTMENT OF HEALTH & SOCIAL
SERVICES****DIVISION OF PUBLIC HEALTH**

Statutory Authority: 16 Delaware Code, Section
1109 (16 Del.C. 1109)

The Office of Health Facilities Licensing and Certification, Division of Public Health of the Department of Health and Social Services, will hold public hearings to

DEPARTMENT OF AGRICULTURE

Statutory Authority: 3 Delaware Code, Section 407(a) (3 **Del.C.** 407(a))

The Department proposed these regulations pursuant to 3 **Del.C.** 407(a). The proposed regulations contain the following general sections: Definitions, Aquaculture Registration, General Aquaculture Permits, Restricted Aquaculture Permits, Aquaculture Stock Certification, Aquaculture Broodstock, Identification and Certification, Inspection of Premises, enforcement, Future considerations, Fe Fishing, Aquaculture facility Protection, and Civil Penalties. these regulations are intended to more clearly define the role of the Department in the Delaware aquaculture industry. the porposed regulations will be considered at a public hearing scheduled for November 12, 1997, at 1:00 p.m. at the Delaware Department of Agruculture building. Copies of the proposed regulations may be obtained from the State Veterinarian's office. Comments may be submitted in writing to the State Veterinarian, on or before 4:00 p.m. on November 11, 1997, and/or in person at the hearing. The Delaware Department of Agriculture is located at 2320 S. DuPont Highway, Dover, DE 19901 and the phone number is (302) 739-4811.

DEPARTMENT OF HEALTH & SOCIAL SERVICES

Statutory Authority: 16 Delaware code, Section 122(c)(3) (16 **Del.C.** 122(c)(3))

Delaware Health and Social Services is considering revising certain regulations contained in Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act, Section 403, 8 USC 1613, the 1993 Mickey Leland Childhood Hunger Relief Act, the Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 104-204, Title 38, United States Code, and DSSM sections 4006 and 4012. The Department will receive comments and consider whether or not to adopt or modify the proposed regulations.

The proposed regulations:

- Align cash assistance lump sum policy with the corresponding food stamp policy (DSSM 4006 and 4012).
- Exempt from adverse action notice when DSS mail is returned with no forwarding address. (DSSM 9020.4)
- Prohibit noncitizens who are lawfully admitted to the U. S. for legal permanent residence on or after August 22, 1997, from receiving Food Stamps for five years. (DSSM 9030)
- Allow households to provide the Social Security Number of a newborn at its next recertification or within six months, whichever is later. (DSSM 9210.3 and 9314.6)
- Exclude the value of one bona fide funeral agreement per household member up to \$1,500 in equity value. (DSSM 9404)
- Require Standard Utility Allowances be utilized instead of actual utility costs. (DSSM 9507)
- Restrict households with no record of regular child support payments to a 3 month certification period and those with a payment record to 6 months. (DSSM 9615)
- Revise the treatment of educational income. (DSSM 9404, 9503, 9504, 9506)
- Exclude allowances paid to children of Vietnam veterans who are born with spina bifida as income and resources for food stamp purposes. (DSSM 9404 and 9506)
- Make any failure to comply with another program's requirements, regardless of intent, subject to the Riverside Rule for purposes of food stamp benefit calculation. (DSSM 9709).

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to the Director, Division of Social Services, P.O. Box 906, New Castle, DE, by October 30, 1997, at one of the Division of Social Services' offices listed above.

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

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL****DIVISION OF WATER RESOURCES**

Statutory Authority: 7 Delaware Code,
Section 6010 (7 **Del.C.** 6010)

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, has proposed to revise the Regulations for Licensing Operators of Wastewater Facilities. Proposed amendments would change the due date from July 1 to January 31 of each year for registration of wastewater facilities and operators and provide a way to allow wastewater operators to retain licenses while not actively operating as long as they meet the continuing education requirements. Section 9 and 15 have also been deleted.

Possible Terms of the Agency Action:

N/A

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

List of Other Regulations That May be Impacted or Affected by the Proposal:

None

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control will hold a public hearing on November 5, 1997, beginning at 7:00 p.m., in the Canteen Conference Room, of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to consider proposed amendments to the Regulations for Licensing Operators of Wastewater Facilities. The proposals address reporting requirements and the requirements to retain an operators license when not operating and also delete Section 9 and 15.

The proposals will be available for inspection at the Division of Water Resources offices located at 89 Kings Highway, Dover, Delaware. Inquiries should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL****AIR QUALITY MANAGEMENT SECTION**

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

The Department of Natural Resources and Environmental Control, Air Quality Management Section, is proposing for adoption a regulation that will require the control of landfill gas emissions from new and existing municipal solid waste landfills. Landfill gas contains nethine, carbon dioxide, and more than 100 nonmethine organic compounds that include volatile organic compounds, hazardous air pollutants, and odorous compounds. The regulation is, generally, an adoption of a federal rule (40 CFR 60 Subpart WWW) by reference.

NOTICE OF PUBLIC HEARING

The Department of Natural Resources and Environmental Control, Air Quality Management Section, will conduct a public hearing on a new Section to be added to Regulation No. 20 of the State of Delaware "Regulations Governing the Control of Air Pollution," Regulation No. 20 Section No. 28- STANDARDS OF PERFORMANCE FOR MUNICIPAL SOLID WASTE LANDFILLS.

The Department is proposing to, through Regulation No. 20, Section 28, adopt the Federal New Source Performance Standard found at 40 CFR Part 60 Subpart WWW by reference. The applicability of Subpart WWW is proposed to be expanded such that it will cover both new and existing municipal solid waste landfills. The public hearing will be held on October 23, 1997, beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

For more information, please contact Joanna L. French, in New Castle, at (302) 323-4542. The Department of Natural Resources and Environmental Control, Air Quality Management Section, is proposing for adoption a regulation that will require the control of landfill gas emissions from new and existing municipal solid waste landfills. Landfill gas contains nethine, carbon dioxide, and more than 100 nonmethine organic compounds that include volatile organic compounds, hazardous air pollutants, and odorous compounds. The regulation is, generally, an adoption of a federal rule (40 CFR 60 Subpart WWW) by reference.

NOTICE OF PUBLIC HEARING

The Department of Natural Resources and Environmental Control, Air Quality Management Section, will conduct a public hearing on a new Section to be added to Regulation No. 20 of the State of Delaware "Regulations Governing the Control of Air Pollution," Regulation No. 20 Section No. 28- STANDARDS OF PERFORMANCE FOR MUNICIPAL SOLID WASTE LANDFILLS.

The Department is proposing to, through Regulation No. 20, Section 28, adopt the Federal New Source Performance Standard found at 40 CFR Part 60 Subpart WWW by reference. The applicability of Subpart WWW is proposed to be expanded such that it will cover both new and existing municipal solid waste landfills. The public hearing will be held on October 23, 1997, beginning at 6:00 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

For more information, please contact Joanna L. French, in New Castle, at (302) 323-4542.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority: 7 Delaware Code,
Section 902(e)(3) (7 Del.C. 902(e)(3))

Brief Synopsis of the Subject Substance and Issue

The Department of Natural Resources and Environmental Control is authorized to promulgate regulations consistent with fishery management plans for species of fish under management of a fishery management plan approved by the Secretary of Commerce.

The Department proposes to enact tidal finfish regulations for certain Atlantic Sharks (see list of sharks defined as the management unit below) to be consistent with the Fishery Management Plan for Sharks of the Atlantic Ocean, as amended, and final rules approved by the Secretary of Commerce (50 CFR Part 678).

These regulations will make it illegal to possess sharks in the management unit after the federal semi-annual commercial quota is landed for large pelagic sharks, small coastal sharks or pelagic sharks respectively; implement a recreational creel limit; prohibit directed commercial fishing for landing of or sale of five species of sharks; establish a

recreational catch and release only fishery for white sharks; prohibit filleting of sharks at sea and prohibit the removal of any fins from a shark in the management unit and discarding the remainder. These regulations are intended to reduce effective fishing mortalities, stabilize the large coastal shark population, facilitate enforcement and improve management of atlantic shark resources. Sharks in the management unit are currently at very low populations due to recent increases in their harvest.

Possible Terms of the Agency Action

The Department of Natural Resources and Environmental Control may reject or approve Tidal Finfish Regulations to manage certain sharks.

Statutory Basis or Legal Authority to Act

§ 902 (e) (3), 7 Del. C.

Notes of Public Comment

Individuals may present their opinions and/or request additional information by writing or visiting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 prior to 4:30 p.m. on October 31, 1997. A public hearing on these proposals will be held in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Monday, October 27, 1997.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE**

Statutory Authority:

7 Delaware Code, Section 1902(a)(2) (7 Del.C.
1902(a)(2))

7 Delaware Code, Section 1902(a)(3) 7 Del.C.
1902(a)(3))

SHELLFISH REGULATION NO. S-41

Brief Synopsis of the Subject, Substance and Issues

Legislative authority to classify shellfish growing areas was changed from the Department of Health and Social Services, Division of Public Health to the Department of Natural Resources and Environmental Control (DNREC) in 1996. Consequently, the DNREC promulgated Shellfish Sanitation Regulations that classify

shellfish growing areas as approved, prohibited, seasonally approved or conditionally approval based upon theoretical pollution loading, sanitary survey data and bacteriological monitoring. Shellfish Regulation No. S-41 is proposed to be amended to reflect the above changes and make it unlawful to harvest any shellfish from shellfish growing areas that are prohibited or when seasonally closed.

Statutory Basis or Legal Authority to Act

§ 1902 (a) (2), 7 Del. C.

Notice of Public Comment

Persons may obtain additional information and/or submit their views on the proposed amendment to Shellfish Regulation No. S-41 by contacting the Division of Fish and Wildlife, Fisheries Section, 89 Kings Highway, Dover, DE 19901 prior to 4:30 p.m. on Friday, October 31, 1997. A public hearing on the amendment to Shellfish Regulation No. S-41 is scheduled in the DNREC auditorium, 89 Kings Highway, Dover, DE on Thursday, October 30, 1997 at 7:30 p.m.

SHELLFISH REGULATIONS NOS. S-55, S-56

Brief Synopsis of the Subject, Substance and Issues

Currently there are no restrictions on the number and length of trotlines that may be used by a recreational crabber and there are no restrictions on the number of crab traps that may be used by a recreational crabber. Recreational crabbers are limited to harvesting no more than one bushel of crabs per day.

The use of trotlines and crab traps is proliferating in the Inland Bays. Some trotlines measure in excess of 1000 feet. Crab traps, which differ from a crab pot, must be activated by the crabber to catch a crab where as a crab pot catches crabs passively. The number of crab traps being used by individuals also is proliferating. Crab pots are limited to two per person.

It is suspected that some recreational crabbers are illegally selling crabs taken by trotline and crab traps from the Inland Bays. In order to reduce the effort by recreational crabbers who use trotlines or crab traps, it has been recommended by environmental law enforcement officials to limit the number and length of crab trotlines and the number of crab traps per individual. Since these gears are sometimes left unattended, the owners name and address should be legible on a float attached to the gear.

The Division of Fish and Wildlife, Department of

Natural Resources and Environmental Control, (DNREC) proposes to promulgate new shellfish regulations that will limit the number and length of crab trotlines (defined) to one per person no more than 300 feet in length. A new shellfish regulation also is proposed to limit the numbers of crab traps (defined) to no more than 12 per person. In addition, each crab trotline and crab trap will be required to have attached a white buoy with the owners name and address clearly legible on the buoy. These regulations will decrease the potential of a recreational crabber harvesting more than one bushel per day.

Statutory Basis on Legal Authority to Act Section 1902 (a) (3), 7 Del. C.

Notice of Public Comment:

Additional information may be obtained from the Fisheries Section, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE., 19901. (302-739-3441). Comments on these proposed shellfish regulations may be submitted to the Fisheries Section until 4:30 p.m. on Friday, October 31, 1997. A public hearing is scheduled in the DNREC auditorium, 89 Kings Highway, Dover, DE at 7:30 p.m. on Thursday, October 30, 1997. The public is invited to attend and comment.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES/MEDICAL
ASSISTANCE PROGRAM (DMAP)**

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, the Delaware Department of Health and Social Services (DHSS) hereby publishes notice of proposed policies and procedures. The DHSS/Division of Social Services/Medical Assistance Program (DMAP) will implement a change in the value of a vehicle that can be excluded from resource consideration from \$4500 to \$4650 to comply with Federal Regulations that require Medicaid to use the same exclusion value as does the Food Stamp Program.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the

following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than November 1, 1997, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated.

Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES**

IN THE MATTER OF: |

REVISION OF REGULATION |
OF THE MEDICAID/MEDICAL |
ASSISTANCE PROGRAM |
CONTAINED IN DMAP |
SECTION 420 |

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, the Delaware Department of Health and Social Services (DHSS) hereby publishes notice of proposed policies and procedures. The DHSS/ Division of Social Services/Medical Assistance Program (DMAP) will implement a change, approved and funded by the State Legislature, for an increase in the personal

needs allowance protected for individuals who are eligible for Medicaid and who are residing in a nursing facility, effective 7/1/97.

The revised rule increases the amount to be protected for the personal needs of a Medicaid client in a long-term care facility from \$36 to \$42.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than November 1, 1997, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated.

Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings, or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

**DEPARTMENT OF HEALTH &
SOCIAL SERVICES
DIVISION OF SOCIAL SERVICES/MEDICAL
ASSISTANCE PROGRAM (DMAP)**

**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 42 CFR §447.205, the Delaware Department of Health and Social Services (DHSS) hereby publishes notice of proposed policies and procedures. The DHSS/Division of Social Services/Medical assistance Program (DMAP) is publishing its Inpatient Hospital and Outpatient Hospital provider manuals in the State Register of Regulations for the first time and so they appear in complete form as follows.

There is also one addition to the Ambulance Provider Specific Policy Manual and two additions to the Long-Term Care Provider Specific Policy Manual.

Comments or requests for copies of proposed changes or relevant materials may be made in writing to: Medicaid Administrative Offices, Division of Social Service, P.O. Box 906, New Castle, DE 19720, attention: Thelma G. Mayer, or by calling (302) 577-4880, extension 131, or may be viewed at the following locations: New Castle County: Medicaid Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE, 19720; Kent County: Medicaid Unit, Division of Social Services, Williams State Service Center, 805 River Rd., Dover, DE 19901; Sussex County: Medicaid Unit, Division of Social Services, Georgetown State Service Center, 546 S. Bedford St., Georgetown, DE, 19947.

Comments, written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed change must be received by mail no later than November 1, 1997, at the Medicaid Administrative Office, Lewis Bldg., Herman M. Holloway, Sr. Health & Social Services Campus, 1901 N. DuPont Hwy., New Castle, DE 19720, attention Thelma Mayer. Materials filed thereafter will not be considered except where good cause for lateness is demonstrated.

Copies of all written submissions filed with the Medicaid office will be available for public inspection in the Medicaid Administrative Office at the address given above. Please call (302) 577-4904 for an appointment if you wish to review the materials. Individuals with disabilities who wish to participate in these proceedings,

or review the materials submitted, should contact the Division to discuss auxiliary aids or services needed to facilitate such review or participation. Such contact may be in person, in writing or by telephone by using the Telecommunications Relay Service, or otherwise.

**DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL**

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

Brief Synopsis of the Subject, Substance and Issues:

The Department of Natural Resources and Environmental Control, in accordance with 7 Del. C. §6010, has proposed to revise Subsection 1 of Section 9 in the Regulations Governing the Control of Water Pollution. Proposed amendments would revise Part 1 and 2 and add Part 3 through 14 to the NPDES General Permit Program Regulations Governing Storm Water Discharges Associated with Industrial Activity.

Possible Terms of the Agency Action:

The Regulation has a term of 5 years

Statutory Basis or Legal Authority to Act:

7 Del C. Section 6010

List of Other Regulations That May be Impacted or Affected by the Proposal:

None

Notice Of Public Comment:

The Department of Natural Resources and Environmental Control will hold a public hearing on November 6 1997, beginning at 7:00 p.m., in the DNREC auditorium of the Richardson and Robbins Building, 89 Kings Highway, Dover, Delaware, to consider proposed amendments to Section 9 of the Regulations Governing the Control of Water Pollution. The proposals amend Subsection 1, Part 1 and 2 and add Part 3 through 14 to the NPDES General Permit Program Regulations Governing Storm Water Discharges Associated with Industrial Activity.

The proposals will be available for inspection at the Division of Water Resources offices located at 89 Kings Highway, Dover, Delaware. Inquiries should be directed to R. Robert Thompson at (302) 739-4403. Statements and testimony may be presented orally or in written form at the hearing. It is requested that those interested in presenting statements register in advance by mail. Written statements may be presented prior to the hearing and should be addressed to: R. Robert Thompson, Hearing Officer, DNREC, 89 Kings Highway, Dover, DE 19901.

DEPARTMENT OF ADMINISTRATIVE SERVICES
PROFESSIONAL REGULATION,
BOARD OF PHARMACY

Statutory Authority: 24 Delaware Code,
Section 2509, (24 **Del.C.** 2509)

The Board of Pharmacy, under authority granted by 24 Del.C. 2509, proposes to adopt additions and revisions to the existing Regulations I and V as follows:

Regulation I(C)(1) by the addition of "For the period from January 1, 1998 through and including September 30, 1998, no continuing education will be required and continuing education credits received during this time period may be credited to the next biennial renewal."

Regulation V, D, 3, (c)(5) by the addition of "If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived."

Regulation V, B will be amended to read "the practice or dispensing shall include, but not be limited to the following acts which will be performed by a pharmacist, or pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program."

A public hearing on the proposed additions and revisions of existing Regulations I and V will be held on November 19, 1997 at 11:00 a.m. in Room 309, Jesse Cooper Building, Federal and Water Streets, Dover, DE 19901.

The Board of Pharmacy shall receive input in writing from interested persons on proposed rules regarding the proposed additions and revisions of existing Regulations I and V. The final date for interested parties to submit views in writing or orally shall be at the above scheduled public hearing. Anyone wishing to make oral comments should notify the Board's Administrative Assistant, Gradella E. Bunting, (302) 739-4798 at the Jesse Cooper Building, Federal & Water Streets, Dover, DE 19901.